



# Higher Education Act 2004

## 2004 CHAPTER 8

### PART 2

#### REVIEW OF STUDENT COMPLAINTS

#### 11 Qualifying institutions

In this Part “qualifying institution” means any of the following institutions in England or Wales—

- (a) a university (whether or not receiving financial support under section 65 of the 1992 Act) whose entitlement to grant awards is conferred or confirmed by—
  - (i) an Act of Parliament,
  - (ii) a Royal Charter, or
  - (iii) an order under section 76 of the 1992 Act;
- (b) a constituent college, school or hall or other institution of a university falling within paragraph (a);
- (c) an institution conducted by a higher education corporation;
- (d) a designated institution, as defined by section 72(3) of the 1992 Act.

#### 12 Qualifying complaints

- (1) In this Part “qualifying complaint” means, subject to subsection (2), a complaint about an act or omission of a qualifying institution which is made by a person—
  - (a) as a student or former student at that institution, or
  - (b) as a student or former student at another institution (whether or not a qualifying institution) undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution’s awards.
- (2) A complaint which falls within subsection (1) is not a qualifying complaint to the extent that it relates to matters of academic judgment.

### **13 Designation of operator of student complaints scheme**

- (1) The Secretary of State may, for the purposes of this Part, designate a body corporate as the designated operator for England as from a date specified in the designation.
- (2) The Assembly may, for the purposes of this Part, designate a body corporate as the designated operator for Wales as from a date specified in the designation.
- (3) The Secretary of State or the Assembly may not designate a body under subsection (1) or (2) unless he or the Assembly is satisfied that the body—
  - (a) meets all of the conditions set out in Schedule 1,
  - (b) is providing a scheme for the review of qualifying complaints that meets all of the conditions set out in Schedule 2, or is proposing to provide such a scheme from a date not later than the effective date,
  - (c) has consulted interested parties about the provisions of that scheme, and
  - (d) consents to the designation.
- (4) If a body is designated under subsection (1) or (2) the Secretary of State or the Assembly must, before the effective date,—
  - (a) give the body notice of the designation, and
  - (b) publish notice of the designation in such manner as he or the Assembly thinks fit.
- (5) In this Part—
  - (a) “the effective date”, in relation to the designation of a body corporate under this section, means the date specified in the designation as the date from which the body is designated as designated operator, and
  - (b) any reference to the designated operator is—
    - (i) in relation to an institution in England, a reference to the body designated under subsection (1), and
    - (ii) in relation to an institution in Wales, a reference to the body designated under subsection (2).

### **14 Duties of designated operator**

The designated operator must comply with the duties set out in Schedule 3 during the period specified in that Schedule.

### **15 Duties of qualifying institutions**

- (1) The governing body of every qualifying institution in England and Wales must comply with any obligation imposed upon it by a scheme for the review of qualifying complaints that is provided by the designated operator.
- (2) The duty imposed by subsection (1) applies from the effective date of the designation and ceases to apply only if the designation is terminated.
- (3) The obligations referred to in subsection (1) include any obligation to pay fees to the designated operator.

## **16 Termination of designation**

- (1) The designation of a body under section 13 continues until it is terminated in accordance with Schedule 4.
- (2) If the designation of a body is terminated, the Secretary of State or the Assembly must publish notice of the termination in such manner as he or it thinks fit.

## **17 Privilege in relation to law of defamation**

- (1) For the purposes of the law of defamation, any proceedings relating to the review under the scheme of a qualifying complaint are to be treated as if they were proceedings before a court.
- (2) For those purposes, absolute privilege attaches to the publication of—
  - (a) any decision or recommendation made under the scheme by a person responsible for reviewing a qualifying complaint, and
  - (b) any report under paragraph 6 or 7 of Schedule 3.
- (3) In this section “the scheme” means the scheme for the review of qualifying complaints provided by the designated operator.

## **18 Provision where designation of operator to cease**

- (1) Where—
  - (a) an agreement to terminate a designation has been made under paragraph 2 of Schedule 4,
  - (b) notice to terminate a designation has been given under paragraph 4 or 6 of Schedule 4, or
  - (c) the designated operator has ceased to exist,the Secretary of State (in relation to England) or, as the case requires, the Assembly (in relation to Wales) may by order make such provision as he or it thinks fit for, or in connection with, the review of qualifying complaints.
- (2) The provision that may be made under this section includes any one or more of the following—
  - (a) provision requiring the designated operator to provide the scheme in accordance with specified requirements;
  - (b) provision modifying, or requiring the designated operator to modify, the provisions of the scheme;
  - (c) provision about the fees payable under the scheme, including provision requiring the repayment of fees already paid;
  - (d) provision for a specified person to take over provision of the scheme;
  - (e) provision for any provision of this Part that applies in relation to a scheme provided by the designated operator to apply (with or without modifications) in relation to a scheme provided by a person specified by virtue of paragraph (d);
  - (f) provision for a specified person to review qualifying complaints, or specified descriptions of qualifying complaints, otherwise than under the scheme;
  - (g) provision requiring the payment of fees by the governing bodies of qualifying institutions to a person specified by virtue of paragraph (f);

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*Status: This is the original version (as it was originally enacted).*

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- (h) provision requiring the designated operator to provide such information and assistance as the Secretary of State or the Assembly considers necessary—
  - (i) for the Secretary of State or the Assembly to make provision under this section; or
  - (ii) for any person to comply with, or act under or in accordance with, provision made under this section.
- (3) The Secretary of State or the Assembly may be specified by virtue of subsection (2)(d), but not by virtue of subsection (2)(f).
- (4) In this section—
  - “the scheme” means the scheme for the review of qualifying complaints that the designated operator provides or has been providing;
  - “specified” means specified in an order under this section.

## **19 Extension of time for bringing discrimination proceedings**

- (1) In section 76 of the Sex Discrimination Act 1975 (c. 65) (period within which proceedings to be brought) after subsection (2) insert—

“(2A) Where in England and Wales—

- (a) proceedings or prospective proceedings under section 66 relate to the act or omission of a qualifying institution, and
- (b) the dispute concerned is referred as a complaint under the student complaints scheme before the end of the period of six months mentioned in subsection (2)(a),

the period allowed by subsection (2)(a) shall be extended by two months.

(2B) In subsection (2A)—

“qualifying institution” has the meaning given by section 11 of the Higher Education Act 2004;

“the student complaints scheme” means a scheme for the review of qualifying complaints, as defined by section 12 of that Act, that is provided by the designated operator, as defined by section 13(5)(b) of that Act.”

- (2) In section 68 of the Race Relations Act 1976 (c. 74) (period within which proceedings to be brought) after subsection (3) insert—

“(3A) Where in England and Wales—

- (a) proceedings or prospective proceedings by way of a claim under section 57 relate to the act or omission of a qualifying institution,
- (b) the dispute concerned is referred as a complaint under the student complaints scheme before the end of the period of six months mentioned in subsection (2), and
- (c) subsection (3) does not apply,

the period allowed by subsection (2) for instituting proceedings in respect of the claim shall be extended by two months.

(3B) In subsection (3A)—

“qualifying institution” has the meaning given by section 11 of the Higher Education Act 2004;

“the student complaints scheme” means a scheme for the review of qualifying complaints, as defined by section 12 of that Act, that is provided by the designated operator, as defined by section 13(5)(b) of that Act.”

- (3) In Schedule 3 to the Disability Discrimination Act 1995 (c. 50) (enforcement and procedure), in paragraph 13 (period within which proceedings must be brought) for sub-paragraph (2) substitute—

“(2) If, in relation to proceedings or prospective proceedings under section 28V—

- (a) the dispute concerned is referred for conciliation in pursuance of arrangements under section 31B before the end of the period of six months mentioned in sub-paragraph (1), or
- (b) in England and Wales, in a case not falling within paragraph (a), the dispute concerned relates to the act or omission of a qualifying institution and is referred as a complaint under the student complaints scheme before the end of that period,

the period of six months allowed by sub-paragraph (1) shall be extended by two months.

(2A) In sub-paragraph (2)(b)—

“qualifying institution” has the meaning given by section 11 of the Higher Education Act 2004;

“the student complaints scheme” means a scheme for the review of qualifying complaints, as defined by section 12 of that Act, that is provided by the designated operator, as defined by section 13(5)(b) of that Act.”

## **20 Exclusion of visitor’s jurisdiction in relation to student complaints**

- (1) The visitor of a qualifying institution has no jurisdiction in respect of any complaint which falls within subsection (2) or (3).
- (2) A complaint falls within this subsection if it is made in respect of an application for admission to the qualifying institution as a student.
- (3) A complaint falls within this subsection if it is made by a person—
- (a) as a student or former student at the qualifying institution, or
- (b) as a student or former student at another institution (whether or not a qualifying institution) undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution’s awards.

## **21 Interpretation of Part 2**

In this Part—

“award” means any degree, diploma, certificate or other academic award or distinction;

“designated operator” has the meaning given by section 13(5)(b);

“the effective date” has the meaning given by section 13(5)(a);

“governing body” has the meaning given by section 90(1) of the 1992 Act, but subject to any provision made by virtue of section 90(2) of that Act;

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“higher education corporation” has the meaning given by section 90(1) of the 1992 Act;

“interested parties”, in relation to a scheme for the review of qualifying complaints provided or to be provided by a body corporate, means—

- (a) qualifying institutions in England or Wales (as the case may be), and
- (b) persons selected by the body corporate from amongst those it considers to represent the interests of students at qualifying institutions in England or Wales (as the case may be);

“qualifying complaint” has the meaning given by section 12;

“qualifying institution” has the meaning given by section 11.