



Teaching and Higher Education Act 1998

1998 CHAPTER 30

PART II

FINANCIAL PROVISION FOR HIGHER AND FURTHER EDUCATION

CHAPTER II

SCOTLAND

29 Grants and loans: Scotland

- (1) In section 73 of the Education (Scotland) Act 1980 (power of Secretary of State to make grants and loans), in paragraph (f), after the word “allowances” there shall be inserted the words “or loans”.
- (2) After that section there shall be inserted—

“73A Transfer or delegation of functions relating to student support

- (1) If the Secretary of State so determines, any function exercisable by him by virtue of regulations made under section 73(f) of this Act shall, to such extent as is specified in his determination, be exercisable instead by such body or person as is so specified.
- (2) A person or body by whom any function is for the time being exercisable by virtue of subsection (1) above shall comply with any direction given by the Secretary of State as to the exercise of that function.
- (3) The Secretary of State may make arrangements for any person or body specified in the arrangements to exercise on his behalf, to such extent as is so specified, any function exercisable by him by virtue of regulations under section 73(f) of this Act (including any such functions as to appeals).

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- (4) Any arrangements made under subsection (3) above shall not prevent the Secretary of State from exercising the function in question himself.
- (5) The Secretary of State may make provision for enabling appeals—
 - (a) to be made with respect to such matters arising out of the exercise by any person or body of any function by virtue of subsection (1) or (3) above as he may determine; and
 - (b) to be so made to a person or body appointed by him for that purpose.
- (6) The Secretary of State may pay to any person or body by whom any function is exercisable by virtue of subsection (1) or (3) above—
 - (a) such amounts as he considers appropriate for the purpose of meeting expenditure incurred or to be incurred by that person or body—
 - (i) in making grants or loans by virtue of regulations under section 73(f) of this Act, or
 - (ii) by way of administrative expenses,
 in, or in connection with, the exercise of that function;
 - (b) in the case of any such person, or of any body with which the Secretary of State has made arrangements under subsection (3) above, such remuneration as he may determine.
- (7) Any payment under subsection (6)(a) above may be made subject to such terms and conditions (including conditions as to repayment) as the Secretary of State may determine.
- (8) The Secretary of State may pay to any person or body appointed by him under subsection (5) such remuneration or administrative expenses (or both) as he may determine.
- (9) In relation to any function which, by virtue of subsection (1) or (3) above is exercisable to a specified extent, references in any other provision of this section to the exercise of that function are accordingly to its exercise to that extent.

73B Regulations relating to student loans

- (1) This section applies in relation to regulations under paragraph (f) of section 73 of this Act made with respect to loans.
- (2) Regulations to which this section applies may make provision requiring such amounts as may be prescribed, payable under loans granted by virtue of such regulations, to be paid directly to institutions providing courses of education who have previously made payments of any prescribed description to persons attending such courses to whom such loans may be granted.
- (3) Regulations to which this section applies may make such provision as the Secretary of State considers necessary or expedient in connection with the recovery of amounts due from borrowers under loans granted by virtue of such regulations, including provision for—
 - (a) imposing on employers, or (as the case may be) such other persons or bodies as may be prescribed, requirements with respect to—
 - (i) the making of deductions in respect of amounts so due (or, in any prescribed circumstances, amounts assessed

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- in accordance with the regulations to be so due) from emoluments payable to borrowers,
 - (ii) the collection by other means of such amounts,
 - (iii) the transmission of amounts so deducted or collected to the Secretary of State in accordance with directions given by him;
 - (b) imposing on employers, or such other persons or bodies as may be prescribed, requirements with respect to the keeping and production of records for such purposes as may be prescribed;
 - (c) imposing on borrowers requirements with respect to—
 - (i) the provision of such information, and
 - (ii) the keeping and production of such documents and records, relating to their income as may be prescribed;
 - (d) requiring the payment, by persons or bodies to whom the requirements imposed in pursuance of paragraphs (a) to (c) above apply, of—
 - (i) penalties in cases of non-compliance with, or otherwise framed by reference to, such requirements, and
 - (ii) interest in respect of periods when such penalties are due but unpaid;
 - (e) requiring the payment by borrowers, in respect of periods when amounts due under their loans are unpaid, of—
 - (i) interest (applied to such amounts at a rate calculated otherwise than in accordance with subsections (6) and (7) below), or
 - (ii) both such interest and one or more surcharges (together with further interest in respect of periods when such surcharges are due but unpaid);
 - (f) enabling the Secretary of State to require the reimbursement by borrowers of costs or expenses of any prescribed description incurred by him in connection with the recovery of unpaid amounts;
 - (g) applying or extending with or without modification, for purposes connected with the recovery of amounts under regulations to which this section applies, any of the provisions of the Taxes Acts or of regulations under section 203 of the Income and Corporation Taxes Act 1988 (PAYE);
 - (h) determining the priority as between deductions falling to be made by virtue of paragraph (a)(i) above and deductions falling to be made from emoluments payable to borrowers by virtue of other enactments (whenever passed);
 - (i) modifying any enactment or instrument (whenever passed or made) so as to provide for the treatment, in connection with any calculation with respect to income (however defined), of amounts due from or payable to such persons under loans granted by virtue of regulations to which this section applies.
- (4) In subsection (3) above—
- (a) “employers” means persons who make payments of, or on account of, income assessable to income tax under Schedule E, and

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- (b) “the Taxes Acts” has the same meaning as in the Taxes Management Act 1970.
- (5) Regulations to which this section applies may make provision for the payment, in respect of amounts overpaid by borrowers, of interest at such rate, and calculated in such manner, as may be determined by the Secretary of State from time to time.
- (6) A rate of interest, prescribed by regulations to which this section applies, to be borne by loans shall at no time exceed the rate for the time being specified for the purposes of any exemption conferred by virtue of section 16(5)(b) of the Consumer Credit Act 1974 (exemption of certain consumer credit agreements by reference to the rate of the total charge for credit).
- (7) Subject to subsection (6) above, regulations to which this section applies shall not prescribe a rate of interest to be borne by loans higher than that which the Secretary of State, having regard to such retail prices index as appears to him to be appropriate, is satisfied is required to maintain the value in real terms of the outstanding amounts of such loans.
- (8) Regulations to which this section applies may make provision, for the purpose of calculating the interest to be borne by loans, for repayments by borrowers to be treated as having been made or received on such date or dates as may be prescribed.
- (9) Regulations to which this section applies may prescribe requirements or other provisions which add to or otherwise modify, during the currency of a loan, requirements or other provisions (whether as to repayment or otherwise) which apply in relation to loans granted by virtue of such regulations.
- (10) Regulations to which this section applies may make provision for a borrower not to be liable to make any repayment in respect of a loan—
- (a) during such periods as may be prescribed from time to time, or
 - (b) in such circumstances as may be prescribed,
- including provision for the cancellation of any further such liability of the borrower in any such circumstances.
- (11) Regulations to which this section applies may make provision for appeals with respect to matters arising under such regulations (including provision for determining, or enabling the determination of, the procedure to be followed in connection with such appeals).
- (12) Regulations to which this section applies may, in relation to a borrower’s discharge under or by virtue of section 54 of the Bankruptcy (Scotland) Act 1985 or on an order being made under paragraph 11 of Schedule 4 to that Act, make provision for the treatment of any debt or liability to which a borrower is, or may become, subject in respect of sums received, or which he is entitled to receive, after the date of his sequestration.
- (13) Nothing in this section prejudices the generality of section 73(f) of this Act.

73C Transitional provisions and savings on repeal of Education (Student Loans) Act 1990

- (1) The Secretary of State may by regulations make such transitional provision and savings in connection with the repeal by the Teaching and Higher Education Act 1998 of the Education (Student Loans) Act 1990 (“the 1990 Act”) as he considers necessary or expedient including—
 - (a) provision for any function which has been conferred under or by virtue of the 1990 Act to transfer to, or otherwise become exercisable by—
 - (i) the Secretary of State, or
 - (ii) such other person or body as may be prescribed,to such extent as may be prescribed; and
 - (b) provision for the transfer to the Secretary of State or any such other person or body of rights or liabilities arising under or by virtue of the 1990 Act.
- (2) Regulations made by virtue of paragraphs (a) and (b) of subsection (1) above may, in particular, provide for—
 - (a) any such function to be exercisable in pursuance of such regulations in such modified form as may be prescribed;
 - (b) the 1990 Act to have effect with such modifications as may be prescribed.

73D Provision as to maximum amounts of certain allowances

- (1) This section applies to allowances payable by virtue of section 73(f) of this Act in respect of the fees charged in connection with attendance on a course of higher education.
- (2) The Secretary of State may by order made by statutory instrument determine the maximum amount payable in any academic year of allowances to which this section applies in respect of such courses or classes of courses of higher education as may be so determined and, subject to subsection (3) below, a statutory instrument containing an order under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Where the Secretary of State has determined a maximum amount under subsection (2) above, he shall not make a further determination increasing that maximum amount under that subsection unless—
 - (a) he is satisfied that the increase is no greater than is required to maintain the allowance’s value in real terms; or
 - (b) a draft of the order containing the further determination has been laid before, and approved by a resolution of, each House of Parliament.
- (4) For the purposes of subsection (3)(a) above the Secretary of State shall have regard to such retail prices index as appears to him to be appropriate.
- (5) In subsection (2) above, “courses of higher education” means courses of higher education falling within section 38 of the Further and Higher Education (Scotland) Act 1992.”

30 Supply of information in connection with student loans: Scotland

After section 73D of the Education (Scotland) Act 1980 there shall be inserted—

“73E Supply of information in connection with student loans

- (1) This section applies to any information which is held—
 - (a) by the Commissioners of Inland Revenue, or
 - (b) by a person providing services to those Commissioners and in connection with the provision of those services.
- (2) Information to which this section applies may be supplied to—
 - (a) the Secretary of State or the Department of Education for Northern Ireland,
 - (b) any person or body acting on behalf of the Secretary of State or that Department under the delegation of functions provisions, or
 - (c) any person or body by whom any function of the Secretary of State or that Department is for the time being exercisable to any extent by virtue of the transfer of functions provisions,

for the purpose of enabling or assisting the recipient to exercise any function in connection with the operation of the student loans scheme.
- (3) Information supplied under subsection (2) above shall not be supplied by the recipient to any other person or body unless it is supplied—
 - (a) to a person or body to whom it could have been supplied under that subsection, or
 - (b) for the purposes of any civil or criminal proceedings arising out of the student loans scheme.
- (4) Subsections (2) and (3) above extend only to the supply of information by or under the authority of the Commissioners of Inland Revenue.
- (5) This section does not limit the circumstances in which information may be supplied apart from this section.
- (6) In this section—
 - (a) “the delegation of functions provisions” means section 73A(3) of this Act or section 23(4) of the Teaching and Higher Education Act 1998;
 - (b) “the transfer of functions provisions” means section 73A(1) of this Act or section 23(1) of the Teaching and Higher Education Act 1998; and
 - (c) “the student loans scheme” means the provisions of—
 - (i) regulations under section 73(f) of this Act with respect to loans; or
 - (ii) regulations under section 22 of the Teaching and Higher Education Act 1998 so far as having effect in relation to loans under that section;

and in this subsection any reference to a provision of this Act includes a reference to any corresponding Northern Ireland legislation.”

31 Imposition of conditions as to fees at further and higher education institutions in Scotland

(1) In section 10 of the Further and Higher Education (Scotland) Act 1992 (payment of grants to Funding Council), after subsection (2) there shall be inserted—

“(2A) The power of the Secretary of State under subsection (2) above to impose conditions shall include power to impose a condition requiring the Funding Council to impose, in such cases as may be specified in the condition, a condition under subsection (2B) below in relation to any grant, loan or other payment made by the Funding Council in the exercise of any function prescribed by an order under section 7(2) of this Act.

(2B) A condition under this subsection shall require—

- (a) the board of management of any college of further education; or
- (b) any other person to whom any such grant, loan or other payment as is mentioned in subsection (2A) above is made,

to secure that no fees are payable to the board of management or, as the case may be, person by any specified class of persons in respect of any specified matters in connection with their attending courses of any specified description.

(2C) No condition under subsection (2B) above shall apply in relation to any fees which are payable, in accordance with regulations under section 1 of the Education (Fees and Awards) Act 1983 (fees at universities and further education establishments), by students other than those falling within any class of persons prescribed by such regulations for the purposes of subsection (1) or (2) of that section (persons connected with the United Kingdom etc.).

(2D) A condition under subsection (2B) above shall impose, in the event of a failure by a board of management mentioned in paragraph (a) of that subsection or, as the case may be, of such other person as is mentioned in paragraph (b) of that subsection to comply with the requirement specified in that subsection, such further financial requirements on that board or person as may be specified, which may include requirements relating to the repayment, with or without interest, of the whole or any part of any sums received by that board or person in respect of the grant, loan or other payment in question.

(2E) Where the functions of the Secretary of State under section 4 of this Act are exercised by the Funding Council, the prohibition contained in subsection (3) of that section shall not apply in relation to conditions imposed under subsection (2B) above.”

(2) In section 42 of that Act (grants in relation to higher education), after subsection (3) there shall be inserted—

“(3A) The power of the Secretary of State under subsection (1) above to impose conditions shall include power to impose a condition requiring the Council to impose, in such cases as may be specified in the condition, a condition under subsection (3B) below in relation to any grants, loans or other payments made by the Council under section 40(3) of this Act in respect of activities eligible for funding under that section.

(3B) A condition under this subsection shall require the recipient of a grant, loan or other payment made under section 40(3) of this Act to secure that the fees

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payable to the recipient by any class of persons prescribed by regulations in connection with their attending courses of any description so prescribed are equal to such maximum amount as may, in relation to any such class of persons attending courses of any such description, be determined by the Secretary of State under section 73D(2) of the Education (Scotland) Act 1980.

- (3C) No condition under subsection (3B) above shall apply in relation to any fees which are payable, in accordance with regulations under section 1 of the Education (Fees and Awards) Act 1983 (fees at universities and further education establishments), by students other than those falling within any class of persons prescribed by such regulations for the purposes of subsection (1) or (2) of that section (persons connected with the United Kingdom, etc.).
- (3D) The Secretary of State shall not exercise the power to prescribe descriptions of courses under subsection (3B) above in such a way as to discriminate—
- (a) in relation to courses for the training of persons preparing to be teachers which are open only to persons holding a degree, between different courses on the basis of the subject in which such training is given; or
 - (b) in relation to other courses, between courses at the same or a comparable level on the basis of the particular areas of study or research to which they relate.
- (3E) A condition under subsection (3B) above shall impose, in the event of a failure by the recipient of a grant, loan or other payment made under section 40(3) of this Act to comply with the requirement specified in that subsection, such further financial requirements on that recipient as may be specified, which may include requirements relating to the repayment, with or without interest, of the whole or any part of any sums received by that recipient in respect of the grant, loan or other payment in question.
- (3F) Subsection (3) above shall not apply in relation to conditions imposed under subsection (1) above by virtue of subsection (3A) above.
- (3G) The prohibition contained in section 40(4) of this Act and the duty imposed by section 41(2) of this Act shall not apply in relation to conditions imposed under subsection (3B) above.”