

---

WELSH STATUTORY INSTRUMENTS

---

**2004 No. 3144 (W.272) (C.136)**

**EDUCATION, WALES**

**The Higher Education Act 2004 (Commencement  
No.1 and Transitional Provision) (Wales) Order 2004**

*Made - - - - 30 November 2004*

The National Assembly for Wales, in exercise of the power conferred upon it by sections 47(5) and 52(6), of the Higher Education Act 2004(1), hereby makes the following Order:

**Name, application and interpretation**

1. This Order is called Higher Education Act 2004 (Commencement No.1 and Transitional Provision) (Wales) Order 2004.
2. Provisions brought into force by this Order are brought into force only in relation to Wales.
3. In this Order, unless otherwise stated, references to sections and Schedules are references to sections of and Schedules to the Higher Education Act 2004.

**Appointed days**

4. The day appointed for the coming into force of the provisions specified in Part 1 of the Schedule to this Order is 1 December 2004.
5. The day appointed for the coming into force of the provisions specified in Part 2 of the Schedule to this Order is 1 January 2005.

**Transitional Provision**

6. Notwithstanding the coming into force of section 20 and section 46, the visitor of a qualifying institution has jurisdiction in respect of —
  - (a) any complaint which falls within section 20 (2) or (3) if that complaint was submitted to the visitor prior to 1 January 2005; and
  - (b) any complaint which falls within section 46(1) if that complaint was submitted to the visitor prior to 1 January 2005.

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(2)

30 November 2004

*John Marek*  
The Deputy Presiding Officer of the National  
Assembly

SCHEDULE

Articles 4 and 5

**PART 1**

Provisions coming into force on 1 December 2004

<i>Provision</i>	<i>Subject matter</i>
Section 11	Qualifying institutions
Section 12	Qualifying complaints
Section 13	Designation of operator
Section 14	Duties of designated operator
Section 15	Duties of qualifying institutions
Section 16	Termination of designation
Section 17	Privilege in relation to law of defamation
Section 18	Provision where designation of operator to cease
Section 21	Interpretation
Schedule 1	Conditions to be met by operator of student complaints scheme
Schedule 2	Conditions to be met by student complaints scheme
Schedule 3	Duties of designated operator
Schedule 4	Termination of designation of operator

**PART 2**

Provisions coming into force on 1 January 2005

<b>Provision</b>	<b>Subject matter</b>
Section 20	Exclusion of visitor's jurisdiction in relation to student complaints
Section 46	Exclusion of visitor's jurisdiction in relation to staff disputes
Section 50 so far as it relates to provisions of Schedule 7 below	Repeals
In Schedule 7 the repeals in the Education Reform Act 1988 (c. 40)	Repeals

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

---

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force in Wales on 1 December 2004 and 1 January 2005 those provisions of the Higher Education Act 2004 specified in Parts 1 and 2 of the Schedule to this Order. The Order also makes transitional provision in relation to student and staff complaints which were submitted to the visitor before 1 January 2005.

In brief, these provisions of the Higher Education Act 2004 provide for the termination of the visitors' jurisdiction over staff disputes and student complaints. They also provide that a body to be designated by the National Assembly will operate a scheme for the review of student complaints. Participation in the scheme is compulsory for qualifying institutions.

The effect of each the provisions of the Higher Education Act 2004 specified in the Schedule is as follows —

Section 11 sets out the qualifying institutions that will be subject to the new scheme for the review of student complaints. These institutions are universities, constituent colleges of universities, higher education corporations and institutions designated by the National Assembly as eligible for funding from the Higher Education Funding Council for Wales.

Section 12 defines qualifying complaints for the purposes of the scheme. These are complaints against qualifying institutions in respect of acts or omissions of those institutions. Individuals make the complaints and must do so as students or former students of the institutions or students studying towards an award from a qualifying institution. Complaints relating to academic judgement are excluded from the scheme.

Section 13 and Schedules 1 and 2 give the National Assembly power to designate a body to operate the student complaints scheme in Wales and set out conditions which must be met before the National Assembly may designate such a body (the “designated operator”). The conditions include a requirement for the body to comply with Schedule 1 and for the provisions of the scheme it operates to comply with Schedule 2.

Section 14 and Schedule 3 provide that as long as a body remains the designated operator it must comply with the duties set out in Schedule 3. These include a duty to provide a scheme, a duty to publish the scheme, a duty to comply with requirements imposed by the scheme and a duty to produce an annual report.

Section 15 requires governing bodies of qualifying institutions to participate in a scheme provided by the designated operator. Those institutions must comply with obligations placed on them by the scheme, including any obligation to make payments to the designated operator.

Section 16 and Schedule 4 give the National Assembly, in certain circumstances, power to terminate the designation of a body as the designated operator. The National Assembly can give notice of termination if the operator no longer meets the conditions for designation and the operator can give notice of its intention to cease operating the scheme.

Section 17 provides privilege in relation to defamation in connection with the review of student complaints.

Section 18 provides a power for the National Assembly to make alternative transitional provision (including provision as to payments) where an agreement or notice to terminate an operator's designation has been reached or given, or the operator has ceased to exist.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Section 20 removes the jurisdiction of visitors of qualifying institutions over student complaints, including complaints about admissions as student to qualifying institutions.

Section 21 contains definitions.

Section 46 removes the jurisdiction of visitors over staff disputes.

Section 50 and Schedule 7 provide for repeals.