

BILL COMMITTEE MEMBER BRIEFING

Higher Education and Research Bill at Committee Stage

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MillionPlus Analysis of the Bill – key questions

Alongside the formal submission of proposed amendments to the Higher Education and Research Bill, the Bill raises a number of issues of policy which have the potential to impact on students and the wider sector. Accordingly, in addition to the full summary of our formal amendments, MillionPlus has identified a number of key questions that the Committee may wish to consider as the Bill is scrutinised. Some of these questions relate to very specific parts of the Bill, others to more general issues of future policy direction. In our view they all require some degree of clarification if the Bill is to work in the best interests of the entire sector, and the students it serves.

Holistic Oversight

In responses to the Green and White Papers, MillionPlus pointed out the Bill has the potential to undermine the holistic oversight of the higher education sector that is currently exercised in England by the Higher Education Funding Council for England (HEFCE). The creation of OfS and the transfer of HEFCE's responsibilities for the research excellence framework, knowledge exchange and taught postgraduate support to UKRI has the potential to silo activities which are intertwined, serving to enhance the student experience, and engagement with employers, and contributing to the global reputation of UK universities.

MillionPlus was strongly opposed to the transfer of these responsibilities to UKRI when they were announced in the White Paper. In addition to removing sector oversight, this separation also suggests that teaching and research are distinct functions with little overlap. This is clearly open to challenge and has been raised as an issue by the Science and Technology Committee. In fact teaching is informed by research and research is informed by teaching, and students directly benefit from exposure to academics involved in scholarship and research, and by being given opportunities to participate in research projects.

The exercise of holistic oversight therefore remains a key issue. Several of our amendments seek to ensure that this principle is enshrined on the face of the Bill and that there is parliamentary oversight via an annual report prepared by a joint committee of the two organisations.

The Public Interest

The Green and White Papers and the Bill itself set out an explicitly pro-competition approach to the delivery of higher education with students referred to as consumers. In fact higher education has wider economic and societal benefits and outcomes which go beyond the individual student. It is also inaccurate to suggest that higher education is simply a consumption market.

A major consideration therefore arises as to what extent, if at all, the Bill pays due regard to the wider public purpose of higher education and research. All established universities in the UK today are much more than just places where students go to be taught. They are vibrant centres of innovation, with deep collaborative roots in the communities they serve, and each of them is committed to an ideal that a university should be run in the public interest, contributing to the good of society, and their local, national and global populations.

We therefore believe that the Bill must ensure that the newly created Office for Students (OfS) and UK Research and Innovation (UKRI) should be required to pay due regard to the public interest in their decision-making, strategies and funding allocations.

As it stands the Bill is pro-competition and makes little reference to the public interest, and where it does it is not in relation to the functions or duties of the Office for Students itself. We would encourage the Committee members to raise the issue of public interest with the Minister, and to further explore how the government is seeking to define or re-define the role of a University in England in the 21st century. Higher education is one of the UK's greatest success stories, and is internationally recognised for its excellence. It is vital that government sets out how it intends to ensure the UK will benefit from the changes being proposed, and that the standards that UK universities have set, including their contribution to local communities, will be maintained and built on in the years ahead.

Teaching Excellence Framework

Ministers have decided to progress a Teaching Excellence Framework (TEF) linked with fees and HEFCE has already been given responsibility to administer the TEF. Accordingly the TEF does not specifically feature in the Bill other than that the OfS is given responsibility to make arrangements for a scheme to give ratings to English higher education providers regarding the quality of higher education that they provide (Clause 25).

MillionPlus shares the government's ambitions to promote excellence in teaching. However, we have significant concerns about how the government plans to measure teaching excellence and the timetable identified for TEF 2 pilots and the application of a rating system, all of which are Ministerial decisions, rather than HEFCE or OfS decisions.

Bearing in mind the huge reductions in teaching grant and capital allocations for teaching and the failure to inflation-proof fees since 2012, we support universities being able to raise fees with inflation in order to maintain the unit of resource as has been permitted under TEF 1. However, we have concerns that the government continues to look to students and graduates to fund higher education rather than restore some teaching grant.

We are opposed in principle to the TEF being linked with differential fee increases (or fee reductions) and a rating and assessment system which has not been fully piloted and which could damage the domestic and global reputation of the UK's universities. The introduction of a TEF linked with fees also has consequences for the reputation and management of universities in the devolved administrations. Clause 25 may provide an opportunity to explore some of these issues and how they align in principle and practice with the Bill's objectives and the new architecture that it introduces.

Quality and Standards

It is extremely important that the government appreciate the difference between quality and standards which are equated as one and the same thing throughout the Bill. Clauses such as Clause 23 make explicit references to the OfS having responsibility for both quality and standards. However, 'quality' and 'standards' are fundamentally separate entities, which require very different regulatory approaches. Their alignment in the Bill is therefore erroneous.

According to the Quality Assurance Agency (QAA):

- **Academic quality** refers to how, and how well, the higher education provider supports students to enable them to achieve their award. It covers learning, teaching and assessment, and all the different resources and processes a provider puts in place to help students progress and fulfil their potential

- **Threshold academic standards** are the minimum acceptable level of achievement that a student has to demonstrate to be eligible for the award of academic credit or a qualification. For equivalent qualifications, *the threshold level of achievement is agreed across the UK* in the national qualifications frameworks and subject benchmark statements
- **Academic standards** are the standards that *individual degree-awarding bodies* set and maintain for the award of their academic credit or qualifications. These may exceed the threshold academic standards

Threshold standards should be the preserve of the designated quality body, working in a co-regulatory way with the sector. Academic standards should remain the preserve of independent, autonomous institutions. Centralising either of these functions could damage the diversity of the sector and the independence of institutions, and lead to a multiplicity of new providers with similar or identical offers. This would not improve student choice or quality, nor would it be a sign of positive competition. Although technical, this remains a very important point and the government must outline exactly why it is going against the weight of academic opinion with its current wording or accept the amendments that have been proposed. The Further and Higher Education Act 1992 also kept these distinct areas apart.

The Powers of the Secretary of State

Throughout the Bill, extensive powers are granted to the Secretary of State, on a wide range of functions. We do not believe that it is the intention of the government to be overly statist and have more direct control from Whitehall. However, it will be very important for the government, and the Universities Minister in particular, to outline exactly what powers they expect to exercise in higher education, and which are to be left to the delegated bodies and never interfered with. Clarity on this point is important in the immediate term, but it is also crucial for the future. If left ambiguous it means that at some point, with a different Minister, a different government or a different set of civil servants, there will have been no precedent set as to how far this Bill intended the powers of the Secretary of State to be used.

International Students and Brexit

In Clause 10 the Bill makes reference to international students, in relation to fees. Although currently nothing has changed in terms of the status of EU students, the nature of the UK's planned withdrawal from the EU may mean that this section may have to be revisited in a number of years' time. This should be taken into account within the scrutiny of the Bill. Legislation of the nature has to be future proofed, and the government's plans have to be considered in light of the decision to leave the EU. This section provides a place to do that and ensure that the Bill will be fit for purpose when the changes in status occur.

Postgraduate Provision

The explicit assertion in Clause 31, subsection (5) paragraph (b) around the clause not applying to postgraduate courses is symptomatic of the entire Bill, and its lack of focus on anything beyond undergraduate study. We appreciate that this clause is specifically related to access and participation plans, but a wider point applies. Although not the main focus of this legislation, postgraduate study is a crucial component of higher education in the UK. As such, the Minister needs to clarify what plans the government has in regard to postgraduate courses, bearing in mind that the Bill does not deal with this issue.

Timescales

Throughout the Bill there is a lack of tangible timescales for much of the proposals to be either started or completed. From the publication to reports, to the setting up of bodies, the language remains deliberately vague, and this could pose a problem for short, medium and long-term planning. We believe that the government do have a draft timetable and that the Committee could helpfully clarify what this is and assess whether it is realistic.

Impact on the Devolved Administrations

Clause 75, subsection (1) defines what the government means by an 'English higher education provider', stating that it requires that the activities are 'principally' carried out in England. We believe this poses a number of questions around what the government means by principally (e.g. is it 51% of activity?), if it will apply only to other UK universities, or if it refers to any non-UK based entrants to the market. Further clarity around this point is important

Statutory Instruments

Clause 107 deals with regulations, and the possible need for statutory instruments. The government should clarify if the proposed statutory instruments are positive or negative. While we would urge them to be positive, this should be debated at committee stage as this could have far reaching implications in the future.