

## PARLIAMENTARY BRIEFING

# The Higher Education and Research Bill at Report Stage and Third Reading – 21<sup>st</sup> November 2016

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## The Bill at Committee Stage

The Higher Education and Research Bill is a complex piece of draft legislation, which is attempting to change the fundamental architecture of the higher education sector. While supportive of some of the government's objectives, MillionPlus has expressed a number of serious concerns around elements of the Bill, and submitted evidence and draft amendments to the Committee.

Despite the government's welcome acknowledgement of some of the major criticisms put to them in the Committee, the Bill has not been changed in any substantive way. We accept that in some areas the Minister believes regulations will fill in the gaps and answer many of the outstanding questions. However, there would be greater clarity if some of the major issues of policy were on the face of the Bill and subject to full scrutiny during the passage of the legislation through Parliament. This would help ensure that Parliament and the Government deliver a more robust piece of legislation which is more likely to stand the test of time.

## Key Points and Questions

### PUBLIC INTEREST

Universities across the UK are all important actors in their local communities, and have a long established and incredibly successful tradition of working in the public interest, in addition to having elements of their business that operate in a commercial way. However, the Bill seeks to further promote higher education as a market and refers to students as consumers. This focus ignores the wider economic and societal benefits and outcomes offered by universities.

All established universities in the UK 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. 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. With a greater emphasis on students as consumers and the prospect that providers which have no wider obligations or interests may be encouraged to enter the market, there is a clear risk that the more civic aspects associated with UK universities is diminished as competition for students grows.

The new Office for Students (OfS), alongside UK Research and Innovation (UKRI), should have a clear focus on working for the wider benefit of society and not simply a focus on boosting competition.

- What practical mechanisms will be in place to ensure that the OfS and UKRI pay due regard to the public interest in their decision making, strategies and funding allocations?

- All current universities work in the public interest. Can the Minister confirm this will include any new entrants to the market, and what steps would the government like to see providers take to ensure this is the case?

Main clauses: [Clause 2](#), [Clause 88](#)

## UNIVERSITY TITLE AND DEGREE AWARDING POWERS

A major area of concern is the lack of any structures on the face of the Bill to uphold the current rigorous and hard-earned criteria necessary for an institution to be awarded Degree Awarding Powers and University Title. Currently, universities have to be assessed against a rigorous criteria before they are allowed to call themselves a university or award degrees. However, these criteria are being somewhat relaxed under the current provisions of the Bill, ostensibly in an attempt to encourage more entrants into the market.

We strongly believe that safeguards need to be put in place to ensure that any institution awarding degrees has to meet the current criteria for degree awarding powers. The idea of any institution awarding provisional degrees before being formally given the right to do so, is utterly unacceptable. 'Provisional' degrees would not be in the interests of students, whose qualifications could be potentially worthless if the institution failed to move out of its provisional status. The concept of provisional degrees also would also be harmful and damaging to the reputation of established UK universities and is likely to impact on the wider global reputation of UK higher education.

MillionPlus proposed an amendment to create a *Committee on the Granting of Degree Awarding Powers and University Title*, to ensure appropriate safeguards were considered. This was in support of a similar amendment suggested by Universities UK. However, this amendment was voted down by the government. Although the Minister believes regulations are able to achieve the necessary standards for new providers, and that the OfS will maintain standards, this issue is fundamental and should be on the face of the Bill. We would urge the government to think again and, in order to protect the sector and students of the future, to ensure that the Bill legislates for robust, independent scrutiny of any new provider wishing to benefit from the significant advantages that come with being conferred university title and degree awarding powers. As the Bill currently stands, it enables the OfS – and by extension the Secretary of State – the power to award university title and degree awarding powers to new providers without any independent scrutiny or input.

- How can provisional degree awarding powers ever be justified?
- Can the government outline exactly what criteria a new provider must have to be awarded university title, and does this differ from the current requirements?
- Why will the government not commit this fundamental issue onto the face of the Bill itself?

Main clauses: [Clause 40](#), [Clause 51](#)

## HOLISTIC OVERSIGHT

The Bill is changing the architecture of the sector by replacing the Higher Education Funding Council for England (HEFCE) with the OfS, and transferring some of HEFCE's current responsibilities for the research excellence framework, knowledge exchange and taught postgraduate support to UKRI.

In splitting the functions across two independent bodies there are real concerns that activities that are currently joined-up and coherent, will be undertaken in silo in the future, with negative consequences in the years ahead.

During the Committee Stage debate the government accepted some arguments on this issue, and have inserted a new clause into the Bill on joint working. This is a welcome step; however, we believe that it does not go far enough. The new clause only says that the OfS and UKRI (for instance) *may* work together when it is deemed efficient to do so. This raises several questions, not least around the word '*may*', but also around who determines the level of efficiency, and the principle that joint working across the sector should be extremely desirable even when not driven by thoughts of efficiency. This is particularly important given the fact that the two bodies will also be overseen by two separate Secretaries of State (OfS under the Department for Education and UKRI under the Department for Business, Energy and Industrial Strategy).

MillionPlus suggested a joint committee on the face of the Bill, with the understanding that a report would need to be published annually on key areas, documenting the work being done in collaboration by the two major bodies. We believe that the new clause, however well intentioned, does not address the potential problem that is being created by the transfer of functions away from HEFCE, and that the government needs to put stronger safeguards in place.

- What steps is the government taking to ensure that the new OfS and UKRI will work together for the good of the sector?
- Why are efficiency and improving effectiveness the only areas where the government feels joint working between the OfS and UKRI should be on the face of the Bill?
- Does the government expect the OfS and UKRI to work together on all of their work, and how will this be ensured?
- Which body will have the ultimate responsibility for oversight of higher education in the UK, and which Secretary of State will they report to?
- What scope is there for Parliamentary scrutiny of the combined outcomes of UKRI and OfS?

Main clauses: [Clause 2](#), [Clause 97](#), [Clause 106](#), [Schedule 1](#), [Schedule 9](#)

## **FAIR ACCESS AND PARTICIPATION**

Although the Bill includes a focus on widening access and participation within higher education, there remain a number of concerns and missed opportunities that the government ignored at Committee Stage that would have improved the legislation.

The powers of the newly created Director for Fair Access and Participation is one such concern. In the Bill the Director is merely given powers to 'report' and not to actually be responsible for the OfS's record on access and participation. Although the government will argue that this is due to these issues being core to the central functions of the entire organisation, not having a named and accountable person downgrades the role and removes its teeth, turning them into more of a 'coordinator' of fair access as opposed to a 'director'. If the government is serious about tackling the important issue of social mobility in the UK, a problem highlighted in the Social Mobility Commission's 2016 report, then the legislation should give the Director responsibility to effect real change<sup>1</sup>.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/569410/Social\\_Mobility\\_Commission\\_2016\\_REPORT\\_WEB\\_1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/569410/Social_Mobility_Commission_2016_REPORT_WEB_1.pdf)

Similarly, the Director should be the named person approving all Access and Participation Plans. Not doing so risks undermining the role, or even sidelining it and giving the power to somebody else in the OfS.

In Clause 9 the Bill also seeks to introduce a mandatory transparency condition for providers, capturing information on ethnicity, gender and socio-economic background. Whilst these are important, these functions are already being recorded, and the Bill has missed a real opportunity to be less prescriptive and more enabling. We believe the clause should be used to innovate and encourage organisations to identify and collate even more and better information than is currently provided. We are concerned that this current Clause may actually limit the ambition of bodies to collect data, and we would urge the government to be bolder in this area.

- What steps does this Bill take to improve and widen the current transparency conditions being captured by sector bodies?
- Can the government justify why the Director for Fair Access and Participation should not always be the person signing off Access and Participation plans?
- What role does the government wish the Director for Fair Access and Participation to have when this Bill is passed into law?

Main clauses: [Schedule 1](#), [Clause 2](#), [Clause 9](#), [Clause 28](#), [Clause 31](#), [Clause 71](#), [Clause 72](#)

## **THE OFS AS A VALIDATOR**

Clause 47 of the Bill continues to be deeply troubling. It gives the Office for Students the responsibility, in certain circumstances, to validate a provider's degrees, as a provider of last resort. Having the organisation that regulates validators becoming a validator itself is a clear conflict of interest which should not be allowed in any circumstances. Without significant changes to this clause the situation could arise whereby the OfS is regulating, validating and assessing higher education provision.

One of the primary purposes of the Bill is competition and marketisation, so it is extremely strange that the government wishes to create a validator of last resort if a provider cannot get validation. Being able to appeal to the OfS as a validator of last resort will remove the market-based incentives to make provision of better quality in order to receive validation from another source (of which there are in excess of 100).

We believe that Clause 46 is sufficient for what the government is looking to achieve in Clause 47, without the critical problem of such a clear conflict of interest.

- How can the government justify any situation whereby the OfS is regulating, validating and assessing higher education provision?

Main clauses: [Clause 46](#), [Clause 47](#)

## **TEACHING EXCELLENCE FRAMEWORK**

Although not explicitly on the face of the Bill, the Teaching Excellence Framework (TEF) is clearly referenced in Clause 25. MillionPlus has significant concerns about the development of the TEF, particularly around its use of metrics to try and ascertain the quality of teaching at an institution. We are also very firmly against linking ratings from a differential TEF with tuition fees.

The implementation of a ratings system is also problematic, particularly if these ratings extend beyond the confines of a rating of teaching excellence. There has been deep concern that the government may seek to use the TEF as a tool to classify the quality of a university more generally, and then link this with an ability to recruit international students.

This would be extremely damaging to the sector, and would create a hierarchy based on questionable metrics that would have a major cultural and financial impact on institutions across the country, and on the reputation of UK universities overseas. We therefore believe that the TEF should not be a ratings system, and should simply seek to establish teaching quality, refining this model over time.

- Can the Minister rule out any possibility of the TEF ratings being linked to international student recruitment, and the Tier 4 and Tier 2 visa regimes?
- How will the government ensure the metrics used in the TEF will accurately measure teaching excellence?
- Will the government commit to reviewing the TEF results over a trial period before any moves to link them with an uplift in fees?

Main clauses: [Clause 25](#)

## **QUALITY AND STANDARDS**

The Bill continues to confuse and conflate quality and standards. The government has improved the wording of the original Bill, but it continues to suggest that the OfS will be responsible for overseeing standards. This contradicts the long-standing tradition of universities themselves being responsible for developing, managing and accessing the standards applied to their degree courses, in accordance with the relevant qualifications framework. The government, through funding councils, has always had a role in quality assurance, but autonomous institutions should be responsible for the standards of their degrees.

- For what reason, should the OfS now be judging the standards applied to degree courses, which should always remain under the autonomy of providers?
- Does the government accept that quality and standards are two very different things for a university, and will the Bill be modified to adequately reflect this?

Main clauses: [Clause 13](#), [Clause 23](#), [Clause 25](#), [Schedule 4](#)

## **RESEARCH**

The changes to the research architecture proposed in this Bill are some of the most significant departures from the way the sector currently operates. The newly created UK Research and Innovation (UKRI) will be one body, with former independent Research Councils becoming committees of this new organisation, as well as the establishment of Innovate UK, and Research England – which will be responsible for the research and knowledge exchange functions currently undertaken by the Higher Education Funding Council for England (HEFCE). MillionPlus has expressed concern that any perception of a downgrading of the importance and status of the Research Councils could limit the calibre of individuals leading them, to the potential detriment of the areas they represent. It could also lead to dominance of the larger, more expensive, areas of research, at the expense of equally important but less research-hungry areas.

MillionPlus has also suggested changes to the framework of UKRI that would result in the functions of Research England moving back into the OfS, in much the same way that these functions operate today in HEFCE. This would result in the OfS having greater oversight of the sector, meet concerns about the separation of teaching and research (activities which are inter-related) and ensure that the Research Excellent Framework (REF) continued to be undertaken by OfS on behalf of all of the Funding Councils in England. It would also mean that OfS remained responsible for the allocation of funding linked with the dual support system, retaining HEFCE's current responsibilities for postgraduate provision and knowledge exchange.

It would also be valuable to ensure that enterprise and innovation is referenced in the Bill, taking to account the value of applied research to businesses especially SMEs, that is successfully undertaken in universities around the UK. MillionPlus has also expressed concerns around making sure Innovate UK works with UK higher education, and brings together businesses, of all sizes, and does not act simply as the commercial arm of UKRI.

- How will the independence and status of the current research councils be guaranteed in the new UKRI structure?
- Bearing in mind that in established universities, teaching, research and knowledge exchange and enterprise are inter-related, what is the justification for removing HEFCE's current responsibilities in respect of research, knowledge exchange and postgraduate provision from the OfS?
- What role does the government see OfS having over research in general, and in supporting postgraduate students?
- Why does the government believe enterprise should not be promoted by UKRI?
- How does the government see Innovate UK and UK higher education working together in practical terms in the years ahead?

## **DEVOLUTION**

Although many areas of the Bill are specified as only relating to England, the impacts of this legislation will be far reaching in all areas of the UK. One key area is the TEF, where, although universities in the devolved administrations are not mandated to take part by the Bill, they will be pressured to join the system (administered and run in England) or run the risk of being at a competitive disadvantage in recruitment and reputational terms, due to the lack of an assessment of 'teaching excellence'. The potential link of the TEF to international recruitment would also have a huge impact on Scottish, Welsh and Northern Irish universities, and the clear knock-on effects need to be considered, with the devolved administrations consulted at every stage of the process.

UK higher education, although in some ways very differently funded in the different countries of the UK, has a shared reputation for excellence and high quality provision, earned over a period of many years. Any changes to the architecture of the sector, the criteria for taught degree awarding powers and the award of university title in England is likely to impact on the global reputation of the UK sector.

- What discussions has the government had with the devolved administrations on the impact the Bill will have on UK higher education?
- Will the government commit to ensuring that all bodies created in the Bill are mandated to work with the devolved administrations in their work?

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