MillionPlus

The Association for Modern Universities

BRIEFING NOTE

Higher Education and Research Bill at Committee Stage

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Proposed Amendments

Based on a line-by-line analysis of the Higher Education and Research Bill, MillionPlus has proposed some amendments to the clauses and schedules as set out in the Bill. The chronology of the analysis follows on from the proposed chronology that the Public Bill Committee will use to scrutinise the Bill (as set out by Universities Minister Jo Johnson MP on 20th July 2016).

For each amendment, new wording is highlighted in green, and deleted wording is highlighted in red.

PART ONE: THE OFFICE FOR STUDENTS

Schedule 1

Section 2: Membership (pages 63-64)

Schedule 1, Section 2, Subsection (2), page 63, lines 19-21:
Current: (2) The Secretary of State must, in appointing the chair and the ordinary members, have regard to the desirability of the OfS's members (between them) having experience of—
Amendment: (2) The Secretary of State must, in appointing the chair and the ordinary members, have equal regard to the desirability of the OfS's members (between them) having experience of—

All of the related criteria should be taken to be of equal importance and there should be no perception that a hierarchy exists between any of them. The government has made comments to suggest that the new OfS will be explicitly pro-competition. There is a risk that this element will take priority over other functions which could harm the quality of higher education and act against the wider student interest. OfS members should therefore have prior experience and understanding which relates to all aspects of the Board's and OfS's work and this should be made explicitly clear in legislation.

Schedule 1, Section 2, Subsection (2), page 63, after line 37:
New subsection: (h) working to improve equality of opportunity, and the widening of access and participation within higher education

The Bill merges the Higher Education Funding Council for England and the Office for Fair Access into one new organisation.
Although the Bill makes explicit reference to the responsibilities of the Director for Fair Access and

Participation, and makes that role a named member of the OfS Board, access and participation are not included in the criteria for the recruitment of Board members to the OfS.

Since working to improve access and participation is built-in throughout the Bill, and has been a key government priority since 2010, it follows logically that it should be a key consideration in the appointment of board members. There is no reason why this amendment should lead to calls for other characteristics to be added to the list *ad infinitum*. Social mobility and widening access are central to the Bill, as expressed by the government, and therefore merit specific reference.

This is further evidenced by the former Department for Business Innovation and Skills' Business Case for the creation of the OfS, in which it states *"Also proposed is the appointment of additional non-executive members with relevant background experience working in the area of social mobility and/or Access and Participation to provide further support for the Access and Participation strategy within the OfS with criteria for appointments set out by the SoS under powers to determine the job descriptions and terms and conditions of board appointments".*[1]

Section 3: The Director for Fair Access and Participation (page 64)

Schedule 1, Section 3, Subsection (1), page 64, lines 6-8:
Current: (1) The Director for Fair Access and Participation ("the Director") is responsible for reporting to the other members of the OfS on the performance by the OfS of its access and participation functions.
Amendment: (1) The Director for Fair Access and Participation ("the Director") is responsible for the access and participation functions and will report to other members of the OfS on the performance by the OfS of its access and participation functions.

The responsibilities of the Director must be explicitly more than a simple role of reporting, and specific assurances should be made that clearly state that the Director is responsible for the access and participation functions themselves. Although we believe it is not the government's intention to have the Director in a purely reporting function in their day-to-day activities, we feel this needs to be made explicit within the Bill so that the responsibility for fair access cannot be taken away from the Director at any point in future, without full Parliamentary scrutiny. The White Paper states that the Director for Fair Access and Participation will hold responsibility for fair access, and their role will be enshrined in law. The Bill needs to reflect that sentiment.

We understand that access and participation is a function that will be central to all of the OfS's actvities, but without a figure having direct accountability for it, this risks downgrading the Director to simply becoming the Coordinator of Fair Access and Participation, which we would strongly oppose.

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/527757/bis-16-292-ofs-case-for-creation.pdf, p14

Section 8: Committees (page 65)

Schedule 1, Section 8, page 65, after line 31:
New Subsection ( ) A joint committee is to be established by UKRI and OfS, it must – (a) consist of representatives of both UKRI and OfS (b) produce an annual report on the health of the higher education sector, to be sent to the Secretary of State and laid before Parliament. The report must contain details of – (i) the health of the sector, (ii) work on equality of opportunity, (iii) the health of disciplines, (iv) research funding, (v) the awarding of research degrees, (vi) post-graduate training, (vii) shared facilities, (viii) knowledge exchange, (ix) skills development and (x) maintaining the public interest.

Holistic oversight of the higher education sector is essential for its continuing success, and the Bill must have measures within it that will ensure that the two major bodies, UKRI and OfS, do not work in silos and that the work of each organisation is complementary to the other. A joint committee and an annual report would help achieve this and deliver a close working relationship between the two new organisations that will benefit students, providers and employers and provide parliamentary oversight. We strongly believe the health of the sector is too important not to have some specific measures on the face of the Bill to ensure that such co-operation and oversight take place.

Section 11: Delegation of Functions (page 66)

Schedule 1, Section 11, page 66, after line 21:
New subsection ( ) Any function delegated by the OfS relating to access and participation must be done in consultation with the Director for Fair Access and Participation

The Director for Fair Access and Participation is named as a member of the OfS Board. However, as currently drafted the Bill does not specifically require the Director to be involved in access and participation functions. There should be no provision within the Bill to allow for any access and participation duties to be taken away from the Director for Fair Access and Participation, unless with his or her direct involvement. The powers currently held by the Director for Fair Access have played a fundamental role in ensuring that OFFA has been able to drive forward increases in fair access. Since the Bill aims to improve progress in access and participation, these functions and the role of the Director for Fair Access and Participation should not be undermined in any way.

Clauses 2-10

Clause 2: General Duties (pages 1-2)

Clause 2, Subsection (1), page 1, line 9:
Current: (1) In performing its functions, the OfS must have regard to-
Amendment: (1): In performing its functions, the OfS must have equal regard to-

This amendment would ensure that no one element of the OfS's remit dominates, and that it is mandated to take consideration of all the listed elements in a balanced fashion. Without such a change it is possible for the OfS to prioritise the need for competition over the needs of students or the sector, which would be both counter-productive and regressive. It would also run the risk of damaging the quality of higher education and have the potential to undermire the student interest. Although we do not believe that it is the intention of the Bill to allow for such a situation, without an explicit reference within the legislation it is impossible to guard against this possibility in the future.

Clause 2, Subsection (1), page 2, lines 1-6:
Deletion: (e) the need to use the OfS's resources in an efficient, effective and economic way, and (f) so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be— (i) transparent, accountable, proportionate and consistent, and (ii) targeted only at cases in which action is needed.
New subsection: (2) In performing its functions, the OfS must also have regard to - (a) the need to use the OfS's resources in an efficient, effective and economic way, and (b) so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be— (i) transparent, accountable, proportionate and consistent, and (ii) targeted only at cases in which action is needed.

These are consequential amendments following changes to subsection (1). Current paragraphs (e) and (f) should not logically have the proposed change applied to them, so would need a new subsection.

Clause 2, Subsection (1), page 1, after line 20:
New paragraph: ( ) the need to maintain confidence in the higher education sector, and in the awards which they collectively grant, among students, employers, and the wider public

We strongly believe that OfS should take into account of the need to maintain confidence in the UK's higher education sector as a whole. The UK economy – and society more generally – benefit when the sector grows, not just individual universities and providers. This benefit translates to every area of the UK and underwrites the global reputation of UK universities. This reputation has been hard-earned and needs to be both protected and promoted by OfS. This amendment will help to ensure that this is a consideration in the future.

Clause 2, Subsection (1), Paragraph (b), page 1, lines 13-15:
Current: (b) the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers,
Amendment: (b) to read 'the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students, employers, and the public interest'

It is important for the purposes of effective oversight of, and future confidence in, the sector for the OfS to look more broadly, and to ensure that duties to promote competition take account of the wider public interest. This amendment would mean that competition can be pursued in a way that will not adversely impact upon areas outside of the narrow categorisation of 'student and employer'.
We do not believe this amended clause would be overly burdensome or bureaucratic. However, it will help to ensure that the remit of OfS is not so narrowly defined that it cannot take into account the wider public interest.

Clause 2, Subsection (4), page 2, lines 18-25:
Deletion: (4) The guidance may, in particular, be framed by reference to particular courses of study but it must not relate to— (a) particular parts of courses of study (b) the content of such courses (c) the manner in which they are taught, supervised or assessed (d) the criteria for the selection, appointment or dismissal of academic staff, or how they are applied, or (e) the criteria for the admission of students or how they are applied.

Although we accept that the bulk of this clause is transferred from the Further and Higher Education Act 1992, the context and the consequences are very different. Under the 1992 Act these powers relate specifically to conditions attached to grant funding. Successive Secretaries of State, including current Ministers, have been able to use the powers of the 1992 Act to advise HEFCE to support some elements of provision, but this guidance has not been in relation to courses. Instead, grant letters have focused on, for example, strategically important or high cost subjects, or employer engagement.

The Bill proposes to include these powers in the OFS's general duties. Accordingly, the power provided to the Secretary of State by this clause no longer pertains to the direction of funds (which are reducing) but is potentially focused on the decisions that institutions make with regard to course provision.

As it stands in the Bill, the clause gives the Secretary of State extended powers to make decisions about course provision including course opening and closure. This completely undermines the autonomy of institutions and providers in respect of course provision, which was one of the most successful outcomes of the 1992 Act, allowing universities to innovate and respond to new and emerging markets and employer and student interest without Ministerial direction or interference.

It is also difficult to see how the inclusion of this clause aligns with the government's avowedly pro-market market approach to sector provision.

Clause 2, page 2, from line 25:
New subsection ( ) In this part – 'academic freedom' has the same meaning as in Education (No.2) Act 1986, Part IV, Clause 43

We do not believe academic freedom should be undefined within this Bill. The 1986 Act provides a robust definition which should be referenced in the Bill.

Clause 3: The Register (pages 2-3)

Clause 3, Subsection 6, page 3, lines 6-7:
Current: (6) The Secretary of State may by regulations make provision about the information which must be contained in an institution's entry in the register
Amendment: (6) The Secretary of State may, after a period of consultation, by regulations make provision about the information which must be contained in an institution's entry in the register

This amendment would help inform the nature of the choices made by the Secretary of State, and ensure that any changes must be set out to show that they benefit the sector. It would also enable any unintended consequences of any proposals to be highlighted at an early stage.

Clause 9: Mandatory transparency condition for certain providers (pages 5-6)

Clause 9, page 5 lines 37 - 40 and page 6 lines 1-16:
Deletion: Clause 9 (1) The OfS must ensure that the ongoing registration conditions of each registered higher education provider of a prescribed description include a transparency condition. (2) A transparency condition is a condition that requires the governing body of a registered higher education provider to provide to the OfS, and publish, such information as the OfS requests in relation to one or more of the following— (a) the number of applications for admission on to higher education courses that the provider has received; (b) the number of those applications that were received according to— (i) gender, (ii) ethnicity, and (iii) socio-economic background; (c) the number of offers made by the provider in relation to those applications; (d) the number of those offers that were accepted; (e) the number of students who accepted those offers that completed their course with the provider. (3) "Prescribed" means prescribed by regulations made by the Secretary of State for the purposes of this section.
New Clause: (1) The OfS must ensure that the ongoing registration conditions of each registered higher education provider of a prescribed description include a transparency condition 2) A transparency condition is a condition that requires the governing body of a registered higher education provider to provide to the OfS, and publish, such information in relation to one or more of the following— (a) the number of applications for admission on to higher education courses that the provider has received; (b) the number of offers made by the provider in relation to those applications; (c) the number of those offers that were accepted; (d) the number of students who accepted those offers that completed their course with the provider. (3) Registered higher education providers may publish this information via an independent organisation and / or a designated body. (4) The information must make reference to (i) prior attainment of applicants and students, (ii) socio-economic background of applicants and students, and (ii) specific protected characteristics of applicants and students (5) The information must be provided with particular regard to those groups of applicants and students that are under-represented in higher education (3) "Prescribed" means prescribed by regulations made by the Secretary of State for the purposes of this section.

The information mandated in this clause is already provided by both the Higher Education Statistics Agency (HESA) and the Universities and Colleges Admissions Service (UCAS) through regular and frequent publications and analysis based on data submitted to both of them by students or providers. The information specified in the Bill is, in fact, less than that which is currently published. Rather than enabling greater development of information provision and transparency to improve understanding of the sector, led by HESA and UCAS in consultation with providers, the Bill may impede development as providers concentrate on those elements specified (or are led to believe they are the most important measures).

This would be a retrograde step as it omits reference to other protected characteristics that are equally important in understanding applications to and progress in higher education. The Bill should be creating the opportunity to develop further the level, frequency and detail of information about higher education applications and progression to better inform an understanding of social mobility.

As it stands, the Bill ignores protected characteristics such as disability and age and, if the assumption is that this is referring to data from UCAS, will not capture applications for part-time or postgraduate study.

It also appears overly statist in a 'free market' Bill. Whilst we entirely understand the intention of the clause, the risk is that, as drafted, its inclusion will have largely symbolic consequences. If the government really do want to mandate organisations in this area it should be more ambitious in its scope – or at the very least, not create a list that may limit scope.

Our proposed new clause would enable the same work to be undertaken, but without setting any potential limits to the information that could be collected. This would be therefore much more of an enabling clause, and would better reflect the reality of the current situation.

Clauses 16-26

Clause 23: Assessing the quality and standards of higher education (page 14)

Clause 23, page 14, lines 17-32:
Current: Clause 23 (1) The OfS may assess, or make arrangements for the assessment of, the quality of, and the standards applied to, higher education provided by English higher education providers. (2) But the OfS must assess, or make arrangements for the assessment of, the quality of, and the standards applied to, higher education provided by— (a) institutions who have applied to be registered in the register for the purposes of determining whether they satisfy any initial registration condition applicable to them relating to the quality of, or standards applied to, higher education provided by them (see section 13(1)(a)), and (b) registered higher education providers for the purposes of determining whether they satisfy any ongoing registration condition of theirs relating to the quality of, or standards applied to, higher education provided by them (see section 13(1)(a)). (3) "Standards" has the same meaning as in section 13(1)(a).
Amendment: Clause 23 (1) The OfS may assess, or make arrangements for the assessment of, the quality of, and the systems and processes the provider has in place to ensure appropriate standards are applied to, higher education provided by English higher education providers. (2) But the OfS must assess, or make arrangements for the assessment of, the quality of, and the systems and processes the provider has in place to ensure appropriate standards are applied to, higher education provided by— (a) institutions who have applied to be registered in the register for the purposes of determining whether they satisfy any initial registration condition applicable to them relating to the quality of, or systems and processes the provider has in place to ensure appropriate standards are applied to, higher education provided by them (see section 13(1)(a)), and (b) registered higher education providers for the purposes of determining whether they satisfy any ongoing registration condition of theirs relating to the quality of, or systems and processes the provider has in place to ensure appropriate standards are applied to, higher education provided by them (see section 13(1)(a)). (3) "Standards" has the same meaning as in section 13(1)(a).

This clause makes explicit reference to the OfS having responsibility for both quality and standards. There is a need to ensure that 'quality' and 'standards' are fundamentally separate entities, which require very different regulatory approaches. Having them so closely aligned within the Bill is a mistake.

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. The Bill should therefore seek to ensure that in every clause where the two are together, they are separated, this would include:

Clause 13, subsection (1), paragraph (a)
Cause 23, subsection (1)
Clause 23, subsection (2)
Clause 25, subsection (1)
Schedule 4, subsection 1, paragraph (b)
Schedule 4, subsection 3, paragraph (b)
Schedule 4, subsection 11, part (1)

Clauses 27-56

Clause 28: Power to approve an access and participation plan (page 17)

Clause 28, Subsection (3), page 17, line 14:
Current: (3) The OfS may, if it thinks fit, approve the plan.
Amendment: (3) The OfS may approve the plan, if it thinks fit, after seeking advice from the Director for Fair Access and Participation.

Although we believe it is the government's intention for the OfS to ensure the Director is consulted before the approval of a plan, this amendment will ensure that in no circumstance can the Director be ignored or by-passed in this process. We believe this strengthens the legislation.

Clause 28, Subsection (4), page 17, lines 15-16:
Current: (4) The OfS may issue guidance as to the matters to which the OfS will have regard in deciding whether to approve plans.
Amendment: (4) The OfS must issue guidance as to the matters to which the OfS will have regard in deciding whether to approve plans, and this guidance must be updated annually.

As any guidance will be important to both institutions and students, we believe the OfS should be mandated to issue such guidance and have it updated each year to provide for clarity and effective forward planning. This will also ensure greater scrutiny of the work of the OfS by stakeholders and Parliamentarians.

Clause 31: Content of a plan: equality of opportunity (pages 18-19)

Clause 31, Subsection (3), page 18, lines 26-43:
Current: (3) The general provisions that may be required by regulations made under subsection (1) include, in particular, provisions— (a) requiring the governing body of the institution to take, or secure the taking of, measures to attract applications from prospective students who are members of groups which, at the time when the plan is approved, are under-represented in higher education, (b) requiring the governing body of the institution to provide, or secure the provision of, financial assistance to students,

(c) requiring the governing body of the institution to make available to students and prospective students information about financial assistance available to students from any source, (d) setting out objectives relating to the promotion of equality of opportunity, (e) relating to the monitoring by the governing body of the institution of— (i) its compliance with the provisions of the plan, and (ii) its progress in achieving any objectives set out in the plan by virtue of paragraph (d), and (f) requiring the provision of information to the OfS.
Amendment: (3) The general provisions that may be required by regulations made under subsection (1) include, but are not limited to, provisions— (a) requiring the governing body of the institution to take, or secure the taking of, measures to attract applications from prospective students who are members of groups which, at the time when the plan is approved, are under-represented in higher education, (b) requiring the governing body of the institution to take, or secure the taking of, measures to support entry and participation of students who are members of groups which, at the time when the plan is approved, are under-represented in higher education, (c) requiring the governing body of the institution to take, or secure the taking of, measures to support progression to employment and further study of students who are members of groups which, at the time when the plan is approved, are under-represented in higher education, (d) where appropriate, requiring the governing body of the institution to provide, or secure the provision of, financial assistance to students, (e) requiring the governing body of the institution to make available to students and prospective students information about financial assistance available to students from any source, (f) setting out objectives relating to the promotion of equality of opportunity, (g) relating to the monitoring by the governing body of the institution of— (i) its compliance with the provisions of the plan, (ii) its progress in achieving any objectives set out in the plan by virtue of paragraph (d), and (iii) its evaluation, data analysis and research to demonstrate the effectiveness of the plan, and (h) requiring the provision of information to the OfS.

Many of the powers outlined in this subsection are already being exercised successfully, and as such we believe that the legislation should seek to build on what is already being done, rather than simply state the basics of what is currently generally expected. We therefore feel the subsection should be as enabling as possible, and should incorporate much more than just information on applications, as these do not tell the full story. Our understanding is that this is supported by OFFA.

It is not the case that in all instances the governing body of an institution will need to secure financial assistance. Accordingly, the clause should be caveated to ensure that it cannot be read that this is mandated in all cases.

Clause 35: Duty to protect academic freedom (pages 19-20)

Clause 35, page 20, after line 4:
New Subsection: For the purposes of this section "academic freedom" has the same meaning as in clause 2, subsection ( )

Consequential and clarifying amendment (see above).

Clause 36: Power of Secretary of State to require a report (page 20)

Clause 36, Subsection (1), page 20, lines 10-11:
Current: (1) The Secretary of State may, by direction, require the OfS to report to the Secretary of State—
Amendment: (1) The Secretary of State must, by direction, require the OfS to report to the Secretary of State—

There should be an annual report on the sector, and this should not be left up to the discretion of the Secretary of State. This would enable the sector to better understand the work of the OfS, to which it is also contributing financially.

Clause 40: Authorisation to grant degrees etc. (pages 23-24)

Clause 40, page 23, after line 9:
New Subsection: ( ) In making any orders under this section, and sections 41, 42 and 43, the OfS must have due regard to the need to maintain confidence in the higher education sector, and in the awards which they collectively grant, among students, employers, and the wider public.

This amendment would ensure that the granting and removal of degree awarding powers would be linked to a need to maintain confidence in the sector, and with a view to preserving its excellent reputation. We believe this is a reasonable proposition that will not hinder the government's ambitions in respect of degree awarding powers, but it will make sure that they are followed through with greater oversight of the sector as a whole, to the benefit of all institutions and students, past, present and future.

Clause 47: Validation by the OfS (pages 26-27)

Clause 47, page 26 lines 27-45 and page 27 lines 1-16:
Deletion: 47 Validation by the OfS (1) If (having regard to advice from the OfS) the Secretary of State considers it necessary or expedient, the Secretary of State may by regulations— (a) authorise the OfS to enter into validation arrangements, and (b) require the OfS to offer to do so with— (i) registered higher education providers generally, or (ii) such registered higher education providers as are specified in the regulations or are of a description so specified. (2) Regulations under subsection (1) may authorise the OfS to enter into validation arrangements in respect of— (a) all taught awards and foundation degrees, or (b) such taught awards and foundation degrees as are specified in the regulations or are of a description so specified. (3) Regulations under subsection (1) may require the OfS to offer to enter into validation arrangements subject to conditions specified in the regulations. (4) Regulations under subsection (1) may include power for the OfS to authorise registered higher education providers to enter on its behalf into— (a) all the validation arrangements that the OfS is authorised to enter into by the regulations, or 5 10 15 20 25 30 35 40 45 Higher Education and Research Bill Part 1 — The Office for Students 27 (b) such of those validation arrangements as are specified in the regulations or are of a description so specified. (5) Regulations under subsection (1) may include power for the OfS to deprive a person of a taught award or foundation degree granted by or on behalf of the OfS under validation arrangements.

(6) In this section "validation arrangements" means arrangements between the OfS and a registered higher education provider under which the OfS— (a) grants a taught award or a foundation degree to a person who is a student at the provider, or (b) authorises the provider to grant a taught award or a foundation degree on behalf of the OfS.
(7) Validation arrangements may provide for— (a) the grant of a taught award or a foundation degree by the OfS, or (b) the authorisation to grant a taught award or a foundation degree on behalf of the OfS, to be subject to such conditions as the OfS considers appropriate

Any possibility of the OfS becoming a provider is a clear conflict of interest, and this section should be removed. We also believe necessary powers exist within Clause 46 to mitigate any issues brought about by removing this clause. No matter what assurances the government may give, if in legislation it sets out that a regulator can also validate that is an unacceptable position for the sector to be in. This clause would therefore require substantial alterations, or, failing that, outright deletion. A future scenario could be that the OfS is regulating, validating and assessing higher education provision. It is also possible to see a situation where the OfS is regulating its own validation activities. Moreover, the powers in clause 47 are vested in the Secretary of State and we do not believe it is appropriate that the Secretary of State should have the ability to decide who should or should not have their courses validated.

In a pro-market Bill which is seeking to promote more competition, having a body that serves as a validator of last resort takes the onus away from the provider needing to improve to obtain validation. We believe that if the circumstances ever arose that would require clause 47 to be enacted, it would be due to an issue with the provider and not with the validating system. At the heart of this must come the student interest: if a provider cannot obtain validation through the measures already in place we believe it is too large a risk for the students for the OfS to validate their degrees in these circumstances.

NEW CLAUSE: Committee on the granting of Degree Awarding Powers and University Title (circa page 33)

New Clause, page 33, after line 27:
New Clause: (1) The OfS must establish a committee called the "Committee on Degree Awarding Powers and University Title" (2) The function of the Committee is to provide advice to the OfS on— (a) the general exercise of its functions under sections 40, 42, 43 and 53 of this Act, and section 77 of the Further and Higher Education Act 1992; (b) particular uses of its powers under section 40(1) of this Act; and (c) particular uses of its powers under section 77 of the Further and Higher Education Act 1992 (3) The OfS must seek the advice of the Committee before— (a) authorising a registered higher education provider or qualifying further education provider to grant taught awards, research awards or foundation degrees under section 40(1) of this Act. (b) varying any authorisation made under section 40(1) of this Act so as to authorise a registered higher education provider or qualifying further education provider to grant a category of award or degree that, prior to the variation of the authorisation, it was not authorised to grant. (c) Providing consent under section 77 of the Further and Higher Education Act for an education institution or body corporate to change its names so as to include the word "university" in the name of the institution or body corporate (4) The OfS does not need to seek the advice of the Committee before— (a) revoking an authorisation to grant taught awards, research awards or foundation degrees

(b) varying any authorisation to grant taught awards, research awards, or foundation degrees so as to revoke the authorisation of a registered higher education provider or qualifying further education provider to grant a category of award that, prior to the variation of the authorisation, it was authorised to grant.
(5) Subsection (4) applies whether the authorisation being revoked or varied was given¬—
(a) by an order made under section 40(1) of this Act,
(b) by or under any Act of Parliament, other than under section 40(1) of this Act; or
(c) by Royal Charter
(6) In providing its advice to the OfS, the Committee must in particular consider the need for students, employers and the public to have confidence in the higher education system and the awards which are granted by it.
(7) The OfS must have regard to the advice given to it by the Committee on both the general exercise of its functions referred to in subsection 2 and any particular uses of its powers referred to in subsection 3.
(8) The majority of the members of the Committee must be individuals who appear to the OfS to have experience of providing higher education on behalf of an English higher education provider or being responsible for the provision of higher education by such a provider.
(9) In appointing members of the Committee who meet those criteria, the OfS must have regard to the desirability of their being currently engaged at the time of their appointment in the provision of higher education or in being responsible for such provision.
(10) The majority of the members of the Committee must be individuals who are not members of the OfS
(11) Schedule 1 applies to the Committee on Degree Awarding Powers and University Title as it applies to committees established under paragraph 8 of that Schedule

This amendment creates a new clause which creates a committee of the OfS which fulfils much the same function as the current Advisory Committee on Degree Awarding Powers (DAPs).

We strongly believe, as do many sector representatives, that strong safeguards need to be put in place to ensure that any body that is awarded degree awarding powers or university title has met the criteria to do so, and will not put student interest at risk, or potentially damage the hard earned reputation of the entire higher education sector in the UK. We are in favour of new providers entering the sector, but we believe that they must meet a credible standard, and we feel this clause would go a large way to meeting this requirement.

The Committee has the role both of advising the OfS in general as to how it is fulfilling its functions in this area (subsection 2a) and on proposed particular uses of its power to grant DAPs or UT (subsections 2b and 2c). The amendment specifically allows the OfS to revoke DAPs or UT without specifically consulting the committee (subsection 4), which means that any argument against it on the grounds that it may create problematic delays if urgent action was required, would be mitigated. In fulfilling its role, we would expect the Committee to seek advice from the designated quality body.

The current arrangements for conferring DAPs and university title on an institution require (in England) the Higher Education Funding Council for England to seek the advice of the Quality Assurance Agency. This is not required in the 1992 Act, but is clearly sets a precedent whereby appropriate expertise is sought prior to any decision making. It is therefore vital that the OfS continues to seek advice from the designated quality body prior to any conferring of DAPs and / or university title. There is a strong argument to amend this new clause further to reflect that obligation.

Schedule 5

Schedule 5, Section 1, Subsection (3), page 77, after line 22:
New Subsection: ( ) the suspected breach may constitute fraud, or concerns serious or willful mismanagement of public funds

We have strong concerns around the broad nature of the powers outlined in Schedule 5. We believe that it is therefore appropriate to limit the scope of these powers to issues of financial impropriety or fraud. Enabling the OfS to seek a warrant to enter and search for any breach of a registration condition appears to us to be excessive power, especially as some of those registration conditions relate to the provision of information or the submission of an access and participation plan. Breaches of those conditions would not, in our view, be sufficient for OfS to request a warrant.

Clauses 66-82

Clause 69: Secretary of State's power to give directions (pages 41-42)

Clause 69, page 42, after line 24:
New Subsection: ( ) For the purposes of this section "academic freedom" has the same meaning as in clause 2, subsection (6 or 5)

A consequential and clarifying amendment (see above).

Clause 70: Power to require information or advice from the OfS (page 42)

Clause 70, Subsection (1), page 42, after line 32:
New Paragraph: (c) such information or advice must also be published by the Secretary of State

This will enable greater transparency and scrutiny of the sector by stakeholders and Parliamentarians.

Clause 71: Power to require application-to-acceptance data (pages 42-43)

Clause 71, page 42 lines 35-42 and page 43 lines 1-24:
Deletion: 71 Power to require application-to-acceptance data (1) The Secretary of State may, by notice, require a body within subsection (2) to provide such application-to-acceptance information as may be described in the notice for use in qualifying research. (2) A body is within this subsection if it provides services to one or more English higher education providers relating to applications for admission on to higher education courses provided by them. (3) "Application-to-acceptance information" means information relating to— (a) applying for admission on to higher education courses provided by English higher education providers (including predicted grades), (b) offers and rejections regarding which individuals are admitted on to those courses, or (c) the acceptance of such offers. (4) "Qualifying research" means— (a) research into the choices available to individuals who are— (i) applying for admission on to higher education courses provided by English higher education providers, or (ii) considering whether to accept an offer for admission on such a course from such a provider; (b) research into equality of opportunity; (c) research into any other topic approved by the Secretary of State.

(5) The notice under subsection (1) may require the information to be provided— (a) by a time specified in the notice, and (b) in a form and manner specified in the notice.
(6) If a body fails to comply with a notice under subsection (1) and does not satisfy the Secretary of State that it is unable to provide the information, the Secretary of State may enforce the duty to comply with the notice in civil proceedings for an injunction or (in Scotland) an interdict.
(7) In this section, "equality of opportunity" means equality of opportunity in connection with access to and participation in higher education provided by English higher education providers.
(8) See section 72 regarding the use of information obtained under this section.

This clause may be intended to apply to any new organisation in the future that may provide admissions services to registered providers. However, as it stands, the sector has a strong track record on analysing application and acceptance rates. This work is already being managed by UCAS in consultation with the sector. UCAS has provided extensive analysis and research into application rates and acceptance rates, including with regard to the progress or otherwise by individuals from disadvantaged backgrounds or those with protected characteristics. This clause therefore appears to be excessive and burdensome, legislating for something already in place.

Clause 72: Use of application-to-acceptance data for research purposes (pages 43-44)

Clause 72, page 43 lines 25-44 and page 44 lines 1-9:

Deletion: 72 Use of application-to-acceptance data for research purposes
(1) The Secretary of State may— (a) use information obtained under section 71 for use for qualifying research, and (b) provide information obtained under section 71 to an approved person for use for qualifying research.
(2) The Secretary of State or an approved person may publish the product of research conducted using information obtained under section 71 so long as— (a) a purpose of the Secretary of State or the approved person in publishing it is to provide statistical information, (b) no individual to whom the information obtained under section 71 relates may be identified from the publication, and (c) the publication does not include information obtained under section 71 that may be regarded as commercially sensitive.
(3) "Approved person" means— (a) a body approved by the Secretary of State for the purposes of this section that uses or disseminates information for the purpose of research ("an approved body"), or (b) an individual approved by the Secretary of State or an approved body for the purposes of this section ("an approved researcher").
(4) An approved body may provide information obtained under section 71 to an approved researcher, but an approved researcher may not provide that information to— (a) another approved researcher, or (b) another approved body.
(5) The Secretary of State must publish guidance regarding factors that will be taken into account in deciding whether to approve a body or individual for the purposes of this section.
(6) "Qualifying research" has the same meaning as in section 71.

This clause risks providing personal information from students to commercial organisations. The clause gives the Secretary of State the power to decide who is an approved person. The Secretary of State also has the power (by virtue of clause 71) to decide what is qualifying research. This potentially means that any safeguards put in place by the data controller to ensure information about individuals is kept secure and used only for specific purposes can be overruled by the Secretary of State.

PART THREE: RESEARCH

Schedule 9

Section 2: Membership of UKRI (page 92)

Schedule 9, Section 2, Subsection (4), page 92, lines 15-16:
Current: (4) Before appointing the members mentioned in sub-paragraph (1)(b) to (d), the Secretary of State must consult the chair.
Amendment: (4) Before appointing the members mentioned in sub-paragraph (1)(b) to (d), the Secretary of State must consult the chair and the House of Commons Select Committee

This would enhance the scrutiny of any choice and improve the likelihood of the best person being appointed. It will also boost the prestige and legitimacy of the person holding the role. In practice, it would not stop an appointment being made. However it would require the Secretary of State to set out a strong case as to why they have chosen a particular candidate, which we believe to be appropriate being in mind the duties and responsibilities attached to this post.

Section 3: Membership of the Councils (page 92)

Schedule 9, Section 3, Subsection (1), paragraph (a), page 92, lines 27-28:
Current: (a) an executive chair appointed by the Secretary of State (the "executive chair"),
Amendment: (a) an executive chair appointed by the Secretary of State (the "executive chair"), following consultation with the President of the relevant National Academy,

This amendment will have the dual advantage of helping to ensure that a person with the requisite experience is appointed and will also enhance the prestige of the position, to counteract any perceived downgrading of the role as a result of the removal of the Royal Charter, and the new organisational structure of UKRI.

Schedule 9, Section 3, Subsection (4), page 92, lines 35-36:
Current: (4) The other ordinary Council members are to be appointed by UKRI after consulting the executive chair.
Amendment: (4) The other ordinary Council members are to be appointed by UKRI after consulting the executive chair and the chair of UKRI.

The membership of the Councils is extremely important. Ensuring that this is undertaken in consultation with the Chair will ensure greater scrutiny of choices, greater body-wide accountability, and a higher prestige for the positions in question.

Section 9: Committees and Sub-Committees (page 94)

Schedule 9, Section 9, page 94, after line 21:
New Subsection: ( ) A joint committee is to be established by UKRI and OfS, it must – (a) consist of representatives of both UKRI and OfS (b) produce an annual report on the health of the higher education sector, to be sent to the Secretary of State and laid before Parliament. The report must contain details of – (i) the health of the sector, (ii) work on equality of opportunity, (iii) the health of disciplines, (iv) research funding,

(v) the awarding of research degrees, (vi) post-graduate training, (vii) shared facilities, (viii) knowledge exchange, (ix) skills development and (x) maintaining the public interest.

Holistic oversight of the higher education sector is essential for its continuing success. The Bill must have measures within it that will ensure that the two major bodies with responsibility for higher education provision and research, UKRI and OfS, do not work in silos and that the work of each organisation is complementary to the other. We believe a committee and an annual report which references the areas and activities outlined in the amendment would help achieve this and provide greater public oversight and parliamentary scrutiny.

Clauses 84-104

Clause 84: The Councils of UKRI (pages 51-52)

Clause 84, Subsection 2, page 51, line 39:
Current: (2) The Secretary of State may by regulations amend subsection (1) so as to—
Amendment: (2) The Secretary of State may, after open consultation, by regulations amend subsection (1) so as to—

Adding in a need for consultation will mean that any significant issues around the re-naming of a Council are identified and a full range of opinions can be fully taken into account. Consultation with appropriate people is included for other powers granted to the Secretary of State by the Bill, so this is in keeping with precedent.

Clause 85: UK research and innovation functions (page 52)

Clause 85, Subsection (1), Paragraph (b), page 52, lines 9-10:
Current: (b) facilitate, encourage and support research into science, technology, humanities and new ideas,
Amendment: (b) facilitate, encourage and support research into science, technology, arts and humanities and new ideas,

Clause 85, Subsection (1), Paragraph (c), page 52, lines 11-12:
Current: (c) facilitate, encourage and support the development and exploitation of science, technology and new ideas,
Amendment: (c) facilitate, encourage and support the development and exploitation of science, technology, arts and humanities and new ideas,

These should be explicitly part of the remit, and as such named within this section. We believe both of these amendments will bring greater consistency to this section of the Bill, and will underline how important these areas are to the UK economy more generally.

Clause 87: Exercise functions by science and humanities Councils (page 53)

Clause 87, Subsection (5), page 53, line 36:
Current: (5) The Secretary of State may by regulations—
Amendment: (5) The Secretary of State may after consultation and discussions with the devolved administrations, by regulations—

This is partially a consequential amendment of any changes to Clause 84. It is also a commitment to ensuring collaboration with all administrations of the UK, which will be vitally important for the success of the whole sector UK-wide.

Clause 88: Exercise functions by Innovate UK (page 54)

Clause 88, Subsection (1), page 54, lines 2-4:
Current: (1) UKRI must arrange for Innovate UK to exercise such functions of UKRI as UKRI may determine for the purpose of increasing economic growth in the United Kingdom.
Amendment: (1) UKRI must arrange for Innovate UK to exercise such functions of UKRI as UKRI may determine for the purpose of increasing economic growth in the United Kingdom, and in the public interest.

This will ensure that, alongside the commercial aspects of Innovate UK, there is also a commitment to consider the public interest and wider impact of the work, activities and funding allocations of Innovate UK.

Clause 88, page 54, after line 12:
New clause: (4) 'UKRI must arrange for Innovate UK to compile a report on the performance of its functions during each financial year. This report must include - a) a statement of accounts in respect of that financial year. b) Innovate UK must send the report to the Secretary of State c) The Secretary of State must then lay this report before Parliament

In the interests of scrutinising performance it will be very important to ensure full accountability for Innovate UK, and this will ensure that Parliament has the opportunity to effectively monitor the work of the body.

Clause 89: Exercise of functions by Research England (page 54)

Clause 89, Subsection (2), page 54, after line 25:
New paragraph: (c) the undertaking of knowledge exchange activities and (d) support for postgraduate students

HEFCE currently provides funding to institutions to support their activities in knowledge exchange and to enable them to support postgraduate students undertaking taught or research courses, and to support those undertaking PhDs that are not funded by specific awards from Research Councils. Research England should retain this power. The advantage of the current situation and practice is that, due to the holistic oversight HEFCE has of the sector, the links between teaching, research and knowledge exchange can be effectively supported. There is a risk this support and oversight will disappear if Research England does not maintain this responsibility.

Clause 89, Subsection (4), page 54, after lines 31-34:
Current: (4) Arrangements under this section must require Research England, when exercising a function for the purpose of giving financial support, to consult such persons as Research England considers appropriate before determining any terms and conditions to be imposed in relation to the financial support.
Amendment: (4) Arrangements under this section must require Research England, when exercising a function for the purpose of giving financial support, to consult such persons as Research

England considers appropriate, including the relevant bodies in the devolved administrations, before determining any terms and conditions to be imposed in relation to the financial support.

We believe strong and continuing communication between the UK government and the devolved administrations is vital for the health of the entire UK higher education sector, therefore this should be an explicit mandate within the legislation wherever possible and appropriate, such as here.

Clause 91: UKRI research and innovation strategy

Clause 91, page 55, lines 5-18:
Current: 91 UKRI's research and innovation strategy (1) UKRI must— (a) if requested to do so by the Secretary of State, prepare a strategy for the exercise of its functions during the period specified in the request, and (b) submit the strategy to the Secretary of State for approval. (2) A strategy under subsection (1) is referred to in this Part as a "research and innovation strategy". (3) A research and innovation strategy must specify— (a) the period before the end of which each Council must submit a strategic delivery plan to UKRI under section 92, and (b) the period to which such a plan must relate. (4) The Secretary of State may approve a research and innovation strategy with or without modifications. (5) UKRI must publish a research and innovation strategy approved under this section in such manner as the Secretary of State may require it to be published.
Amendment: 91 UKRI's research and innovation strategy (1) UKRI must— (a) if requested to do so by the Secretary of State, prepare a strategy for the exercise of its functions during the period specified in the request, in consultation with the Executive Chairs of each council of UKRI, Research England and Innovate UK, and (b) submit the strategy to the Secretary of State for approval. (2) A strategy under subsection (1) is referred to in this Part as a "research and innovation strategy". (3) A research and innovation strategy must specify— (a) the specific strategic objectives of, and a strategy for the exercise of the functions for, each council of UKRI, including Innovate UK and Research England, (b) the period before the end of which each Council must submit a strategic delivery plan to UKRI under section 92, and (c) the period to which such a plan must relate. (4) The Secretary of State may approve a research and innovation strategy with or without modifications. (5) UKRI must publish a research and innovation strategy approved under this section in such manner as the Secretary of State may require it to be published.

The new structure created by the Bill will make UKRI the only corporate body overseeing research funding and strategy. However, much importance has been placed on the distinct role of the nine new committees being established within UKRI. These distinct roles will continue to be important in the new structure, so it is vital that the approach to setting strategy recognises this, rather than assuming that these varied roles and responsibilities can be easily collapsed into one overall strategy. Links and coherent themes will undoubtedly run through the strategies, but it is also necessary to ensure that each 'voice' is heard in the overall UKRI strategy. This is particularly important when it comes to the work of Research England and Innovate UK.

Clause 92: Councils' strategic delivery plans (page 55-56)

Clause 92, Subsection (2), page 55, line 23:
Current: (2) UKRI must arrange for each Council to—
Amendment: (2) UKRI must arrange for each Council, Innovate UK and Research England to—

We strongly believe that all parts of UKRI should require a strategic plan, and we do not accept that there are reasonable grounds for Innovate UK and Research England to be exempt from this.

Clause 95: Balanced funding and advice from UKRI (page 56-57_

Clause 95, Subsection (2) page 57, after line 2:
New Paragraph: (c) The advice in sub-paragraph (b) must be published, where appropriate, and the Secretary of State should commission an annual report on the allocation of funding, to be laid before Parliament

This new paragraph would ensure that the balanced funding principle can be better evaluated by the sector, and by Parliamentarians, to assess if UKRI is successfully upholding it. We believe transparency over this principle is both important and necessary.

Clause 96: General duties (page 57)

Clause 96, Subsection (1), page 57, lines 11-12:
Current: (1) In exercising its functions, UKRI must have regard to the need to use its resources in the most efficient, effective and economic way.
Amendment: (1) In exercising its functions, UKRI must have regard to the need to use its resources in the most efficient, effective and economic way, and with due regard to the wider public interest.

UKRI should be mandated to ensure the good of the sector (and its reputation) is upheld, and not just the success of its own economic performance. This will further underline the importance of long-term planning and effective holistic oversight of the sector.

PART FOUR: GENERAL

Clause 103: Cooperation and information sharing between OfS and UKRI (page 59)

Clause 103, Subsection (1), page 59, lines 11-12:
Current: (1) The OfS and UKRI may cooperate with one another in exercising any of their functions.
Amendment: (1) The OfS and UKRI may cooperate with one another in exercising any of their functions. The OfS and UKRI must cooperate with one another on work pertaining to- (i) the health of the sector, (ii) work on equality of opportunity, (iii) the health of disciplines, (iv) research funding, (v) the awarding of research degrees, (vi) post-graduate training, (vii) shared facilities, (viii) knowledge exchange, (ix) skills development and (x) maintaining the public interest.

It is vital that both the OfS and UKRI work together as much as possible to ensure holistic oversight of the sector. Mandating them to work together is essential and will mitigate against the risk of the two bodies working in silo. As previously outlined, the two bodies must work together for the good of the entire sector and this should be clearly set out within this legislation.