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Higher Education and Research Bill: Committee Stage Report

By Sue Hubble and David
Foster

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Summary

The [*Higher Education and Research Bill 2015-16*](#) was presented in the House of Commons on 19 May 2016. It seeks to bring forward a range of measures to increase competition and choice in the higher education sector, raise standards and strengthen capabilities in UK research and innovation. The Bill implements the legislative proposals in the Department for Business, Innovation and Skills White Paper, [*Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice*](#)¹ and in Sir Paul Nurse's report, [*Ensuring a successful UK research endeavour: A Review of the UK Research Councils by Paul Nurse*](#), November 2015. Full background on the Bill, and its provisions as originally presented, can be found in Library Briefing Paper 7609, [*Higher Education and Research Bill 2016 \[Bill No 004 of 2016-17\]*](#).

The Public Bill Committee stage of the *Higher Education and Research Bill 2016-17* took place over fourteen sessions between 6 September and 18 October 2016. The first three sessions were evidence taking sessions and a range of spokespersons from public, private and further education providers, university mission groups and other higher education sector bodies such as UCAS appeared before the Committee.

The main areas of debate during the Committee Stage were: the lack of student representation in the Bill, access and participation under the new system, the Teaching and Excellence Framework (TEF), collaboration and competition in the sector and the new research system created by the Bill. Amendments tabled to the Bill were also used as a means of debating general areas of recent controversy in the higher education sector such as the removal of student maintenance grants and the freezing of the student loan repayment threshold.

There were 17 divisions during the Committee Stage and a number of amendments were agreed; all the accepted amendments were Government amendments – most of which were minor technical ones. The only substantial amendments agreed were amendments allowing the immediate suspension of providers from the register of higher education providers where public funds are at risk, and another permitting TEF ratings to be given to higher education institutions (HEIs) in the devolved regions.

This paper considers the amendments tabled in Public Bill Committee and examines the most significant issues that were debated. It does not cover in detail every amendment or every clause of the Bill.

¹ Department for Business, Innovation and Skills, [*Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice*](#), 16 May 2016 Cm9258.

1. The Bill

The *Higher Education and Research Bill 2015-16* was presented in the House of Commons on 19 May 2016 and its Second Reading took place on 19 July 2016.² The Bill and accompanying documents are available on the Parliament website at [Higher Education and Research Bill 2016-17](#).

The Bill seeks to bring forward a range of measures to increase competition and choice in the higher education sector, raise standards and strengthen capabilities in UK research and innovation. Provisions in the Bill will: create a new body to regulate the higher education sector (the Office for Students), establish a new single gateway into the higher education sector, introduce a new non-interest bearing student finance product called an alternative payment, and make changes to the research infrastructure. The Bill implements the legislative proposals in the Department for Business, Innovation and Skills (BIS) White Paper, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#) and in Sir Paul Nurse's report, [Ensuring a successful UK research endeavour: A Review of the UK Research Councils by Paul Nurse](#), November 2015.³

The following official documents were published alongside the Bill:

- BIS, [Summary Impact Assessment](#), Higher Education and Research Bill, May 2016
- BIS, [Detailed Impact Assessments](#), Higher Education and Research Bill, June 2016
- BIS, [Equality Analysis](#), Higher Education and Research Bill, May 2016
- BIS, [Case for the creation of the Office for Students](#), A new public body in place of the Higher Education Funding Council for England (HEFCE) and the Office for Fair Access (OFFA) June 2016
- BIS, [Case for the creation of UK Research and Innovation \(UKRI\)](#), A new public body in place of the seven Research Councils, Innovate UK, and the research and knowledge exchange functions of the Higher Education Funding Council for England, June 2016
- DFE, [Higher Education and Research Bill: Technical note on market entry and quality assurance](#), September 2016
- DFE, [Higher Education and Research Bill: student protection plans, September](#), 2016

² HC Deb 19 July 2016 c703.

³ Department for Business, Innovation and Skills, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#), 16 May 2016 Cm9258.

2. Second Reading debate

The Bill had its Second Reading in the House of Commons on 19 July 2016. The main topics discussed were:

- the impact of Brexit on the higher education sector
- the impact of the proposed changes to research infrastructure
- the teaching excellence framework (TEF) and its effect on the reputation of UK higher education
- the further raising of higher education tuition fees
- collaboration between higher education providers
- quality of private providers and changes to degree awarding powers
- widening participation and social mobility

The Secretary of State for Education, Justine Greening, said that “these reforms, which are the first since the 1990s, enable us to maintain the world-class reputation of our higher education institutions, because quality will be built in at every stage—from the way we regulate new entrants to how we deal with poor-quality providers already in the system”.⁴

The Labour Shadow Further Education and Skills Minister, Gordon Marsden, said the Bill had “positive elements”⁵ which the opposition welcomed such as the provisions on social mobility and the introduction of a transparency duty for university admissions. However he said that the opposition “strongly opposed the linking of the TEF with fees”.⁶

Carol Monaghan said that the SNP would not be able to support the Bill in its current form.⁷

Many contributors to the debate referred to the impact of Brexit on the higher education sector;⁸ Mr Zeichner expressed the views of several contributors to the debate when he said:

In facing the Brexit challenge, it is absolutely clear that the sector is suffering from instability and uncertainty. I echo the suggestion of many of my hon. Friends that now might not be the time for undertaking more major reforms. Our research institutions and universities currently face a real challenge to maintain our global reputation, and we should not make it any more difficult for them.⁹

Mr Johnson, Minister for Universities, Science, Research and Innovation, in wrapping up the debate said that there was a “very strong consensus

⁴ [HC Deb 19 July 2016](#), c704.

⁵ [HC Deb 19 July 2016](#), c716.

⁶ [HC Deb 19 July 2016](#), c717.

⁷ [HC Deb 19 July 2016](#), c737.

⁸ Mr Marsden c725, Mr Carmichael c732, Mr Byrne c744, Mr Lammy c751, Ms Churchill c760, Mr Blomfield c764, Mr Zeichner c771.

⁹ [HC Deb 19 July 2016](#), c771.

that our universities rank among the very best in the world”¹⁰ and that it was right to “press ahead with the Bill”:

It will provide stability for the sector, putting in place a robust regulatory framework. The sector has been calling for this legislation since the tuition fee changes were put in place during the last Parliament, and it welcomes the stability and certainty that the Bill will provide.¹¹

The Bill passed its Second Reading by **294 votes to 258**.

¹⁰ [HC Deb 19 July 2016](#), c785.

¹¹ [HC Deb 19 July 2016](#), c787.

3. Public Bill Committee

The Bill's Committee stage began with three evidence sessions on 6th and 7th September 2016. The evidence sessions were followed by line-by-line scrutiny of the Bill over a further eleven sessions which concluded on 18 October 2016. The members of the Committee were as follows:

Chairs: Sir Edward Leigh and Mr David Hanson

Committee Membership:

Edward Argar (Charnwood) (Con)

Dr Roberta Blackman-Woods (City of Durham) (Lab)

Paul Blomfield (Sheffield Central) (Lab)

Alex Chalk (Cheltenham) (Con)

Jo Churchill (Bury St Edmunds) (Con)

David Evennett (Lord Commissioner of Her Majesty's Treasury)

Ben Howlett (Bath) (Con)

Joseph Johnson (Minister for Universities, Science, Research and Innovation)

Seema Kennedy (South Ribble) (Con)

Gordon Marsden (Blackpool South) (Lab)

Amanda Milling (Cannock Chase) (Con)

Carol Monaghan (Glasgow North West) (SNP)

Wendy Morton (Aldridge-Brownhills) (Con)

Roger Mullin (Kirkcaldy and Cowdenbeath) (SNP)

Mark Pawsey (Rugby) (Con)

Angela Rayner (Ashton-under-Lyne) (Lab)

Jeff Smith (Manchester, Withington) (Lab)

Wes Streeting (Ilford North) (Lab)

Valerie Vaz (Walsall South) (Lab)

Matt Warman (Boston and Skegness) (Con)

The written evidence and transcripts of the Committee's sittings are available on the [Higher Education and Research Bill 2016-17](#) page of the Parliament website. A [tracked changes version of the Bill](#) showing how the Bill was amended in Committee is also available on the website.

The clause numbers in this briefing refer to those from the Bill as first introduced in the House of Commons, Bill 004 of 2016-17.

4. Committee Stage: detailed consideration of the Bill

4.1 The Office for Students (OFS)

Establishment of the OFS – (clause 1 and schedule 1)

Clause 1 contained the provisions **for the establishment of the OFS**.

The only amendment to this clause was amendment 119 – which was moved by Valerie Vaz. This amendment aimed to **change the name of the Office for Students (OFS) to the Office for Higher Education**.

The short debate that followed discussed the role of the OFS as regulator and the issues of student representation on the OFS board. Mr Johnson outlined the functions of the body and stated that the stakeholders were happy with the name.¹² The amendment was **withdrawn**.

The rest of the clause 1 related amendments were moved to provisions in schedule 1 which contained the **details of the working of the OFS**.

Student representation

The first group of amendments to schedule 1 were moved by Mr Streeting and were concerned with student representation on the board of the OFS. Amendments 2 and 3 taken together would require that **two student representatives were included as members of the OFS**. Amendment 122 tabled by Mr Marsden would require that at least one member of the OFS should be a student member. The lack of student representation on the board of the OFS was an important issue raised during the Second Reading debate.¹³

Mr Streeting began the debate saying that the Bill should be a “Bill of Rights for students”¹⁴ and that “principles of co-production of higher education [should be placed] at the heart of the Bill rather than aggressive consumerism”.¹⁵

Mr Howlett pointed out that other organisations such as the Care Quality Commission¹⁶ did not have consumer representation on their board. Mr Blomfield replied that the Quality Assurance Agency for Higher Education (QAA) had students on their audit teams.¹⁷

Other Members, such as Mr Chalk, said that the amendment was not necessary because schedule 1 made it a requirement for OFS members to have experience of representing or promoting the interests of individual students.¹⁸ Mr Marsden countered this argument saying that having experience of representing students “is not in itself a sufficient guarantee that the voice of students would be heard”¹⁹ and that the

“students have their name on the door but they do not have a seat at the table”
Wes Streeting MP
Public Bill
Committee, 8
September 2016
c116

¹² [PBC 8 September 2016 \(afternoon\)](#), c111.

¹³ [HC Deb 19 July 2016](#) Stella Creasy, c760.

¹⁴ [PBC 8 September 2016 \(afternoon\)](#), c113.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ [PBC 8 September 2016 \(afternoon\)](#), c116.

¹⁸ [PBC 8 September 2016 \(afternoon\)](#), c117.

¹⁹ [PBC 8 September 2016 \(afternoon\)](#), c117.

amendment would send a very strong signal of how important it was to include students in this process and in broader democratic processes.²⁰

Mr Johnson said that students' interests were "hard-baked" into the Bill and were clear and explicit.²¹ He also said that including a requirement that holders of particular positions in the NUS, or other student unions, had ex officio places on the board of the OFS would tie the hands of the board and would be entirely undesirable in primary legislation.²²

Mr Streeting summed up his case for the amendments saying:

I cannot understand how it could be reasonably argued that students' interests lie at the heart of the office for students when there might be no voice around the table with current or recent experience of being a student.²³

Mr Streeting said that he would **withdraw** his amendments and would **consider returning to the issue on Report**.

Mr Marsden pressed amendment 122 to a vote - the Committee divided **Ayes 9, Noes 11**.

Experience required of OFS members

Mr Marsden moved amendments related to the **experience required of OFS members** as set out in schedule 1, paragraph 2 of the Bill. This paragraph set out seven criteria of which the members between them must have experience. The lead amendment, number 123, would ensure that all criteria were considered as of **equal importance**, the other amendments would extend the criteria to include experience of the further education sector, widening participation and to include an employee representative of a higher education institution (HEI).

Mr Marsden said the amendments aimed to ensure that there was no hierarchy of criteria and expressed his concern that the pro-competition function of the OFS would take priority over its other functions.²⁴ He was also keen that further education colleges were included in the criteria as these colleges deliver an increasing amount of higher education.

Mr Johnson reassured the Committee saying:

Ensuring that the OFS board members reflect the diversity of the HE sector is of the utmost importance to this Government. It is also essential that the board has the range of skills, knowledge and experience that will be required for it to be the market regulator of a sector that is of such strategic importance to the UK.²⁵

The Minister added that the Bill's provisions relating to the OFS board appointments took the same approach as the current legislative framework and expanded the number and range of areas to which the Secretary of State must have regard when appointing OFS board

²⁰ [PBC 8 September 2016 \(afternoon\)](#), c118.

²¹ [PBC 8 September 2016 \(afternoon\)](#), c119.

²² [PBC 8 September 2016 \(afternoon\)](#), c120.

²³ [PBC 8 September 2016 \(afternoon\)](#), c122.

²⁴ [PBC 8 September 2016 \(afternoon\)](#), c125.

²⁵ [PBC 8 September 2016 \(afternoon\)](#), c127.

members. He said that it was important that the Secretary of State had the ability to determine the overall balance of the board, and that the amendment would “inhibit the Secretary of State’s ability to make appointments that reflect current priorities”.²⁶

Mr Johnson reassured the Committee that further education colleges would be covered under the existing definition of higher education provider.²⁷

Mr Marsden **withdrew** the amendment.

Access and Participation

The next group of amendments aimed to clarify the **role of the Director for Fair Access and Participation (DFAP)**. Amendment 156 aimed to ensure that the DFAP was responsible for the performance of access and participation as well as reporting on those functions; amendment 134 would ensure that the DFAP was consulted about functions relating to access and participation; and amendment 157 would give the DFAP exclusive responsibility for access and participation.

Mr Marsden moved the amendments saying that they aimed to “explore the independence and flexibility of the director”.²⁸ He stressed the important role that the DFAP had had in improving access targets at institutions and said that it was crucial that the director was able to carry out their role unimpeded. He also said that it was vital that the role of the DFAP should not be weakened:

If the director does not retain the authority to approve or reject an access and participation plan, if it is not clear that he or she retains that authority, or if that power can be delegated to others and decisions overturned, there is a real risk that the director’s position will be seen as weakened.²⁹

Dr Blackman-Woods made a similar point and said that she was concerned that the Bill watered down some of the DFAPs powers.³⁰ This point was also raised by Professor Ebdon, the Director of the Office for Fair Access, in his evidence.³¹

Mr Blomfield expressed concern that the schedule as drafted made the director for fair access and participation responsible simply for reporting and he was concerned that the director could be bypassed, or functions delegated.³² He also said that bringing the Office for Fair Access into the OFS risked the autonomy and authority of the office.

Mr Johnson reassured the Committee and said that he would **give the amendments some consideration**:

I thank hon. Members for their helpful and extremely interesting amendments. Although I was less able to be accommodating on

²⁶ [PBC 8 September 2016 \(afternoon\)](#), c127.

²⁷ [PBC 8 September 2016 \(afternoon\)](#), c129.

²⁸ [PBC 8 September 2016 \(afternoon\)](#), c131.

²⁹ [PBC 8 September 2016 \(afternoon\)](#), c134.

³⁰ [PBC 8 September 2016 \(afternoon\)](#), c134.

³¹ *Ibid.*

³² [PBC 8 September 2016 \(afternoon\)](#), c135.

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previous amendments, I would like to signal that we are giving these amendments very careful thought.³³

He said that the OFS would bring together the responsibilities for widening participation currently undertaken by the director for fair access and the Higher Education Funding Council for England (HEFCEO) and that bringing those functions together in one body would ensure greater co-ordination of activities and funding at national level and allow greater strategic focus. He reassured the Committee that the OFS would give responsibility to the director for fair access and participation for activities in this area.³⁴

The Minister finally said that it would not be appropriate to put details into statute and once again stressed that the intention was for the OFS to give responsibility for access and participation to the DFAP.³⁵

Mr Marsden **withdrew** the amendment.

Mr Steeting moved the next series of amendments³⁶ which would provide for the **DFAP to report directly to the Secretary of State and for the Secretary of State to lay the report before Parliament**. Mr Steeting said that the amendments aimed to safeguard the position of the Office for Fair Access.³⁷

Mr Marsden endorsed the amendments and stressed the importance of regular reports to Parliament.³⁸

The Minister clarified the relationship between the DFAP and the OFS and Parliament:

OFS members will agree a broad remit with the DFAP and that the DFAP will report back to them on those activities.

The OFS board will have responsibility for access and participation but, on a day-to-day basis, I envisage that that will be given to the DFAP. In particular, he or she will have the responsibility for agreeing access and participation plans, as is currently the case. I reiterate that because it is such an important point and I know hon. Members are focused on that issue.³⁹

The amendments would require reports by the DFAP to be presented to the Secretary of State and to Parliament separately from other OFS reporting.⁴⁰ Mr Johnson said that this was not necessary:

The work of the DFAP does not need to be separate from the rest of the OFS and its work should be reported to Parliament as part of the OFS's overall accountability requirements. In addition, the Bill allows the Secretary of State to ask the OFS to provide additional reports on access and participation issues, either through its annual report or through a special report. Any such report will also be laid before Parliament and therefore made available in the Library. The OFS can produce separate independent reports on widening participation. It would not be

³³ [PBC 8 September 2016 \(afternoon\)](#), c136.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Amendments 10, 11, 12, 13, 14 and 128.

³⁷ [PBC 8 September 2016 \(afternoon\)](#), c138.

³⁸ [PBC 8 September 2016 \(afternoon\)](#), c139.

³⁹ [PBC 8 September 2016 \(afternoon\)](#), c140.

⁴⁰ *Ibid.*

consistent with integrating the role into the OFS to require separate external reporting from a single OFS member when the organisation will be governed collectively by all its members.⁴¹

However the Minister also said that it was an **interesting idea and he would give it some thought**.⁴²

The amendment was **withdrawn**.

Membership of the OFS

The next amendment, number 129 aimed to **make the appointment of the Chair of the OFS subject to pre-appointment by the relevant select committee and subject to the passing of a resolution by both Houses of Parliament**. The amendment was moved by Mr Marsden who said that the principle that select committees should play a significant role when key appointments were made was now well established.⁴³

Mr Johnson reassured the Committee he fully intended to actively involve the select committee or select committees, as appropriate, in the appointment process, including the option of pre-appointment hearings for senior OFS appointments.⁴⁴ However he said that approval of the appointment by both Houses of Parliament would be burdensome and unnecessary.⁴⁵

Mr Marsden **withdrew** the amendment.

Mr Marsden moved amendment 130 to ensure that the **Secretary of State must specify why a person has been removed as a member of the OFS**. Mr Marsden said that the wording of the Bill allowed the removal of a member of the OFS if the Secretary of State considered it appropriate – he said this was too broad and that reasons should be given. Mr Johnson said that he would strongly resist the amendment as it was inconsistent with normal practice on public appointments and unnecessary.⁴⁶ He also said that in many cases it would not be appropriate to disclose the grounds of dismissal. Mr Marsden said that greater transparency was needed but as agreement was unlikely he **withdrew** the amendment.

Debate on schedule 1 continued with amendment 131 which was moved by Mr Marsden; the amendment aimed to make the **remuneration, allowances and expenses of OFS members publicly available**. Mr Marsden said that the amendment was made in the interests of transparency. Mr Johnson confirmed that the OFS chair and chief executive's salary would be made publicly available in a list with other senior civil servants on an annual basis.⁴⁷ Mr Marsden accepted the Minister's assurance and **withdrew** the amendment.

⁴¹ [PBC 8 September 2016 \(afternoon\)](#), c140.

⁴² *Ibid.*

⁴³ [PBC 8 September 2016 \(afternoon\)](#), c141.

⁴⁴ *Ibid.*

⁴⁵ [PBC 8 September 2016 \(afternoon\)](#), c143.

⁴⁶ [PBC 8 September 2016 \(afternoon\)](#), c144.

⁴⁷ [PBC 13 September 2016 \(morning\)](#), c152.

Dr Blackman-Woods moved the next series of amendments which probed to clarify **how the OFS would work with the new body UK Research and Innovation (UKRI)**. Amendment 158 would require the OFS and UKRI to establish a **joint committee** to ensure the two bodies do not work in silos. Many witnesses had expressed concern during the evidence sessions about how these bodies would work together.⁴⁸ Particular concern was expressed about the separation of teaching and research and the interests of postgraduate students.

The SNP members of the Committee supported the amendment. Mr Marsden said that co-operation between the bodies was essential “to ensure confidence and good relations between the devolved Administrations and the Westminster Government”.⁴⁹

A lengthy debate followed which covered areas including: co-operation and collaboration between the OFS and UKRI, oversight of postgraduate students and the link between teaching and research. Mr Marsden commented that the machinery of Government changes had placed science and education in separate departments and warned that this, and breaking the link between research and teaching, could lead to unintended consequences.⁵⁰

Mr Johnson gave an overview of how the OFS and UKRI would work together and reassured the Committee that joint working would be embedded in governance arrangements:

as the new organisations are created we will develop appropriate governance arrangements that embed joint working principles and practice in the framework documents for both organisations and in the informal agreements between them, such as a memorandum of understanding⁵¹

Mr Johnson said that framework documents would be published after the Bill received Royal Assent and that he would **write to the Committee** to provide more details about co-operation arrangements⁵² and working relationships that were to be set out in the framework documents.

On postgraduate students, the Minister said that the research councils would fund doctoral students through UKRI as now and the OFS would fund masters students.⁵³ The OFS would be a regulator for all students including postgraduates.

Mr Johnson said that the amendments were unnecessary and could reduce flexibility. The amendments were **withdrawn**.

Conduct of OFS meetings

The last two amendments on schedule 1 were moved by Mr Marsden. Amendment 133 aimed to **prevent the Secretary of State from taking part in any deliberations of OFS meetings** and sought to

⁴⁸ [PBC 13 September 2016 \(morning\)](#), c154.

⁴⁹ *Ibid.*

⁵⁰ [PBC 13 September 2016 \(morning\)](#), c156.

⁵¹ *Ibid.*

⁵² [PBC 13 September 2016 \(morning\)](#), c157.

⁵³ *Ibid.*

ensure the independence of the OFS. Amendment 135 sought to **clarify the provision in paragraph 15(2)(d) of the schedule about the OFS accepting gifts of money, land or other property.**

Mr Johnson said that preventing the Secretary of State from taking part in any deliberations of OFS would risk the OFS not having access to latest policy thinking.⁵⁴ He also explained that the paragraph on accepting gifts of money, land or other property was necessary to allow the OFS to manage issues raised by public ownership of some of the land and property of some existing HEIs if those institutions merged or ceased to operate, and to ensure that the assets were managed effectively.⁵⁵ Mr Johnson said that **he would write** to the Committee on the point about gifts and assets and that this was a failsafe power and replicated previous legislation.

Both amendments were **withdrawn**.

Clause 1 was agreed.

4.2 General duties of the OFS (clause 2)

Clause 2 of the Bill sets out the general duties of the OFS. The first amendments to this clause were moved by Mr Streeting, and dealt with the duties of the OFS in relation to access and participation.

Widening participation, apprenticeships and HE 'cold spots'

Amendment 15 aimed to place a statutory duty on the OFS to **ensure fair access and to promote widening participation**. Amendment 20 would place a duty on the OFS to **work with the Institute for Apprenticeships to develop more higher and degree level apprenticeship places** and amendment 28 would place a duty on the OFS **to monitor the geographical distribution of higher education provision and encourage provision where there is a shortfall relative to local demand**. A lengthy debate followed on participation in higher education, provision of higher education and higher level skills.

Speaking to amendment 20, Mr Streeting said that the higher education sector could do more to engage with the debate about apprenticeships. He said that the creation of higher and degree level apprenticeships would ensure that "appropriate routes and genuine choice" were available to every talented person.⁵⁶

With regard to participation, Mr Streeting highlighted the concern about the drop in participation among part-time and mature students.⁵⁷ He said on amendment 28 that more people were choosing to study at local institutions and that in some areas there were higher education "blackspots" in terms of provision.⁵⁸ He also expressed concern about

⁵⁴ [PBC 13 September 2016 \(morning\)](#), c159.

⁵⁵ [PBC 13 September 2016 \(morning\)](#), c161.

⁵⁶ [PBC 13 September 2016 \(morning\)](#), c163.

⁵⁷ [PBC 13 September 2016 \(morning\)](#), c165.

⁵⁸ *Ibid.*

private providers, and suggested these institutions might cherry-pick courses and not offer less profitable ones.⁵⁹

Mr Marsden welcomed amendment 20 on apprenticeships and discussed the “need to give the appropriate connectivity between the vocational and the academic sides of the Bill.”⁶⁰ He said there was a need for higher degree skills in the post-Brexit climate. He also expressed concern about the changing pattern of participation among older students and part-time students. He said that further education colleges could assist with provision in higher education “cold spots”.⁶¹

Mr Johnson said that the Government “whole heartedly supported” widening choice and opportunities⁶² and had made good progress on widening access to higher education:

record numbers of young people from disadvantaged backgrounds are going into HE: the proportion has risen from 13.6% in 2009-10 to 18.5% in 2015-16, and provisional figures for 2016 indicate an entry rate of 19%.⁶³

The Minister said that he shared concerns about part-time study.

Mr Johnson outlined the role of the OFS in widening participation:

the Office for Students brings together the responsibilities of the Director of Fair Access and HEFCE for widening access and promoting the success of disadvantaged students. The Bill will rationalise those activities and ensure they are a key part of the OFS’s remit. Placing a requirement in legislation to publish a strategy is restrictive and unnecessary.⁶⁴

On amendment 20, the Minister said that the Government wanted to see an increase in apprenticeships.⁶⁵ Mr Johnson then explained at length the government’s apprenticeship policy. He said that there had been a “dramatic increase in the number of people starting higher apprenticeships,” that the further education sector had had a good settlement for skills, and that the area review programme would make the further education sector better able to meet the educational needs of local areas.⁶⁶ He said that the amendment was unnecessary and overly prescriptive and would limit the flexibility that was needed to ensure that the “education system remained responsive to changes in the labour market and the needs of the economy”.⁶⁷

With regard to “cold spots” in higher education provision, the Minister said that HEFCE had undertaken work in this area and that the OFS would continue this.⁶⁸ He said the amendment would be over-prescriptive and “interventionist”. He also said that the amendment would “risk creating the expectation that the OFS would continually

⁵⁹ [PBC 13 September 2016 \(morning\)](#), c165.

⁶⁰ [PBC 13 September 2016 \(morning\)](#), c166.

⁶¹ [PBC 13 September 2016 \(morning\)](#), c168.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ [PBC 13 September 2016 \(morning\)](#), c169.

⁶⁶ [PBC 13 September 2016 \(morning\)](#), c170.

⁶⁷ [PBC 13 September 2016 \(morning\)](#), c171.

⁶⁸ *Ibid.*

monitor the distribution of supply and demand for higher education, perhaps in a bureaucratic and costly way".⁶⁹ He further said that new institutions could open up in cold spots to support demand.

Mr Streeting said that he would withdraw amendment 15,⁷⁰ however he said that amendment 20 would facilitate the Minister's aim of joining up the higher education and skills strategies and that amendment 28 should be put in the Bill as it was an issue that the OFS needed to keep an eye on.

Mr Streeting **withdrew** amendment 15 and pressed amendments 20 and 28 to a vote. Amendment 20 was **negated by 5 votes to 11** and amendment 28 **by 5 votes to 10**.⁷¹

Competition in the sector

Mr Marsden moved a series of amendments aimed at **modifying the general duties** of the OFS. Amendment 137 would ensure that all elements of the OFS's remit were of **equal importance**. Amendments 138 and 139 aimed to **reduce the emphasis on competition** in the Bill and amendment 160 introduced a **public interest criteria** into the general duties.

Mr Marsden said his amendments reflected concerns across the university sector on the issue of competition between HEIs; he said that there was a place for it⁷² but that competition could damage collaboration.⁷³ He said that the higher education sector were particularly concerned about competition in the uncertain post-Brexit climate and that Universities UK had said "competition with no reference to collaboration was too narrow".⁷⁴ He also said that competition was not always in the best interests of students:

market forces can change institutional priorities in ways that may not be beneficial to students—competition increases the pressure on providers to spend money on attracting students, rather than on front-line delivery.⁷⁵

Dr Blackman-Woods made points on the public benefit of higher education and its value in economic terms and its role in society. She said that the general duties of the OFS should reflect the wider public good and safeguard the public interest.⁷⁶

Mr Johnson said that giving the different elements of the OFS's remit equal weighting would "seriously inhibit the ability of the OFS to make effective decisions."⁷⁷ He also said:

We are also giving it statutory independence to act impartially and objectively in delivering those statutory duties in the light of the relevant circumstances of the time. For us, that has the distinct

⁶⁹ [PBC 13 September 2016 \(morning\)](#), c172.

⁷⁰ [PBC 13 September 2016 \(morning\)](#), c172.

⁷¹ The vote on amendment 28 took place during the Sixth sitting PBC c195.

⁷² [PBC 13 September 2016 \(morning\)](#), c174.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ [PBC 13 September 2016 \(morning\)](#), c175.

⁷⁶ [PBC 13 September 2016 \(morning\)](#), c176.

⁷⁷ [PBC 13 September 2016 \(morning\)](#), c177.

advantage of giving the independent OFS clear statutory responsibility for deciding what is most important at any one time.

In its day-to-day operations, the OFS will need regularly to manage its different competing priorities, some of which will need to take greater importance than others depending on the issue at stake.⁷⁸

Mr Marsden asked for an indication that the Government did not regard competition as the “be all and end all of the OFS’s duties”.

The Minister said that he did not see “competition and collaboration as being inherently in tension with each other”⁷⁹ and that the Bill did not prevent collaboration, he said, therefore, that there was no need for a separate duty on collaboration.

Mr Johnson also said that the provision on competition recognised that higher education is a market and needs a regulator suited to dealing with that. He referred to the Competition and Markets Authority report, which said that aspects of the current system were holding back competition.⁸⁰

The Minister said that it was in students’ interest to maximise choice and competition and that there were assurances built into the Bill to safeguard the public interest.

Mr Marsden said that he would return to these issues elsewhere in the Bill and **withdrew** the amendments.

The reputation of UK higher education

Debate on clause 2 continued with Dr Blackman-Woods moving amendment 159 which aimed to insert a general duty into the clause to **‘maintain confidence’ in the higher education sector**. A series of wide ranging amendments were included with this amendment – the amendments concerned **consultation with students over the production of access and participation plans**⁸¹, **collaboration between providers**⁸² and the **promotion of adult, part-time and life-long learning**.⁸³

Introducing her amendment, Dr Blackman-Woods said that the Bill must protect the reputation of UK higher education and that the Government should reassure the sector that it had its interests at heart.⁸⁴ She also introduced amendment 136 which returned to the principle of student consultation. Mr Marsden backed amendment 136 and said that he was genuinely disappointed that the Government was determined not to put anything in the Bill about student involvement.⁸⁵

Mr Marsden then gave a lengthy speech about adult learning. He said the situation that faced adult learners was “bleak”.⁸⁶ He made points

⁷⁸ [PBC 13 September 2016 \(morning\)](#), c 177.

⁷⁹ *Ibid.*

⁸⁰ [PBC 13 September 2016 \(morning\)](#), c178.

⁸¹ Amendment 136.

⁸² Amendment 140.

⁸³ Amendment 141.

⁸⁴ [PBC 13 September 2016 \(afternoon\)](#), c186.

⁸⁵ *Ibid.*

⁸⁶ [PBC 13 September 2016 \(afternoon\)](#), c187.

about the decline in part-time learning, the low numbers of mature students, the cut in the adult skills budget and the removal of grants. He said that it was essential “for our economy and society that we continue to provide high-quality education for adults”.⁸⁷

Mr Johnson responded in agreement “that it is very important that the strong reputation of the English higher education sector is maintained”,⁸⁸ and the OFS would have a key role to play in that. He also said that the OFS would promote the interests of students and that providers should collaborate and innovate.⁸⁹

The Minister then discussed **degree awarding powers** and said that the power to award degrees would be subject to specific criteria, which would be **consulted** on – he said that this level of detail was not appropriate in primary legislation and he envisaged that the new criteria would not differ much from the existing criteria.⁹⁰ He added that the criteria for granting degree awarding powers and guidance would ensure quality and therefore confidence in the sector.

On amendment 136, Mr Johnson said that a “culture of engagement”⁹¹ would be embedded in the OFS and that a variety of mechanisms would be used rather than prescribing detail in the legislation.

Mr Johnson returned to the issue of collaboration and Mr Blomfield asked why collaboration was not on the face of the Bill in the way that competition was.⁹² Mr Johnson said he would make it clear in his guidance to the OFS that collaboration was part of its general role and it did not need a separate duty.⁹³

Dr Blackman-Woods **withdrew** her amendment but said that promoting quality was not the same as maintaining confidence in the sector.⁹⁴

The Committee **voted** on amendment 28 which would place the OFS under a duty to monitor the geographic distribution of higher education – the amendment was **negated by 5 votes to 10**.

Dr Blackman-Woods moved amendment 161 which would allow universities to **innovate and respond to new and emerging markets and employer and student interest without Ministerial direction or interference**.⁹⁵ Amendment 142 was also moved which aimed to extend the list of areas on which the Secretary of State would not be permitted to issue guidance. Dr Blackman-Woods said that the amendment was to test the extent of the powers of the Secretary of State over universities and courses; she said that the clause as it stood

⁸⁷ [PBC 13 September 2016 \(afternoon\)](#), c189.

⁸⁸ [PBC 13 September 2016 \(afternoon\)](#), c190.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ [PBC 13 September 2016 \(afternoon\)](#), c191.

⁹² [PBC 13 September 2016 \(afternoon\)](#), c192.

⁹³ [PBC 13 September 2016 \(afternoon\)](#), c193.

⁹⁴ [PBC 13 September 2016 \(afternoon\)](#), c194.

⁹⁵ [PBC 13 September 2016 \(afternoon\)](#), c196.

gave the Secretary of State extended powers over course provision including course opening and closing.⁹⁶

The Minister responded that for 25 years the Government had issued guidance to HEFCE on priority and strategically important subjects; he said that the Bill enshrined this guidance in law. Mr Johnson reassured the Committee that the provision was necessary and would not relate to the closure or creation of specific courses:

With a diminishing amount of grant funding available, the Secretary of State must be able to ensure that the OFS is fully aware of which subjects are of strategic importance to the nation. This is necessary to allow the OFS to provide top-up funding to high-cost subjects, such as STEM, in the way HEFCE does now. The key word here is “strategic”. The guidance will not be specific; for example, it cannot be used to target individual courses at individual higher education providers. Clause 2(5) makes that clear. We must remember that we are talking about guidance here: it can advise, perhaps strongly, but it cannot mandate.⁹⁷

Dr Blackman-Woods said that she was reassured that institutional autonomy would be protected and **withdrew** the amendment.

Clause 2 was agreed.

4.3 The Register of providers (clause 3)

Clause 3 was uncontroversial – two amendments were moved by Mr Marsden to **clarify the role of the Secretary of State in laying regulations** concerning the information that must be included in an institution’s entry on the register and to **make the register available on a quarterly basis**.

The Minister assured the Committee that **regulations would be made**, and that they will be subject to the usual scrutiny process.⁹⁸ He said that the register would be updated in real time and made publicly available.

Mr Marsden said he was grateful for the positive response and **withdrew** the amendments.

4.4 Registration Procedure (clause 4)

Mr Marsden moved amendments 145, 149 and 173 which would **increase the notification period** for refusal of registration, variation of a registration condition, or suspension from the register from 28 days to 40.

Mr Johnson set out how the registration process would work:

The OFS will consult on, and then publish, the initial registration conditions that all providers will be required to meet before they are granted entry to the register. The conditions will relate to important matters such as quality, financial sustainability and standards of management and governance. Providers that cannot

⁹⁶ [PBC 13 September 2016 \(afternoon\)](#), c196.

⁹⁷ [PBC 13 September 2016 \(afternoon\)](#), c197.

⁹⁸ [PBC 13 September 2016 \(afternoon\)](#), c199.

demonstrate that they meet these standards will not be registered. Additionally, if the OFS considers that an institution or an element of an institution, such as its financial sustainability, poses a particularly high risk, the OFS can add, change or tailor specific registration conditions to the risks posed by the provider.⁹⁹

The Minister said that the 28 day period would “achieve the right balance between procedural fairness for the provider and an efficient, speedy outcome for others” and would protect the interests of students, employers and tax payers.

Mr Marsden **withdrew** the amendment.

Clause 4 was agreed.

4.5 Initial and ongoing registration conditions (clause 5 and 6)

Mr Blomfield used the debate on clause 5 to move an amendment which would introduce a requirement on universities to **provide a mechanism for students to enrol on the electoral list** when they register with HEIs.¹⁰⁰ He said that this amendment had cross-party support and the endorsement of Universities UK. Mr Blomfield explained the benefit of the process and said that it had been trialled in Sheffield.

Mr Streeting and Mr Marsden welcomed the amendment.

Mr Johnson said that the Government fully shared the aim of increasing the number of younger people registered to vote but said that the process should be voluntary and it was inappropriate to include such a condition in the Bill.¹⁰¹ He said that the conditions of registration were:

primarily to provide proportionate safeguards for students and the taxpayer, and to take forward social mobility policies. Requiring providers to carry out electoral registration, particularly when there are other means of students enrolling on the electoral register, is not the best way forward.¹⁰²

Mr Blomfield said that he would withdraw the amendment if the Minister would meet him and the relevant Cabinet Office Minister to talk about how the matter could be taken forward. The Minister agreed and Mr Blomfield **withdrew** the amendment.

Mr Marsden then moved a series of amendments to clauses 5 and 6 which **would allow stakeholders involved in an institution to have some input in the registration conditions of their institution**. The amendments would ensure that student, staff and other representatives were informed about changes in ongoing registration conditions and that stakeholders could make representations to the OFS – not just the institution’s governing body.

Mr Johnson said that the amendments would make it mandatory for the OFS to consult every time it revised conditions and would widen the

⁹⁹ [PBC 13 September 2016 \(afternoon\)](#), c201.

¹⁰⁰ Amendment 165 [PBC 13 September 2016 \(afternoon\)](#) c202.

¹⁰¹ [PBC 13 September 2016 \(afternoon\)](#), c205.

¹⁰² *Ibid.*

base for consultation, he said that this would be unhelpful. He further said that the OFS would be given **guidance** on consultation and that it would be encouraged to engage and consult with key stakeholders.¹⁰³ He reassured the Committee that the OFS would always listen and that it did not need a power to do that.

Mr Mardsen was satisfied that clear guidance would be given and **withdrew** the amendment.

Clause 5 and 6 were agreed.

4.6 Proportionate conditions (clause 7)

Mr Mardsen moved an amendment to ensure that registration requirements and costs for HEIs were **proportionate to the institution's size, history and track record**.¹⁰⁴ He said the amendment was supported by the Association of Colleges¹⁰⁵ and was of particular importance to smaller providers of higher education, such as colleges.

Mr Mardsen voiced concerns that smaller providers would be charged the same registration fees and charges as larger providers and would be adversely affected by a one-size-fits-all approach. He pointed out that colleges had fewer students and charged lower fees.¹⁰⁶

Mr Johnson replied that "risk-based proportionate regulation was at the heart of how the OFS would operate". In response to the amendment he said:

It will certainly be the case that track record and perhaps size will be determining factors for the OFS to consider when it imposes registration conditions, but only insofar as those factors might help to determine the size of risk to the taxpayer and students.

The Bill is built on the principle of risk-based regulation in all its forms, and it is unhelpful to identify a list of factors that might substitute for risk in its wider sense. Over time, it is likely that the OFS will adapt and change its approach to identifying and controlling risk as the higher education market evolves.¹⁰⁷

He also said that they would **consult with the sector** on registration fees and charges.¹⁰⁸ The amendment was **withdrawn**.

In the clause stand part debate the Minister referred the Committee to a [Technical Note](#)¹⁰⁹ on quality, that had been published on 5 September 2016, which provided details of some aspects of the regulatory system. The clause was agreed.

¹⁰³ [PBC 13 September 2016 \(afternoon\)](#), c209.

¹⁰⁴ [PBC 13 September 2016 \(afternoon\)](#), c210.

¹⁰⁵ *Ibid.*

¹⁰⁶ [PBC 13 September 2016 \(afternoon\)](#), c212.

¹⁰⁷ [PBC 13 September 2016 \(afternoon\)](#), c213.

¹⁰⁸ [PBC 13 September 2016 \(afternoon\)](#), c214.

¹⁰⁹ Department for Education, [Higher Education and Research Bill: Technical note on market entry and quality assurance](#), September 2016.

4.7 Mandatory ongoing registration conditions for providers (clause 8)

Rights for students

Mr Streeting moved amendments to clause 8 which dealt with rights for students. Amendment 1 required providers to develop a **Code of Practice on Student Information** which would include information on details such as: contact hours, marking and assessment processes and learning facilities. He said that he hoped to turn the Bill into a **bill of rights for students**. Amendment 5 and new clause 1 related to student representation on governing bodies and consultation with students over decisions affecting them.

Mr Streeting said that students were getting a “raw deal”, and that a bill of rights would enable students to be well informed and able to hold their institution to account.¹¹⁰ He also said that “student representation on the boards of governing bodies had previously been part of the code of practice issued by the Committee of University Chairs”.

The Minister said that the Government was committed to improving information and he said that multiple codes of practice would create disparate and unequal information and increase burdens on providers. He reassured the Committee that guidance on information would be provided:

We expect the office for students to develop guidance setting out the information that students should receive. That will incorporate existing Competition and Markets Authority guidance, so will help institutions to comply with consumer law. The Bill gives the OFS overall responsibility for determining what information needs to be published, when—it will be published at least annually—and in what form.¹¹¹

Mr Johnson further said that the amendments risked reducing providers’ flexibility to engage students in a range of ways.

Mr Streeting said that he was “struggling to understand [the Minister’s] reluctance to enshrine student representation in legislation” but **withdrew** the amendments.

UK Quality Code

Mr Streeting moved a probing amendment to **clarify the role of the national quality code held by the Quality Assurance Agency for Higher Education (QAA)** under the new system. This Minister reassured the Committee that the code was sector owned and supported and that both the sector and the Government wanted the quality code to continue as it had done to date.¹¹²

The amendment was **withdrawn**.

¹¹⁰ [PBC 13 September 2016 \(afternoon\)](#), c218.

¹¹¹ [PBC 13 September 2016 \(afternoon\)](#), c219.

¹¹² [PBC 13 September 2016 \(afternoon\)](#), c225.

Access and Participation plans

Mr Marsden moved amendment 116 to **make access and participation plans mandatory for all higher education providers**; he said that this requirement would level the playing field and avoid discriminatory conditions for some providers.¹¹³

Mr Johnson explained the requirement for access and participation plans:

Our clear intention is that fee-capped providers on the OFS register that are able to charge above the basic level of fees should be required to agree an access and participation plan with the director for fair access and participation, as he will be in the new world. That must be in place before they can charge fees at the higher level. It is consistent with the current approach to access plans, which has worked well since 2004.¹¹⁴

The Minister said that it was not appropriate that all providers should produce access and participation plans. He said that the new regulatory system was based on how providers participated in the system and that the burden on providers should be proportionate.¹¹⁵ He also outlined new proposals on widening participation:

For the first time, we are proposing that those providers that want their students to be able to access tuition fee loans up to the basic level of £6,000 should have to set out how they intend to promote widening access and participation in a public statement.¹¹⁶

Mr Johnson gave further information on the **new requirement for public statements**:

these are statements that the providers accessing the basic amount of fee loans support for their students put up on their own initiative. They will be required to have them, but they will not be signed off by the director for fair access and participation. We do not think that that would be a proportionate requirement.¹¹⁷

Mr Marsden pressed the amendment to a vote and the Committee divided – **Ayes 5, Noes 10**.

Transparency duty

Mr Streeting moved a number of amendments to re-enforce transparency in the Bill. The lead amendment, number 19, would require providers to publish their policies on the **use of contextual data in relation to admissions**. The amendments would also extend the transparency condition to include **information on retention rates, standards obtained and graduate destinations, and require that the information was published for each academic department**. These amendments were supported by the National Education Opportunities Network.

¹¹³ [PBC 13 September 2016 \(afternoon\)](#), c227.

¹¹⁴ PBC c228.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ [PBC 13 September 2016 \(afternoon\)](#), c229.

Mr Mardsen said the transparency duty should cover as many different dimensions of participation by social background as possible; he added that the Sutton Trust did not believe that the Bill went far enough in that area.¹¹⁸

Dr Blackman-Woods said that the information should be provided in one place and Mr Blomfield said that he wanted more granular information.

Mr Johnson responded that institutions would be expected to provide more information:

Institutions will be expected to publish application, offer and drop-out rates for students broken down by ethnicity, gender and socio-economic background. The duty will allow us to shine a spotlight on institutions that need to go further.¹¹⁹

Mr Johnson set out the Government's proposals in this area and said that he would **reflect** on points made by the Committee. He said that he would consider Dr Blackman-Woods' proposal for UCAS to collate and publish data.¹²⁰

The amendments were **withdrawn**.

4.8 Mandatory transparency condition for certain providers (clause 9)

Student unions

Mr Streeting moved an amendment which would make the **establishment of a student union an ongoing registration condition**; the amendment would extend provisions in the *Education Act 1994* to private providers. Mr Streeting said that student unions were an important part of the student experience.

Mr Johnson replied that nothing in the Bill, or in current legislation prevented a higher education provider, private or otherwise, from having a students' union, and no higher education provider was currently required to have a students' union. He also quoted Alex Proudfoot from Independent Higher Education who said that students at private providers tended not to engage in formal student unions.¹²¹ He further said that evidence of student engagement was already included in the QAA's Higher Education Review (Alternative Providers)¹²² and that the amendment would impose conditions on private providers but not on publicly funded ones.

The amendment was pressed to a vote, the Committee divided - **Ayes 5, Noes 10**.

Clause 9 was agreed.

¹¹⁸ [PBC 13 September 2016 \(afternoon\)](#), c232.

¹¹⁹ [PBC 13 September 2016 \(afternoon\)](#), c233.

¹²⁰ [PBC 13 September 2016 \(afternoon\)](#), c235.

¹²¹ [PBC 13 September 2016 \(afternoon\)](#), c236.

¹²² [PBC 13 September 2016 \(afternoon\)](#), c237.

4.9 Mandatory fee limit condition for certain providers (clause 10)

Flexible provision

Dr Blackman-Woods moved an amendment which would **allow fees for three year courses to be charged over two years** – this amendment aimed to allow more flexible course delivery. The Minister gave reassurances:

We are determined to do more to support flexible provision and that is exactly why we issued a call for evidence earlier in the summer, seeking views from providers, students and others. That resulted in more than 4,000 responses, the vast majority of which, as the hon. Lady may expect, came from individual students.

[...]

We certainly sympathise with the underlying intention of the amendment. We believe the Bill will help ensure more students are able to choose to apply for accelerated courses. We are currently analysing the full range of the many responses we received to our call for evidence. I assure the hon. Lady that we expect to come forward with further proposals to incentivise the take-up of accelerated provision by the end of the year.¹²³

The amendment was **withdrawn** and clause 10 agreed.

4.10 Fee limit (schedule 2)

Teaching Excellence Framework and fee increases

The debate on schedule 2 was protracted and heated. The main area of contention was the **lack of detail on the Teaching Excellence Framework** (TEF) in the Bill and the **linking of the TEF to increases in tuition fees**.

Mr Marsden said that the detail of the TEF had not been put in the Bill to avoid debate:

By not putting the teaching excellence framework in the Bill in any shape or form other than the rather oblique way it is dealt with in clause 25, they have done their best to truncate any broad discussion of its merits or demerits or any attempt to address any of the significant concerns that have already been expressed.¹²⁴

He said that people were frustrated that the TEF had not been debated on the floor of the House.¹²⁵ Mr Marsden was also critical that major increases in tuition fees had been announced by merely issuing a written statement.¹²⁶

Mr Johnson said that increases in fees were “simply allowing the real-terms value to be maintained”¹²⁷ and that the Government had used the “the same provision that the Labour Government introduced in

¹²³ [PBC 15 September 2016 \(morning\)](#), c245.

¹²⁴ [PBC 15 September 2016 \(morning\)](#), c246.

¹²⁵ [PBC 15 September 2016 \(morning\)](#), c256.

¹²⁶ [PBC 15 September 2016 \(morning\)](#), c247.

¹²⁷ *Ibid.*

2004 so that universities do not suffer an annual erosion in real terms of their income".¹²⁸

Mr Marsden pointed out that the National Union of Students opposed statutory links between teaching quality and the level of fee charged for teaching.¹²⁹ He also said that there was a degree of scepticism about the outcome from universities of linking the TEF with tuition fees¹³⁰ and that a number of universities, including the University of Cambridge and the Russell Group, were "very lukewarm" about signing up to the TEF.¹³¹

Mr Pawsey said that the proposals were a "massive incentive" for institutions to put on better courses,¹³² but Mr Marsden said that there was no evidence that the TEF would improve quality.¹³³

Mr Blomfield suggested that some universities were in favour of the TEF because it was "the only show in town" as far as fee increases were concerned. He pointed out that the report by the Business, Innovation and Skills Committee on the TEF opposed the linking of the TEF and fees.¹³⁴

Mr Johnson said he was "extremely concerned at the misrepresentation" of the views of individual vice-chancellors who supported the TEF and the fee link and said that their views were not unrepresentative of the sector.¹³⁵

Other concerns raised about the TEF included that it would: "alienate young people",¹³⁶ be "administratively burdensome"¹³⁷ and that it could have "perverse outcomes".¹³⁸

Ms Milling said that the Government had listened and that a lot of progress had been made in developing the TEF. Mr Blomfield however discussed the metrics chosen for the TEF, and said they had not yet got metrics with a proven link to teaching quality.¹³⁹

Summing up, Mr Johnson set out the Government's rationale for the proposals:

Schedule 2 is crucial, in that it provides the mechanism for the setting of fee caps, which are central to fair and sustainable higher education funding. It replicates the provisions put in place by the Labour Government more than a decade ago with one difference, which I will come to later. First, I want to set out why the current funding system not only works for the sector but is crucial to its continued competitiveness.

¹²⁸ [PBC 15 September 2016 \(morning\)](#), c249.

¹²⁹ [PBC 15 September 2016 \(morning\)](#), c250.

¹³⁰ *Ibid.*

¹³¹ [PBC 15 September 2016 \(morning\)](#), c252.

¹³² [PBC 15 September 2016 \(morning\)](#), c251.

¹³³ *Ibid.*

¹³⁴ [PBC 15 September 2016 \(morning\)](#), c254.

¹³⁵ *Ibid.*

¹³⁶ [PBC 15 September 2016 \(morning\)](#), c255.

¹³⁷ [PBC 15 September 2016 \(morning\)](#), c256.

¹³⁸ *Ibid.*

¹³⁹ [PBC 15 September 2016 \(morning\)](#), c258.

The system we have established and are updating through the Bill, building on the measures put in place by the previous Labour Government, will ensure the sustainability of the HE sector and drive up the value to students by linking quality with fees. Our approach has been recognised by the OECD, which praised England as one of the few countries to have figured out a sustainable approach to higher education finance.¹⁴⁰

The Minister reassured the Committee that fee rises would at most rise in-line with inflation and that Parliament would retain control over fees:

Let me reassure the Committee that, as I set out in the White Paper, our proposed changes to the fee limits accessible to those participating in the TEF will at most be in line with inflation—fee caps will be kept flat in real terms. Let me also reassure the Committee that, should the upper or lower limits be increased by more than inflation, which is certainly not our intention, it will require regulations subject to the affirmative procedure, which require the approval of Parliament. That is in line with the current legislative approach to raising fee caps and we have no desire to depart from those important safeguards, so Parliament will therefore continue retain strong controls over fees.¹⁴¹

Schedule 2 was pressed to a vote – the Committee divided - **Ayes 11, Noes 7**. Schedule 2 and clauses 11 and 12 were agreed.

4.11 Other initial and ongoing registration conditions (clause 13)

Student protection plans

Clause 13 requires all providers to have a student protection plan in place as an ongoing condition of registration. Amendment 168 was moved to ensure that students were **protected from reasonable financial loss** if their provider, or course closed. The Minister referred the Committee to an [explanatory note on student protection plans](#)¹⁴² that had been recently published, he explained the new requirement:

What the Bill does, importantly, is give the office for students the power to require registered providers to put student protection plans in place. All approved providers and approved fee cap providers in receipt of public funds will be expected, regardless of size, to have a student protection plan approved by the OFS. That is new, and the measure has been welcomed by the NUS in its written evidence to the Committee. I have met the NUS on a number of occasions. If it has continuing concerns, following our publication of this preliminary clarifying material, I would be happy to meet again to discuss how we can go further, if necessary.¹⁴³

The amendment was **withdrawn**.

The student experience

Dr Blackman-Woods moved amendment 178 which aimed to ensure that all students had **access to a range of amenities and services**

“The sector is familiar with the principle of linking funding to quality, which was introduced by the Conservative Government in the 1980s, when they introduced the research assessment exercise. Over successive iterations, the research excellence framework has undoubtedly driven up the quality of our research endeavour as a country, keeping us at the forefront of global science”.

Jo Johnson MP,
Public Bill
Committee 15
September 2015
c261

¹⁴⁰ [PBC 15 September 2016 \(morning\)](#), c258.

¹⁴¹ [PBC 15 September 2016 \(morning\)](#), c263.

¹⁴² Department for Education, [Higher Education and Research Bill: student protection plans](#), September 2016.

¹⁴³ [PBC 15 September 2016 \(morning\)](#), c266.

such as sports, student services, volunteering opportunities and students unions. She said that the amendment went to the heart of what a university should be and that the student experience was more than just getting a degree.

The Minister welcomed the amendment for highlighting the breadth of opportunities offered by participation in higher education, but said that putting that into legislation would not be desirable.¹⁴⁴

Dr Blackman-Woods said she was bitterly disappointed with the response but **withdrew** the amendment.

Stricter entry requirements for new providers

Mr Marsden moved an amendment to enable the ONS to require **stricter entry requirements for new providers based on previous history** and future forecasts. Mr Marsden was concerned about low quality for-profit organisations moving into the market purely for financial gain.¹⁴⁵

The Minister said:

there will be no cutting of corners to allow an easy route into the sector for providers who would not pass our exceptionally robust thresholds in terms of financial sustainability, management, governance and quality. The single gateway into the sector that we are putting into place through the Bill and the robustness of its processes are of key importance to the success of our reforms.¹⁴⁶

He also explained that regulation would be risk-based and proportionate:

Clause 5 requires the OFS to consult on and publish initial and ongoing registration conditions. Different conditions will be applied to different categories of providers. Although it is for the OFS to determine those conditions, we expect that they will reflect those first set out in the Green Paper and subsequently confirmed in the White Paper. We expect they will include academic track record, as demonstrated by meeting stringent quality standards, checks on financial sustainability, including requiring financial forecasts from providers, and other important issues, such as the provider's management and governance arrangements.

In addition, clause 6 provides the OFS with the power to apply specific ongoing registration conditions based on the OFS's assessment of the degree of regulatory risk that each provider represents.¹⁴⁷

The Minister said that the technical note on market entry and quality assurance gave a clear indication that the OFS would consult with representative bodies on details of the new system such as the required length of track record.

The amendment was **withdrawn**.

¹⁴⁴ [PBC 15 September 2016 \(afternoon\)](#), c271.

¹⁴⁵ [PBC 15 September 2016 \(afternoon\)](#), c274.

¹⁴⁶ [PBC 15 September 2016 \(afternoon\)](#), c275.

¹⁴⁷ *Ibid.*

4.12 Public Interest Governance Condition (clause 14)

Pay rates of higher education staff

Mr Streeting moved a group of amendments on university pay; one amendment aimed to have **pay ratios between different higher education staff published**, and another aimed to **include students on remuneration committees**.

Mr Streeting said that the amendments were a response to excessively high pay rates at the top of universities and “poverty rates” paid to other staff.¹⁴⁸ He said that the [2016-17 HEFCE grant letter](#)¹⁴⁹ included a reference to excessive high pay at the top and urged universities to show greater restraint.

Mr Johnson said that he would give the amendments **some thought**. He said that HEIs were obliged to publish the salaries of their vice-chancellors and that the Government urged the sector to exercise restraint, without crossing the line and interfering in the practices of autonomous institutions.¹⁵⁰ He also said that the OFS would **consult** with the sector on the list of principles referred to in clause 14.

The amendments were **withdrawn**.

Higher education providers in England

Mr Marsden moved a probing amendment to ascertain if the provisions in the Bill would cover **institutions which operate across the UK**, such as the Open University.

The Minister reassured the Committee that any higher education provider that carried out the majority of its activities in England would be covered and that the Bill replicated the definition in the *Further and Higher Education Act 1992*.

The amendment was **withdrawn**.

Academic freedom

The final amendment to clause 14 aimed to ensure that the academic freedom of staff was not constrained by Government, or other relevant stakeholders.

The Minister said that the Government was “fully committed” to protecting academic freedom and that the Bill contained a comprehensive range of protections.¹⁵¹ He also repeated that the OFS would **consult** prior to determining and publishing a new list of public interest conditions.¹⁵² The Minister said that he would **reflect** on the points raised.

The amendment was **withdrawn** and clause 14 agreed.

¹⁴⁸ [PBC 15 September 2016 \(afternoon\)](#), c278.

¹⁴⁹ Department for Business, Innovation and Skills, [Higher Education Funding for 2016-17](#), para 38.

¹⁵⁰ [PBC 15 September 2016 \(afternoon\)](#), c280.

¹⁵¹ [PBC 15 September 2016 \(afternoon\)](#), c286.

¹⁵² *Ibid.*

4.13 Power to impose monetary penalties (clause 15 and schedule 3)

Dr Blackman-Woods moved an amendment to ensure that **penalties could only be imposed where evidence was provided**.¹⁵³ The Minister said that:

Regulations will set out the factors to which the OFS must or must not have regard when deciding whether to impose a monetary penalty. They will be subject to consultation and targeted at ensuring that the OFS can impose a monetary penalty only when there is good reason to do so.¹⁵⁴

The amendment was **withdrawn**.

Mr Johnson moved several technical Government amendments¹⁵⁵ to **allow the OFS to retain some of the sums received**. The original wording of the Bill only provided for sums to be paid into the Consolidated Fund. He said that the amendments aligned the legislation with standard Treasury guidance.

The amendments were **agreed** and clause 13 and schedule 3 as amended were agreed.

4.14 Suspension of registration (clause 16)

Government amendment 34 was agreed without debate; the amendment removed the requirement for the OFS to enter the date of the end of the suspension of a provider in instances when the provider has been removed from the register.

Mr Marsden moved amendment 172 that would require that the **suspension of a provider should not last for more than 365 days**. He said that the amendment was about natural justice for providers and ensuring that the workforce and students at institutions under suspension were not left in limbo for an unreasonable period.¹⁵⁶ He also said that amendment 174 would create safeguards for students during the suspension period. The debate on the amendments covered the role of student protection plans,¹⁵⁷ the proportionally high numbers students from under-represented groups at alternative providers¹⁵⁸ and the instability of the alternative sector.¹⁵⁹

Mr Johnson said that including a 365 day limit in the Bill was arbitrary and unhelpful and could create problems for students being 'taught out' by exiting institutions.¹⁶⁰ He said that clauses 17 and 18 in the Bill contained clear procedures for dealing with suspension from the register, set out remedial action and required providers to act promptly. He also said that student protection plans would provide the safeguard

¹⁵³ [PBC 15 September 2016 \(afternoon\)](#), c288.

¹⁵⁴ [PBC 15 September 2016 \(afternoon\)](#), c289.

¹⁵⁵ Amendments 32, 33, 102 and 103.

¹⁵⁶ [PBC 15 September 2016 \(afternoon\)](#), c292.

¹⁵⁷ [PBC 15 September 2016 \(afternoon\)](#), c293.

¹⁵⁸ *Ibid.*

¹⁵⁹ [PBC 15 September 2016 \(afternoon\)](#), c295.

¹⁶⁰ [PBC 15 September 2016 \(afternoon\)](#), c296.

being sought by the amendments¹⁶¹ and that these plans, which already exist, would become more widespread.¹⁶²

Mr Marsden said that he was concerned about students being able to transfer banked credit from other HEIs and at the absence of detail in the Bill. He said that he was “profoundly unhappy” with the Minister’s response but **withdrew** the amendment.

Clause 16 as amended was agreed.

4.15 Suspension procedure and de-registration by the OFS (clauses 17 and 18)

Government amendment 35 to clause 17 provided the OFS with the **power to suspend a provider with immediate effect where the OFS considers that there is an urgent need to protect public money**. The **amendment** and clause 17 **were agreed**.¹⁶³

Clause 18 set out the two cases where the OFS must deregister a provider: one covers the second breach of a condition of registration by a suspended provider and the other is for a very serious breach of a condition. Government amendment 36 made clear that the OFS could decide that a fine or suspension would be insufficient to deal with a breach and that the OFS could move to deregistration without having taken any action to impose sanctions. This would allow fast action in particularly serious cases.¹⁶⁴ The amendment **was agreed**.

Gordon Marsden moved amendment 175 which aimed to **ensure that a list of providers removed from the register was laid before Parliament**. New clause 5 – De-registration: notification of students, was discussed alongside this amendment; the new clause would ensure that students still undertaking courses at a provider were notified if the provider became deregistered. Both the amendment and new clause 5 aimed to increase transparency around the process of de-registration of providers.

The Minister said that the list of deregistered providers would be updated in real time, publicly available and well publicised.¹⁶⁵ With regard to new clause 5 he said that widespread publicity would not be appropriate particularly in cases where the OFS had not finally decided to take action; but he said where a decision had been taken, the OFS already had power to compel a provider to promptly inform students.¹⁶⁶

The amendments were **withdrawn** and clause 18 as amended was agreed. New clause 5 was negatived following a division – **Ayes 8, Noes 11**.¹⁶⁷

¹⁶¹ [PBC 15 September 2016 \(afternoon\)](#), c297.

¹⁶² [PBC 15 September 2016 \(afternoon\)](#), c298.

¹⁶³ [PBC 15 September 2016 \(afternoon\)](#), c299.

¹⁶⁴ [PBC 15 September 2016 \(afternoon\)](#), c300.

¹⁶⁵ [PBC 15 September 2016 \(afternoon\)](#), c302.

¹⁶⁶ *Ibid.*

¹⁶⁷ The decision on the new clause was taken later at, [PBC 18 October 2016 \(afternoon\)](#), [c566-7](#).

Clauses 19 and 20 were agreed without debate.

There were no amendments moved to clause 21 and in a short debate the Minister said that the circumstances for refusal to renew an access and participation plan would be set out in **regulations**:

detailed arrangements, covering the whole process of agreeing, renewing and enforcing plans, have been set out in regulations since 2004.¹⁶⁸

The clause was agreed.

4.16 Assessing the quality and standards of higher education (clauses 23-24)

Clauses 22 to 24 were agreed with only a short debate on the issue of **“standards”** as set out in clause 23.

Dr Blackman-Woods stated that Universities UK was concerned that the way in which standards should be assessed was not clearly set out, nor had enough clarity been given to the difference between “quality” and “standards” throughout the Bill.¹⁶⁹

Mr Blomfield similarly stated that the Russell Group had expressed concern that “the definition as it stands would require the OFS to be involved in decisions about appropriate standards that are properly for universities themselves to make as autonomous institutions”.¹⁷⁰

The Minister clarified the intention of the clause:

Quality refers primarily to processes, such as whether a provider has suitable academic staff or is providing appropriate levels of assessment and feedback. Standards, on the other hand, refer to the level that a student is required to meet to attain a degree or other qualification. The common expectation of standards is set out in the “Frameworks for Higher Education Qualifications”, which has the support of the sector.

It is essential that the Office for Students is able to ensure that providers are genuinely offering qualifications that are of a suitable standard to be considered higher education. Otherwise, we could be powerless to prevent a provider offering a qualification in, for example, mathematics which might require students to achieve no higher standards than a C at GCSE, while potentially passing it off as a degree and collecting student support from the taxpayer. This would clearly be unacceptable.

Let me be absolutely clear for the hon. Member for City of Durham and others. This is not about undermining the prerogative of providers in determining standards.

The clause was agreed.

4.17 The TEF (clause 25)

Clause 25 allows the OFS to operate and develop the TEF.

¹⁶⁸ [PBC 15 September 2016 \(afternoon\)](#), c304.

¹⁶⁹ [PBC 15 September 2016 \(afternoon\)](#), c306.

¹⁷⁰ *Ibid.*

A number of technical Government amendments were agreed that ensured consistency of language across clauses and made sure that the Secretary of State must set out all of the reasons when a quality body's designation is removed.¹⁷¹

Jeff Smith moved amendment 198 on behalf of the Opposition (with which amendment 199 was debated), which would **make the TEF scheme subject to the approval of both Houses of Parliament**. Gordon Marsden argued that the amendments would provide for the "major issues with the teaching excellence framework" to receive "proper and full scrutiny on the Floor of the House of Commons."¹⁷² The Minister stated that the amendment was not necessary or proportionate given the protections in the Bill. The amendment was withdrawn.¹⁷³

TEF in Scotland, Wales and Northern Ireland

Mr Johnson introduced a group of Government amendments that would **allow the OFS to give TEF ratings to HEIs in Scotland, Wales and Northern Ireland** where the relevant devolved administration consented and the provider applied for a rating. The Minister stated that all three devolved administrations had confirmed that their providers would be allowed to take part in year 2 of the TEF if they wished. The amendments would also allow Welsh Ministers to set maximum fee loans on the basis of a provider's tuition fee limit based on their TEF rating.¹⁷⁴

Carol Monaghan argued that HEIs in the devolved administrations faced a difficult choice – they could either participate in the TEF which would necessitate going through two different systems of quality assurance, or they could not participate and risk being disadvantaged internationally by not having a TEF rating.¹⁷⁵ She stated that the SNP would look for some benchmarking of Scotland's quality assurance against the TEF so that institutions that did participate in the TEF did not have to undergo a double level of quality assurance and did not disadvantage other HEIs.¹⁷⁶ The amendments were **agreed** without division.

TEF metrics

Paul Blomfield moved amendment 286, which would require an **assessment of the reliability of the TEF metrics** to be undertaken and published. He stated that the amendment reflected the recommendation of the Business, Innovation and Skills Committee in its report on teaching quality. He argued that the three key TEF metrics (employment, retention and the national student survey) were not satisfactory measures of teaching quality and might lead to unintended consequences, such as universities being less willing to take disadvantaged students. The amendment would, he said, make sure

¹⁷¹ PBC 11 October 2016 (morning), [c316-7](#).

¹⁷² PBC 11 October 2016 (morning), [c313](#).

¹⁷³ PBC 11 October 2016 (morning), [c311](#).

¹⁷⁴ PBC 11 October 2016 (morning), [c314](#).

¹⁷⁵ PBC 11 October 2016 (morning), [c335](#).

¹⁷⁶ PBC 11 October 2016 (morning), [c315](#).

that the OFS had a responsibility to ensure that the TEF metrics accurately measured teaching quality.¹⁷⁷

Jo Johnson stated that in developing TEF metrics the Government wanted to use “tried and trusted data sets that are already widely established in the sector” in order to avoid imposing new burdens on institutions. He argued that the Government consulted extensively on the metrics and that changes following this were welcomed by the sector. The Minister rejected that the TEF could be in conflict with widening participation, stating that the assessment process would explicitly look at outcomes for disadvantaged groups and that providers would have to have an access agreement in place to take part in the TEF. The Government would, he said, continue to use the proposed metrics and would add new metrics “where there is a strong case to do so”. The amendment was negatived following a division – **Ayes, 7, Noes 11.**¹⁷⁸

Arrangements for year two of the TEF

There was a lengthy debate on whether clause 25 should stand part of the Bill. Mr Marsden reiterated his contention (see section 4.10 above) that the Government was attempting to avoid debate on the TEF by not explicitly mentioning it in the wording of the clause. He then outlined concerns with year two of the TEF and, in particular, its link with tuition fee increases. He said that while Labour believed in the importance of the TEF, its merits needed to be properly explored before “it becomes tainted by being regarded simply as an automatic mechanism to increase fees year on year.”¹⁷⁹ Plans for year two, he said, did not amount to “rigorous quality standards” as a provider which was judged as not entirely satisfactory yet achieved a bronze standard, would still be able to increase fees.¹⁸⁰ Mr Marsden stated:

There might be arguments for increasing tuition fees, but the Government are setting out an automatic mechanism for a two-year period that will significantly and substantially increase fees with no impact assessments and no reference to the quality of the university degrees that are being graded, in a rather trivial PR fashion, as gold, silver and bronze.¹⁸¹

Raising the concern that the TEF could be “simply a license to raise fees”, Mr Marsden concluded by stating that, “it is an act of complete and supreme folly at this time to use party political games to avoid having to make decisions about inflation-based rises in tuition fees and to shoehorn that into a framework that was never designed for that process.”¹⁸²

In response, Jo Johnson argued that teaching is “not always given the recognition it deserves” and that information on teaching quality is not always available to students. He stated that the TEF addressed this “by setting a scheme for the impartial assessment of different aspects of

¹⁷⁷ PBC 11 October 2016 (morning), [c317-20](#).

¹⁷⁸ PBC 11 October 2016 (morning), [c320-3](#).

¹⁷⁹ PBC 11 October 2016 (morning), [c324](#).

¹⁸⁰ PBC 11 October 2016 (morning), [c326](#).

¹⁸¹ PBC 11 October 2016 (morning), [c327](#).

¹⁸² PBC 11 October 2016 (morning), [c331](#).

teaching, including student experience and the job prospects of graduates.” Mr Johnson rejected the charge that the Government was attempting to hide the fact that clause 25 was about the TEF and stated that the wording of the clause allowed “flexibility to implement the White Paper’s policy objectives now and to make appropriate adaptations in future, as the teaching excellence framework develops.” The Minister also highlighted the fall in the real terms value of tuition fees and stated that the TEF was “a responsible step to put the funding of our institutions on a sustainable footing.”¹⁸³

There was also debate about the TEF’s impact on the international reputation of universities; Dr Blackman-Woods raised the issue of “reputational damage” for universities that fell into the bronze category.¹⁸⁴ Similarly, Mr Blomfield argued that the UK unilaterally rating its universities could act as a “potentially...significant disincentive” to international students.¹⁸⁵ The Minister responded that the Government believed that the TEF would “enhance the overall reputation of the sector” and that achieving high levels of the TEF would help universities market themselves “more effectively around the world.”¹⁸⁶

Clause 25 was agreed following a division – **Ayes 11, Noes 5.**¹⁸⁷

Box 1: TEF Year Two

In September 2016 the DfE published a document [Teaching Excellence Framework: year two specification](#). The document outlines the arrangements for the TEF in Year Two and reflects the decisions made by the Government in response to the Technical Consultation. The specification sets out the timetable for implementation, the metrics to be used, eligibility requirements and the relationship between the devolved administrations and the TEF. The document states that in Year Two providers will be awarded one of three possible levels of excellence: Bronze, Silver or Gold.

4.18 Assessment body (clauses 26-27 and schedule 4)

Clauses 26-27 of the Bill allow the OFS to designate a body to perform assessment functions and to charge HEIs fees for the activities it undertakes.

A group of Government amendments were agreed, all but one of which were to **remove the power of the Secretary of State to designate a body to operate the TEF**. Introducing the amendments, Jo Johnson stated:

Our intention has always been for the OfS to operate the TEF and we do not envisage a need to require another body to undertake these functions. In the absence of a compelling case, I believe it is simpler, clearer and, from a legislative perspective, more proportionate to remove the power to designate a body to run the TEF functions. I reassure the Committee, however, that removing this power does not prevent the OfS from working with

¹⁸³ PBC 11 October 2016 (morning), [cc331-6](#).

¹⁸⁴ PBC 11 October 2016 (morning), [c333](#).

¹⁸⁵ PBC 11 October 2016 (morning), [c333](#).

¹⁸⁶ PBC 11 October 2016 (morning), [c334](#).

¹⁸⁷ PBC 11 October 2016 (morning), [c323](#).

others on the delivery of the TEF, which I recognise might be desirable at some point in the future.¹⁸⁸

The remaining amendment in the group (amendment 62) gave the **OFS the power to give the designated assessment body general directions regarding the exercise of its functions**. Mr Johnson stated that the Government's policy intent was to create a "co-regulatory approach to quality assessment".¹⁸⁹

Consultation and student representation

Mr Marsden moved amendment 230 (grouped with amendment 231), which would **require the OFS to consult with bodies representing higher education staff before recommending the designation of a body to perform assessment functions**. He stated that this amendment was based on the Opposition's theme that the OFS "needs to address and promote the interests of higher education staff" and that it aimed to help ensure that the OFS had support from across the sector.¹⁹⁰

Mr Johnson stated that higher education staff were already included in consultations on changes to the higher education system, and already represented on the committees and advisory groups of higher education bodies. He argued that the amendments would introduce an undesirable level of prescription, with the result that the OFS may "not feel able" to use its discretion to consult who it considered appropriate. The amendment was **withdrawn**.¹⁹¹

Dr Blackman-Woods moved amendment 232 (grouped with amendment 233), which would ensure that the OFS **consulted students before designating a body to carry out assessment functions**. In moving the amendment, Dr Blackman-Woods stated that it seemed "a little perverse" that a body allowed to assess teaching quality did not have to have the confidence of the student body.¹⁹²

In speaking to amendment 4, which would require the board of the designated quality assessment body to include student representatives, Wes Streeting highlighted that the QAA currently had two student representatives on its board and rejected that this precluded engagement with students throughout the system.¹⁹³

Mr Johnson agreed that the quality body will need to represent the interests of students but questioned whether legislation was the most appropriate place for such stipulations to be made. He stated that he wished to ensure flexibility and was confident that a designated quality body would include student representation without the law requiring it. The amendment was **withdrawn** and schedule 4, as amended, was agreed to.¹⁹⁴

¹⁸⁸ PBC 11 October 2016 (morning), [c337](#).

¹⁸⁹ PBC 11 October 2016 (morning), [c337](#).

¹⁹⁰ PBC 11 October 2016 (morning), [cc338-9](#).

¹⁹¹ PBC 11 October 2016 (morning), [c339](#).

¹⁹² PBC 11 October 2016 (morning), [cc340-1](#).

¹⁹³ PBC 11 October 2016 (morning), [c343](#).

¹⁹⁴ PBC 11 October 2016 (morning), [cc343-4](#).

4.19 Access and participation plans (clauses 28-36)

Clauses 28-36 of the Bill merge the Office for Fair Access (OFFA) into the OFS and allow the OFS to take over the role of OFFA in approving access and participation plans.

Preparing and plans (clause 28)

Gordon Marsden moved amendment 200 that would make the **Office for Fair Access and Participation (OFAP) responsible for approving access and participation plans**. Mr Marsden noted that, under the Bill, the OFS would not be required to exercise its power to approve plans through the Director for Fair Access and Participation (DFAP). He raised concerns that this may result in the DFAP being seen as subordinate to the head of the OFS, which could reduce their ability to challenge institutions to deliver stretching plans and could send the message that “fair access and participation have been deprioritised.”¹⁹⁵

Mr Johnson stated that the Government was “giving amendment 200 **careful thought**”. He also reiterated that it was the Government’s intention that the OFS would give the DFAP responsibility for access and participation. The amendment was **withdrawn**.¹⁹⁶

Dr Blackman-Woods moved an amendment requiring HEIs to **consult students when they produce an access and participation plan**. The Minister noted that OFFA currently expected HEIs to involve students in the development of their plans and stated that, “although that approach has worked well”, the Government would “consider how best to ensure that students can continue to be engaged in this area in the future.” The amendment was **withdrawn**.¹⁹⁷

Content of plans (clause 31)

Wes Streeting introduced a group of amendments that would require **access and participation plans to include specific goals** for ensuring fair access and widening participation, and provide the DFAP with powers to **set targets** when it deemed that a HEI had missed these goals. Mr Streeting stated that the amendments aimed to make sure that the DFAP would have powers to hold institutions to account.¹⁹⁸

Mr Johnson responded that that the current approach, whereby targets are proposed by HEIs as part of their access agreements, was based on the desire to protect institutions’ autonomy over admissions. He additionally stated that under the Bill the OFS had a range of powers including monetary penalties, where it considered that providers were failing to meet their access and participation plans. The amendment was **withdrawn**.¹⁹⁹

Mr Marsden then moved amendment 207, which would require HEIs to **include a policy concerning part-time and mature students in**

¹⁹⁵ PBC 11 October 2016 (afternoon), [cc350-2](#).

¹⁹⁶ PBC 11 October 2016 (afternoon), [c353](#).

¹⁹⁷ PBC 11 October 2016 (afternoon), [cc353-4](#).

¹⁹⁸ PBC 11 October 2016 (afternoon), [cc355-6](#).

¹⁹⁹ PBC 11 October 2016 (afternoon), [cc356-7](#).

their access and participation plans. Paul Blomfield spoke to amendment 287 which would require the OFS to report on access to and participation in part-time study. He stated that this would give the OFS “the responsibility to think deeply about part-time participation.”²⁰⁰

The Minister stated that the Government agreed that a focus on part-time and mature students in access and participation plans was important. However, he stated that the Bill, in providing for the OFS to be able to ask providers to focus on key areas that are important to widening participation, already delivered the aim of amendment 207. With regards to amendment 287, the Mr Johnson stated that the Bill already contained sufficient provisions to ensure that part-time and mature study were priorities for the OFS. Both amendments were **withdrawn** and clauses 34 and 35 were ordered to stand part of the Bill.²⁰¹

Power of Secretary of State to require OFS to report (clause 36)

Mr Marsden introduced a group of amendments to **strengthen the reporting requirements of the OFS** to the Secretary of State and to require the OFS to report to the relevant select committee. He stated that this was ensure that the OFS received “adequate and sufficient scrutiny”. Mr Johnson stated that he believed the Bill, in requiring the OFS to produce an annual report and to lay it, and any special reports on access and participation, before the House, would make sure that such reports are accessible and open to the scrutiny of committees. The amendment was **withdrawn**.²⁰²

Paul Blomfield moved a probing amendment that would allow the Secretary of State to require the OFS to look into **establishing a national credit rating and transfer service** for recognition of prior learning. He stated that the amendment was aimed at making it easier to switch university or degree course and that allowing students to move between institutions in this way could act as a protection for students against market failure.²⁰³ In support of the amendment, Mr Marsden highlighted the importance of credit transfer in providing the flexibilities that the future work, life, study balance will require.²⁰⁴

Mr Johnson expressed sympathy for the amendment and noted the Government’s consultation on credit transfer. However, he stated that the Government wanted to avoid undermining institutional autonomy through a universal approach that inadvertently homogenised provision. He also argued that there was no need to explicitly require reporting on a credit ratings and transfer service as the Bill already allowed the Secretary of State to require the OFS to report on matters relating to equality of opportunity. The amendment was **withdrawn**.²⁰⁵

²⁰⁰ PBC 11 October 2016 (afternoon), [cc358-61](#).

²⁰¹ PBC 11 October 2016 (afternoon), [cc361-3](#).

²⁰² PBC 11 October 2016 (afternoon), [cc365-6](#).

²⁰³ PBC 11 October 2016 (afternoon), [cc366-7](#).

²⁰⁴ PBC 11 October 2016 (afternoon), [cc367-8](#).

²⁰⁵ PBC 11 October 2016 (afternoon), [cc369-70](#).

4.20 Power to grant degrees (clauses 40-45)

Clauses 40-45 of the Bill set out the powers of the OFS with regards to the awarding of degree awarding powers (DAPs) and aim to simplify and speed up the process of granting DAPs.

Co-operation between the OFS and UKRI

Gordon Marsden introduced probing amendments that would require the **OFS to award DAPs for research degrees in conjunction with UKRI**. He stated that the amendments reflected concern that there needed to be a “very close relationship” between the OFS and UKRI.²⁰⁶ In speaking to a grouped amendment that would require OFS to consult with UKRI before granting research DAPs, Dr Blackman-Woods argued that the system as described in the Bill “lacks oversight and checks and balances from the research sector.”²⁰⁷

In response, the Minister agreed that the OFS and UKRI should work closely in the assessment of applications for research DAPs. Provisions in clause 103, he said, would allow this and gave the Secretary of State the power to require co-operation if necessary. He additionally stated that guidance on DAPs would make explicit the Government expectation that the OFS and UKRI should work together. The amendment was **withdrawn**.²⁰⁸

Higher education in FE colleges

Gordon Marsden moved amendment 219, which would provide for **further education colleges to be able to award certificates of higher education**. Mr Marsden stated that the amendment aimed to change a situation whereby colleges with foundation DAPs are unable also to provide a higher education certificate. He argued that the amendment would allow colleges to develop modules to meet specific local needs.²⁰⁹

In response, the Minister stated that FE colleges could currently obtain taught DAPs, which included the power to grant certificates, as long as they were a registered higher education provider. He stated that this situation would remain under the proposals in the Bill and that colleges would also retain the ability to apply for foundation DAPs only. However, when asked if allowing colleges to accredit individuals with a certificate of higher education would be a “step in the right direction”, the Minister stated that the Government would “have a **further look** at the issue and reassure ourselves that the approach that we are taking is the correct one.”²¹⁰

New providers

There was a lengthy debate on private providers and market entry. Gordon Marsden introduced a number of amendments, which he said were aimed at **mitigating the risks arising from the proposed framework for the granting of DAPs to new providers**. Mr

²⁰⁶ PBC 11 October 2016 (afternoon), [c371](#).

²⁰⁷ PBC 11 October 2016 (afternoon), [cc371-2](#).

²⁰⁸ PBC 11 October 2016 (afternoon), [cc372-3](#).

²⁰⁹ PBC 11 October 2016 (afternoon), [cc373-5](#).

²¹⁰ PBC 11 October 2016 (afternoon), [c375](#).

Marsden stated that, while the Opposition was not opposed in principle to the expansion of the sector, it had “grave concerns” about the process and about the “rapid expansion” of “challenger institutions.” One of the concerns, he said, was that new providers will be able “to operate and recruit people for degree purposes” “from almost the first day of operation.” He then raised a number of specific concerns regarding the Government’s technical note on market entry and quality assurance and stated that the Government had not given an explanation of how the process of market exit would work beyond financial compensation.²¹¹

Dr Blackman-Woods spoke to an amendment that would place **additional requirements on the OFS when granting DAPs**, including that a provider must operate in the interests of students and the public before being granted DAPs. She stated that this arose from a concern that providers “could operate simply in the interests of their shareholders without sufficient regard to the needs of students.”²¹²

Paul Blomfield spoke to new clause 9 which would require the OFS to **review the authorisation of DAPs where ownership of the provider changed** or where the owner of the provider had restrictions placed on its DAPs in another country. Mr Blomfield stated that the amendment was aimed at addressing a specific concern that the quality and culture of provision at a provider could “change substantially” when an institution changes ownership.²¹³

In response, Jo Johnson argued that the “current system is too heavily weighted in favour of existing incumbents, which is stifling innovation.” He contended that “huge value has been added to the sector by the arrival of new entrants” and stated that the Government wanted to make it easier for “high-quality providers” to enter the sector and offer “high-quality education”.²¹⁴

In response to the amendments, the Minister provided an outline of the process under which DAPs would be awarded to new providers and stated that the reforms “are designed to ensure...that only providers that can prove they can meet the high standards associated with the values and reputation of the English HE system can obtain degree awarding powers.”²¹⁵ With regards to new clause 9, Mr Johnson stated that situations where a holder of DAPs were involved in a change in ownership would be covered by guidance and that the approach of the OFS would depend on the particular circumstances.

Mr Marsden and Mr Blomfield both withdrew their amendments. Dr Blackman-Woods stated that she disagreed with the Minister that it should be easy to get DAPs and pushed her amendment to a vote; amendment 234 was negated – **Ayes 7, Noes 11**.

²¹¹ PBC 11 October 2016 (afternoon), [cc376-381](#).

²¹² PBC 11 October 2016 (afternoon), [c382](#).

²¹³ PBC 11 October 2016 (afternoon), [cc382-3](#).

²¹⁴ PBC 11 October 2016 (afternoon), [c383](#).

²¹⁵ PBC 11 October 2016 (afternoon), [c389](#).

Role of the Privy Council

There was debate on a group of amendments aimed at **giving the Privy Council scrutiny powers over the granting of DAPs and oversight of the award and revocation of university title**. Mr Marsden stated that it was not intended to keep the Privy Council as the “prime mover” in the process, but that “there should be an existing backstop to the process”.²¹⁶ In response, the Minister argued that the current process was “unduly complex and time-consuming” and that the OFS “as the independent sector regulator will be best placed to take decisions on DAPs and university title”. The amendment was withdrawn.²¹⁷

Advisory committee

Gordon Marsden introduced new clause 6 that would **require the OFS to establish a committee that would fulfil much the same functions as the QAA’s current [Advisory Committee on Degree Awarding Powers](#) (ACDAP)**. The ACDAP considers applications for DAPs and university title and makes recommendations to the QAA Board to inform its advice to ministers.²¹⁸

Mr Marsden stated that it was important to have such an advisory body in order to have confidence in the system. Jo Johnson assured the Committee that the Government had “every intention of keeping the process around the scrutiny of applications for DAPs broadly as they are”, including “retaining an element of independent peer-review, most likely in the form of a committee of independent members.” He stated that the precise details of the processes would be set out in guidance and that he was not convinced that the “exact relationship should be provided for in legislation.”²¹⁹

New clause 6 was negatived following a division – **Ayes 8, Noes 11**.²²⁰

Clause 40, as amended, was agreed following a division – **Ayes 10, Noes 7** – and clauses 41-45 were ordered to stand part of the Bill.²²¹

4.21 Degree validation (clauses 46-50)

Clauses 46-50 of the Bill make changes to the arrangements for the validation of degrees.

Validation by authorised providers (clause 46)

Clause 46 allows the OFS to commission HEIs to offer to validate the degrees of other HEIs.

A minor Government technical amendment was agreed that aimed to **clarify what is meant by an authorised degree award**.²²²

²¹⁶ PBC 11 October 2016 (afternoon), [cc393-4](#).

²¹⁷ PBC 11 October 2016 (afternoon), [cc394-5](#).

²¹⁸ [Advisory Committee on Degree Awarding Powers](#), QAA, last accessed 26 October 2016.

²¹⁹ PBC 11 October 2016 (afternoon), [c397-8](#).

²²⁰ The decision on the new clause was taken later at, PBC 18 October 2016 (afternoon), [cc567-8](#).

²²¹ PBC 11 October 2016 (afternoon), [cc399-401](#).

²²² PBC 11 October 2016 (afternoon), [c401](#).

Dr Blackman-Woods moved a probing amendment that would make the **Open University rather than the OFS a validator of last resort**. She stated that this amendment aimed to test the Minister's "laissez-faire" attitude about which courses could be validated and by whom. She said that the Opposition were concerned that new providers could "be touting their degrees around different institutions just waiting for one that will validate them."²²³ The Minister stated that the OFS must be able to choose the most appropriate provider to act as a validator and it would not be appropriate to prescribe a role for one provider over another in legislation. The amendment was **withdrawn**.²²⁴

Validation by the OFS (clause 47)

Clause 47 provides for the Secretary of State to make regulations authorising the OFS to act as a validator, which may enable the OFS to authorise some HEIs to provide validation arrangements on its behalf.

Three Government amendments were agreed which **would allow regulations to be made to ensure that only HEIs with the necessary DAPs are allowed by the OFS to validate degrees on its behalf**.²²⁵

Gordon Marsden stated that the Opposition believed it was "fundamentally important" that clause 47 be deleted. He raised concerns that the OFS, as a validator of last resort, could compete with other providers to validate degrees and stated that there was "something very strange indeed about setting out powers that could ultimately make the OFS both the regulator of the market and a participant in it."²²⁶ Jo Johnson responded that the Government wanted to make sure that the OFS had the necessary powers to ensure that new providers are not "locked out of the market" and to "correct any systemic failures." With regard to the OFS operating in the market it is regulating, the Minister emphasised that the OFS acting as a validator "is intended to be used only in extreme circumstances, after other measures have been tried and failed". He stated that the Government saw it as a "backstop power" to address market failure in the absence of providers able to validate high-quality provision.²²⁷

Clause 47, as amended, was agreed following a division – **Ayes 11, Noes 6**.²²⁸

Unrecognised degrees (clauses 49-50)

A number of technical Government amendments to clauses 49 and 50 were agreed without division. The amendments, among other things, make sure that degrees awarded by the OFS, or by persons purporting to be the OFS, are included within the provisions relating to unrecognised degrees; and ensure that a provider granted DAPs to

²²³ PBC 11 October 2016 (afternoon), [c401](#).

²²⁴ PBC 11 October 2016 (afternoon), [cc402-3](#).

²²⁵ PBC 11 October 2016 (afternoon), [cc403-4](#).

²²⁶ PBC 11 October 2016 (afternoon), [cc404-5](#).

²²⁷ PBC 11 October 2016 (afternoon), [cc405-6](#).

²²⁸ PBC 11 October 2016 (afternoon), [c407](#).

grant bachelor degrees can be caught by the unrecognised degree offence if it grants masters degrees.²²⁹

4.22 Use of university title (clauses 51-55)

Clauses 51-55 of the Bill make changes to the processes and criteria for the granting of university title, including allowing smaller institutions to apply.

Dr Blackman-Woods moved amendment 237 that would ensure that an **institution offers certain opportunities to students**, such as for volunteering, before it was allowed to use the title of university. Dr Blackman-Woods stated that the amendment would ensure that an institution with university in its title was “actually a university” and not, for example, an institution delivering a single subject.²³⁰

The Minister welcomed “the idea behind” the amendment but stated that he did “not believe such a prescription is desirable in legislation” and that as autonomous organisations HEIs were themselves best placed to decide what experiences they offered to students.²³¹

The amendment was **withdrawn** and clauses 51-55 were ordered to stand part of the Bill.

4.23 Powers of entry and search (clause 56 and schedule 5)

Clause 56 makes new provisions about powers to enter and search premises in England occupied by registered HEIs, with schedule 5 setting out details of the procedure.

A series of Government amendments were agreed to ensure that the **premises of all providers that acted on behalf of a HEI to deliver courses were included within the scope of the entry and search powers**. Clause 56 was ordered to stand part of the Bill.²³²

Dr Blackman-Woods moved a probing amendment to schedule 5 that would ensure that search and entry powers were only used where a justice of the peace is satisfied that there is **no other practicable way forward**. She stated that the amendment was to test whether the Minister thought there were sufficient safeguards in place for universities. The Minister stated that the provisions in schedule 5 meant that a warrant would be granted “only when necessary and when it is not practical to enter or request the information on a consensual basis.” The amendment was **withdrawn** and schedule 5 as amended was agreed.²³³

²²⁹ PBC 11 October 2016 (afternoon), [cc407-9](#).

²³⁰ PBC 11 October 2016 (afternoon), [c410](#).

²³¹ PBC 11 October 2016 (afternoon), [c411](#).

²³² PBC 13 October 2016 (morning), [cc417-9](#).

²³³ PBC 13 October 2016 (morning), [cc419-20](#).

4.24 Information powers (clauses 57-61 and schedule 6)

Clauses 57-61 of the Bill set out provisions around data collection, the publication of data and information sharing.

Gordon Marsden moved probing amendments to clause 59 to provide for the future **possibility of more than one provider of data on higher education**. He stated that this was to “future-proof” the Bill, given that it might, for example, be that organisations other than UCAS were better qualified to be data providers for institutions that substantially dealt with part-time students.²³⁴ In response, Jo Johnson stated that the Government’s intention was to replicate the current arrangements and that it believed it best for the sector to only have one body designated to collect the data at any one time. The amendment was **withdrawn**.²³⁵

Gordon Marsden moved a group of probing amendments aimed at testing whether the Minister thought the terminology applying to the duty to publish information about higher education was adequate to deal with the **diversity of the sector**. One of the amendments, for example, would require the OFS to consider people of all ages thinking about undertaking higher education courses when determining what information should be published. The Minister stated that he believed that the Bill as drafted was sufficient to ensure that the OFS operates in the interest of all students. The amendment was withdrawn and clauses 59-61 and schedule 6 were ordered to stand part of the Bill.²³⁶

4.25 Other functions of the OFS (clauses 62-66)

Clauses 62 and 63 were ordered to stand part of the Bill after a very short debate concerning the effectiveness of HEFCE’s current power to undertake studies to improve the economy, efficiency and effectiveness of registered HEIs – a power that clause 62 transfers to the OFS.²³⁷

Fees to the OFS (clause 64)

Clause 64 gives the OFS the power to charge HEIs other fees outside of the registration fee.

A large part of the debate on clause 64 centred on **whether students would pay an unfair proportion of the costs of the OFS**.²³⁸ Dr Blackman-Woods moved amendment 239 to ensure that where a HEI incurred fees, only that institution was liable to pay them. She stated that this would prevent a situation whereby costs to the OFS arising from the activities in one HEI were averaged out across other institutions, and would therefore “give HEIs a guarantee in the Bill that costs would not be applied to them, through the fees regime, that

²³⁴ PBC 13 October 2016 (morning), [c422](#).

²³⁵ PBC 13 October 2016 (morning), [c423](#).

²³⁶ PBC 13 October 2016 (morning), [cc424-6](#).

²³⁷ PBC 13 October 2016 (morning), [cc426-7](#).

²³⁸ PBC 13 October 2016 (morning), [cc434-5](#).

should not be borne by them.” This amendment was grouped with Dr Blackman Wood’s amendment 239, which sought to ensure that the Government, rather than universities, was responsible for the set up and running costs of the OFS. Dr Blackman-Woods stated that most of the income from universities came from students and “so if the OFS is funded by universities, actually students are paying for it or a huge part of it.”²³⁹

Jo Johnson stated that the OFS had the power to charge other fees, outside of the registration fee, in recognition that it may provide specific services (for example, commissioning a HEI to validate another provider’s degrees) that did not apply to the majority of providers. He stated that the Government had made clear that such “fees should be charged only on a cost recovery basis.” He additionally stated that clause 64 allowed cross-subsidy between charges relating to the same service and that amendment 239 could “affect the OFS’s ability to build cover into the fee regime for overhead costs relating to the specific activity being charged for.”²⁴⁰

On amendment 240, the Minister said that the Government would consider where it may provide supplementary funding to the OFS, “including to ensure that students do not incur the additional costs associated with transition to the new regulator” and that this would form part of the **upcoming consultation** on registration fees. He additionally stated that once the new system was in place, it was the Government’s intention that providers would share the running costs of the new regulator with the Government. He argued that it was in the students’ interest that institutions were properly regulated and that the reform would bring the model into line with other co-funded regulators where consumers indirectly funded the cost of regulation. It would also, he said, make the funding of higher education regulation more sustainable and create an incentive for providers to hold the OFS to account for its efficiency.²⁴¹

Amendment 239 was **withdrawn**; amendment 240 was negatived following a division – **Ayes 6, Noes 10**.

Government new clause 2 was discussed during the debate on clause 64. The new clause requires the OFS to pay the fees it receives to the Secretary of State except when the Secretary of State, with the consent of the Treasury, directs otherwise. The Minister stated that the Bill as originally drafted – whereby the OFS’s income would be paid into the consolidated fund – took “too blunt an approach” and that the Government thought that it should be possible for the OFS to retain some of its costs in certain cases.²⁴² The **new clause was agreed** without a division.

Clause 64 was agreed to following a division – **Ayes 10, Noes 6** – and clause 65 and schedule 7, as amended, were agreed to.

²³⁹ PBC 13 October 2016 (morning), [cc427-8](#).

²⁴⁰ PBC 13 October 2016 (morning), [cc428-9](#).

²⁴¹ PBC 13 October 2016 (morning), [c429](#).

²⁴² PBC 13 October 2016 (morning), [c437](#).

4.26 Academic freedom (clause 66)

Clause 66 gives ministers the power to make grants to the OFS and, among other things, requires ministers to protect academic freedom when placing conditions on such grants.

The debate on clause 66 centred on the protection of academic freedom, with Gordon Marsden moving an amendment aimed at **strengthening the requirements**. In moving the amendment, Mr Marsden argued that, given the changes in this area since the last major higher education legislation, there ought to be “more thought and discussion about it”.²⁴³ In addition, Dr Blackman-Woods argued that the set of circumstances described in the Bill with regards to academic freedom was too narrow to give sufficient reassurance to academics; she also spoke to amendment 162 that would include a definition of academic freedom in the Bill.²⁴⁴ In response, the Minister stated that the language in the Bill was based on the wording in the *Further and Higher Education Act 1992*, which had “proved to be robust over time.” He further stated that defining academic freedom too tightly risked limiting its meaning and the Bill’s protections. The amendment was **withdrawn** and clause 66, as amended, was ordered to stand part of the Bill.²⁴⁵

4.27 OFS’s regulatory framework (clause 67)

Clause 67 of the Bill requires the OFS to publish a regulatory framework setting out how it intends to perform its functions.

Gordon Marsden moved amendment 300, which would ensure that the OFS **consulted with bodies representing higher education staff before publishing a regulatory framework**. In response, the Minister stated that, while it was for the OFS to decide who to consult, the Government expected that the requirement to consult bodies representing the interests of providers would encompass the interests of HEI staff. The amendment was **withdrawn** and clause 67, as amended, was ordered to stand part of the Bill.²⁴⁶

4.28 Power to require advice or information from the OFS (clauses 70-72)

Gordon Marsden moved an amendment to require the Secretary of State to **publish any information it received from the OFS** under clause 70. The Minister stated that the amendment risked inadvertently creating a less open decision making process as it could reduce the OFS’s willingness to speak “freely and frankly to Ministers” and so could inhibit how it responded to requests for information. The amendment was **withdrawn** and clause 70 was ordered to stand part of the Bill.²⁴⁷

²⁴³ PBC 13 October 2016 (morning), [c440](#).

²⁴⁴ PBC 13 October 2016 (afternoon), [c445](#).

²⁴⁵ PBC 13 October 2016 (afternoon), [cc446-8](#).

²⁴⁶ PBC 13 October 2016 (afternoon), [cc448-50](#).

²⁴⁷ PBC 13 October 2016 (afternoon), [cc451-3](#).

Power to require application-to-acceptance data (clauses 71-72)

Clause 71 of the Bill provides the Secretary of State with the power to require bodies involved in providing services to HEIs to provide specific application-to-acceptance data.

Following the agreement of a minor technical Government amendment, Dr Blackman-Woods moved amendments aimed at ensuring that safeguards were in place to prevent the burden of information requests interfering with UCAS's responsibilities for processing students' applications; and to ensure that a body could only be required to provide research when it was in the public interest to do so.²⁴⁸ Gordon Marsden additionally raised the potential danger that the state could have access to applicants' data for use by individuals only defined as "researchers".²⁴⁹

Jo Johnson stated that access to application-to-acceptance data was vital to more effectively develop policies to improve social mobility. In response to the amendments, he assured the Committee that any research undertaken using the data would be in the public interest and that information that the Government was seeking to share was already routinely collected by bodies such as UCAS. In addition, only "named and approved individual researchers within Government and from approved bodies would have access to the data."²⁵⁰ The amendment was **withdrawn** and clauses 71 and 72 were ordered to stand part of the Bill.

4.29 Abolition of HEFCE (clause 73)

Gordon Marsden stated that he did not oppose the principle of HEFCE being abolished but he raised concerns that there was a "lack of clarity" concerning how the relationships between HEFCE, the OFS and the QAA would work during the transition period and the impact that this might have on such things as the administration of the TEF. He stated that this would not be good for the reputation of UK HEIs or for establishing the OFS on a "clear footing."²⁵¹

In response, Jo Johnson stated that the OFS would deliver the TEF from its establishment in 2018-19. He further stated that the Government was looking to transfer responsibilities from HEFCE and OFFA to the OFS in a "clear and transparent manner" and that it wanted to preserve the people who were doing the work, meaning that "to a great extent, the very same people will be involved."²⁵²

²⁴⁸ PBC 13 October 2016 (afternoon), [cc453-4](#).

²⁴⁹ PBC 13 October 2016 (afternoon), [c455](#).

²⁵⁰ PBC 13 October 2016 (afternoon), [cc455-8](#).

²⁵¹ PBC 13 October 2016 (afternoon), [cc458-9](#).

²⁵² PBC 13 October 2016 (afternoon), [c459](#).

4.30 Power to make alternative payments (clause 78-80)

Clauses 78-80 of the Bill provide for an alternative model of student finance to be created. This would allow for the introduction of Sharia-compliant student finance.

A minor Government amendment was agreed to allow **approval to receive student funding to be linked to OFS registration**, and to allow for Ministers to **cancel previously suspended support payments**. The Minister additionally stated that, following a request from the Welsh Government, the Government had ensured that the provisions applied to Wales.²⁵³

There then followed a lengthy debate on a number of new clauses tabled by Opposition Members that concerned the broader student support system.

Angela Rayner spoke to new clause 8, which would **revoke the regulations that provided for maintenance grants to be replaced with loans**, and to new clause 15, that would **restrict the Government's ability to retrospectively change the terms of student loan agreements**. She stated that "far too many students feel that they have been ripped off by this Government" and challenged the Committee to approve new clause 8 and do "something exciting and worthwhile to boost social mobility."²⁵⁴ Regarding new clause 15, she stated that the Government having the power to change loans retrospectively meant that students would be "writing a blank cheque to the Government" and that students may be deterred from entering further and higher education "for fear of what the Government will do to their loans."²⁵⁵

Paul Blomfield spoke to new clause 10 that would require the OFS to **review the impact of any recent or subsequent changes to student support arrangements**. He also spoke to new clause 11, which would require the provision of **module-specific student loans** rather than requiring people to be working towards a full qualification. Mr Blomfield stated that the intention was to "address the concerns over the fall-off in student numbers", as one of the "leading barriers to engaging in part-time education...was financial issues relating to funding and fees."²⁵⁶

Wes Streeting spoke to new clause 13, which concerned **retrospective changes to loan terms**, and new clause 14, which provided for **student loans to be regulated by Financial Conduct Authority**. He stated that it was unfair that loan terms could be changed retrospectively and that, in this regard, student loans seemed to be the exception among financial products. He argued that retrospective changes damaged trust and that other commercial lenders would not

²⁵³ PBC 13 October 2016 (afternoon), [cc460-1](#).

²⁵⁴ PBC 13 October 2016 (afternoon), [cc463-4](#).

²⁵⁵ PBC 13 October 2016 (afternoon), [c465](#).

²⁵⁶ PBC 13 October 2016 (afternoon), [cc466-7](#).

be allowed to make such changes if regulated by the Financial Conduct Authority.²⁵⁷

In response, Jo Johnson argued that it was appropriate for students, as the primary beneficiaries of higher education to make a contribution to its cost. He stated that the Government's funding reforms, including the replacement of maintenance grants with loans, made sure that the funding system was sustainable.

In response to new clause 11 (module-specific student loans), Mr Johnson highlighted the Government's **consultation on credit transfer** and accelerated degrees and stated that it expected to **respond to the consultation by the end of the year.**

Regarding new clauses 13, 14 and 15, the Minister argued that student loans were not like commercial loans and that their key terms and conditions were set out in regulations and that changes to terms could be debated and voted on by Parliament. Concerning the regulation of loans by the Financial Conduct Authority, he stated that the Government saw no need to change the arrangements and that the "current system of parliamentary oversight" was the most appropriate. With regards to changing loans conditions for borrowers whose loans had been sold, Mr Johnson confirmed that for the planned sale of pre-2012 income contingent loans, purchasers "will have no powers to change the loan terms in any way."

On clause 78 itself, the Minister stated that the timetable for the introduction of alternative payments was dependent on the passage of the Bill but that the Government's intent was to "get cracking on it as soon as parliamentary business allows."²⁵⁸

New clause 8 was later negated following a division; the other new clauses were not pressed to a vote.²⁵⁹

Clause 78, as amended, was ordered to stand part of the Bill.

4.31 Establishment of United Kingdom Research and Innovation (UKRI) (clauses 83-84 and schedule 9)

Part 3 of the Bill (clauses 83-102) revokes the Royal Charters of the current research councils and Innovate UK and creates a new body - United Kingdom Research and Innovation (UKRI) as a single research and innovation funding body. The Bill provides for UKRI to have nine committees (referred to as councils), comprising the seven research councils, Innovate UK and a new body, Research England, responsible for the research functions currently performed by HEFCE.

Clauses 83 and 84 of the Bill provide for the creation of UKRI and its nine councils. Schedule 9 sets out the detailed organisation of UKRI.

²⁵⁷ PBC 13 October 2016 (afternoon), [cc470-3](#).

²⁵⁸ PBC 13 October 2016 (afternoon), [cc473-81](#).

²⁵⁹ The decision on the new clause was taken later at, PBC 18 October 2016 (afternoon), [cc568-9](#).

A minor Government amendment was agreed to **place the Welsh language name of UKRI on the face of the Bill.**²⁶⁰

Integration of teaching and research

Gordon Marsden moved amendment 330, which would amend schedule 9 to **require a member of the OFS board to sit on the board of UKRI with observer status.** Further amendments discussed in this group, also in the name of Mr Marsden, aimed to **strengthen the requirement for co-operation between the OFS and UKRI** by prescribing the areas where they must co-operate. Mr Marsden said that the amendments aimed to address a concern that the separation of teaching and research would mean that issues at the interface between the two, such as the awarding of research degrees, “might not be effectively identified and supported.” He further stated that the issues had become more pressing following the division of teaching and research responsibilities between the Department for Education, and the Department for Business, Energy and Industrial Strategy.²⁶¹

In response, Jo Johnson argued that the Bill reflected the Government’s commitment to the integration of teaching and research and included safeguards to ensure co-operation between the OFS and UKRI. He additionally stated that the Government would, “develop appropriate governance arrangements which would embed joint working principles and practice in the framework documents for [the OFS and UKRI]”. With regards to amendment 330, the Minister said that he would **reflect further** on requiring a member of the OFS board to sit on the board of UKRI, but he emphasised that responsibility for cohesion should not rest with a single board member.²⁶² The amendment was **withdrawn.**

Box 2: UKRI governance and principles

In October 2016 the DfE and the Department for Business, Energy and Industrial Strategy published [Higher Education and Research Bill: UKRI Vision, Principles & Governance](#). The document sets out the rationale behind the research and innovation reforms in the *Higher Education and Research Bill 2015-16*, describes the core principles of dual support funding and the Haldane principle and outlines the governance structures that will enable UKRI to fulfil this vision.

Consultation requirements

Paul Blomfield moved amendment 304 that would require the **relevant select committee to be consulted before members of the UKRI board were appointed.** In response, the Minister assured the Committee that a pre-appointment hearing with the Science and Technology Committee would be held for the permanent chair of UKRI and that he believed it appropriate to also have a pre-appointment hearing with the chief executive officer. He additionally stated that he expected the current practice of prospective research council chairs

²⁶⁰ PBC 18 October 2016 ([morning](#)), [c489](#).

²⁶¹ PBC 18 October 2016 ([morning](#)), [cc490-2](#).

²⁶² PBC 18 October 2016 ([morning](#)), [cc492-5](#).

appearing before a select committee to continue. The amendment was **withdrawn**.²⁶³

Humanities and the arts

A technical Government amendment was made to require the Secretary of State to have regard to the desirability of UKRI board members between them having **experience of the humanities**. The Minister also clarified that clause 102 provides that references to humanities in the Bill include the arts, and references to science include social science.²⁶⁴

Relationship between UKRI and its councils

A series of Government amendments were made to schedule 9 to:

- replace the provision that a Council of UKRI could include members who were not members or employees of UKRI, with a provision that a **majority of ordinary members of a Council must fall into this category**. Mr Johnson stated that this would “ensure the integrity and autonomy of the individual councils.”²⁶⁵
- make clear that it was **UKRI rather than the Secretary of State that paid members and council members of UKRI**, and to provide powers to UKRI to provide allowances and pensions to existing and former members of UKRI.²⁶⁶

Gordon Marsden moved a probing amendment that sought to clarify **which functions UKRI intended to delegate to its councils**. In response the Minister stated that it was intended that the decisions that UKRI would delegate to its councils would include, but were not limited to:

...the leadership of their area of expertise, including prioritisation of budgets and the development of delivery plans; ensuring the future of skilled researchers and other specialists essential to the sustainability of the UK’s research and innovation capacity; engaging with their community to develop ideas, raise awareness and disseminate strategic outputs; and appointing and setting terms and conditions of academic, specialist and research staff in the relevant council and any associated institutes.

Mr Johnson stated that functions that would remain at the centre of UKRI included a “strategic brain” to “facilitate development of the overall direction; the management of cross-disciplinary funds; and responsibility for back-office functions across the organisation”. Further details would, he said, be included in guidance included in the framework document between UKRI and the Department for Business, Energy and Industrial Strategy, which would be published “in due course, once agreed with UKRI’s future leadership.”²⁶⁷

Relationship of UKRI with the private sector

A probing amendment moved by Gordon Marsden sought to **“understand the extent to which UKRI will work with the private**

²⁶³ PBC 18 October 2016 (morning), [cc495-7](#).

²⁶⁴ PBC 18 October 2016 (morning), [cc501-4](#).

²⁶⁵ PBC 18 October 2016 (morning), [cc504-5](#).

²⁶⁶ PBC 18 October 2016 (morning), [c505-6](#).

²⁶⁷ PBC 18 October 2016 (morning), [cc506-9](#).

sector". Mr Marsden stated that the ability to generate spin-out activity and form companies would be important in the coming years as money would be tight. In response, the Minister stated that UKRI would retain the current flexibilities available to the research councils, subject in some cases to approval from the Secretary of State, as is the current practice. He stated that further details of those approvals would be provided in guidance from the Department to UKRI.²⁶⁸

4.32 Councils of UKRI (clause 84)

Clause 84 provides for the creation of the nine councils of UKRI.

Amendments 341 and 323, in the name of Gordon Marsden, sought to **make sure that there would be a process of consultation before any changes were made to the councils of UKRI**. He argued that there was "considerable disquiet" about the power of the Secretary of State to change the responsibilities of councils without consultation. In response, the Minister argued that the powers would allow the Government "to react to the evolving needs of the research landscape" and that they reflect similar powers that have been used in the past. He assured the Committee that the Government would "seek the views of the research community through proper consultation before any future changes" and argued that it was not necessary to place a duty on the Secretary of State to do that. The amendment was **withdrawn** and clause 84 was ordered to stand part of the Bill.²⁶⁹

4.33 Functions of UKRI (clause 85)

Clause 85 of the Bill sets out the functions of UKRI.

A technical Government amendment was made to ensure UKRI's functions **included supporting the exploitation of advancements in the humanities**.²⁷⁰ As part of the earlier debate on schedule 9, amendment 315, in the name of Gordon Marsden, was debated. The amendment aimed to ensure that the funding of basic, applied and strategic research was a core function of UKRI. The Minister assured the Committee that UKRI would support all forms of research and the reference to research in clause 85 was broad enough to encompass this.²⁷¹

Postgraduate research students

Paul Blomfield moved an amendment to include within UKRI's functions that it may "**provide postgraduate training and skills development**, working together with the OFS." Mr Blomfield argued that the Bill "fails to address" the learning experience of postgraduate research students and stated that the amendment would give UKRI a clear responsibility in this area. He additionally asked the Minister for reassurance on how he saw UKRI exercising its responsibility for the

²⁶⁸ PBC 18 October 2016 (morning), [cc509-10](#).

²⁶⁹ PBC 18 October 2016 (morning), [cc510-3](#).

²⁷⁰ PBC 18 October 2016 (morning), [cc501-4](#) and c514.

²⁷¹ PBC 18 October 2016 (morning), [cc501-4](#).

learning experience of postgraduate research students in conjunction with the OFS.

The Minister stated that the OFS would be the regulator for all students, including postgraduates, and that the Government wanted there to be no difference from the current situation where institutions may receive funding from a research council but is still subject to oversight by HEFCE. He further stated that postgraduate education was one of the areas that would require close working between UKRI and the OFS and that this was provided for by clause 103. In response to whether he saw the Bill as an opportunity to improve the learning experience of postgraduate research students, Mr Johnson stated that while the initial phase of the TEF was focused on undergraduate provision, the Government hoped in time (but not in the first three years) that it would be "able to capture aspects of postgraduate provision."²⁷² The amendment was **withdrawn**.

Relationship between UKRI, the devolved administrations, and other organisations

Roger Mullin moved amendment 180 that would require **UKRI to carry out its activities in a way that benefits all the constituent countries of the UK**. This was debated along with a series of other amendments (181-185) in the names of Mr Mullin and Carol Monaghan, which would:

- Place a duty on the Secretary of State to act in the best interests of England, Wales, Scotland and Northern Ireland when giving directions to UKRI.
- Would require the Secretary of State to consult with Ministers in the devolved nations before giving directions to UKRI and before approving a research and innovation strategy.

Mr Mullin stated that "too often, the needs of Scotland, Northern Ireland and Wales are forgotten" and that this showed the need to put the right to be consulted into legislation. He argued that the different priorities of the Scottish research sector could be missed within a UK-wide research body and that the voices of the devolved administrations needed to be heard "to ensure that this Bill will be of no detriment to any part of the United Kingdom."²⁷³

In speaking to amendment 326, which would allow Research England to co-ordinate with its devolved counterparts, Gordon Marsden stated that he had "a great deal of sympathy" with amendments 180-185 and that "simply rehearsing the line that we can be assured that UKRI will take such things into account is not going to be adequate, either practically or symbolically."²⁷⁴

Jo Johnson stated in response that the research councils, Innovate UK and UKRI would "fund excellence wherever it is found in the UK" and that UKRI's duty to use resources in an efficient and effective way

²⁷² PBC 18 October 2016 (morning), [cc514-8](#).

²⁷³ PBC 18 October 2016 (afternoon), [cc521-3](#).

²⁷⁴ PBC 18 October 2016 (afternoon), [c524](#).

meant that it would “look for all opportunities to collaborate.” He additionally stated that Innovate UK would be appointing full-time regional managers in Glasgow, Cardiff and Belfast.²⁷⁵

On consultation, the Minister stated that UKRI would work closely with the devolved administration, but that the Government “would not seek to bind [it] into a restrictive process of consultation” in order to ensure that it has the flexibility to react quickly to issues.²⁷⁶

Regarding amendment 326, Mr Johnson stated that, as quality-related funding was a devolved matter it was “not appropriate to require Research England to consult its devolved equivalents.”²⁷⁷ Amendment 180 was **withdrawn**.

Paul Blomfield moved amendment 310 that sought to make clear that **research funded in part by other bodies, for example charities, could continue unaffected by the creation of UKRI**. Mr Blomfield stated that the Bill did not fully explain how such collaborations could take place and that it was unclear whether contracts would be formed directly with UKRI or delegated to the research councils. Jo Johnson assured the Committee that, aside from some specific instances, such as the devolved administrations and the OFS, UKRI “will not need specific provision [in the Bill] to be able to work jointly with other bodies.” The amendment was **withdrawn**.²⁷⁸

Two Government new clauses and three amendments related to **joint working** were discussed alongside amendment 310. Jo Johnson explained that new clause 3 had been developed in consultation with the devolved administrations and enabled the OFS, UKRI, the devolved funding bodies and Ministers to work together where this allowed them to exercise their functions more efficiently and effectively – for example, as HEFCE does currently on areas such as the Research Excellence Framework. The new clause was agreed without a division.²⁷⁹

New clause 17, which was also agreed without a division, gives the OFS and UKRI powers equivalent to HEFCE’s to **provide advice to the Northern Ireland Executive**.²⁸⁰ Two minor consequential amendments were also made that corrected references to UKRI predecessor bodies in the *Government of Wales Act 2006*.²⁸¹

4.34 Functions of UKRI’s councils (clauses 87-90)

Clauses 87-90 of the Bill set out the functions of UKRI’s nine councils.

A series of Government amendments were agreed to clause 87, which had been agreed with the research councils in order to ensure that the

²⁷⁵ PBC 18 October 2016 (afternoon), [cc525-6](#).

²⁷⁶ PBC 18 October 2016 (afternoon), [c526](#).

²⁷⁷ PBC 18 October 2016 (afternoon), [c526](#).

²⁷⁸ PBC 18 October 2016 (afternoon), [cc527-8](#).

²⁷⁹ The decision on the new clause was taken later at, PBC 18 October 2016 (afternoon), [cc563-4](#).

²⁸⁰ *Ibid.*

²⁸¹ PBC 18 October 2016 (afternoon), [cc528-9](#).

descriptions of their respective fields of activity in the Bill were as accurate as possible.²⁸²

Innovate UK (clause 88)

Gordon Marsden moved a probing amendment that sought clarification from the Government that **Innovate UK was intended to maintain its business-facing focus**. Mr Marsden cited concerns that the Government's case for integration was "based on a flawed linear model of innovation where Innovate UK functions as the commercialisation arm of the research councils", and that Innovate UK could be "dwarfed and its impact distorted."²⁸³

Jo Johnson assured the Committee that he agreed on the importance of Innovate UK retaining its business-facing focus and argued that its integration into UKRI would mean that "research outputs are better aligned with the needs of business." He stated that the Bill already made Innovate UK's business-facing role clear, for example by ensuring that it has regard to benefitting people carrying out business, and that the Government would appoint both business and academic representatives to the board of UKRI.²⁸⁴

Research England (clause 89)

Gordon Marsden moved a further probing amendment to clause 89 to "tease out" some of the issues about **how quality-related (QR) funding would be "separated, assessed and actioned."** Mr Marsden stated that the stability that QR funding can give would be important in the coming years given the "highly variable factors" that HEIs would have to face as a result of Brexit, and that it would help to enshrine its purpose in law.²⁸⁵

Mr Johnson argued that the amendment was not needed to ensure the un-hypothecated nature of the funding provided to Research England. He additionally stated that he would be wary about placing conditions on that funding in addition to those already in place as this could "inadvertently restrict what universities can do with this block grant funding."²⁸⁶

Two Government technical amendments were agreed to make it clear that **UKRI would enable councils to collaborate in funding multidisciplinary research**, and to enable **collaboration between UKRI and a council carrying out specific functions**. Mr Johnson stated that the amendments were to "enable UKRI and the councils to engage in multidisciplinary work more effectively."²⁸⁷

²⁸² PBC 18 October 2016 (afternoon), [cc529-30](#).

²⁸³ PBC 18 October 2016 (afternoon), [cc530-3](#).

²⁸⁴ PBC 18 October 2016 (afternoon), [cc533-5](#).

²⁸⁵ PBC 18 October 2016 (afternoon), [cc535-6](#).

²⁸⁶ PBC 18 October 2016 (afternoon), [cc536-7](#).

²⁸⁷ PBC 18 October 2016 (afternoon), [cc537-8](#).

4.35 UKRI's research and innovation strategy (clause 91)

Clause 91 gives the Secretary of State the power to request UKRI to prepare a research and innovation strategy setting out how it plans to exercise its functions over a given time period.

Gordon Marsden moved a probing amendment to ensure that a **Committee of the Executive Chairs of the Councils was created and consulted as part of UKRI's strategy**. Mr Marsden argued that the Nurse Review recommended such a council in order to provide a link between the councils and UKRI's board but that the Bill instead gave UKRI the power to establish one if it wished. He cited concerns that this system of governance was "significantly more top-down than before."²⁸⁸

Mr Johnson responded that the Government's intention was for the executive chairs of the councils and senior directors of UKRI to sit together on an executive committee and that further details would be provided in UKRI's framework document. The Minister further stated that, while it would be for UKRI to define the process for developing its strategy, the Government expected it "to be an iterative process involving the councils and executive chairs, and informed by engagement with the relevant stakeholder communities."²⁸⁹ The amendment was **withdrawn**.

4.36 Funding of UKRI (clauses 93-95)

Grants and directions from the Secretary of State

Clauses 93 and 94 of the Bill concern the Secretary of State's powers to make grants and give directions to UKRI.

A number of Government amendments were agreed to clauses 93 and 94 to **ensure that in setting terms and conditions on grants to Research England the Government were under the same limitations as currently**. Specifically, the amendments required that directions or terms and conditions of grants could only be given if they applied to every institution or to every institution of a specified description.²⁹⁰

Roger Mullin spoke to amendment 284 that **would require the Government to provide separate funding allocations to the research councils, Innovate UK and Research England**. Mr Mullin stated that, as funds distributed by Research England would only be available to English institutions, it was necessary to have transparency about what funding went to UKRI and Research England. He further raised concerns that the Bill did not ensure that the Secretary of State did not move funds between constituent parts of UKRI, especially to Research England. He argued that if this were to happen, it would not

²⁸⁸ *PBC 18 October 2016 (afternoon)*, [cc538-41](#).

²⁸⁹ *PBC 18 October 2016 (afternoon)*, [cc541-2](#).

²⁹⁰ *PBC 18 October 2016 (afternoon)*, [c543](#).

give Scotland, Wales or Northern Ireland “a fair and equal say in research allocation.”²⁹¹

Jo Johnson argued that the amendment, in providing no flexibility to change the allocations to the councils of UKRI without the consent of Parliament, “would...introduce an unnecessary and overly restrictive requirement.” The amendment was **withdrawn**.²⁹²

Haldane Principle

Gordon Marsden moved an amendment to clause 94 that would **replace the Secretary of State’s power to give directions to UKRI about the allocation or expenditure of grants, with a power to give recommendations**. Mr Marsden raised stakeholder concerns that it was unclear whether the Bill provided sufficient protection for academic freedom and stated that the intention of the amendment was to “tease out whether the legislation is consistent with the...Haldane principle.”²⁹³

Mr Johnson stated that the Government was committed to the principle that funding decisions should be taken by experts in their relevant areas and argued that the consequence of the amendment would be to “weaken significantly the safeguards on public funding within the legislative framework.” The amendment was **withdrawn** and clause 93, as amended, was ordered to stand part of the Bill.²⁹⁴

Post-study work visas

Roger Mullin moved a probing amendment to clause 94 that would require the Government to commission **research from UKRI on the effects of the absence of arrangements for post-study work visas**. He stated that he wanted to attract more immigration to Scotland and that he was concerned about the withdrawal of the post-study work visa.²⁹⁵

Jo Johnson stated that the Bill was not the appropriate vehicle for commissioning such research and that he was not sure it would add value, “given that that the current visa system provides generous post-study work opportunities and the Government will, in any case shortly be consulting on these issues”. The amendment was **withdrawn** and clause 94, as amended, was agreed to.²⁹⁶

Balanced funding (clause 95)

Clause 95 of the Bill places a duty on the Secretary of State to consider the balance of funding between QR funding and funding allocated through the research councils when making grants or giving directions to UKRI concerning their use.

Gordon Marsden moved a probing amendment to clarify **how the dual support system would be protected by the Bill**. Mr Marsden welcomed the attempt to enshrine dual support in legislation for the

²⁹¹ PBC 18 October 2016 (afternoon), [cc543-4](#).

²⁹² PBC 18 October 2016 (afternoon), [cc544-5](#).

²⁹³ PBC 18 October 2016 (afternoon), [cc545-7](#).

²⁹⁴ PBC 18 October 2016 (afternoon), [cc547-8](#).

²⁹⁵ PBC 18 October 2016 (afternoon), [cc548-9](#).

²⁹⁶ PBC 18 October 2016 (afternoon), [cc549-50](#).

first time but cited concerns that the Bill did not include sufficient detail to “fully embody the dual support system” and stated that it would be “helpful to understand what would be a reasonable balance between the two funding streams.”²⁹⁷

Jo Johnson detailed some of the issues that the Secretary of State would be expected to take into account when considering what the balance of funding should be, such as the “strategic priorities of the research base”. He stated that the Government did not seek to fix a specific proportion for dual support in the Bill in order to ensure that Governments have the flexibility to respond to circumstances.²⁹⁸ The amendment was **withdrawn** and clauses 95-98 were ordered to stand part of the Bill.

4.37 Transfer schemes (clause 104 and schedule 10)

Clause 104 of the Bill introduces schedule 10, which makes provision about schemes for the transfer of staff, property, rights and liabilities as a result of a body established or dissolved by the Bill.

Two Government amendments were agreed to schedule 10.

Amendment 270 **enabled the Secretary of State to be a “permitted transferor”** for the purposes of a transfer scheme. Mr Johnson explained that this would, for example, mean that when the OFS took over the regulation of alternative providers from the DfE, there would be an option to transfer resources from the DfE to the OFS. Amendment 271 **enabled changes to be made to a transfer scheme as if they had been in place at the start of the scheme**. The Minister stated that this was the most efficient way of allowing “tidying-up exercises”, where arrangements may be reassessed during the transition process.²⁹⁹

4.38 Consequential provisions (clause 105 and schedule 12)

Clause 105 enables the Secretary of State to amend, revoke or repeal legislation and, under certain circumstances Royal Charters, as a consequence of provisions made in or under the Bill. This included, for example, amendments to the Royal Charters of HEIs relating to DAPs and university title.

Gordon Marsden questioned the propriety of the Secretary of State possessing these powers, in particular in relation to Royal Charters, and cited concerns about the impact that they might have on the independence of science and academia.³⁰⁰ In response, Jo Johnson argued that the clause “is an entirely standard provision” and that the quality of the English higher education system would be undermined if a provider’s quality dropped to an unacceptable standard but it could continue awarding degrees. He stated that the powers were “necessary

²⁹⁷ PBC 18 October 2016 (afternoon), [cc551-2](#).

²⁹⁸ PBC 18 October 2016 (afternoon), [cc552-4](#).

²⁹⁹ PBC 18 October 2016 (afternoon), [cc554-5](#).

³⁰⁰ PBC 18 October 2016 (afternoon), [cc555-7](#).

to give seamless effect to new powers to vary or remove DAPs or university title” and were intended only to be used in rare circumstances and if other interventions failed.³⁰¹

Minor Government amendments were made to schedule 12 to ensure that a reference to the British Antarctic Survey was retained in the *Antarctic Act 2013* and to ensure that the territorial extent of the 2013 Act remains unchanged after it is amended to allow for the creation of UKRI.³⁰²

4.39 Commencement (clause 112)

Government amendments were agreed providing for the commencement of Government new clauses. Government new clauses 7 and 16 were also discussed.

New clause 16 allows the OFS and UKRI to reply on consultations carried out by the Secretary of State, the Director of Fair Access or HEFCE before the consultation provisions in the Bill come into force. The Minister explained that this would allow requirements on the OFS and UKRI to consult to be taken forward in advance on their behalf which would help “ensure a smooth and orderly transition.”³⁰³

Concerning new clause 7, Mr Johnson explained that Ministers allocate some additional research funding, including funding for the UK Space Agency, under powers in the *Science and Technology Act 1965* and the *Higher Education Act 2004*. The new clause ensures that there is equivalence between the powers of UKRI, provided for in the Bill, and the powers of Ministers under the 1965 and 2004 Acts.³⁰⁴

Both new clause 16 and new clause 7 were agreed to without a division.³⁰⁵

4.40 New clauses

A number of Government new clauses were agreed. All of the Government new clauses had been grouped with other amendments and so debate on them had taken place earlier in proceedings. The following Government new clauses were all agreed without division:

- New Clause 2 (regarding the fee income of the OFS), debated at [PBC 13 October 2016 \(morning\)](#), c437 and discussed in section 4.25 of this briefing.
- New clause 3 (regarding joint working between the OFS, UKRI, the devolved funding bodies and Ministers), debated at PBC 18 October 2016 (afternoon), [cc528-9](#) and discussed in section 4.33 of this briefing.

³⁰¹ *PBC 18 October 2016 (afternoon)*, [cc557-8](#).

³⁰² *PBC 18 October 2016 (afternoon)*, [cc560-1](#).

³⁰³ *PBC 18 October 2016 (afternoon)*, [cc561-2](#).

³⁰⁴ *PBC 18 October 2016 (afternoon)*, [cc562-3](#).

³⁰⁵ The decisions on the new clauses were taken later at, PBC 18 October 2016 (afternoon), [cc564-6](#).

- New clause 7 (regarding the allocation of additional research funding), debated at PBC 18 October 2016 (afternoon), [cc562-3](#) and discussed in section 4.39 of this briefing.
- New Clause 16 (regarding UKRI relying on consultations carried out before it is established), debated at PBC 18 October 2016 (afternoon), [cc561-2](#) and discussed in section 4.39 of this briefing.
- New clause 17 (empowering the OFS and UKRI to provide advice to the Northern Ireland Executive), debated at PBC 18 October 2016 (afternoon), [cc528-9](#) and discussed in section 4.33 of this briefing.

Opposition new clauses

Three non-Government new clauses that had been debated as part of earlier groups were negated following divisions:

- New Clause 5 (Roberta Blackman-Woods), regarding the notification of students if a provider becomes deregistered – Ayes 8, Noes 11.³⁰⁶ The clause was debated at PBC 15 September 2016 (afternoon) [c302](#) and is discussed in section 4.15 of this briefing.
- New clause 6 (Gordon Marsden and Angela Rayner), requiring the OFS to establish a committee similar to the QAA's current [Advisory Committee on Degree Awarding Powers](#) – **Ayes 8, Noes 11**. The new clause was debated at [PBC 11 October 2016 \(afternoon\)](#) c398 and is discussed in section 4.20 of this briefing.
- New clause 8 (Angela Rayner and Gordon Marsden), revoking the 2015 student support regulations - **Ayes 8, Noes 11**. The new clause was debated at [PBC 13 October 2016 \(afternoon\)](#), c463-4, and is discussed in section 4.30 of this briefing.

Paul Blomfield moved new clause 12, which **would allow young people granted a form of leave other than refugee status following an application for asylum, to access student finance and home fees immediately**. Mr Blomfield stated that, while those granted refugee status qualified for home fees from the moment they were awarded their protection, those granted humanitarian protection had to show that they had been ordinarily resident in the UK for three years. He stated that this particularly affected Syrians resettled under the vulnerable person resettlement programme because they were granted humanitarian protection status not refugee status. He argued that the immediate future of such individuals was in the UK and that they "should be given every opportunity to contribute and to develop."³⁰⁷

In response, Jo Johnson outlined the current arrangements and argued that the residence rule "established that generally the student has a solid connection with the UK before they are entitled to support and home fees." The Minister stated that the amendment would break this and would extend support to individuals "who have only a recently established and potentially temporary connection to the UK."³⁰⁸

³⁰⁶ PBC 18 October 2016 (afternoon), [c566-7](#).

³⁰⁷ PBC 18 October 2016 (afternoon), [cc569-71](#).

³⁰⁸ PBC 18 October 2016 (afternoon), [cc571](#).

Mr Blomfield expressed his disappointment with the Government's position and pushed the new clause to a vote, where it was negatived – **Ayes 8, Noes 11.**³⁰⁹

³⁰⁹ *PBC 18 October 2016 (afternoon)*, [cc572-3](#).

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