



## BRIEFING PAPER

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# Higher Education and Research Bill 2016-17: Lords amendments

By Sue Hubble  
David Foster

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## Summary

Following its passage through the Commons, the [Higher Education and Research Bill 2016-17](#) was presented in the House of Lords on 22 November 2016 and had its Second Reading on 6 December 2016. The Bill was considered in committee in the House of Lords over six days between 9 January and 30 January 2017, and was considered on Report over four days from 6 March to 15 March 2017. Third Reading took place on 4 April 2017.

This briefing paper provides information on amendments made to the Bill during its progress through the House of Lords. It covers the more substantive changes made, but is not intended to provide exhaustive coverage of every agreed amendment. Unless otherwise stated, references in the briefing to clauses of the Bill refer to [HL Bill 76](#) (as introduced to the Lords).

The Government has also published a document setting out the Lords amendments and giving details: [Higher Education and Research Bill Explanatory Notes](#).

### The purpose of the Bill

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](#) 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.

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.

Full background on the Bill, and its provisions as originally presented, can be found in Library Briefing Paper 7609, [Higher Education and Research Bill \[Bill No 004 of 2016-17\]](#). Information on amendments made to the Bill during its progress through the Commons is provided in Library Briefings 7768, [Higher Education and Research Bill: Committee Stage Report](#), and 7859, [Higher Education and Research Bill: Report Stage and Third Reading](#).

### Amendments at Committee Stage

Over 500 amendments were tabled for the Bill's Committee Stage in the Lords. On the first day of Committee, Lord Stevenson stated that the Public Bill Office had said that this was "the most amendments for any Bill in recent memory".

All but one of the amendments accepted during Committee Stage were Government or Government supported amendments and most were of a minor and/or technical nature. The more substantive Government amendments included:

- Setting out the responsibilities of the Director for Fair Access and Participation (DFAP) more clearly in the Bill, and making it clear that the Office for Students (OfS) will give responsibility for widening participation and access to the DFAP.
- Clarifying what types of providers can apply for what type of degree awarding powers (DAPs), particularly with regards to foundation degrees. This included making clear that further education institutions that gain foundation degree awarding powers will not be prevented from going on also to gain powers to grant higher degrees.
- Establishing the importance of knowledge exchange within United Kingdom Research and Innovation (UKRI), for example by amending the functions of UKRI to provide that it may "facilitate, encourage and support knowledge exchange."

The one non-Government amendment accepted in Committee was highly significant and arguably demonstrated the strength of the Lords' concerns about the changes to the higher education sector that the Bill could bring about. The amendment, moved by Lord Stevenson (Labour) **places a definition of a university on the face of the Bill**; this would be the first time that such a definition was included in legislation. The definition provides, among other things, that universities must provide "an extensive range of high quality academic subjects" and must "make a contribution to society through the pursuit, dissemination, and application of knowledge...".

## Amendments on Report

### Government amendments

Over 200 further amendments were tabled for the Report Stage. A large number of substantive Government or Government-supported amendments were agreed, many of which had either originally been proposed by non-Government Members during the Bill's Committee Stage in the House of Commons, or were the fulfilment of commitments given by the Government at that time. A number of sector bodies and commentators, including Guild HE and Universities UK, welcomed the amendments.

The Government amendments included:

- Requiring the OfS and the Secretary of State to have regard to the need to protect the institutional autonomy of higher education providers. The amendments also defined institutional autonomy for the purposes of the Bill.
- Placing the OfS under a duty to have regard to the benefits of collaboration between higher education providers.
- Ensuring that the standards against which providers will be assessed are determined by the sector.
- Making clear that the OfS's duty to promote student choice includes choice in types of provider, courses and the means by which they are provided – for example, full-time, part-time distance learning and accelerated courses.
- A new clause that would place the OfS under a duty to monitor, facilitate and report on student transfer arrangements.
- Providing for regulations to be made to introduce a higher fee cap for accelerated courses, with the aim of "stimulating the market" for accelerated courses.
- Setting out the specific conditions that will have to be met before the OfS can revoke a provider's degree awarding powers, and making clear that the powers in the Bill may not be used to revoke a provider's Royal Charter in full.
- Requiring all registered higher education providers to be subject to the freedom of speech duty contained in the *Education Act (No 2) Act 1986*.
- Making changes to the governance of UKRI and its councils.
- Providing that when the Secretary of State makes grants to UKRI, the separate funding allocations to the individual councils will still be made and published as per current practice.
- Enshrining the Haldane Principle (defined as the principle that decisions on individual research proposals are best taken following an evaluation of the quality and likely impact of the proposals, such as through a peer-review process) in law.

Further information on the amendments was published by the Government ahead of the Report Stage: [Higher Education and Research Bill Amendments Tabled Ahead of Lords](#).

### Non-Government amendments

Seven non-Government supported amendments were also agreed at Report Stage:

- Baroness Royall (Lab) moved an amendment that would **require higher education providers to give all eligible students the opportunity to opt to be added to the electoral register** as part of the registration process.
- Two amendments were made concerning the **Teaching Excellence Framework (TEF)**. The first, moved by Lord Blunkett (Lab), removed and replaced the clause relating to the TEF. The new clause requires the Secretary of State to bring forward a scheme for assessing the quality of education and teaching at higher education institutions but, among other things, provides that **the scheme must not be used to create a composite ranking of providers**. The second amendment, moved by Lord Kerslake (Crossbench), **prohibits TEF rankings from being used to determine the fees that providers can charge**.
- Baroness Wolf (Crossbench) moved an amendment providing that the **OfS could not grant DAPs to a provider unless it has been established for four years** or, alternatively, if the OfS's Quality Assurance Committee is assured that the provider is able to maintain the required standard and has reported to the Secretary of State.
- Lord Judge (Crossbench) moved two amendments which **altered the grounds under which providers may appeal against a decision by the OfS to vary or revoke its degree awarding powers or university title**. The amendments replaced three grounds for appeal with one, that the decision was wrong.
- The final non-Government amendment, moved by Lord Hannay (Crossbench), inserted a new clause that would, among other things, **remove international students from the net migration target** and ensure that no restrictive immigration rules in addition to those already in place are put on international students with an offer to study in the UK.

### Amendments at Third Reading

A group of nine minor and technical Government amendments were agreed at Third Reading. The Government spokesperson, Viscount Younger, stated that the amendments were simply to clarify the drafting of the Bill and to ensure that it is consistent across the board. All the amendments were agreed without division and with no debate. Two non-Government amendments were also debated but both were withdrawn.

The date has not yet been announced for the Commons consideration of the Lords amendments.



# 1. Higher education providers and the Office for Students

The Bill establishes the Office for Students (OfS) as the new, single regulatory body for the higher education sector. The OfS will establish and maintain a register of higher education providers, the operation of which will create a single entry route into the sector.

## 1.1 Definition of a UK university

### Amendments made in Committee

Amendment 1 was moved by Lord Stevenson on the first day of the Committee stage. The amendment inserts a new clause into the Bill before clause 1 that places a definition of a university on the face of the Bill:

1: Before Clause 1, insert the following:

“UK universities: functions

(1) UK universities are autonomous institutions and must uphold the principles of academic freedom and freedom of speech.

(2) UK universities must ensure that they promote freedom of thought and expression, and freedom from discrimination.

(3) UK universities must provide an extensive range of high quality academic subjects delivered by excellent teaching, supported by scholarship and research, through courses which enhance the ability of students to learn throughout their lives.

(4) UK universities must make a contribution to society through the pursuit, dissemination, and application of knowledge and expertise locally, nationally and internationally; and through partnerships with business, charitable foundations, and other organisations, including other colleges and universities.

(5) UK universities must be free to act as critics of government and the conscience of society.”

The amendment will enshrine in legislation the nature of a university and Lord Willetts commented that this was the “first attempt ever in British primary legislation to define what a university is”.<sup>1</sup>

The amendment, Lord Stevenson said, “scopes out a university’s role with its implicit ideals of responsibility, engagement and public service”.<sup>2</sup> A speech by Lord Krebs contained the views of many of the speakers when he said that universities should not exist purely for economic benefit, or for training in technical skills.<sup>3</sup> Baroness Lister summed up the fears of other speakers when he referred to the “creeping marketisation and consumerism of universities”.<sup>4</sup> Speakers who were against the amendment, such as Lord Forsyth, said that it was wrong to have “declarative clauses” in the Bill and that putting a

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<sup>1</sup> HL Deb 9 January 2017, [c1745](#).

<sup>2</sup> *Ibid*, [c1738](#).

<sup>3</sup> *Ibid*, [c1745](#).

<sup>4</sup> *Ibid*, [c1753](#).

definition of a university in the Bill could “achieve the opposite of its intended purpose”.<sup>5</sup>

Viscount Younger, the Lords Spokesperson for Higher Education, gave the following response:

I fear that the amendment would, rather than protect, undermine institutional autonomy by placing legal obligations on universities that some would fail to meet and that all should be wary of. The noble Baroness, Lady Wolf, said that the Bill has nothing to say about universities. However, I remind the noble Baroness that a university has never been defined in legislation before. We are not aware that this has led to particular problems in the system. My observation is that towards the tail end of the debate further doubts have been raised about the efficacy of placing a definition in the Bill.

As my noble friend Lord Willetts said, the clause would for the first time see the Government prescribing in statute how an autonomous institution should approach its mission and provide in a uniform manner its purpose, form and functions. While I sympathise with the noble Lord, Lord Stevenson, and agree with much of the spirit behind the amendment, higher education providers, including universities, are rightly autonomous institutions. They must continue to be free to determine how best to meet the needs of their students and employers, and to support wider society. It should not be for the Government to prescribe.

I am similarly wary of imposing wide-ranging obligations on universities of the sort the amendment proposes. As the noble Lord, Lord Sutherland, said, the danger is that, in seeking to set out in legislation what might otherwise seem highly desirable aspirations, we set legally binding standards in a range of areas that universities and other providers will find extremely difficult to interpret as a matter of law and, hence, to meet.<sup>6</sup>

Lord Stephenson said in reply that the Minister had no argument for not accepting the amendment and pushed the amendment to a vote. It was accepted by 248 votes to 221.

## 1.2 Institutional autonomy

Clause 3 of the Bill ([HL Bill 97](#), as amended in Committee) sets out the general duties of the OfS. Many of these are the same as those currently carried out by the Higher Education Funding Council for England (HEFCE) and the Office for Fair Access (OFFA), but there are also new duties to promote opportunities for students and to encourage competition and value for money in the sector. In performing its duties, the OfS must have regard to guidance from the Secretary of State.

### Amendments made at Report Stage

Lord Stevenson and Baroness Garden put forward a number of Government-supported amendments regarding the institutional autonomy of higher education providers, all of which were agreed.<sup>7</sup> Amendment 4 added to the general duties of the OfS as set out in

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<sup>5</sup> HL Deb 9 January 2017, [c1760](#).

<sup>6</sup> *Ibid*, [c1771](#).

<sup>7</sup> Amendments 4, 9, 10, 11, 99, 133, 134, 137, 138 and 142.

clause 3 to require it to have regard to “the need to protect the institutional autonomy of English higher education providers.”

Amendment 11 defined institutional autonomy for the purposes of the Bill:

In this Part, “the institutional autonomy of English higher education providers” means—

- (a) the freedom of English higher education providers within the law to conduct their day to day management in an effective and competent way,
- (b) the freedom of English higher education providers—
  - (i) to determine the content of particular courses and the manner in which they are taught, supervised and assessed,
  - (ii) to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and
  - (iii) to determine the criteria for the admission of students and apply those criteria in particular cases, and
- (c) the freedom within the law of academic staff at English higher education providers—
  - (i) to question and test received wisdom, and
  - (ii) to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at the providers.”

Amendments 9, 133 and 137 additionally provided that the Secretary of State would be under the same duty in issuing guidance and directions to the OfS, and when providing grants to it.<sup>8</sup>

The Government’s policy paper explained the amendments as follows:

These amendments apply across all the OfS’s functions, and will ensure that the OfS considers institutional autonomy in everything it does. It therefore provides an explicit and wide ranging protection, which, subject to Parliament, will be enshrined in law for the first time.

These amendments provide a full and clear definition of institutional autonomy, making clear that English higher education providers have freedoms in relation to day to day management, decisions on course content and structure, selection and dismissal of academic staff, and admission of students. They also specify the freedoms of academic staff to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions. Together this collection of amendments provides the most robust protection for institutional autonomy that has ever existed in our modern higher education system.<sup>9</sup>

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<sup>8</sup> HL Deb 6 March 2017, [c1117](#).

<sup>9</sup> Department for Education, [Higher Education and Research Bill: Amendments Tabled Ahead of Lords Report Stage](#), February 2017, p4.



## 1.3 Collaboration between providers

### Amendments made at Report Stage

Government amendment 6 added to the duties of the OfS set out in clause 3 to require that, as part of its duty relating to the need to encourage competition, the OfS would also be required to have regard to “the benefits for students and employers resulting from collaboration between [higher education providers].”<sup>10</sup>

Viscount Younger stated that the Government had always been clear about the integral role of collaboration but had responded to concerns that the Bill could go further to make this clear:

While we have spoken a lot about competition, we have always been clear that collaboration has an integral role to play in the mission of higher education and its benefits to wider society. However, we heard concerns that the drafting of the Bill could go further to make this recognition clearer. We have listened, and have consequently tabled an amendment to clarify that the OfS, when having regard to the need to encourage competition between providers, should also have regard to the benefits for students and employers resulting from collaboration between such providers. This amendment has been warmly welcomed by the sector, including GuildHE, University Alliance and Million Plus.<sup>11</sup>

## 1.4 Institutional Standards

Under clause 24 of the Bill ([HL Bill 97](#), as amended in Committee) the OfS will have the power to assess or make arrangements for the assessment of the quality and standards of higher education providers in England. In addition, the clause provides for the OfS to be under a duty to assess the quality and standards of providers which have applied to be registered in order to ensure they meet the registration conditions.

Clause 27 of the Bill ([HL Bill 97](#), as amended in Committee) allows the OfS to designate a body to perform its assessment functions.

### Amendments made at Report Stage

A series of Government amendments were agreed, which the Government policy document stated were in response to concerns that the Bill “could undermine the sector’s role in regard to standards.”<sup>12</sup>

Viscount Younger stated that the amendments made clear “that the standards against which providers are assessed, and to which registration conditions can refer, are the standards that are determined by, and command the confidence of, the higher education sector, where such standards exist.” He additionally reassured Peers that where sector-recognised standards did not cover a particular issue, the OfS could not apply its standard in respect of it. Viscount Younger said that

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<sup>10</sup> HL Deb 6 March 2017, [c1123](#).

<sup>11</sup> *Ibid.*

<sup>12</sup> Amendments 50, 51, 58, 59, 70, 71, 77, 80, 81, 82, 140 and 143. Department for Education, [Higher Education and Research Bill: Amendments Tabled Ahead of Lords Report Stage](#), February 2017, p5.

the approach was “in the spirit of co-regulation and allows the sector to develop its standards as it sees fit, to meet the challenges of the day.”<sup>13</sup>

The Government’s policy paper set out the other changes made by the amendments:

Amongst other things, they also:

[...]

- delete the previous definition of standards for the purposes of the Bill. This deletion brings standards in line with “quality”, which is not defined in the bill, so as not to undermine the principle that the sector is responsible for defining standards.
- amend clause 27 so that, where a body has been designated to carry out the assessment functions (a quality body), those functions cease to be exercisable by the OfS to the extent that they relate to standards. The OfS will retain ultimate responsibility for assessing quality, and for setting registration conditions relating to quality and standards. [amendment 77]
- We have also amended Schedule 4 to ensure that the OfS, when giving general directions to the designated quality body, must have regard to the need to protect the body’s ability to carry out an impartial assessment. This is in addition to the existing requirement for the OfS to have regard to the need to protect the body’s expertise [amendments 80 and 81]<sup>14</sup>

Crossbencher Baroness Brown welcomed the Government amendments and stated that they “effectively address the concerns of the sector that the definition of academic standards must be owned by the sector and not be in the remit of the OfS.”<sup>15</sup> Labour’s Shadow Spokesperson, Lord Stevenson, also welcomed the amendments and stated that the Opposition supported them.<sup>16</sup>

## 1.5 Access and Participation

Clauses 28-36 of the Bill merge OFFA into the OfS and allow the OfS to take over OFFA’s role in approving access and participation plans. Schedule 1 provides that the Director for Fair Access and Participation (DFAP) will be a member of the OfS and will be appointed by the Secretary of State.

### Amendments made in Committee

Several Government amendments were moved by Viscount Younger to Schedule 1 to clarify the role and responsibilities of the DFAP within the OfS. Viscount Younger stated that the amendments had been made “in the spirit of listening”<sup>17</sup> and to set out more clearly the responsibilities

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<sup>13</sup> HL Deb 6 March 2017, [c1164](#).

<sup>14</sup> Department for Education, [Higher Education and Research Bill: Amendments Tabled Ahead of Lords Report Stage](#), February 2017, p5.

<sup>15</sup> HL Deb 6 March 2017, [c1163](#).

<sup>16</sup> *Ibid.*

<sup>17</sup> HL Deb 11 January 2017, [c1982](#).

of the DFAP in widening access and participation. All of the amendments were agreed without division.

The amendments included:

- Amendment 15, which made it clear on the face of the Bill that the OfS would give responsibility for widening participation and access to the DFAP. The amendment will require the DFAP to oversee and report on the performance of the OfS with regard to its access and participation functions.
- Amendment 24, which would ensure that the OfS can only delegate access and participation functions to the DFAP.
- Amendment 27, which inserts a provision in the Bill which will require the OfS to include in a report, any period of time for which the access and participation functions of the OfS were not delegated to the DFAP and the reason for not delegating those functions.

Viscount Younger outlined the function of the amendments:

[the] amendments seek to clarify that the director will be responsible for overseeing the OfS's performance on access and participation and reporting on that performance to the OfS board. In other words, it is the role of the DFAP to ensure that these obligations are met. In addition, our amendments confirm that the director is responsible for performing the access and participation functions, plus any other functions which are formally delegated by the OfS. Amendment 16 makes it clear that the director will report to the OfS board on performance in this vital area.

In addition, we are ensuring that the legislation makes it clear that if, for any reason, the OfS does not delegate the access and participation functions, it must set out in its annual report both the reasons why and the length of time that these functions were not delegated. This signifies that we envisage this function not being delegated to the DFAP to be very much the exception and not the rule.<sup>18</sup>

Viscount Younger said that Professor Les Ebdon, the current Director for Fair Access, had welcomed the amendments.<sup>19</sup>

## 1.6 Higher education data

Clause 59 of the Bill provides that the OfS, or a body designated by it, must publish information relating to higher education courses provided in England by higher education providers. Clause 8 of the Bill provides that a mandatory registration condition for all providers will require them to provide information as may be required by a designated body in order to perform its functions.

### Amendments made in Committee

Baroness Goldie moved 29 Government amendments regarding the designated data body, many of which were consequential.<sup>20</sup>

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<sup>18</sup> HL Deb 11 January 2017, [c1983](#).

<sup>19</sup> *Ibid.*

<sup>20</sup> Amendments 83, 86, 87, 365, 367, 369, 370, 372, 373, 375, 381, 382, 385-91, 394, 397, 399, 405, 408-12, and 414.

Amendments 83, 86 and 87 to clause 8 clarified that the legislation enabled the OfS to nominate the designated data body to perform the data collection, specifically required by the OfS, in order for it to perform its functions. Amendments 367, 369, 370, 372, 373 and 381 to clause 59 were, Baroness Goldie stated, to “provide further specific powers of delegation, enabling the OfS to require the designated body to make appropriate arrangements for the publication of the data and to consult on data publication.” Baroness Goldie stated that the effect of these amendments was “to support the already stated intention that the OfS can delegate these duties to enable it to work in a co-regulatory partnership with a sector body.”<sup>21</sup>

Amendment 365 inserted a new clause into the Bill before clause 59. The new clause provides for the designated data body (or if no such body exists, the OfS) to be required, in addition to its duties relating to the publishing of data, to gather and hold information not intended for publication and to make it available to the OfS, United Kingdom Research and Innovation (UKRI) and the Secretary of State. Baroness Goldie stated that the new clause “gives the designated data body more scope and flexibility to gather and compile information required by government, the OfS and UKRI.”<sup>22</sup>

### Amendments made at Report Stage

Clause 10 of the Bill ([HL Bill 97](#), as amended in Committee) provides for a transparency condition to be placed on prescribed higher education providers as an ongoing condition of registration. Under the condition, providers would be required to publish application, offer, acceptance and completion rates broken down by gender, ethnicity and socio-economic background.

Government amendment 14 provided for providers to also have to publish information on levels of attainment broken down by gender, ethnicity and socio-economic background.

Viscount Younger noted the attainment gap for certain groups and stated that the amendment would allow the Government to look at data across the whole student lifecycle:

The evidence shows that there is more to do to close the attainment gap, which is particularly pronounced for certain groups of BME students.

We agree with noble Lords that attainment is an area that should be addressed and I thank them for their attention on this matter. That is why our Amendment 14 will add degree attainment at the end of the undergraduate’s course to the existing information required under the transparency condition. This will enable us to look across the whole student lifecycle, from application to graduation.<sup>23</sup>

He added that the Government would, through guidance, ask the OfS to consult on what other information should be published by individual

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<sup>21</sup> HL Deb 16 January 2017, [cc57-8](#).

<sup>22</sup> *Ibid.*

<sup>23</sup> HL Deb 6 March 2017, [c1126](#).

institutions and that it expected the consultation to include, among other things, consideration of whether the protected characteristics under the *Equality Act 2010* should be captured.”<sup>24</sup>

## 1.7 Enforcement of registration conditions

Clauses 15-21 of the Bill relate to the enforcement of ongoing registration conditions and provide for the OfS to have the powers to impose monetary penalties on providers, suspend their registration and to de-register them. Schedule 3 sets out the process that must be followed by the OfS in the event of a penalty being imposed.

### Amendments made in Committee

A large number of Government amendments were agreed concerning the appeals processes in relation to decisions by the OfS to impose monetary penalties, vary or revoke degree awarding powers, or revoke a university title.<sup>25</sup> Baroness Goldie stated that the amendments were not a change in policy but were intended to address points of inconsistency and “ensure a smooth and clear appeals process.” She explained the purpose of the amendments as follows:

...the amendments clarify and put beyond doubt various procedural points, including that no decision can come into effect while any appeal, including a further appeal, can be brought or is pending; that a provider may appeal against the decision itself, the date on which it comes into effect or both; and that a provider may appeal, in relation to degree-awarding powers and university title only, the exact sequencing of a decision, an appeal and any order which brings the decision into effect.<sup>26</sup>

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<sup>24</sup> HL Deb 6 March 2017, [c1130](#).

<sup>25</sup> Government amendments 145, 154-6, 158, 160, 290, 292-4, 296, 297, 300, 302, 353-6, 358, 359, 361, 363, 422, and 437.

<sup>26</sup> HL Deb 23 January 2017, [cc438-9](#).



## 2. Teaching Excellence Framework

Clause 26 of the Bill ([HL Bill 97](#), as amended in Committee) allows the OfS to make arrangements to operate a scheme to rate higher education providers on the quality and standard of their teaching provision. This will allow the OfS to operate and develop the Teaching Excellence Framework (TEF).

Further information on the TEF is available in Library Briefing 7848, [The Teaching Excellence Framework for higher education \(TEF\)](#), last updated 15 February 2017.

### 2.1 Ranking providers through a TEF scheme Amendment made at Report stage

Lord Blunkett moved amendment 72, which removed and replaced clause 26 relating to the TEF. The new clause provides that the Secretary of State must by order bring forward a scheme to assess the quality of education and teaching at higher education providers. The clause additionally provides, among other things, that:

- The scheme “must be wholly or mainly based on the systems in place in higher education providers to which ensure that courses offered are taught to a high standard.”
- The Office for National Statistics must regularly evaluate the “validity of any data or metrics included in such a scheme.”
- The scheme must be report on whether an institution meets expectations or not, but “must not be used to create a single composite ranking of English higher education providers.”
- The order providing for the scheme would be subject to the affirmative resolution procedure.

In speaking to the amendment, Lord Blunkett stated that there were “real issues about the nature of the [TEF] metrics” and argued that the TEF “could well be undermined by a simple lack of confidence on the part of those crucially involved in it.” He argued that “change must take place in the lecture theatre and through the process of learning, not from outside.” If the TEF was about students, he added, “you would expect student bodies to be in favour of the proposals – but they are not”.<sup>27</sup>

In response, Viscount Younger noted that the amendment would “turn the TEF into a pass or fail system” and overlooked that the quality assessment regime already determined whether or not providers had met baseline expectations. The TEF he said, offered differentiation, without which “it is impossible to tell students where the best teaching can be found” and without which there “will be no incentive for the vast majority of higher education providers to improve.” He also rejected concerns that a bronze award in the TEF would be a badge of

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<sup>27</sup> HL Deb 8 March 2017, [c1363](#).

failure and announced that the OfS would “label providers without a quality assessment as, ‘ineligible for a TEF award’”.

Viscount Younger further stated that all of the TEF metrics were “credible, well established and well used by the sector” and offered reassurance that the Government was committed “to developing the TEF iteratively.” He concluded that the amendment, and those in the group, failed to meet the commitment made in the Conservative Party manifesto and struck at the foundations of what the Government wanted to achieve:

The amendments in this group challenge the fundamental nature of the TEF. The words in the manifesto were carefully chosen to echo the way that the REF is described. It said that the Conservative Government would,

“introduce a framework to recognise universities offering the highest teaching quality”.

A framework that only allows for a pass or fail assessment offers no gradients. A framework that offers no opportunity to recognise the highest teaching quality simply does not meet the Conservative commitment. I do not want noble Lords to misinterpret these amendments as offering constructive tweaks. They strike at the very foundations of what we want to achieve.<sup>28</sup>

Lord Blunkett stated that the announcement that providers would be labelled as “ineligible for a TEF award” made things worse rather than better and pushed his amendment to a vote. The amendment was agreed by 280 votes to 186.<sup>29</sup>

## 2.2 Link between the TEF and tuition fees

### Amendment made at Report Stage

Lord Kerslake moved amendment 19 that inserted a new clause into the Bill that prohibits TEF rankings from being used to determine the fees that higher education providers can charge, or the number of students they can recruit. The prohibition would apply to both home and international students, which Lord Kerslake explained, would prevent “the possibility that the TEF ranking might be linked to the issuing of student visas.”<sup>30</sup>

Lord Kerslake stated that there was “a lot of agreement on the issues of teaching quality and fees when taken separately”, but that problems arose “from the Government’s plans to circumvent the debate on fees and allow inflation increases only for those universities that have achieved silver or gold [TEF] rankings.” He argued that this approach was wrong for four reasons:

- the TEF is not ready and does not have a settled methodology;
- subject-level TEF ratings will not be available for some years, but it is possible to have mediocre course in an excellent institution;

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<sup>28</sup> HL Deb 8 March 2017, [cc1379-85](#).

<sup>29</sup> *Ibid*, [cc1386-9](#).

<sup>30</sup> HL Deb 6 March 2017, [c1132](#).

- the NUS are opposed to the TEF. It is hard to make the case for a shift towards a student voice and then ignore the view of student representatives; and
- there is no need to link TEF to fees in order to create an incentive to improve teaching quality. The impact of the TEF and a falling university-age population would be sufficient.

He concluded that “there is a strong case for promoting teaching excellence and for allowing student fees to rise in order to reflect increasing costs. However, putting the two together in the way the Government are currently proposing is both ill-judged and unfair.”<sup>31</sup>

In response, Viscount Younger noted that research funding is currently based on quality and stated that the Government wanted to apply the same principle to teaching. Linking fees to the TEF, he said, “will provide strong reputational and financial incentives to prioritise the student learning experience” and “is the only way of providing the necessary incentive for universities to genuinely focus on improving teaching.”

It was important, he said, that institutions could maintain fees in line with inflation and he said that if the amendment were enacted the sector would lose the £16 billion of funding that the Government intended to make available through the TEF over the next 10 years. The alternative that universities should be allowed to increase their fees regardless of the quality of teaching seemed “very hard to justify”, he argued. He added that the Government had listened to and acted on concerns by committing to carry out a lessons-learned exercise and only introducing the fee link gradually.

In conclusion, Viscount Younger argued that the Government’s position was reasonable and had been “consistently supported by the sector”. “Linking the TEF to fees”, he stated, “is the only way to maintain the sustainability of our higher education system while ensuring good value for students.”<sup>32</sup>

Lord Kerslake stated that he had not been convinced by the Minister’s arguments and pushed the amendment to a vote. It was agreed by 263 votes to 211.<sup>33</sup>

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<sup>31</sup> HL Deb 6 March 2017, [cc1132-4](#).

<sup>32</sup> *Ibid*, [cc1139-41](#).

<sup>33</sup> *Ibid*, [cc1143-45](#).

## 3. Students and courses

### 3.1 Student transfer

#### Amendments made at Report Stage

Government amendment 100 inserted a new clause that would place the OfS under a duty to monitor and report on arrangements put in place by higher education providers to enable students to transfer within and between providers, and to provide information on the take up of these arrangements. It would also allow the OfS to “facilitate, encourage or promote awareness of [student transfer arrangements]”.<sup>34</sup>

Viscount Younger said that responses to the Government’s call for evidence (see box 1 on following page) on student transfer stated that opportunities for transfers were not well known and could be developed further. He said the Government was proposing the amendments as “students should understand the transfer options available and know how to readily take advantage of them.”<sup>35</sup>

### 3.2 Accelerated courses

Schedule 2 of the Bill allows the OfS to set fee limit conditions on registered higher education providers and allows for the charging of differential fees, including sub-level fees under the TEF.

#### Amendments made at Report Stage

Government amendment 46 amended Schedule 2 to provide for regulations to be made, subject to the affirmative procedure, to introduce a higher fee cap for accelerated courses than is in place for their non-accelerated equivalent. The amendment also provided a definition of accelerated courses.

Lord Young, a Government whip and spokesperson, stated that providers were currently unable to introduce accelerated courses because of the existing fee cap:

Evidence from independent research and our call for evidence tells us that a number of English providers are interested in providing more accelerated courses. However, many providers are unable to grow or introduce accelerated courses because of the existing annual tuition fee cap; they simply cannot afford to offer accelerated courses. Therefore, these amendments will enable Parliament to set a higher annual fee cap for accelerated courses—and accelerated courses only—compared to the annual fee cap for standard degree courses.<sup>36</sup>

The Government’s policy paper stated that it will seek to “stimulate the market for accelerated courses by setting a fee cap that provides adequate funding for providers while offering the student and the taxpayer a fair and good deal.” It added that the Government’s

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<sup>34</sup> HL Deb 6 March 2017, [c1131](#). Amendments 139 and 141 were minor amendments consequential on amendment 100.

<sup>35</sup> HL Deb 6 March 2017, [c1131](#).

<sup>36</sup> *Ibid*, [c1158](#).

intention was that “accelerated courses will cost students less than an equivalent course” and that the Government would consult on the detail of how to deliver higher annual fee limits for accelerated courses ahead of tabling any secondary legislation.<sup>37</sup>

Other Government amendments were agreed to clarify that when setting fee limits under Schedule 2, whether for an accelerated course or other courses, the Secretary of State may establish different higher, basic and sub-levels for different types of teaching provision—for example, sandwich and part-time courses. Lord Young stated that this “reflects the approach taken under current legislation whereby, for example, the higher amount set for part-time courses is fixed at a lower level than for full-time courses.” He added that the amendments “serve to provide flexibility with regard to other types of provision.”<sup>38</sup>

### **Box 1: Government reports on student transfers and accelerated courses**

In May 2016, the Government issued a call for evidence on accelerated courses and switching university or degree in order to “understand the need for greater flexible learning opportunities and the ways in which Government could best support higher education providers to meet that need.” The findings from the call for evidence were published in December 2016 and are available at: [Accelerated courses and switching university or degree: call for evidence](#).

In addition, in March 2017 the Government published research reports on accelerated degrees and credit transfer in higher education. The reports provided literature reviews of current evidence and a series of case studies. The reports are available at: [Accelerated degrees in higher education](#) and [Credit transfer in higher education](#).

## **3.3 Promoting student choice**

### **Amendments made at Report Stage**

Government amendment 8 aimed to make clear that the OfS's duty under clause 3 (see section 1.2 for background to clause 3) to have regard to the need to promote student choice, includes choice in types of provider, courses, and the means by which courses are provided – for example, full-time, part-time, distance learning and accelerated courses.

Viscount Younger stated that the amendment explicitly recognised that part-time and flexible learning would play a big part in the future. He stated that the amendment:

...makes it clear that choice among a diverse range of higher education provision is part of the OfS's duty to promote greater student choice. That includes but is by no means limited to choice among a diverse range of provider types, course subjects and modes of study such as full-time, part-time, distance learning and accelerated courses. These are only examples rather than a comprehensive list because when looking to the future, the needs of students, employers and our economy will change and the sector will need to continue to innovate and diversify in response.<sup>39</sup>

<sup>37</sup> Department for Education, [Higher Education and Research Bill: Amendments Tabled Ahead of Lords Report Stage](#), February 2017, p10.

<sup>38</sup> HL Deb 6 March 2017, [cc1157-8](#).

<sup>39</sup> *Ibid*, [c1112](#).



### 3.4 Student complaints

Clause 83 of the Bill expands the list of higher education providers which are required to join the higher education complaints scheme (currently operated by the Office of the Independent Adjudicator). Under the Bill's provisions, all registered providers will be required to join the scheme.

Clause 83 additionally provides for institutions that cease to be qualifying institutions for the purposes of the complaints scheme to be classed as transitional providers and still subject to the scheme for a further 12 months.

#### Amendments made in Committee

Baroness Goldie moved Government amendments to make "a number of largely technical changes" to clause 83.<sup>40</sup> She stated that the "key change" being introduced by the amendments was to ensure that the Bill's provisions concerning transitional providers being subject to the student complaints scheme will apply in both England and Wales. She stated that the amendments additionally:

- Confirm, as is current practice, that higher education providers delivering courses in a franchise arrangement will also be required to join the student complaints scheme (amendments 455 and 456).
- Ensure that the operator of the complaints scheme "continues to have the discretion to agree with individual providers what courses should be covered by the scheme." Baroness Goldie stated that with many providers offering more than just higher education courses joining the complaints scheme, without this discretion it was "likely that the...scheme could inadvertently stray into other parts of the education sector, such as schools or further education."<sup>41</sup>

### 3.5 Electoral Registration of students

Under clause 15 of the Bill ([HL Bill 97](#), as amended in Committee), the OfS "must determine and publish a list of principles applicable to the governance of English higher education providers" that it considers will help to ensure that providers act in the public interest. Clause 14 provides that the registration conditions for providers may include a requirement that their governing documents are consistent with this list of principles.

#### Amendments made at Report stage

Labour Peer Baroness Royall moved amendment 52 which provided that the list of principles set out in clause 15 must include a requirement that providers give all eligible students the opportunity to opt in to be added to the electoral register as part of the registration process. The amendment also required providers to enter into a data sharing

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<sup>40</sup> Amendments 450-461, and 515.

<sup>41</sup> HL Deb 25 January 2017, [cc734-5](#).

agreement with the local electoral registration office to add students to the electoral register.

Baroness Royall stated that the amendment provided “the best means” of improving the level of voter registration among students. She added that it was important to do this to enable students to “have a vote and a voice”, to help “instil the voting habit in young people”, and to ensure that when constituency boundaries are redrawn in the future they “will better reflect the size of the population.”

The Baroness rejected concerns that the amendment would be burdensome and costly:

I am very conscious of the bureaucratic burdens on higher education institutions, but the amendment is not overly onerous. It simply requires universities to make a minor change to their student enrolment systems to provide new students with the opportunity to have their names added to the electoral register in a seamless process. Universities already collect most of the data needed to register students...

Some have said that the amendment would be costly, but the opposite is true—an important factor when councils are suffering painful cuts. In Sheffield, the council now covers the university's costs for registering students and the cost per student has dropped from around £5 to 12p.<sup>42</sup>

In response, Lord Young stated that the Government shared the aim of increasing the number of students registered to vote, but argued that the amendment had serious drawbacks and was the wrong way to achieve this. He stated that both Universities UK and the Association of Electoral Administrators had said that a one-size-fits-all approach was not necessarily the best solution and contended that the amendment risked contradicting the Government's objective to give electoral registration officers greater autonomy.

Lord Young additionally committed that in their first guidance letter to the OfS the Government would ask it to “encourage institutions to offer their students an opportunity to register to vote by providing a link to the online registration page.” He added that this was a “user-friendly solution that avoids some of the problems in the amendment.” In addition, he said, the Minister would write to HEFCE before Third Reading to “ask it to work with the sector to encourage best practice and to actively promote student electoral registration.”<sup>43</sup>

The amendment was pushed to a vote and agreed by 200 votes to 189.<sup>44</sup>

## 3.6 International students

### Amendments made at Report Stage

Lord Hannay moved amendment 150, which was also in the names of Baronesses Lady Royall and Lady Garden. The amendment inserted a new clause - ‘Students and academic staff at higher education

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<sup>42</sup> HL Deb 6 March 2017, [c1167](#).

<sup>43</sup> *Ibid*, [cc1169-71](#).

<sup>44</sup> *Ibid*, [cc1173-5](#).

providers' – that makes changes with regard to international students. The new clause would:

- place a duty on the Secretary of State to encourage overseas students to come to the UK for higher education purposes;
- urge UKRI to encourage and facilitate international research co-operation;
- remove international students from the net immigration target; and
- ensure that no further restrictive immigration rules, beyond the current rules, were placed on international students with an offer to study in the UK.

Lord Hannay outlined the case for the amendment, saying that "Universities UK has demonstrated that overseas students bring £25.8 billion of income and economic activity to this country which provides for, or helps to support roughly 206,000 jobs".<sup>45</sup> He pointed out, however, that the UK was experiencing a "serious loss of market share to our main competitors"<sup>46</sup> and he said that Brexit was creating an uncertain future. He said that the case for the shift in policy set out in the amendment was unanswerable.

The amendment received broad cross party support. Baroness Royall spoke in favour of the "hugely important amendment", and said that the amendment had strong support from the sector:

Apart from the Government, I have spoken to no one who is against the measures in the amendment: quite the contrary, there is strong support. I have spoken to overseas and UK students, academics, administrative staff of higher education institutions, people working for the bodies responsible for standards and quality, and many of our citizens from all backgrounds in different parts of the country. They understand, as my noble friend Lord Darzi said at Second Reading, that we must secure and sustain our ability to excite, attract and retain the world's greatest minds. This is fundamental to the excellence of the UK university system.<sup>47</sup>

Baroness Royall also said that "the amendment would provide a strong signal in the increasingly important and competitive higher education market that this country really welcomes international students".<sup>48</sup>

Other Peers spoke in support of the amendment and commented on the importance of overseas research students in UK universities, the role of overseas students in widening diversity and creating a global perspective in universities and the impact of Brexit on the higher education sector.

Lord Bilimoria welcomed the amendment and spoke about the removal of students from the net migration target saying:

Our direct competitors categorise international students as temporary citizens. In the United States they are classified as non-

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<sup>45</sup> HL Deb 13 March 2017, [c1669](#).

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*, [c1670](#).

<sup>48</sup> *Ibid.*, [c1671](#).

immigrants alongside tourists, business visitors and those in cultural exchange programmes. In Australia they are classified as temporary migrants alongside tourists and visitors, and in Canada they are classified as temporary residents. These are our direct competitors. If they can do it, why cannot we?<sup>49</sup>

Eighteen peers from across all parties spoke in favour of the amendment and only one Peer, Lord Green, opposed the amendment. Lord Green said that the issue was a “matter for policy and not law”.<sup>50</sup>

Responding for the Government, Viscount Younger said that there could be no doubt about the passion expressed in the debate and that the Government “very much welcomed the contribution that international students and academics make”.<sup>51</sup> He said that the Bill would “ensure that the OfS has the power to gather the information it considers it requires on international student numbers”. He further said that “much of the information that he seeks is already available and published, and the Bill will strengthen those arrangements”. With regard to international student numbers he repeated:

I put on record again that there is no limit on the number of genuine international students whom educational institutions in the UK can recruit.<sup>52</sup>

He also said that there were “no plans to limit institutions ability to recruit international students” and that the Government would “continue to look for ways to promote the UK as an attractive place to come to study”.<sup>53</sup> He finally said that a general statutory duty would be “impossible to measure and would give rise to litigation”.<sup>54</sup>

With regard to removing international students from the net migration target Viscount Younger said:

International students consume services while they are here, so it is right that, in line with international norms, they feature in net migration statistics. I reassure your Lordships that, as I have explained, that has not led, and will not lead, to the Government seeking to cap numbers or restrict institutions’ ability to continue to attract students from around the world. The Government want our world-class institutions to thrive and prosper. International students and academics will always be welcome in the UK. However, I do not believe that we can pass an amendment which would be likely to make operation of the visa system impossible.<sup>55</sup>

Lord Hannay said that the amendment had had support from “all quarters of the House” and he pressed the amendment to a vote. It was agreed by 313 votes to 219. Several Conservative Peers, including former Universities Minister Lord Willetts, voted for the amendment.

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<sup>49</sup> HL Deb 13 March 2017, [c1678](#).

<sup>50</sup> *Ibid*, [c1682](#).

<sup>51</sup> *Ibid*, [c1685](#).

<sup>52</sup> *Ibid*, [c1686](#).

<sup>53</sup> *Ibid*.

<sup>54</sup> *Ibid*, [c1687](#).

<sup>55</sup> *Ibid*, [c1688](#).

## 4. Degree Awarding Powers and University Title

Clauses 40-45 of the Bill set out the powers of the OfS with regard to the granting, varying or revoking of Degree Awarding Powers (DAPs) to providers. Among other things, the provisions aim to simplify and speed up the process of awarding DAPs to new providers.

The Bill also transfers responsibility for the granting of University Title (UT) from the Privy Council to the OfS and makes changes to the criteria for the granting of UT.

### 4.1 Granting Degree Awarding Powers

#### Amendments made in Committee

35 Government amendments were agreed regarding the authorising of DAPs, the majority of which were consequential.<sup>56</sup>

Introducing the group of amendments, Viscount Younger said that the Bill was not “as clear as it could be on exactly what types of providers can apply for what type of degree-awarding powers”, and that the Government had “reflected on and re-examined how clause 40 may be read as impacting on the further education sector.”<sup>57</sup>

He stated that the amendments sought to address two main areas:

- The amendments removed clause 40(1)(b), which had provided for the OfS to authorise further education institutions to grant foundation degrees, and provided for foundation degrees to be included within the Bill’s definition of a “taught award.” This was to remove any impression that further education institutions that gained powers to grant foundation degrees could not go on to gain powers also to grant higher degrees.
- The Government wished to retain the current position whereby only higher education institutions that are also further education providers may apply for foundation degree awarding powers only, but institutions that can award taught degrees are able to also award foundation degrees. He stated that the amendments “should remove any doubt over which providers can award foundation degrees.”<sup>58</sup>

Viscount Younger additionally stated that it remained the Government’s policy that providers authorised to award foundation degrees only, should be required to provide a progression statement that demonstrated that it had clear routes for learners wishing to proceed to a higher-level course.<sup>59</sup> Amendment 279 to clause 43 provided that if changes to a provider’s DAPs resulted in it being left with foundation

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<sup>56</sup> Government amendments 241, 246-50, 253, 258, 261-3, 267, 270-5, 278, 279, 303, 304, 307-9, 317, 318, 323, 325, 329, 330, 332, 334, 336, and 436.

<sup>57</sup> HL Deb 23 January 2017, [cc497-8](#).

<sup>58</sup> *Ibid.*

<sup>59</sup> Provided for by clause 40(4) in the version of the Bill as introduced to the Lords.



degree awarding powers only, then it would need to satisfy the requirements relating to progression statements.<sup>60</sup>

### Amendments made at Report Stage

Government amendment 116 clarified that the OfS must seek expert advice ahead of awarding, varying or revoking DAPs.<sup>61</sup> The Government's policy paper explained the amendments as follows [emphasis in original]:

We agree that the important decision of awarding DAPs must be based on objective and independent advice, including from a relevant range of experts. **That is why we have now tabled an amendment to ensure that the OfS will have to seek expert advice ahead of awarding DAPs to a HE provider. This advice should come from the Designated Quality Body or, if no body is designated, from a committee of the OfS.**

This advice must be informed by the views of persons with a range of relevant experience. We envisage that there will be strong representation from persons who have experience of granting degrees, but it will also include persons whose expertise lie in the education provided by institutions without DAPs – so the would be challenger institutions and further education providers. Persons with experience of employing graduates, and persons representing the interests of students, will also be represented.<sup>62</sup>

Viscount Younger stated that the amendment would ensure that “only the best providers can access degree-awarding powers and...that expert scrutiny is built into the system.” He added that he therefore did not believe that further changes beyond the Government amendment were needed.<sup>63</sup>

Baroness Wolf moved amendment 116A which added to amendment 116 to provide that the OfS could not grant DAPs to a provider unless it had been established for four years (as is the current timescale). Alternatively, the amendment provided that the OfS may grant DAPs if its Quality Assurance Committee was assured that the provider was able to maintain the required standard and had reported to the Secretary of State.

Baroness Wolf stated that she supported the Government's amendment and said that her amendment was intended as a complement to it. The amendment would, she said, reduce the risk of students getting degrees from institutions that failed early on to “a very low level indeed.” She argued that four years “was a pretty good number” to see whether an institution worked or not, as during this time it would have gone through a cycle of degree education and its students would have entered the labour market. The Baroness further argued that it was important for the Secretary of State, as an elected, accountable figure

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<sup>60</sup> HL Deb 23 January 2017, [cc497-8](#).

<sup>61</sup> Amendments 74-6, 78, 79, 83-6, 105, 110, 111, 115 and 116.

<sup>62</sup> Department for Education, [Higher Education and Research Bill: Amendments Tabled Ahead of Lords Report Stage](#), February 2017, p6.

<sup>63</sup> HL Deb 8 March 2017, [cc1390-1](#).

to be involved in the process of granting DAPs without a validation period.<sup>64</sup>

Responding to Baroness Wolf's amendment, Viscount Younger argued that the Secretary of State should not have a role in the process and that the OfS, as the independent regulator, was best placed to make such decisions. He added that it was important to streamline the "currently bureaucratic DAPs processes" and stated that "protections for quality are provided for under [the Government's] reforms".<sup>65</sup>

Amendment 116A was pushed to a vote and was agreed by 201 votes to 186.<sup>66</sup>

## 4.2 Revoking Degree Awarding Powers

Clauses 43 and 44 of the Bill ([HL Bill 97](#), as amended in Committee) provide the OfS with powers to vary or revoke a provider's DAPs. This includes providers whose DAPs were awarded under an Act of Parliament or by Royal Charter.

### Amendments made at Report Stage

A number of Government amendments were agreed regarding the OfS's powers to revoke DAPs.<sup>67</sup> The amendments provided that the OfS could only revoke a provider's DAPs if one of three specified conditions were met. The Government's policy paper set out the conditions:

...we have tabled an amendment that will state on the face of the Bill the specific conditions that would need to be met before the OfS can revoke a provider's DAPs or UT.

For DAPs these include serious concerns about quality or standards, where variation of DAPs is insufficient to address the concerns. The amendments also include provisions enabling University Title to be revoked if DAPs are lost, and for the option to revoke both DAPs and UT following changes in circumstances, i.e. DAPs could be revoked if there were serious concerns regarding quality or standards following a sale or merger.<sup>68</sup>

Under clause 112 of the Bill, if the OfS uses its power to remove an institution's DAPs or university title the Secretary of State may amend that institution's royal charter to reflect the changes. Government amendments 195, 196 and 199 aimed to "clarify that the powers in the Bill may not be used to revoke a higher education provider's Royal Charter in full."<sup>69</sup> Lord Younger stated that the Government had always said that the power to make consequential changes to royal charters was not intended to be used to revoke an entire charter. The amendments, however, he said, clarified this in the legislation.<sup>70</sup>

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<sup>64</sup> HL Deb 8 March 2017, [cc1391-3](#).

<sup>65</sup> *Ibid*, [cc1395-6](#).

<sup>66</sup> *Ibid*, [cc1411-2](#).

<sup>67</sup> Amendments 107-9, 112-4, 119A, and 120-2.

<sup>68</sup> Department for Education, [Higher Education and Research Bill: Amendments Tabled Ahead of Lords Report Stage](#), February 2017, p7.

<sup>69</sup> *Ibid*.

<sup>70</sup> HL Deb 8 March 2017, [c1405](#).

### 4.3 Appealing DAP and UT decisions

Clause 46(2) ([HL Bill 97](#), as amended in Committee) provides that a provider may appeal against a decision by the OfS to vary or revoke its DAPs on three grounds: that the decision was based on an error of fact, that the decision was wrong in law, that the decision was unreasonable. Clause 56(2) ([HL Bill 97](#), as amended in Committee) provides the same with regards to appeals against decisions to vary or revoke the granting of university title.

#### Amendments made at Report Stage

Lord Judge moved amendments 117 and 123, which altered the grounds under which appeals could be brought under clauses 46 and 56. Under the amendment, the three grounds for appeal were replaced with one: that an appeal “shall be on the grounds that the decision was wrong.”

Lord Judge stated that the form of judicial review provided for by the Bill was a way of assessing process, but not a way for the merits or a decision to be considered. He argued that this was not acceptable:

In other words, it does not provide for a full appeal from the decision—rather a review of the way in which the decision was reached.

My argument is very simple: that simply will not do here. You cannot win a judicial review, and the grounds provided in the present Bill do not enable you to provide an argument based on this simple proposition that the decision was wrong—that’s it—and it should. A step of this kind, which can lead to the destruction of a university, is so serious that the university should be entitled to go to the First-tier Tribunal with the simple argument, “This is not good enough. Your judgment is wrong. You have made a premature decision. You have made a decision that is too severe”. None of those arguments is encapsulated in the present basis for appeal that is provided.<sup>71</sup>

In response, Lord Young stated that the Government would ensure that, in each year where the OfS used its powers to revoke DAPs or UT a report would be laid before Parliament which included information on how the powers had been used.

Regarding the amendments, Lord Young stated that the grounds for appeal provided by the Bill balanced the need for a regulator to make decisions and the need for it to be held to account. He argued that the amendment would “propose a more general and less clean-cut ground of appeal” which would require a tribunal “to put itself in the regulator’s shoes and then substitute its judgement for that of the OfS.” Changing the grounds for appeal in the way suggested by the amendment would, he said, “risk creating a process whereby tribunals, rather than the OfS, regulated the [higher education] sector.”<sup>72</sup>

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<sup>71</sup> HL Deb 8 March 2017, [c1415](#).

<sup>72</sup> *Ibid*, [cc1417-9](#).

Amendment 117 was pushed to a vote and agreed by 185 votes to 151.<sup>73</sup> Amendment 123, which Lord Judge stated he viewed as consequential on amendment 117, was agreed without a division.<sup>74</sup>

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<sup>73</sup> HL Deb 8 March 2017, [cc1419-22](#).

<sup>74</sup> *Ibid*, [c1427](#).

## 5. Other education measures

### 5.1 Power to make alternative payments

Clauses 80 and 81 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.

#### Amendments made in Committee

Two Government amendments (438 and 439) were agreed to clause 80. Baroness Goldie described the amendments as “narrow and functional amendments” that clarified “the role of Treasury consent in establishing a system for alternative payment contributions to be dealt with other than by payment into the consolidated fund.”<sup>75</sup>

### 5.2 Regulations

#### Amendments made in Committee

Government amendments 440, 441 and 513 were agreed without a debate. Viscount Younger set out the purpose of the amendments in a [letter to peers](#). He stated that amendments were technical in nature and were to ensure that regulations made under the Bill “can work correctly with referenced lists or documents that are published before, or updated after, the regulations are made.” He cited the register of providers, which the OfS would maintain, and the list of TEF awards as examples of such “living lists” which would be referenced in regulations.<sup>76</sup>

#### Amendments made at Report Stage

A series of five Government amendments (amendments 45, 197, 198, 200 and 201) were agreed to make certain regulations made under the Bill subject to the affirmative procedure. These amendments were made in response to the recommendations of the Delegated Powers and Regulatory Reform Committee report on the [Higher Education and Research Bill](#) from 20 December 2016.<sup>77</sup> Lord Young summarised each of the amendments as follows:

...Amendment 197 makes regulations under Clause 10, prescribing descriptions of provider to whom the transparency condition applies, subject to the affirmative procedure...

Amendment 198 makes regulations under Clause 38, prescribing descriptions of provider who will be eligible to receive OfS funding in the form of grants, loans or other payments, subject to the affirmative procedure...

Amendments 45, 200 and 201 ensure that the first set of regulations prescribing the higher, basic and floor amounts for the purposes of determining providers’ fee limits, will be subject to the affirmative procedure.<sup>78</sup>

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<sup>75</sup> HL Deb 25 January 2017, [cc714-8](#).

<sup>76</sup> [Letter from Viscount Younger of Leckie](#), 30 January 2017.

<sup>77</sup> House of Lords, [Delegated Powers and Regulatory Reform Committee Tenth Report, Higher Education and Research Bill](#), 20 December 2016, HL 86.

<sup>78</sup> HL Deb 6 March 2017, [cc1161-2](#).

## 6. Research

Part four of the Bill provides for the creation of UK Research and Innovation (UKRI) as a new non-departmental public body with nine committees (referred to as councils). Through eight of its councils UKRI will bring together the functions currently exercised by the seven research councils and Innovate UK. The ninth council, named Research England, will take on the research funding functions currently carried out by HEFCE.

The functions of UKRI are set out in clause 87 of the Bill. Schedule 9 provides more detail on how UKRI will be structured and how its councils will operate.

### 6.1 Governance and functions of UKRI

#### Amendments made in Committee

Six Government amendments were agreed, which Lord Prior, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, stated aimed to “clarify the vital importance of knowledge exchange within UKRI.”<sup>79</sup>

Amendment 485 added to the functions of UKRI as detailed in clause 87 to explicitly provide that UKRI may “facilitate, encourage and support knowledge exchange in relation to science, technology, humanities and new ideas.” Amendment 487 defined knowledge exchange for the purposes of the Bill.

Amendments 497 and 498 to clause 91 made explicit that financial support for knowledge exchange is within the functions that Research England may exercise on behalf of UKRI.

#### Amendments made at Report Stage

Several Government amendments were agreed at Report Stage concerning the governance and functions of UKRI and its councils.

#### UKRI Board and functions

Schedule 9 provides that the board of UKRI will comprise members appointed by the Secretary of State. In appointing members of the board, the Secretary of State would be required to have regard to the desirability of board members between them having experience of:

- research into science, technology, humanities and new ideas;
- the development and exploitation of science, technology, new ideas and advancements in humanities; and
- industrial, commercial and financial matters and the practice of any profession.

Amendments 159 and 164 added experience of the charitable sector to the list of criteria to which the Secretary of State must have regard when making appointments to the UKRI board. Lord Prior said that

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<sup>79</sup> Amendments 485, 487, 497, 498, 500, and 508.

these amendments aimed to recognise “the vital contributions of charities to research in the UK”.<sup>80</sup> These amendments mirrored amendments which were put down in Committee – they were welcomed and received cross party support.

Amendments 168 to 171 will create an Executive Committee for UKRI, which was called for in Committee by Baroness Lady Brown and Lord Krebs. The Executive Committee will include the Executive Chairs of each Council (including Innovate UK and Research England), and the Chief Executive Officer and Chief Financial Officer of UKRI. It will also have the power to establish sub-committees.<sup>81</sup> The Government’s policy document states that the Executive Committee “will be a critical forum within UKRI’s governance structure.”<sup>82</sup>

During the Committee stage Peers expressed concern that the Bill was too narrowly focused on economic growth and that, as a result, UKRI might steer away from the pursuit of knowledge for knowledge’s sake. Lord Prior offered reassurances that UKRI “will fund the full range of basic and applied research” and stated that Government amendments 179 to 181 made this clear. He then provided an outline of the amendments:

Amendment 181 explicitly recognises that the advancement of knowledge is an objective of the research councils. Meanwhile, Amendments 179 and 180 clarify that when councils have regard for economic growth in the UK, this may result in both indirect as well as direct economic benefit.<sup>83</sup>

### **UKRI Councils**

Schedule 9 provides that each of UKRI’s councils is to comprise an executive chair and between five and nine ordinary members. The Secretary of State will appoint the executive chair and may also appoint one of the ordinary council members.

Amendment 165 will increase the maximum number of ordinary Council members from nine to twelve; increasing the size of the councils was proposed in Committee. Lord Prior stated that the aim of this amendment was to “allow individual councils greater flexibility for managing the breadth of their activity”.<sup>84</sup>

The power of the Secretary of State to appoint one of the ordinary members of each council was questioned in Committee. Amendment 167 sought to address concerns and will require the Secretary of State to consult the UKRI Chair before making an appointment to the Council. Lord Prior stated that that the Secretary of State’s power to appoint one ordinary member of each council was important and “provides the mechanism to appoint an innovation champion who will sit on both the UKRI board and Innovate UK council.” He added,

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<sup>80</sup> HL Deb 15 March 2017, [c1908](#).

<sup>81</sup> *Ibid.*

<sup>82</sup> Department for Education, [Higher Education and Research Bill: Amendments Tabled Ahead of Lords Report Stage](#), February 2017, p13.

<sup>83</sup> HL Deb 15 March 2017, [cc1908-9](#).

<sup>84</sup> *Ibid.*, [c1908](#).



however, that it was also right that such appointments should be made in consultation with UKRI.<sup>85</sup>

Clause 88 of the Bill ([HL Bill 97](#), as amended in Committee) prescribes the councils that UKRI will have and clause 91 sets out the field of activity of each of the seven research councils. Under the Bill, the Secretary of State may, by regulations, add, omit or change the names of the research councils, and alter their field of activities. Government amendments 176 and 182 provide that the Secretary of State, or UKRI on their behalf, must consult before making such regulations.<sup>86</sup>

Clause 91 of the Bill ([HL Bill 97](#), as amended in Committee) provides that each of the research councils may continue to directly recruit “specialist employees” in that council’s field of activity. Lord Prior explained that Government amendment 178, which was tabled in response to concerns raised during Committee Stage, expanded the Bill’s definition of specialist employee “to include any person with knowledge, experience or specialist skills that are relevant to the council’s field of activity who is employed by UKRI to work in that field of activity.” The Government’s policy document stated that the amendment was intended to clarify that “specialist employees includes all technical staff required for the research endeavour.”<sup>87</sup>

### **Innovate UK**

Clause 92 of the Bill ([HL Bill 97](#), as amended in Committee) sets out the functions of Innovate UK. Clause 92(3) requires it, when carrying out its functions, to have regard to the desirability of:

- a) benefitting (whether indirectly or indirectly) persons carrying on business in the United Kingdom; and
- b) improving quality of life in the United Kingdom.

Government amendment 183 amended clause 92(3) to require that Innovate UK must additionally have regard to “the need to promote innovation by persons carrying on business in the United Kingdom.” The amendment also changed the wording of clause 92(3)(a) to require Innovate UK to have regard to “the need to support...persons engaged in business activities in the UK.”

Introducing the amendment, Lord Prior noted concerns that stronger language was needed in the Bill to protect Innovate UK’s business-facing role and stated that the amendment’s language was “substantially more direct than the previous text.” He further contended that the “Bill could not now be clearer on Innovate UK’s mission to support business innovation.”<sup>88</sup>

Schedule 9 of the Bill provides that UKRI may not do a number of things, including borrow money or enter into joint ventures, except with the consent of the Secretary of State. Government amendment 173 amended this part of schedule 9 to provide that UKRI may do these

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<sup>85</sup> HL Deb 15 March 2017, [c1908](#).

<sup>86</sup> *Ibid*, [c1929](#).

<sup>87</sup> Department for Education, [Higher Education and Research Bill: Amendments Tabled Ahead of Lords Report Stage](#), February 2017, p12.

<sup>88</sup> HL Deb 15 March 2017, [c1926](#).

things but only “in accordance with terms and conditions specified from time to time.” Lord Prior set out the purpose of the amendment:

Government Amendment 183 [sic] is intended to make it clear that UKRI can, for example, enter into joint ventures or form or invest in a company subject to appropriate safeguards and, moreover, that the broad parameters of these activities will be set out clearly in advance and can be iterated as Innovate UK’s portfolio of support develops. I hope that these amendments reassure noble Lords over the Government’s positive intent for business innovation.<sup>89</sup>

## 6.2 Funding of UKRI

Clause 97 of the Bill ([HL Bill 97](#), as amended in Committee) provides that the Secretary of State may make grants to UKRI and make such grants subject to terms and conditions.

### Amendments made at Report Stage

Amendments 185 to 188 made amendments to clause 97 to make clear that when the Secretary of State makes grants to UKRI, the separate funding allocations to the individual councils will still be made and published as per current practice. Lord Prior stated that this would “ensure complete transparency, from this Government and future Governments, on all funding allocations to UKRI and to the research councils, Innovate UK and Research England.”<sup>90</sup>

At Committee Stage a number of peers spoke in favour of the Bill including a firmer form of words that directly refer to the Haldane Principle itself. Government amendments 189 to 191 make changes to clause 99 to enshrine the Haldane Principle in law and require the Secretary of State to have regard to the Principle when making grants or directions to the research councils.<sup>91</sup> Amendment 191 inserted the following definition of the Haldane Principle into the Bill:

The “Haldane principle” is the principle that decisions on individual research proposals are best taken following an evaluation of the quality and likely impact of the proposals (such as a peer review process).

## 6.3 Cooperation between UKRI and the OfS

### Amendments made at Report Stage

Two Government amendments were agreed (amendments 3 and 172) which provided for both UKRI and the OfS to set out in their annual reports how they had cooperated with the other body during the year. Introducing the amendments, Lord Younger stated that the information would include issues such as knowledge exchange or research DAPs.<sup>92</sup>

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<sup>89</sup> HL Deb 15 March 2017, [c1927](#).

<sup>90</sup> Department for Education, [Higher Education and Research Bill: Lords Report Stage – Government Amendments](#), 24 February 2017 Letter from Viscount Younger of Leckie and Jo Johnson MP.

<sup>91</sup> HL Deb 15 March 2017, [c1929](#).

<sup>92</sup> HL Deb 6 March 2017, [cc1114-7](#).

## 7. Comment on the Lords amendments

Commentators said the Higher Education and Research Bill at the end of its Commons stages was still in need of considerable amendment.

Julia Goodfellow, the President of Universities UK, sent a letter to the Guardian saying that the organisation supported the objectives of the Bill but that it retained flaws:

The government was right to introduce the bill. But we need the House of Lords to amend and improve the bill over the coming months to transform it into the legislation our world-class higher education sector needs<sup>93</sup>

On 2 March 2017 GuildHE and Universities UK published [a letter](#) welcoming the Government's amendments tabled ahead of Report Stage:

We are writing to you ahead of Report Stage of the Higher Education and Research Bill to signal our strong support for the suite of amendments tabled by government on 24 February 2017. Taken together, these amendments represent a substantial and positive change to the bill. We are grateful to government for listening to our concerns and to the many compelling and effective arguments put forward by peers which were instrumental in securing these amendments.

Nick Hillman, director of the Higher Education Policy Institute, also welcomed the Government amendments and said that they strengthened and clarified the Bill.<sup>94</sup> However he criticised the Opposition amendment which placed a definition of a university in the Bill saying that the amendment could infringe university autonomy and restrict the flexibility of universities:

changing the proposed legislation to define a university seems ahistorical, while simultaneously placing a lightly pencilled question mark over university autonomy and plonking the system we have in a jar of aspic.<sup>95</sup>

The NUS published a briefing in April 2017 in which they said that they welcomed the amendments:

Amendments made in the House of Lords have made substantial improvements to the Bill in the eyes of students. We urge MPs to give their support to these amendments and to seize this critical opportunity to defend the interests of students and protect the quality of education they receive. Whilst NUS and students across the country still have grave concerns about the direction that the Government's reforms will take the UK's higher education sector

My Lords, I gather from the Public Bill Office that the Bill may have broken all records for the number of amendments tabled during its passage. That is an indication of the interest it generated across the House

Lord Stevenson,  
House of Lords  
([HL Deb 4 April 2017, c1010](#))

<sup>93</sup> "[Lords must fix flaws in higher education and research bill](#)", *Guardian*, 5 December 2016.

<sup>94</sup> "[Comment from HEPI Director on the new HE and Research Bill Government amendments](#)", Higher Education Policy Institute, 24 February 2017.

<sup>95</sup> "[HE and Research Bill: Lords amendment could 'suffocate' universities](#)", *Times Higher Education Supplement*, February 2017

in, we believe that amendments made in the Lords go some way in making a bad Bill better.<sup>96</sup>

The NUS particularly welcomed the amendments which: removed the link between the TEF and fee levels, removed international students from net migration targets, safeguarded degree awarding powers and improved levels of student voter registration.

In March 2017 Universities UK published a detailed briefing in which they said that they supported Lord Hannay's amendment to remove international students from net migration targets.<sup>97</sup>

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<sup>96</sup> NUS, [\*NUS Briefing: Higher Education and Research Bill, Consideration of Lords amendments, House of Commons\*](#), April 2017

<sup>97</sup> Universities UK Briefing Paper, [\*House of Commons Ping Pong: Higher Education and Research Bill Amendment: International students and staff\*](#), March 2017

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