

# HIGHER EDUCATION AND RESEARCH BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Higher Education and Research Bill as brought from the House of Commons on 22 November 2016 (HL Bill 76).

- These Explanatory Notes have been produced by the Department for Education and Department for Business, Energy and Industrial Strategy in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

# Table of Contents

Subject	Page of these Notes
<b>Overview of the Bill</b>	<b>5</b>
<b>Policy background</b>	<b>5</b>
Part 1: The Office for Students	6
Establishment of the Office for Students	6
Powers to grant degrees or convey "university" status	7
Information and choice for students	7
Access and participation	8
Part 2: Other education measures	8
Financial support for students	8
Deregulation of higher education corporations	8
Part 3: Research	9
<b>Legal background</b>	<b>10</b>
Part 1: The Office for Students	10
Part 2: Other education measures	10
Part 3: Research	10
Science and Technology Act 1965	10
Higher Education Act 2004	11
Further and Higher Education Act 1992	11
<b>Territorial extent and application</b>	<b>11</b>
<b>Commentary on provisions of Bill</b>	<b>13</b>
Part 1: The Office for Students	13
Chapter 1: Establishment of the Office for Students	13
Clause 1: The Office for Students	13
Clause 2: General duties	13
Chapter 2: The register of English higher education providers	14
Clause 3: The register	14
Clause 4: Registration procedure	14
Chapter 3: Registration conditions	14
Clause 5: The initial and general ongoing registration conditions	14
Clause 6: The specific ongoing registration conditions	14
Clause 7: Proportionate conditions	15
Chapter 4: Mandatory registration conditions	15
Clause 8: Mandatory ongoing registration conditions for all providers	15
Clause 9: Mandatory transparency condition for certain providers	15
Clause 10: Mandatory fee limit condition for certain providers	16
Clause 11: Duty to publish a list regarding the fee limit condition	16

*These Explanatory Notes relate to the Higher Education and Research Bill as brought from the House of Commons on 22 November 2016 (HL Bill 76)*

Clause 12: Mandatory access and participation plan condition for certain institutions	17
Chapter 5: Other registration conditions	17
Clause 13: Other initial and ongoing registration conditions	17
Clause 14: Public interest governance condition	17
Chapter 6: Enforcement of ongoing registration conditions	18
Clause 15: Power to impose monetary penalties	18
Clause 16: Suspension of registration	18
Clause 17: Suspension: procedure	18
Clause 18: De-registration by the OfS	18
Clause 19: De-registration by the OfS: procedure	19
Clause 21: Refusal to renew an access and participation plan	19
Chapter 7: Voluntary de-registration	19
Clause 22: Voluntary de-registration	19
Chapter 8: Quality and standards	19
Clause 23: Assessing the quality of, and the standards applied to, higher education	19
Clause 24: Quality Assessment Committee	20
Clause 25: Rating the quality and standards of higher education	20
Clause 26: Performance of assessment functions by a designated body	21
Clause 27: Power of designated body to charge fees	21
Chapter 9: Access and participation	21
Clause 28: Power to approve an access and participation plan	21
Clause 29: Duration of a plan	22
Clause 30: Content of a plan: fees	22
Clause 31: Content of a plan: equality of opportunity	22
Clause 32: Variation of a plan	22
Clause 33: Review of decisions on approval or variation	22
Clause 34: Advice on good practice	23
Clause 35: Duty to protect academic freedom	23
Clause 36: Power of Secretary of State to require a report	23
Chapter 10: Powers to give financial support	23
Clause 37: Financial support for registered higher education providers	23
Clause 38: Financial support for certain institutions	23
Clause 39: Financial support: terms and conditions	24
Chapter 11: Powers to grant degrees etc	24
Clause 40: Authorisation to grant degrees etc	24
Clause 41: Supplementary powers with authorisation	24
Clauses 42 and 43: Variation or revocation of section 40 authorisation and other authorisations to grant degrees etc	24
Clause 45: Appeals against variation or revocation of authorisation	25
Clause 46: Validation by authorised providers	25
Clause 47: Validation by the OfS	25
Clauses 49 and 50: Unrecognised degrees	25
Chapter 12: Powers in relation to "university" title	26
Clause 51: Use of "university" in title of institution	26
Clause 52: Unauthorised use of "university" in title of institution etc	27
Clause 53: Revocation of authorisation to use "university" title	27
Clause 54: Revocation of authorisation: procedure	28
Clause 55: Appeals against revocation of authorisation	28
Chapter 13: Powers of entry and search	28
Clause 56: Entering and searching premises with a warrant	28
Chapter 14: Information powers	28
Clause 57: Power to require information from unregistered providers	28
Clause 58: Cooperation and information sharing by OfS	29

*These Explanatory Notes relate to the Higher Education and Research Bill as brought from the House of Commons on 22 November 2016 (HL Bill 76)*

Chapter 15: Publication of information	29
Clause 59: Duty to publish English higher education information	29
Clause 60: Designated body	30
Clause 61: Power of designated body to charge fees	30
Chapter 16: Financial sustainability	31
Clause 62: Duty to monitor and report on financial sustainability	31
Chapter 17: Efficiency studies etc	31
Clause 63: Studies for improving economy, efficiency and effectiveness	31
Chapter 18: Funding of the OfS	31
Clause 64: Registration fees	31
Clause 65: Other fees	32
Clause 66: Retention of fee related income	32
Clause 67: Costs recovery	32
Clause 68: Grants from the Secretary of State	32
Chapter 19: Regulatory framework	33
Clause 69: Regulatory framework	33
Chapter 20: Supplementary functions	34
Clause 70: Secretary of State's power to confer supplementary functions	34
Chapter 21: Directions	34
Clause 71: Secretary of State's power to give directions	34
Chapter 22: Powers of Secretary of State to obtain information or advice	35
Clause 72: Power to require information or advice from the OfS	35
Clause 73: Power to require application-to-acceptance data	35
Clause 74: Use of application-to-acceptance data for research purposes	35
Chapter 23: HEFCE and the DFA	36
Clause 75: Higher Education Funding Council for England	36
Clause 76: The Director of Fair Access to Higher Education	36
Chapter 24: Interpretation	36
Clause 77: Meaning of "English higher education provider" etc	36
Clause 78: Designation of other providers of higher education	36
Clause 79: Other definitions	36
<b>Part 2: Other Education Measures</b>	<b>37</b>
Chapter 25: Financial support for students	37
Clause 80: Power to make alternative payments	37
Clause 81: Section 80: consequential amendments	37
Clause 82: Other amendments relating to financial support	37
Chapter 26: Student complaints regime	38
Clause 83: Qualifying institutions for purposes of student complaints scheme	38
Chapter 27: Deregulation of higher education corporations	38
Clause 84: Higher education corporations in England	38
<b>Part 3: Research</b>	<b>39</b>
Chapter 28: Establishment of United Kingdom Research and Innovation	39
Clause 85: United Kingdom Research and Innovation	39
Clause 86: The Councils of UKRI	39
Chapter 29: Research and innovation functions and role of the Councils	39
Clause 87: UK research and innovation functions	39
Clause 88: Financial support: supplementary provision	39
Clause 89: Exercise of functions by science and humanities Councils	40
Clause 90: Exercise of functions by Innovate UK	40
Clause 91: Exercise of functions by Research England	40
Clause 92: Exercise of functions by the Councils: supplementary	41

*These Explanatory Notes relate to the Higher Education and Research Bill as brought from the House of Commons on 22 November 2016 (HL Bill 76)*

Chapter 30: Strategies and strategic delivery plans	41
Clause 93: UKRI's research and innovation strategy	41
Clause 94: Councils' strategic delivery plans	42
Chapter 31: Funding and directions	42
Clause 95: Grants to UKRI from the Secretary of State	42
Clause 96: Secretary of State's power to give directions to UKRI	42
Clause 97: Balanced funding and advice from UKRI	42
Chapter 32: General functions	43
Clause 98: General duties	43
Clause 99: Power to require information and advice from UKRI	43
Clause 100: Studies for improving economy, efficiency and effectiveness	43
Clause 101: Provision of research services	43
Clause 102: Representing the United Kingdom	43
Chapter 33: Supplementary	44
Clause 103: Predecessor bodies and preservation of symbolic property	44
Clause 104: Amendments to powers to support research	44
Clause 105: Definitions	44
<b>Part 4: General</b>	<b>44</b>
Chapter 34: General	44
Clause 106: Cooperation and information sharing between OfS and UKRI	44
Clause 107: Joint working	44
Clause 108: Advice to Northern Ireland departments	45
Clause 109: Transfer schemes	45
Clause 110: Power to make consequential provision etc	45
Clause 111: Transitional, transitory or saving provision	45
Clause 112: Pre-commencement consultation	45
Clause 113: Regulations	46
Clause 114: Directions	46
Clause 115: General interpretation	46
Clause 116: Minor and consequential amendments	46
Clause 117: Extent	46
Clause 118: Commencement	46
Clause 119: Short title	46
<b>Schedules</b>	<b>46</b>
Schedule 1: The Office for Students	46
Schedule 2: The fee limit	49
Schedule 3: Monetary penalties: procedure, appeals and recovery	50
Schedule 4: Assessing higher education: designated body	51
Schedule 5: Powers of entry and search etc	52
Schedule 6: English higher education information: designated body	52
Schedule 7: Costs recovery: procedure, appeals and recovery	53
Schedule 8: Higher Education Corporations in England	53
Schedule 9: United Kingdom Research and Innovation	56
Schedule 10: Transfer schemes	59
Schedule 11: Minor and consequential amendments relating to Part 1	59
<b>Commencement</b>	<b>60</b>
<b>Financial implications of the Bill</b>	<b>60</b>
Parliamentary approval for financial costs or for charges imposed	60

*These Explanatory Notes relate to the Higher Education and Research Bill as brought from the House of Commons on 22 November 2016 (HL Bill 76)*

<b>Compatibility with the European Convention on Human Rights</b>	<b>61</b>
Related documents	61
<b>Annex A - Territorial extent and application</b>	<b>62</b>
Minor or consequential effects	65
Provisions that apply to England	65
Clauses 1 to 24, 26 to 72, 75, 76, 78 and 79 (Part 1) and schedules 1 to 8: The Office for Students	65
Clauses 83 and 84: Other Education Measures	66
Clause 91: Research Councils	66
Provisions that apply to England and Wales	66
Clauses 80 to 82: Other Education Measures	66
Subject matter and legislative competence of devolved legislatures	67
Part 1: The Office for Students	67
Part 2: Other education measures	68
Part 3: Research	68

## Overview of the Bill

- 1 The Bill brings forward a range of measures which:
  - seek to open up the higher education sector with the aim of encouraging more competition and choice by making it easier for new high-quality providers to start up and achieve degree awarding powers, and subsequently secure university status;
  - create a new student-focused single market regulator, the Office for Students (OfS);
  - put in place risk-based regulation with the aim of that the higher education sector serves its stakeholders: students, employers and taxpayers;
  - seek to recognise and reward high-quality teaching by enabling the OfS to implement a Teaching Excellence Framework;
  - seek to bring greater transparency to the data held by the higher education sector, to inform choice and promote equality of opportunity;
  - create a single research and innovation funding body, United Kingdom Research and Innovation (UKRI).

## Policy background

- 2 Provisions in the Bill were consulted on in the Green Paper "[Higher education: teaching excellence, social mobility and student choice](#)", published in November 2015. The Government's response to the consultation has been published as a White Paper.
- 3 The [Conservative Manifesto](#) of 2015 stated:

*These Explanatory Notes relate to the Higher Education and Research Bill as brought from the House of Commons on 22 November 2016 (HL Bill 76)*

- a. We will ensure that universities deliver the best possible value for money to students: we will introduce a framework to recognise universities offering the highest teaching quality; encourage universities to offer more two-year courses and degree apprenticeships and require more data to be openly available to potential students so that they can make decisions informed by the career paths of past graduates;
  - b. Through the Nurse Review of research councils, we will seek to ensure that the United Kingdom continues to support world-leading science, and invests public money in the best possible way;
  - c. We will ensure the continuing success and stability of our higher education reforms, so that the interests of both students and taxpayers are fairly represented.
- 4 In the policy paper "[Fixing the foundations: creating a more prosperous nation](#)" published in July 2015 the Government committed that:
- a. The Government will introduce a new Teaching Excellence Framework to sharpen incentives for institutions to provide excellent teaching, as currently exist for research;
  - b. To enable the best new providers to compete on a level playing field with established universities, the Government will introduce a clearer and faster route to degree awarding powers for those assessed to offer the best quality education. As part of the review of validation arrangements, the Government will explore options to allow the best providers to offer degrees independently of existing institutions before they obtain degree awarding powers;
  - c. Providers with good quality teaching would be able to raise their fees by the rate of inflation from 2017/18.
- 5 At the [Spending Review and autumn statement](#) in November 2015 the Government stated:
- a. The Government is taking forward the recommendations of Paul Nurse's independent review and, subject to legislation, will introduce a new body - Research UK - which will work across the seven research councils;
  - b. The Government will also look to integrate Innovate UK into Research UK in order to strengthen collaboration between the research base and the commercialisation of discoveries in the business community. Innovate UK will retain its clear business focus and separate funding stream.
- 6 The Higher Education and Research Bill will enable the Government to meet these commitments.

## Part 1: The Office for Students

### Establishment of the Office for Students

- 7 The current higher education regulator, the Higher Education Funding Council for England was set up as a Government funding body in the Further and Higher Education Act 1992. At the time it was designed university competition was limited, student numbers were controlled and the majority of university teaching was funded by public grant. Reports by the Higher Education Commission in 2013 and Universities UK's in 2015 (the Gaskell Report) have suggested that with the introduction of student tuition fees and a diminished reliance on public grant funding, the Higher Education Funding Council for England's role, purpose and powers have become outdated.

- 8 The Higher Education Act 2004 created a new office-holder, the Director of Fair Access to Higher Education, whose role was to approve and monitor plans made by institutions in England that wish to set fees higher than the basic amount. His or her office was informally known as the Office for Fair Access.
- 9 This Bill will create a new non-departmental public body, the Office for Students (OfS), which will become the main regulatory body, operating at arm's length from Government in line with the existing regulatory regime, and with statutory powers to regulate providers of higher education in England. The OfS will have the duty of promoting quality, greater choice and opportunities for students. It will also have a duty to encourage competition and value for money in the provision of higher education and the need to promote equality of opportunity in access to and participation in higher education. These duties will ensure the OfS will focus on fostering a more competitive system with the aim of driving up quality and outcomes for students and taxpayers, while maintaining the current protections for academic freedom and institutional autonomy.
- 10 The regulatory functions of the Higher Education Funding Council for England and the statutory powers of the Director of Fair Access to Higher Education will transfer to the OfS. The Higher Education Funding Council for England and the Office for Fair Access, which supports the Director of Fair Access to Higher Education, will then be wound up.
- 11 To provide assurance for students, the OfS will establish and maintain a register of higher education providers in England. The register will include, among others, all providers whose students can receive student support or have a Tier 4 licence for international students.
- 12 Other providers offering accredited higher education courses can join the register on a voluntary basis in return for compliance with the student complaints scheme of the Office of the Independent Adjudicator for Higher Education (OIA) but will not receive access to public funding and / or student support.

## **Powers to grant degrees or convey "university" status**

- 13 The Bill will introduce a range of reforms to the way in which providers can award their own degrees ("degree awarding powers").
- 14 The provisions will enable a risk-based approach which will allow all predominantly degree-level providers to make a case for degree awarding powers with the OfS. Providers who meet quality expectations will be able to secure full degree awarding powers more quickly, after three years of operation. Provisions in the Bill will allow the OfS to vary degree awarding powers which will enable providers to secure probationary degree awarding powers when they first start operating, subject to extensive monitoring and some restrictions on scope. The provisions will enable degree awarding powers to be granted on a time-limited basis for all new holders in the first instance, with a view to indefinite degree awarding powers for all in due course. The provisions will also enable more flexible degree awarding powers: up to bachelor-level only or in a limited range of subjects, and it will enable a more streamlined process for conveying degree awarding powers and university status by transferring responsibility for granting them from the Privy Council to the OfS.
- 15 There will be explicit powers to revoke degree awarding powers and university title, the circumstances and criteria for which will be set out in government guidance.

## **Information and choice for students**

- 16 The Bill will make provision for a quality rating scheme. This will be delivered through the Teaching Excellence Framework (TEF), as promised in the [Conservative Manifesto](#) of 2015, to provide clear information to students about where the best higher education provision can be

found and with the intention of driving up the standard of teaching in all universities. The Teaching Excellence Framework is intended to provide clear, understandable information to students about where teaching quality is outstanding and to establish a robust framework for gathering information to measure teaching in its broadest sense. The Bill will also allow fee caps to be set at differing levels based on a provider's TEF award, within an overall sector floor and cap controlled by Parliament.

## Access and participation

- 17 The Government has two specific goals on access and participation in higher education: to double the proportion of people from disadvantaged backgrounds entering university in 2020 compared to 2009, and to increase the number of black and minority ethnic students going to university by 20% by 2020.
- 18 This Bill will introduce a transparency duty requiring higher education providers to publish data on the backgrounds of their applicants to make their admissions processes clearer. It will also require the OfS to promote fair access and success for students from disadvantaged backgrounds alongside choice and competition. There will be an OfS executive board member with responsibility for fair access, whose role will be enshrined in law.
- 19 The OfS will not set targets for access and success. Instead, in a continuation of the way that the Director of Fair Access to Higher Education has operated, it will work with institutions to ensure they are doing as much as they can to make real progress on these issues.
- 20 The OfS will have the same duties to protect academic freedom and institutional autonomy over admissions as the current Director of Fair Access to Higher Education function, in the performance of its duties around access and participation, and success for students from disadvantaged backgrounds.

## Part 2: Other education measures

### Financial support for students

- 21 The interest on student loans could deter some prospective students who feel unable to use interest-bearing loans for religious reasons. To address these concerns, the Coalition Government consulted on a non-interest bearing alternative model of student finance. The consultation was restricted to student finance in England.
- 22 The Government response to that consultation document set out the intention to introduce primary legislation to allow for alternative student finance to be offered alongside current student loans. Payment and repayment levels for this alternative student finance would be equivalent to those set for users of current student loans.
- 23 The 2015 White Paper re-affirmed the Government's intention to introduce an alternative student finance product which would be equivalent to a student loan but would avoid the use of interest.
- 24 Existing legislation only allows for regulations to offer loans and grants to support students of higher and further education. This Bill will extend that power so that regulations can provide an alternative model of student finance alongside current student loans. Full details will be set out in secondary legislation.

### Deregulation of higher education corporations

- 25 Higher education corporations originated in 1992 from local authority-funded higher education providers. Since then additional higher education corporations have been created by further education corporations transferring into the higher education sector.

- 26 Once removed from local education authority control in 1992, the new higher education corporations had to take on responsibility for their own governance, management and staffing. As they were now entities with a new type of corporate status, it was considered necessary to set down a detailed legislative framework within which they would operate.
- 27 This Bill will deregulate the legislative arrangements governing higher education corporations, with the aim of placing them on a more equal footing with other providers of higher education incorporated under different constitutional arrangements.

## Part 3: Research

- 28 The Bill seeks to streamline the current research and innovation landscape by bringing together the nine existing research and innovation funders, including the seven research councils, Innovate UK and the research and knowledge exchange functions currently performed by the Higher Education Funding Council for England whilst preserving the strengths of individual disciplines and providing legislative protection for dual support funding of research.
- 29 In December 2014 the Government published "[Our Plan for Growth: Science and Innovation](#)", a joint HM Treasury and Department for Business, Innovation and Skills strategy to support United Kingdom research and innovation. Linked to the strategy was a commission to Sir Paul Nurse, then the President of the Royal Society, to undertake a review with the research councils to: "look at how [the] councils can evolve to support research in the most effective ways by drawing on a range of evidence, including international comparisons and the views of the scientific and business communities".
- 30 The 2015 [Conservative Manifesto](#) pledged to make use of Sir Paul's findings which were published in November 2015. At the 2015 Spending Review Government reiterated its manifesto commitment to support the Nurse recommendations and indicated it would consider the inclusion of Innovate UK. A consultation on this was launched in February 2016.
- 31 These initiatives, complemented by the [November 2015 Green Paper consultation](#), form the basis of the proposals in this section of the Bill. The Bill is based on the following key principles:
  - a. The aim of to strengthening strategic thinking on cross cutting priorities and developing a more agile and responsive research and innovation funding system;
  - b. The aim of retaining the world class strengths of the current system, including the Haldane principle, the dual support system and Innovate UK's distinct business facing focus;
  - c. The importance of subsidiarity, with decisions needing to be taken at the lowest effective level and leaders in particular fields of activity given full responsibility for decisions in their areas; and
  - d. The aim of reducing bureaucracy, freeing up research and innovation leaders to focus on strategic decision-making.
- 32 The Bill provides for the formation of a single executive non-departmental public body operating at arm's length from Government. As outlined in the Government's White Paper "Success as a Knowledge Economy: Teaching Excellence, Social Mobility & Student Choice", published on 16 May 2016, this new body, UKRI, will bring together the seven research councils and integrate Innovate UK while retaining Innovate UK's distinctive business focus and separate funding stream. In addition it will integrate the research functions currently

performed by the Higher Education Funding Council for England, maintaining its hypothecated funding streams and protections for the dual support system - in England.

- 33 There will be nine “Councils” within UKRI – seven of which will represent the Research Councils - which will have autonomy on scientific, innovation and research decision making, with delegated budgets. UKRI will delegate functions to the Councils, with each Council responsible for the strategic leadership and research and scientific decisions in their area. Councils will be led by Executive Chairs, appointed by Ministers on the advice of UKRI’s board and reporting to UKRI’s CEO. The Executive Chair will each have significant expertise in their particular fields of activity (e.g. medical research, innovation). The Executive Chair will discharge the implementation of the Research England Council decisions on a day-to-day basis. UKRI’s board will have responsibility for leading overall strategic direction and cross-cutting decision making, including managing funds with cross-disciplinary impact.

## Legal background

- 34 The following significant legislation is referenced by this Bill. Explanation on how previous legislation is referenced, if required, is given below or in the commentary on provisions in the Bill.
- a. Higher Education Act 2004
  - b. Teaching and Higher Education Act 1998
  - c. Further and Higher Education Act 1992
  - d. Science and Technology Act 1965
  - e. Education Reform Act 1988
  - f. Commissioners for Revenue and Customs Act 2005
  - g. Education (Scotland) Act 1980

## Part 1: The Office for Students

- 35 The relevant legal background is explained in the policy background section of these notes.

## Part 2: Other education measures

- 36 This Bill will amend existing primary legislation, the Teaching and Higher Education Act 1998, which governs financial provision for higher and further education. The Bill will create a power to offer, through secondary legislation, an alternative model of student finance alongside current student loans.

## Part 3: Research

- 37 This Bill will draw together nine existing bodies into a single new non-departmental public body, UKRI.
- 38 The legislation currently used to empower these nine bodies, to transfer funds from Parliament, via the Secretary of State, to them and to coordinate their activity with government is as follows:

### Science and Technology Act 1965

- 39 The Science and Technology Act 1965 provided a framework for the funding of scientific research including the social sciences. The Act contains other provisions, including

empowering the Secretary of State to fund research through other bodies. These will be maintained.

- 40 The following bodies were designated as research councils under the Science and Technology Act 1965:
- a. Medical Research Council
  - b. Natural Environment Research Council
  - c. Engineering and Physical Sciences Research Council
  - d. Economics and Social Research Council
  - e. Biotechnology and Biological Research Council
  - f. Science and Technology Facilities Research Council
  - g. Innovate UK (legally: The Technology Strategy Board)

### Higher Education Act 2004

- 41 A further research council, the Arts and Humanities Research Council was formed under the Higher Education Act 2004.

### Further and Higher Education Act 1992

- 42 The Higher Education Funding Council for England was established under the Further and Higher Education Act 1992 as a funding body. It has functions in both the teaching and research spheres.

## Territorial extent and application

- 43 Clause 117 sets out the territorial extent of the Bill, that is the jurisdictions of which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect, disregarding effects that are minor or consequential. The commentary on individual provisions of the Bill includes information on their extent and application.
- 44 All provisions in the Bill extend to England and Wales and apply to England.
- 45 In the view of the Government of the United Kingdom, the Bill will require legislative consent on the following provisions:
- Provisions on rating the quality of, and standards applied to, higher education. This will be needed from all of the Devolved Assemblies;
  - Amendments to existing legislation relating to the power to make alternative payments. This will be needed from the Welsh Assembly;
  - Amendments to powers to support research. This will be needed from all of the Devolved Assemblies;
  - Provisions on joint working of authorities including authorities in Scotland, Wales and Northern Ireland. This will be needed from all of the Devolved Assemblies;
  - Provisions on commencement of the Bill. This will be needed from all of the Devolved Assemblies.

*These Explanatory Notes relate to the Higher Education and Research Bill as brought from the House of Commons on 22 November 2016 (HL Bill 76)*

- 46 The provisions on the following topics will extend and apply to Scotland and Northern Ireland:
- Research councils and the establishment of UKRI. This is reserved so no legislative consent is needed.
  - Enabling the Secretary of State to obtain application-to-acceptance data and sharing that with authorised researchers. While the application is not minor and consequential in terms of the English Votes for English Laws process, provisions are not for devolved purposes, the legislative competence of the Devolved Assemblies is not altered and the executive competence of the Welsh, Scottish and Northern Irish Ministers is not altered. Therefore no legislative consent motion is needed.
- 47 The provisions on the following topic will extend, but not apply to, Scotland:
- Some amendments to existing legislation relating to unrecognised degrees;
- 48 The provisions on the following topics will extend to Scotland and Northern Ireland but will not apply to them:
- Some amendments to existing legislation relating to powers in relation to the unauthorised use of "university" title;
  - Amendments to existing legislation, relating to the power to make alternative payments;
  - General provisions (e.g. to make consequential amendments by regulations);
- 49 The provisions on the following topics will apply to Wales:
- Research councils and the establishment of UKRI. This is reserved so no legislative consent is needed;
  - Enabling the Secretary of State to obtain application-to-acceptance data and sharing that with authorised researchers. As flagged above, no legislative consent motion is needed;
  - Amendments to existing legislation, relating to the power to make alternative payments. We expect legislative consent to be needed.
- 50 In addition, consequential amendments to other legislation required as a result of the Bill's provisions may extend or apply beyond England. Any amendment, repeal or revocation made by the Bill has the same extent within the United Kingdom as the enactment amended, repealed or revoked. Clauses 50(18) and 117(3) and paragraph 27(2) Schedule 12 provide for certain amendments to extend or be extended to the Channel Islands, Isle of Man or British overseas territories.

# Commentary on provisions of Bill

## Part 1: The Office for Students

### Chapter 1: Establishment of the Office for Students

#### Clause 1: The Office for Students

- 51 This clause states that a new body will be established with the name "The Office for Students", which is referenced as "OfS" in the Bill and in these Explanatory Notes and that, as a body corporate, it will be a separate entity with its own legal personality and ability to have specific powers and duties.
- 52 This provision forms part of the law of England and Wales.

#### Clause 2: General duties

- 53 This clause sets out matters to which the OfS must have regard when performing its functions. These are:
- a. The need to promote quality, greater choice and opportunities for students in the provision of higher education by English higher education providers (subsection (1)(a)).
  - b. The need to encourage competition between higher education providers where that is in the interests of students and employers (subsection (1)(b)).
  - c. The need to promote value for money in the provision of higher education by English providers (subsection (1)(c)).
  - d. The need to promote equality of opportunity in connection with access to and participation in higher education offered by English providers (subsection (1)(d)).
  - e. The need to perform its functions in an efficient, effective and economic way (subsection (1)(e)).
  - f. The need to take into consideration the principles of best regulatory practice. The principles reflect those identified by the Better Regulation Task Force in 1997, and provide that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent, and should be targeted only at cases in which action is needed.
- 54 Subsection (2) provides that the Secretary of State may issue guidance to the OfS about how to perform its functions. The guidance can cover the matters listed in subsection (1) but is not limited to them. The OfS must have regard to that guidance.
- 55 Subsections (3) to (5) set out limitations that apply to the content of guidance issued by the Secretary of State.
- 56 Subsection (3) requires the Secretary of State to have regard to protecting academic freedom. This includes the freedom of institutions to choose the content, teaching, supervision and assessment of their courses (paragraph ((3)(a)), who teaches them ((3)(b)) and arrangements for admitting students ((3)(c)).
- 57 Subsection (4) allows guidance to refer to particular courses but does not allow it to refer to

parts of courses (paragraph ((4)(a))), their content ((4)(b)), how they are taught ((4)(c)), who teaches them ((4)(d)) or admissions arrangements for students ((4)(e)).

- 58 Subsection (5) provides that, where guidance relates to particular courses of study; it cannot guide the OfS to perform any function in such a way that would require providers to offer particular courses, or prohibit them from offering particular courses.
- 59 Finally, subsection (6) confirms that guidance cannot be targeted at individual higher education institutions: it must apply to institutions generally or categories of institutions described in the guidance.
- 60 This provision forms part of the law of England and Wales.

## **Chapter 2: The register of English higher education providers**

### **Clause 3: The register**

- 61 This clause sets out the OfS' responsibility with regards to the new register of providers of higher education, including how applications are made. The register is a list of all providers of English higher education. Providers that choose not to register will not be considered to be providers of higher education, nor be subject to the rules and regulations of registration or be able to access the benefits of registration (e.g. access to student support funding or grant funding).
- 62 Registration is voluntary. Subsection (3) lists the only criteria that make a provider eligible to be registered. There are initial and ongoing requirements of registration that providers must (continue to) meet to be on the register. These are set out in subsection (7).
- 63 Subsection (6) allows the Secretary of State to decide, through regulations, the information that the register must include for each provider. Subsection (9) states that the OfS must make the information contained in the register publically available.
- 64 This provision forms part of the law of England and Wales.

### **Clause 4: Registration procedure**

- 65 This clause sets out the information that the OfS must give to institutions when registering or refusing to register them.
- 66 This provision forms part of the law of England and Wales.

## **Chapter 3: Registration conditions**

### **Clause 5: The initial and general ongoing registration conditions**

- 67 This clause sets out the OfS' responsibility to set, manage and publish the conditions different types of providers must meet to become registered and stay registered.
- 68 It says that in some cases, if it appears appropriate to do so, for instance where there is substantive change, the OfS must consult relevant representative or provider governing bodies before changing the conditions.
- 69 This provision forms part of the law of England and Wales.

### **Clause 6: The specific ongoing registration conditions**

- 70 This clause gives the OfS the ability to impose, vary and remove tailor-made ongoing registration conditions on a particular institution.
- 71 It lists the information the OfS must give to that institution before making a change.

72 It sets out that this information on changes to conditions must include information on the appeals process and that changes to conditions will not apply during the period when an appeal could be brought, unless the provider confirms that no appeal will be brought.

73 This provision forms part of the law of England and Wales.

#### Clause 7: Proportionate conditions

74 This clause sets out that registration conditions are minimal and proportionate to the OfS' risk assessment of each provider, and must be kept under review.

75 Subsection (2) explains this risk as the risk of the provider not complying with its registration conditions.

76 This provision forms part of the law of England and Wales.

### Chapter 4: Mandatory registration conditions

#### Clause 8: Mandatory ongoing registration conditions for all providers

77 This clause sets out the ongoing conditions of registration that the OfS must include for every registered provider.

78 The OfS will allocate public money to some higher education providers. It needs the ability to assure itself, Ministers and Parliament that this money is being spent for the purposes for which Parliament voted it and is being properly accounted for. Even where the OfS provides no direct funding to a provider, it will need to assure itself and the public that the provider is financially sustainable and governed appropriately, particularly if students at the institution are eligible for student finance.

79 Subsection (1)(a) sets out that one of these conditions is that higher education providers must tell the OfS when they become aware of any necessary changes to the information held about them on the register.

80 Subsection (1)(b) requires the OfS to place a duty on higher education providers to supply such information as the OfS needs to perform its functions. This mirrors an existing Higher Education Funding Council for England provision and will allow the OfS to get the information it needs from providers. Typically, this will include details of the income, borrowing, spending and liabilities of providers.

81 Subsection (1)(c) requires the higher education providers to provide a designated body with the information that it needs to perform its duty, as set out in clause 59.

82 This provision forms part of the law of England and Wales.

#### Clause 9: Mandatory transparency condition for certain providers

83 Subsection (1) explains that the OfS must ensure that a transparency condition is an ongoing condition of registration for a prescribed set of higher education providers.

84 Subsection (2) sets out the details of the transparency condition. Prescribed registered higher education providers are required by the OfS to publish and provide to the OfS information in relation to the number of applications received, offers made and accepted, and the number of students who go on to complete their courses.

85 Subsection (3) sets out that the OfS may request the information in each of the categories listed in subsection (2) be broken down by gender, ethnicity and socio-economic background.

86 Subsection (4) allows the Secretary of State to establish, through regulations, which type of higher education provider will be required to comply with this condition.

87 This provision forms part of the law of England and Wales.

### Clause 10: Mandatory fee limit condition for certain providers

- 88 Subsection (1) requires the OfS to ensure that the ongoing registration conditions of each registered higher education provider of a prescribed description (i.e. the registered higher education providers are to be set out in regulations made by the Secretary of State) include a fee limit condition.
- 89 A fee limit condition is a condition that requires the governing body of the provider to secure that "regulated course fees" do not exceed the fee limit (subsection (2)). Schedule 2 sets out how fee limits are determined.
- 90 The "regulated course fees" to which fee limits apply, are fees which are paid by a "qualifying person" where that person undertakes a "qualifying course" (subsection (3)). Such a person excludes an international student and is a person who falls within a prescribed description (i.e. persons set out in regulations to be made by the Secretary of State) (subsection (4)). A "qualifying course" means a higher education course and is also the subject of regulations to be made by the Secretary of State (subsection (6)), and that regulation making power is limited by the restrictions in subsection (7). In addition a "higher education course" to which a fee limit condition applies, can not include any postgraduate course other than a course of initial teacher training (subsection (9)).
- 91 All of the regulations made under this clause are subject to the negative resolution procedure (see clause 113, subsection (3)).
- 92 Section 24 of the Higher Education Act 2004, in broad terms, provides for fee limits of the higher and basic amounts to be imposed on relevant institutions receiving certain grant funding (and depending on whether or not the institution had an approved plan) in respect of qualifying courses and persons. In broad terms, clause 10 provides for fee limits to be imposed on a registered higher education provider of a prescribed description, in respect of a qualifying courses and persons and is subject to the fee limit provisions in schedule 2 which make provision including for the fee limits not only of the higher and basic amount and whether or not a provider has an access and participation plan, but also additional fee limits of sub-level and floor amounts, and the linking of the fee limits in the schedule to whether or not it has a quality and standards rating under clause 25, and if it does have a rating, what level of rating that is.
- 93 This provision forms part of the law of England and Wales.

### Clause 11: Duty to publish a list regarding the fee limit condition

- 94 Subsection (1) places a requirement on the OfS to publish a list in each year of registered higher education providers who have a fee limit as a condition of registration, and what fee limit applies to which provider (Schedule 2 makes provision for different fee limits to be determined) for fees in connection with each qualifying course provided by the provider in respect of each relevant academic year.
- 95 Subsection (2) defines a relevant academic year.
- 96 Subsection (3) requires the OfS to send a copy of the published list to the Secretary of State who must, in turn, lay it before Parliament; and subsection (4) is a power for the Secretary of State to prescribe by regulations the date by which the list must be published by the OfS. The regulations in subsection (4) are subject to the negative resolution procedure (clause 107, subsection (3)).
- 97 This provision forms part of the law of England and Wales.

## Clause 12: Mandatory access and participation plan condition for certain institutions

- 98 This clause allows a provider to request an access and participation plan as an initial or ongoing requirement of registration, where the provider will also be subject to a fee limit condition and wishes to access the higher fee limits available to those with access and participation plans. Clauses 28 to 33 set out the requirements for the approval and content of the plans.
- 99 The governing body of a provider will not be considered to have failed to deliver a requirement of its access and participation plan if it has taken all reasonable steps to meet the requirements.
- 100 This provision forms part of the law of England and Wales.

## Chapter 5: Other registration conditions

### Clause 13: Other initial and ongoing registration conditions

- 101 This clause lists what the conditions of initial and ongoing registration may relate to, however this list is not exhaustive.
- 102 Some of these conditions may require payment of registration fees or may relate to public interest governance. Further details are in clauses 61, 64, 65 and 14 respectively.
- 103 One of the conditions may relate to the level of quality of higher education at higher education providers. The OfS will have a duty to make arrangements for the assessment of the quality of higher education, which is set out in clause 23.
- 104 Under subsection (1)(c) a condition may relate to registered higher education institutions having in place a "student protection plan" which has been approved by the OfS. Subsection (2) defines a student protection plan as a plan designed to protect students if an event specified by the OfS occurs (e.g. a course closure).
- 105 The student protection plan could:
- a. ensure providers have considered what they would do to help students facing, for example, course closure or course change situations;
  - b. be made explicitly known to the student, providing them with clear and accessible information on how they will be supported by their provider if the course they are studying needs to close or changes significantly.
- 106 This provision forms part of the law of England and Wales.

### Clause 14: Public interest governance condition

- 107 This clause defines a "public interest governance condition" for the purposes of clause 13 and is intended to ensure that certain higher education providers will continue to adhere to a set of public interest principles. This is currently being monitored by the Privy Council, but in the new system this role would move to the OfS, to be monitored and enforced as a condition of registration.
- 108 The OfS would have to develop and publish a new list of principles. The principles must be those that the OfS considers will help to ensure that higher education providers perform their functions in the public interest, and the list must include the principle of academic freedom for staff. Before determining or revising the list, the OfS must consult bodies representing the interests of English higher education providers which appear to the OfS to be concerned, the Secretary of State and such other persons as the OfS considers appropriate.

109 The OfS may impose, as an initial and / or ongoing condition of registration, a requirement for the governing documents of a provider to be consistent with the principles in the list applicable to that provider. The list may include different principles for different descriptions of higher education providers. In practice, we envisage that the OfS will require compliance with the full list as an initial and / or ongoing registration condition for any providers in receipt of public funding. This would mirror current arrangements. The OfS may require the governance documents of other providers to be consistent with parts of the list when setting initial and/or ongoing registration conditions.

110 This provision forms part of the law of England and Wales.

## Chapter 6: Enforcement of ongoing registration conditions

### Clause 15: Power to impose monetary penalties

111 This clause, which enables the OfS to impose monetary penalties on providers that do not comply with conditions of registration, is self-explanatory.

112 This provision forms part of the law of England and Wales.

### Clause 16: Suspension of registration

113 This clause sets out that the OfS may suspend, rather than just remove, an institution from the register as a result of non-compliance. Subsection (2)(a) requires the OfS to specify the elements of registration for which a suspended provider is not eligible.

114 Subsection (2)(b) is self-explanatory.

115 This provision forms part of the law of England and Wales.

### Clause 17: Suspension: procedure

116 This clause sets out the information that the OfS must give to an institution it plans to suspend or is suspending. The information covers the nature of the suspension, any purposes for which it will not treat the institution as suspended, any remedial conditions and how representations or an appeal may be made.

117 Subsection (4) sets out that the OfS must consider any representations when making a decision to suspend. Subsection (9) sets out that a suspension cannot take when it is still possible for the institution to appeal, or if it had appealed.

118 This provision forms part of the law of England and Wales.

### Clause 18: De-registration by the OfS

119 The OfS must remove a provider from the register when it becomes aware that the provider has ceased to provide higher education.

120 The OfS may remove a provider from the register when:

- a. A failure to meet ongoing conditions of registration resulting in a monetary penalty (clause 15) or suspension (clause 16) reoccurs or continues, or there is a failure to comply with another ongoing condition.
- b. A monetary penalty or suspension is not considered by the OfS to be sufficient sanction for a failure to comply with an ongoing condition of registration, irrespective of whether or not the OfS has imposed, or formed an intention to impose, such sanction.

121 Subsection (5) sets out that the OfS can put transitional arrangements in place, to enable a de-registered provider to be treated as if it were still registered (for example to ensure existing students at the institution can access student support).

122 This provision forms part of the law of England and Wales.

### Clause 19: De-registration by the OfS: procedure

123 This clause, that sets the procedure the OfS must go through to de-register a provider, is self-explanatory.

124 This provision forms part of the law of England and Wales.

### Clause 20: De-registration: appeals

125 This clause sets out the appeals process that providers and the OfS are required to follow in the event that OfS decides to remove a provider from the register.

126 This provision forms part of the law of England and Wales.

### Clause 21: Refusal to renew an access and participation plan

127 This clause sets out a power of the OfS in circumstances where a registered higher education provider is required as a condition of registration to have an access and participation plan and fails, in the view of the OfS, to comply with a requirement of that plan or with the registration condition imposing limits on the fees it can charge students.

128 In those circumstances the OfS is able to refuse to approve a new plan once the current one comes to an end. That refusal may last for a period that the OfS specifies in a notice (subsection (2)). The Secretary of State may make regulations about the matters the OfS should take into account in deciding whether or not to refuse, the procedure it should follow when giving notice of refusal and the effect that the notice has (subsection (3)).

129 These regulations must also provide for a review process before any decision to refuse becomes final. Subsection (4) imposes that requirement and specifies further detail about what regulations must contain about the review procedure.

130 This provision forms part of the law of England and Wales.

## Chapter 7: Voluntary de-registration

### Clause 22: Voluntary de-registration

131 This clause sets out that the OfS must remove an institution from the register if a provider applies to be removed. The OfS can set the application process and can put transitional arrangements in place, to enable a de-registered provider to be treated as if it was still registered, for example to ensure existing students at the institution can continue to access student support.

132 This provision forms part of the law of England and Wales.

## Chapter 8: Quality and standards

### Clause 23: Assessing the quality of, and the standards applied to, higher education

133 Subsection (1) gives the OfS a power to assess, or make arrangements for the assessment of the quality of, and the standards applied to, higher education by English higher education providers. This carries across the effect, with appropriate modification, the substance of existing legislative provisions in the Further and Higher Education Act 1992, section 70 (1)(a).

134 Subsection (2) places a duty on the OfS to assess, or make arrangements for the assessment of the quality of, and the standards applied to, higher education, provided by:

- a. Institutions who have applied to be registered for the purposes of determining whether any such institution meets any initial registration condition in respect of the quality of or standards applied to higher education provided by them; and
- b. registered higher education providers for the purposes of determining whether they continue to meet any ongoing registration conditions relating to the quality of, or standards applied to, higher education provided by them.

135 Subsection (3) refers to the definition of "standards" in clause 13(1)(a) as standards used by a higher education provider to ascertain the level of achievement attained by a student undertaking a higher education course provided by it.

136 This provision forms part of the law of England and Wales.

### Clause 24: Quality Assessment Committee

137 Subsection (1) places a duty on the OfS to establish a committee, called the Quality Assessment Committee. The committee has the function of giving advice to the OfS on the exercise of its functions under clause 23 and such other functions as the OfS confers on it (subsection (2)). The role of this committee is similar to the Committee established by the Higher Education Funding Council for England known as the Quality, Accountability and Regulation Strategic Advisory Committee created under section 70(1)(b) of the Further and Higher Education Act 1992.

138 When a body is designated under schedule 4 to perform functions under clause 23 the, Quality Assessment Committee also gains a function of giving advice to the OfS on the exercise by the designated body of those functions (subsection (3)).

139 This clause makes provision for the composition of the Committee: for example, the experience of its members; and what the OfS must have regard to when appointing members; and provides that the majority of its members must not be members of the OfS (subsections (4) - (6)). Subsection (7) applies schedule 1 to the Quality Assessment Committee, as it applies to other committees established by the OfS under paragraph 8 of that schedule.

140 This provision forms part of the law of England and Wales.

### Clause 25: Rating the quality and standards of higher education

141 This clause gives the OfS a power to make arrangements for a scheme to give ratings to English, and where appropriate consent is given, Welsh, Scottish and Northern Irish higher education providers regarding the quality of, and the standards applied to, the higher education provided by them. Higher education providers are not obliged to apply for such a rating. The OfS will be able to use this power to run the Teaching Excellence Framework which will assess higher education providers according to the quality of the teaching that they provide.

142 Subsections (2) and (3) define appropriate consent as being given by Welsh or Scottish Ministers or the Department for the Economy in Northern Ireland, as applicable, when they give their consent with regard to higher education providers in the respective Devolved Administrations.

143 This provision forms part of the law of the United Kingdom.

## Clause 26: Performance of assessment functions by a designated body

144 This clause makes provision for a body to be designated to carry out the assessment functions of the OfS under clause 23. Where a body is designated to perform the assessment functions, those functions do not cease to be exercisable by the OfS (subsection (3)).

145 Part 1 of Schedule 4 sets out the detail of the designation process and Part 2 of Schedule 4 makes provision for oversight of the designated body by the OfS. For example, the OfS is required to report to the Secretary of State on how the designated body has performed its designated functions and whether it should continue to be designated.

146 Subsections (4) to (7) make provision for the OfS by notice (only in respect of information which is required by the OfS for the purposes of the performance of any of its functions) to require a designated body to provide it with information which the body holds for the purpose of the performance of the assessment functions. The OfS may enforce the duty to comply with the notice in civil proceedings for an injunction.

147 This provision forms part of the law of England and Wales.

## Clause 27: Power of designated body to charge fees

148 This clause enables a body designated under Schedule 4 to charge fees to higher education providers for carrying out the assessment functions under clause 23. The fees charged may be to cover the costs of

- a. the assessment of quality and standards in relation to English higher education providers under clause 23(1)
- b. the assessment of quality and standards in relation to institutions who have applied to be registered, for the purposes of determining whether they satisfy any initial registration condition on quality and standards
- c. the assessment of quality and standards in relation to registered higher education providers for the purposes of determining whether they meet any ongoing registration condition on quality and standards.

149 Subsection (2) to (6) provide that, for each category of fee above, fees may be calculated by reference to costs incurred in the performance of the functions under the relevant subsection of clause 23, or the designated body's general functions, whether or not they relate to the provider being charged, and that the overall fees charged in a 12 month period must not exceed the total costs incurred by the designated body in carrying out these functions over that period.

150 The designated body is required to publish a statement of the amount of fees which is charges under this clause, and to publish revised statements if the fees change or the way they are calculated changes (subsections (8) and (9)).

151 This provision forms part of the law of England and Wales.

## Chapter 9: Access and participation

### Clause 28: Power to approve an access and participation plan

152 This clause provides that an English higher education institution may apply to the OfS for its approval of an access and participation plan. The purpose of the plan will be to satisfy an initial or ongoing registration condition relating to access and participation in higher education imposed under clause 12 (subsection (1)).

153 The OfS can approve a proposed plan (subsection (3)) and issue guidance to institutions about the matters it will take into account in considering whether to approve plans (subsection (4)).

The Secretary of State can make regulations which deal with the procedure for approval, including the matters that the OfS can take into account for approval purposes and publication requirements (subsections (5) to (7)).

154 This provision forms part of the law of England and Wales and carries across the effect, with appropriate modification, of the substance of existing legislative provisions.

### Clause 29: Duration of a plan

155 This clause states that a plan must specify the length of time for which it will last (subsection (1)). That period must not exceed a maximum length that the Secretary of State can fix in regulations (subsection (2)).

156 This provision forms part of the law of England and Wales and carries across the effect, with appropriate modification, of the substance of existing legislative provisions.

### Clause 30: Content of a plan: fees

157 This clause provides that access and participation plans must the maximum amount of tuition fees the provider will charge for each course to which a fee limit applies, during each academic year for which the plan will be in force.

158 Where the institution has been given a high level quality rating the fee limits cannot exceed the higher amount (determined under the arrangements set out in sub-paragraph 2 of schedule 4). If it does not have that rating then the fees cannot exceed an appropriate intermediate (or "sub-level") amount (also set under the same paragraph of schedule 2).

159 This provision forms part of the law of England and Wales and carries across the effect, with appropriate modification, of the substance of existing legislative provisions.

### Clause 31: Content of a plan: equality of opportunity

160 This clause sets out that access and participation plans must include any provisions relating to the promotion of equality of opportunity which are required by regulations made by the Secretary of State, together with additional content (subsection (1)).

161 This provision forms part of the law of England and Wales and carries across the effect, with appropriate modification, of the substance of existing legislative provisions.

### Clause 32: Variation of a plan

162 This clause states that regulations made by the Secretary of State can allow for plans approved by the OfS to be varied, provided that the variation is approved by the OfS (subsections (1) and (2)).

163 This provision forms part of the law of England and Wales and carries across the effect, with appropriate modification, of the substance of existing legislative provisions.

### Clause 33: Review of decisions on approval or variation

164 This clause ensures that any decision to approve a plan or subsequently to vary an approved plan can be reviewed before it becomes final.

165 It does so by ensuring that any regulations made by the Secretary of State under clause 28 about the approvals process or under clause 32 about varying approval must create a review procedure. The key features that regulations must include are that:

- a. any approval or variation decision should be provisional;
- b. the institution should be able to apply for review by a person or panel appointed and paid by the Secretary of State;

- c. regulations must state the grounds on which a provisional decision can be reviewed;
- d. the OfS must reconsider the provisional decision in light of the person or panel's recommendations.

166 . This provision forms part of the law of England and Wales and carries across the effect, with appropriate modification, of the substance of existing legislative provisions.

#### Clause 34: Advice on good practice

167 This clause allows the OfS to identify good practice about promoting equality of opportunity in connection with access to and participation in higher education, and give related advice to higher education providers.

168 This provision forms part of the law of England and Wales and carries across the effect, with appropriate modification, of the substance of existing legislative provisions.

#### Clause 35: Duty to protect academic freedom

169 This clause requires that, in performing its functions in approving, varying or refusing to renew plans, the OfS must protect academic freedom. This includes the freedom of institutions to determine the contents and manner of teaching of their courses, who teaches those courses and their own admissions criteria.

170 This provision forms part of the law of England and Wales and carries across the effect, with appropriate modification, of the substance of existing legislative provisions.

#### Clause 36: Power of Secretary of State to require a report

171 This clause permits the Secretary of State to direct the OfS to report to the Secretary of State on particular matters relating to equality of opportunity. The direction can ask for the report to be included in either the OfS' annual report or in a special report. A special report must be laid before Parliament by the Secretary of State on receipt.

172 This provision forms part of the law of England and Wales and carries across the effect, with appropriate modification, of the substance of existing legislative provisions.

### Chapter 10: Powers to give financial support

#### Clause 37: Financial support for registered higher education providers

173 This clause covers the power for the OfS to provide financial support (through grants, loans and other payments) for eligible higher education providers for the provisions of higher education in England. This recreates the Higher Education Funding Council for England's power to provide financial support under section 65 of the Further and Higher Education Act 1992.

174 This provision forms part of the law of England and Wales.

#### Clause 38: Financial support for certain institutions

175 This clause sets out the types of institutions eligible to receive OfS funding to help cover the cost of teaching prescribed higher education courses in England. This recreates the Higher Education Funding Council for England's power to provide financial support under section 65 of the Further and Higher Education Act 1992. In particular, it sets out that institutions in teaching prescribed higher education courses in England and either maintained or assisted by local authorities or within the further education sector will be eligible for support.

176 This provision forms part of the law of England and Wales.

## Clause 39: Financial support: terms and conditions

177 The OfS should be able to provide financial assistance on such terms and conditions as it sees fit. This clause gives the OfS the ability to:

- a. set terms and conditions when allocating funding;
- b. require the repayment, in whole or in part, of funding if any of the terms and conditions subject to which the funds were paid are not complied with;
- c. require the payment of interest on funds owed to the OfS, covering the period that it is owed.

178 This provision forms part of the law of England and Wales.

## Chapter 11: Powers to grant degrees etc

### Clause 40: Authorisation to grant degrees etc

179 This clause gives powers to the OfS to authorise, by order, registered providers of higher education to award degrees and other awards at foundation, taught and research levels. Registered further education providers may also be authorised to award foundation degrees subject to them providing the OfS with a progression statement setting out proposals ensuring foundation degree students have the opportunity to progress to more advanced study, and the OfS considering those proposals to be satisfactory and likely to be carried out. Registered further education providers can also apply for taught degree awarding powers under clause 40(1)(a).

180 Degree awarding powers may be of a specified nature (e.g. single subject degree awarding powers), they may be time-limited and they may restrict the provider's ability to grant awards to students who are not enrolled at the providers when they complete their courses of study.

181 This provision forms part of the law of England and Wales.

### Clause 41: Supplementary powers with authorisation

182 This clause sets out supplementary powers which are, or may, be bestowed upon those with OfS authorisation. Authorisations may include: powers which enable providers to authorise other institutions to grant awards on their behalf. All authorisations enable providers to award joint awards; to revoke awards; to grant honorary degrees or degrees to members of staff.

183 This provision forms part of the law of England and Wales.

### Clauses 42 and 43: Variation or revocation of section 40 authorisation and other authorisations to grant degrees etc

184 These clauses set out the OfS' powers to vary or revoke, by order, the authorisation to award degrees. Powers will apply to all higher education providers with degree awarding powers, however the degree awarding powers were obtained, whether granted indefinitely or on a renewable basis. The OfS can revoke degree awarding powers, including in circumstances where the providers are not, or are no longer registered. Any other pre-existing power to vary or revoke degree awarding powers of English higher education providers ceases to exist once clause 43 comes into force. The powers to vary degree awarding powers will be supported by criteria set out in government guidance.

185 This provision forms part of the law of England and Wales.

#### Clause 44: Variation or revocation of authorisation: procedure

186 This clause sets out the procedures for variation and revocation of degree awarding powers. The OfS must notify a holder of its intention to vary or revoke; specify its reasons; set out a specified process for representations; have regard to such representations; and notify the provider of its decision. If the decision is to vary or revoke a further order must be issued giving a date of coming into effect and the notice must contain information on rights of appeal.

187 This provision forms part of the law of England and Wales.

#### Clause 45: Appeals against variation or revocation of authorisation

188 This clause sets out a route for appeals against a decision by the OfS to vary or revoke degree awarding powers, to the first tier tribunal. This route of appeal is only available on the grounds that the decision was based on an error of fact, was wrong in law, or was unreasonable. It sets out the actions that may be taken by the tribunal following appeal.

189 This provision forms part of the law of England and Wales.

#### Clause 46: Validation by authorised providers

190 This clause enables the OfS to commission registered higher education providers with degree awarding powers so that they offer to validate other registered higher education providers' taught awards (including degrees) and foundation degrees. Validation, for the purposes of this clause, is where an institution with degree awarding powers grants awards to students at another provider, or authorises another provider to grant awards on its behalf. This clause does not bestow new degree awarding powers, or validating powers, on providers.

191 This provision forms part of the law of England and Wales.

#### Clause 47: Validation by the OfS

192 This clause sets out the power of the Secretary of State to authorise, by regulations, the OfS to enter into validation arrangements (for either 'taught' awards or 'foundation' degrees) with either all, or some, registered higher education providers. The regulations may require validation agreements to conform to prescribed terms and conditions; enable the OfS to authorise registered higher education providers to provide some or all validation arrangements on behalf of the OfS; enable the OfS to deprive a person of an award. The Secretary of State may only exercise this power after having regard to advice from the OfS.

193 This provision forms part of the law of England and Wales.

#### Clause 48: Sections 40 to 47: consequential amendments

194 This clause sets out consequential amendments to Section 76 of the Further and Higher Education Act 1992 as a result of these provisions.

195 This provision forms part of the law of England and Wales.

#### Clauses 49 and 50: Unrecognised degrees

196 These clauses make amendments to sections 214 to 216, 217(2) and section 232 of the Education Reform Act 1988. The amendments do not represent a change of policy but enable the unrecognised degrees offence to apply awards granted in the course of business by providers (and the OfS) without the appropriate permission under the new system.

197 Clause 49 extends the definition of UK institution in s.214 (10) of the Education Reform Act 1988 to include, for the purpose of that section, the OfS and expands the definition of "recognised award" in section 214(2) of that Act so that it encompasses those awards which providers (and the OfS) are authorised to make either by virtue of an authorisation granted or

varied by the OfS under clauses 40 and 43, or regulations made by the Secretary of State under clause 47(1). This clause transfers, to the OfS, the Secretary of State's power to make recognised awards orders under section 214(2)(c) of the Education Reform Act 1988, and makes explicit the current devolution position.

198 Clause 50 provides for the transfer of the Secretary of State's powers to make recognised bodies orders (under section 216(1) of the Education Reform Act 1988 and duty to make listed bodies orders (under section 216(2) of the Education Reform Act 1988) to the OfS. It also amends – for bodies with degree awarding powers granted or varied under the Bill (which may include the OfS) - provisions on recognised and listed body orders. The effect is that, where an English body is included in a recognised body order, it will not be presumed able to grant any or all degrees if its powers have been granted or varied under the Bill; to obtain this information interested parties will need to refer to the order that gives or varies the body's powers to grant degrees (or, in the case of the OfS, the regulations made under clause 47). These orders and regulations will be statutory instruments and should be published accordingly. English bodies with validated degrees can, where their validating partner obtained degree awarding powers under the Bill, appear in the listed body order if their partner has the right authorisation to validate their degrees. Existing recognised body and listed body orders remain valid; the status of providers listed on those Orders would only be affected if the OfS were to subsequently vary or revoke the degree awarding powers of those providers.

199 Clause 50 also makes explicit the current devolution position, and the respective functions of the Welsh and Scottish ministers.

200 Subsections (11) to (13) amend section 232 of the Education Reform Act 1988 so that orders made by the OfS under sections 214 and 216 of that Act are like the orders which have been made by the Secretary of State under those sections - also statutory instruments which may make different provision for different cases or circumstances and may contain such incidental, supplemental or transitional provisions as the OfS thinks fit.

201 Subsection (14) states that previous orders made by the Secretary of State or the Welsh and Scottish Ministers under sections 214 and 216 of the Education Reform Act 1988 remain valid. Under subsection 15, orders made by the Secretary of State continue to have effect as though they were made by the OfS.

202 Subsection (16) is concerned with section 217(2) of the Education Reform Act 1988. It ensures that Her Majesty's power to direct that sections 214 to 216 of that Act extend to any of the Channel Islands may be exercised so as to extend to any of the Channel Islands any amendment made by clauses 49 and 50.

203 These provisions form part of the law of England, Wales and Scotland.

## **Chapter 12: Powers in relation to "university" title**

### **Clause 51: Use of "university" in title of institution**

204 This clause amends section 77 of the Further and Higher Education Act 1992 and transfers the responsibility for approving the use of 'university' title in a provider's name under this section from the Privy Council to the OfS. The OfS may only consent to an institution's use of university title if that institution is a registered higher education provider. Like the Privy Council at present, the OfS will have to have regard to the need to avoid names which are or may be confusing.

205 Existing provisions are retained for Wales, whereby the powers conferred by enactments or instruments to use UT remain exercisable, if required by those enactments or instruments, with the consent of the Privy Council.

206 A provider that has changed their name in this way would be treated as a university for all purposes unless they use the title “university college” or university “collegiate”. This mirrors current arrangements.

207 Approval given by the Privy Council under this section prior to this clause coming into force would continue to be valid unless the OfS exercises its power to revoke the university title of any English institution under clause 53.

208 This provision forms part of the law of England and Wales.

#### Clause 52: Unauthorised use of "university" in title of institution etc

209 This clause ensures that existing provisions are retained for Wales.

210 For providers in England, section 39 of the Teaching and Higher Education Act 1998 is amended to set out that a registered provider in England cannot call themselves a university unless the inclusion of that word is authorised by or by virtue of an Act, a Royal Charter or the OfS.

211 The OfS can, under clause 52, authorise any English provider to use the name university if the use of the name university cannot be authorised by virtue of any other Act (except the Companies Act 2006) or Royal Charter. This means that the OfS would be able to approve "university" title for all types of providers including those alternative providers which currently obtain consent via the Companies Act 2006 route.

212 Any consent obtained from the OfS does not affect any requirement to obtain approval for the use of the word 'university' in a company or business name, under sections 55 or 1194 of the Companies Act 2006. This means that any provider that has obtained approval to use "university" title from the OfS, will still need to obtain the consent of the Secretary of State in order to register a company or Limited Liability Partnership, or for use of 'university' in a business name, if it is under an obligation to do so. We envisage that a non-objection letter to the use of the name will be provided by the OfS, not the Department for Business, Innovation and Skills, under regulations made pursuant to sections 55 and 1194(1) of the Companies Act 2006.

213 Like the Privy Council at present, the OfS would have to have regard to the need to avoid names which are or may be confusing.

214 Approval given by the Privy Council under this section prior to this clause coming into force would continue to be valid, unless the OfS exercises its power to revoke the university title of any English institution under clause 53.

215 This provision forms part of the law of the United Kingdom.

#### Clause 53: Revocation of authorisation to use "university" title

216 This clause provides for the OfS to have the power to revoke consent for an English institution to the use of the title of "university", by order, no matter how it was obtained, either through this act or previously.

217 In particular, the OfS can revoke consent if the provider in question is either not a registered provider, or is no longer a registered provider.

218 The OfS does not, however, have the power to revoke any consent obtained in relation to the use of the word "university" in a company, Limited Liability Partnership or business name, under the Companies Act 2006.

219 Any other power to vary or revoke university title (except under the Companies Act 2006) ceases to exist on the coming into force of this clause.

220 This provision forms part of the law of England and Wales.

#### **Clause 54: Revocation of authorisation: procedure**

221 This clause is self-explanatory.

222 This provision forms part of the law of England and Wales.

#### **Clause 55: Appeals against revocation of authorisation**

223 This clause sets out a route for appeals against a decision by the OfS to revoke "university" title, to the first tier tribunal. This route of appeal is only available on the grounds that the decision was based on an error of fact, wrong in law, or was unreasonable.

224 This provision forms part of the law of England and Wales.

### **Chapter 13: Powers of entry and search**

#### **Clause 56: Entering and searching premises with a warrant**

225 This clause and schedule 5 enable the OfS or the Secretary of State to apply to a justice of the peace for a warrant to allow authorised persons to enter and search certain registered higher education providers' premises.

226 Premises of institutions which act on behalf of such providers to deliver higher education courses, for example, as part of a sub-contracting arrangement, are also within scope of the powers.

227 A warrant can only be granted if a justice of the peace is satisfied that the requirements in paragraph (3) of schedule 5 are met.

228 If a warrant is granted, it may allow an authorised person to enter and search premises and seize and retain items to determine whether there has been a breach of a relevant condition to which the provider is subject. There is an exception for excluded items such as those subject to legal privilege.

229 The warrant may permit or require a constable to accompany an authorised person and that constable may use reasonable force if necessary.

230 It is an offence to intentionally obstruct a person exercising the powers conferred by warrant, or to fail to comply with a reasonably imposed requirement, without reasonable excuse. Provision is made regarding protection from self-incrimination.

231 This provision forms part of the law of England and Wales.

### **Chapter 14: Information powers**

#### **Clause 57: Power to require information from unregistered providers**

232 This clause sets out the powers that the OfS has in relation to gathering information from unregistered higher education providers.

233 Subsection (1) provides the OfS with the power to issue notices to unregistered providers requiring them to provide information to the OfS in order for it to perform its functions.

234 Subsection (2) provides for information requested by the OfS under subsection (1) to be provided to it in a timeframe and form that it specifies in its request to the unregistered higher education provider.

235 Subsection (3) allows for the OfS to enforce its request for information and to undertake civil proceedings against any unregistered provider that fails to provide the information requested and fails to satisfy the OfS that it is unable to provide the information.

236 Subsection (4) defines an unregistered higher education provider as one that is not a registered higher education provider.

237 This provision forms part of the law of England and Wales.

## Clause 58: Cooperation and information sharing by OfS

238 This clause enables the OfS to share information with other bodies, including the Privy Council, so that it can carry out its functions. This is necessary as the Privy Council will retain oversight over some providers, such as those incorporated by charter or those having their governance amendment arrangements set out in private act.

239 The OfS may also cooperate and share information with other bodies if it helps the efficient performance of those bodies' functions. Those other bodies and functions will be set out in regulations.

240 Any data sharing must be in accordance with the Data Protection Act 1998.

241 This provision forms part of the law of England and Wales.

## Chapter 15: Publication of information

### Clause 59: Duty to publish English higher education information

242 This clause sets out the requirements relating to the publication of information relating to higher education provision in England, including which body should be responsible, the frequency of provision of information and the type of information that should be deemed relevant for publication.

243 Subsections (1) and (2) require that the responsible body - which may be designated by the Secretary of State - should itself publish, or arrange for another body to publish, information about the provision of higher education in England. The information that is published should be considered relevant and appropriate by the OfS.

244 Subsection (3) sets out requirements relating to the timing of the information referred to in subsection (1). It requires that the information be published at least once a year and at times that are deemed as appropriate by the OfS.

245 Subsection (4) requires that the information be published in a form and in a way that is deemed as appropriate by the OfS.

246 Subsection (5) requires that, in deciding what type of information it should collect and the method and timing for publishing it, the OfS should consider what would be helpful to English higher education providers, students currently undertaking higher education courses in England, and people who are prospective students and who are thinking about undertaking a higher education course in England.

247 Subsection (6) requires that the OfS should periodically consult a range of organisations and relevant people about the type of information being collected on higher education provision in England and the method and timing associated with its collection and publication. It requires OfS to consult a broad range of English higher education providers that it believes are representative of students undertaking courses at English higher education providers, a range of employers of graduates and any other people or organisations that the OfS considers appropriate.

248 Subsections (7) and (8) require the responsible body to co-operate with other persons or bodies that collect similar information. They must all consider replacing burdens on higher education providers relating to the collection of information. This latter requirement applies to the OfS (be they the responsible body or not) when carrying out its functions under this section.

249 Subsection (9) sets out that any functions that are defined in this section of the Bill do not affect any of the functions of the OfS that relate to information.

250 This provision forms part of the law of England and Wales.

### Clause 60: Designated body

251 This clause describes the role and function of a body that is designated to provide the publication function set out in clause 59, subsection (1).

252 Subsection (2) sets out that schedule 6, part 1 provides information on OfS designating a body in regard to clause 60. It also sets out that schedule 6, part 2 provides further information about how the designated body will be overseen by OfS.

253 Subsection (3) provides that the OfS must consider the views of any designated publication body in relation to that body's functions.

254 Subsections (4) and (5) require the designated body to provide any information requested of it from the OfS, UKRI and the Secretary of State.

255 Subsections (6) and (7) provide that the OfS, UKRI and the Secretary of State may require information by a time and in a form and manner from a designated body that relates to the performance of their functions.

256 Subsection (8) enables the OfS, UKRI or the Secretary of State to enforce its request for information by way of civil proceedings against a designated body that fails to provide the information requested and fails to satisfy the person requesting the information that it is unable to provide the information.

257 This provision forms part of the law of England and Wales.

### Clause 61: Power of designated body to charge fees

258 This clause sets out the powers that a body designated under schedule 6 has to charge fees.

259 Subsection (1) sets out that the body designated by the Secretary of State for the purpose publishing information on English higher education provision under clause 59 is able to charge an annual fee to registered higher education providers. The fee can be charged in respect of the costs the body incurs in performing the duties that it undertakes in publishing information on higher education provision and any other duties it has under clause 59.

260 Subsection (3) requires that the total fees charged by the designated body should not be greater than the overall costs that it incurs for performing its duties. However, the annual fee charged to an individual institution may include an element of costs incurred by the body in performing its designated functions which does not relate to the costs incurred in respect of that institution (subsection (2)).

261 Subsection (4) requires the designated body to publish a statement on the amount of the fees that it charges in relation to subsection (1) and that this should include an explanation of how those fees have been calculated. Revised statements should be published when the fee amount changes or where the calculation on which the fee amounts are based changes.

262 This provision forms part of the law of England and Wales.

## Chapter 16: Financial sustainability

### Clause 62: Duty to monitor and report on financial sustainability

263 This clause gives the OfS a duty to monitor and report on the financial sustainability of registered higher education providers.

264 Subsection (1) sets out the duty to monitor and which providers it applies to. The duty applies to those registered providers who receive any grant, loan or other funding from the OfS under its funding powers in Clauses 37 and 38, or are eligible to receive such funding, even if they do not receive it. It also applies to registered providers that are designated for student support under section 22 of the Teaching and Higher Education Act 1998 and therefore may receive funding from tuition fee loans.

265 Subsection (2) provides for a duty upon the OfS to include in its annual report to the Secretary of State a financial sustainability summary.

266 Subsections (3) and (4) set out what a financial sustainability summary is. It is a summary of the OfS's conclusions on relevant patterns, trends and any other matters that the OfS has identified in performing its monitoring duty under subsection (1) and thinks it appropriate to bring to the attention of the Secretary of State. The patterns, trends and other matters can relate to some or all of the providers monitored.

267 Finally, subsection (5) makes clear that the annual report referred to in subsection (2) is the same annual report stipulated in Schedule 1, paragraph (13), and that the definition of financial year used is the same as is used in that Schedule.

268 This provision forms part of the law of England and Wales.

## Chapter 17: Efficiency studies etc

### Clause 63: Studies for improving economy, efficiency and effectiveness

269 This clause replicates a power currently held by the Higher Education Funding Council for England. It also makes arrangements to ensure that those carrying out an efficiency study will have access to the information they need.

270 This provision forms part of the law of England and Wales.

## Chapter 18: Funding of the OfS

### Clause 64: Registration fees

271 This clause enables the OfS to charge higher education institutions a separate fee for initial and ongoing registration. Any fee charged must be in accordance with regulations made by the Secretary of State (subsection (1)).

272 Under subsection (2) the regulations may prescribe the fee, and (amongst other things) make provision about different fees for different institutions,, when fees are to be paid, how they can be recovered, late payment penalties and associated appeals, interest for late payment and the waiving or refunding of fees. Fees regulations may be made only with the consent of the Treasury (subsection (4)).

273 Fees set under the regulations may recover costs incurred by the OfS in performing any of its functions and are not limited to the costs of maintaining the register. Such fees may include elements of cost that do not relate to the costs incurred by the particular institution paying the fee (subsection (3)).

274 This provision forms part of the law of England and Wales.

*These Explanatory Notes relate to the Higher Education and Research Bill as brought from the House of Commons on 22 November 2016 (HL Bill 76)*

## Clause 65: Other fees

- 275 This clause provides a power for the OfS to charge a specific fee, separate from the annual registration fee, for any activity or service arising in the performance of any of its functions (subsection (1)).
- 276 Fees can be charged only in accordance with regulations made by the Secretary of State, subject to the consent of HM Treasury (subsection (5)). Regulations may make provision about a range of matters, including who must pay, how much, when, the consequences of not paying, late payment penalties and associated appeals, the charging of interest and the waiving and refunding of fees.
- 277 A fee charged to an institution for an activity or service under this clause may be calculated on the basis of costs for that same activity or service incurred by other institutions (subsection (3)). Any costs incurred in the performance of its functions which the OfS recovers under its registration fee under clause 64 cannot then be recovered by a fee charged under this clause (subsection (4)).
- 278 This provision forms part of the law of England and Wales.

## Clause 66: Retention of fee related income

- 279 This clause provides that the OfS can retain its income from registration fees, other fees, and recovery of costs, only if the Secretary of State directs that it can, and with the consent of HM Treasury. Income from imposing penalties and interest charged for late payment cannot be retained by the OfS in any circumstances and must be paid to the Secretary of State.

## Clause 67: Costs recovery

- 280 This clause sets out the measures that the OfS is able to take in recovering costs related to the imposition of sanctions on providers.
- 281 Subsection (1) allows the OfS to require a provider that has been sanctioned by it to pay the costs borne by the OfS in imposing the sanction up to the point at which the sanction is imposed on the provider.
- 282 Subsection (2) sets out the types of sanction which could be included under subsection (1). These are monetary penalties, temporarily suspending the registration of a higher education provider, and removing the provider completely from the register of higher education providers.
- 283 Subsection (3) sets out the types of costs that can be included in the definition of costs incurred by the OfS. These include investigation costs, administration costs and the cost of obtaining expert advice.
- 284 Subsection (4) sets out what is meant by the date of notification of the imposition of the sanction on the provider and refers to the types of sanction that are included in the definition.
- 285 Subsection (5) sets out that schedule 7 of the Bill provides further information about the procedure relating to the requirement to pay costs, rights of appeal, how the costs are recovered including any interest owed, and the destination of the income.
- 286 This provision forms part of the law of England and Wales.

## Clause 68: Grants from the Secretary of State

- 287 Government currently makes grants to the Higher Education Funding Council for England. To protect institutional autonomy and academic freedom, legislation places restrictions on the conditions Government can attach to those grants. This clause gives ministers the power to

make grants to the OfS. It places limits on the conditions ministers can place on those grants, replicating current arrangements.

288 Subsection (1) empowers the Secretary of State to make grants to the OfS and allows them to attach conditions to those grants.

289 Subsection (2) allows ministers to set conditions of grant in relation to particular courses of study (for example, courses which cost a lot to teach or are vulnerable for some other reason).

290 Subsection (3) requires ministers to protect academic freedom and institutional autonomy when making conditions of grant. Subsections (a) and (b) highlight providers' freedom to teach and admit, as students, as they see fit.

291 Subsection (4) lists particular things which cannot feature in ministers' conditions of grant. They include the content of a course and how it is taught and supervised, who providers employ as academics or admit as students. This replicates the protections in existing legislation in this area.

292 Subsection (5) provides that, where terms and conditions refer to particular courses of study, they cannot require the OfS to perform any function in such a way that would require providers to offer particular courses, or prohibit them from offering particular courses.

293 Subsection (6) prevents ministers from setting conditions of grant which promise to reward providers if they take a particular course of action in the future. It also prevents ministers from setting conditions of grant which apply to a particular, named, provider.

294 Subsection (7) allows ministers to take back grant, where a condition of grant is not met. It also allows them to charge interest on that money.

295 Ministers will primarily use this clause to require the OfS to take action against any providers which charge students higher-than-permitted fees.

296 This provision forms part of the law of England and Wales.

## **Chapter 19: Regulatory framework**

### **Clause 69: Regulatory framework**

297 This clause sets out that a duty that the OfS must publish a regulatory framework, from time to time, which will set out the minimum baseline conditions on quality, information and student protection that providers must meet in order to be included in the OfS' register.

298 The regulatory framework will also set out conditions on fee caps, access, financial sustainability, management and governance that providers must meet if their students are accessing student support, and / or if providers are accessing direct Government grant funding.

299 The framework will also set out how the OfS will monitor providers' compliance with the conditions of the single regulatory framework, how it will operate a risk-based approach to regulation and how it will protect the interest of students and taxpayers by using compliance powers.

300 The OfS must consult with bodies representing the interests of higher education providers and students before it publishes its regulatory framework.

301 This provision forms part of the law of England and Wales.

## Chapter 20: Supplementary functions

### Clause 70: Secretary of State's power to confer supplementary functions

302 The OfS will be the principal regulator of higher education in England. It will work closely with all higher education providers and is likely to represent the most effective and best value way of delivering any new functions relating to higher education which new legislation may place on the Secretary of State. This clause provides the powers for the OfS to carry out such new functions.

303 Various pieces of legislation which are not directly concerned with higher education place duties relating to higher education providers on the Secretary of State. Central government will often lack the direct capability to deliver these functions so ministers typically delegate the delivery of the functions to operational partner bodies.

304 Subsection (1) gives the Secretary of State the power to delegate functions to the OfS.

305 Subsection (2) limits the type of functions the Secretary of State can delegate to the OfS. It means the Secretary of State can only ask the OfS to perform functions relating to higher education.

306 This provision forms part of the law of England and Wales.

## Chapter 21: Directions

### Clause 71: Secretary of State's power to give directions

307 Government currently issues guidance to the Higher Education Funding Council for England on the priorities it wants to pursue. It has the power (which it has never used) to direct the Higher Education Funding Council for England to take specific action against a named institution, where there is financial mismanagement at that institution. This latter direction must be approved by Parliament before it is issued. This clause reproduces these arrangements for the OfS.

308 Subsection (1) gives ministers the power to direct the OfS. It allows ministers to issue general direction to the OfS about how it should act. Government will use this power to issue an annual grant letter to OfS, just as it does for the Higher Education Funding Council for England.

309 Subsection (3) allows directions to refer to particular courses of study subject to the limits set out in subsection (3) and (4). Subsection (4) provides that, where directions refer to particular courses of study, they cannot direct the OfS to perform any function in such a way that would require providers to offer particular courses, or prohibit them from offering particular courses.

310 Subsection (5) allows ministers to direct the OfS to take specific action against a named provider.

311 The remaining subsections of this clause place limits on ministers' powers to direct action against named providers. Ministers can only use this power where there is financial mismanagement at that provider, following consultation with the OfS and the provider and with the approval of Parliament. The first of these restrictions means government can only act to safeguard public money; it cannot act to infringe academic freedom. The second two restrictions aim to protect institutional autonomy, giving the provider the opportunity to make its case.

312 This provision forms part of the law of England and Wales.

## Chapter 22: Powers of Secretary of State to obtain information or advice

### Clause 72: Power to require information or advice from the OfS

313 This clause gives the Secretary of State a power to require information and advice from the OfS to help inform policy decisions and other functions. The Secretary of State currently has the power to require information and advice from the Higher Education Funding Council for England. This provision requires the OfS to provide any information and advice that the Secretary of State requests. This could also relate to information that will aid the Secretary in decision making with respect to the matters described in clause 97(2).

314 This provision forms part of the law of England and Wales.

### Clause 73: Power to require application-to-acceptance data

315 This clause enables the Secretary of State to require information on applicants from organisations who offer a shared and centralised admissions service for higher education providers based in England for the purpose of research.

316 Subsection (3) sets out the type of information the Secretary of State can require from bodies identified under subsection (2). This includes different types of application and offer data.

317 Subsection (4) sets out the research purpose for which the information can be used. This will include research into choices available to applicants seeking to enter higher education; research into equality of opportunity and other topics approved by the Secretary of State.

318 Subsection (5) explains that the Secretary of State can request this information, by notice, for a certain time and in a certain form. Subsection (6) allows for the Secretary of State to enforce its request for information and to undertake civil proceedings for an injunction against a body that fails to provide the information requested of it.

319 Subsection (7) explains what is meant by "equality of opportunity".

320 Subsection (8) refers to clause 72 which sets out how the information acquired can be used.

321 This provision forms part of the law of the United Kingdom.

### Clause 74: Use of application-to-acceptance data for research purposes

322 This clause allows the Secretary of State to use the information acquired through clause 71 to undertake research in a qualifying subject and share the information acquired with only those researchers or bodies approved by him or her for a qualifying research purpose.

323 Subsection (2) provides that a good product of research, such as a report, can only be published if:

- a. a purpose is to provide statistical information;
- b. no individual identities are disclosed; and
- c. the product does not include information that may be considered commercially sensitive.

324 Subsection (3) explains what is meant by an approved person, which includes bodies and individuals approved by the Secretary of State or by an approved body.

325 Subsection (4) explains that an approved body may provide information acquired through clause 73 to an approved researcher, but an approved researcher may not provide that information to another approved researcher or approved body.

326 Subsection (5) provides that the Secretary of State will publish guidance setting out the technical requirements which need to be in place for an approved body or individual to gain this information.

327 Subsection (6) explains that the qualifying purpose of the research will be the same as set out in clause 71.

328 Any individual or body found to have misused the information they have received under this provision will be liable for prosecution under the powers contained in the Data Protection Act 1998.

329 This provision forms part of the law of the United Kingdom.

## **Chapter 23: HEFCE and the DFA**

### **Clause 75: Higher Education Funding Council for England**

330 This clause dissolves the Higher Education Funding Council for England to allow for the creation, by this legislation, of the OfS and UKRI.

331 This provision forms part of the law of England and Wales.

### **Clause 76: The Director of Fair Access to Higher Education**

332 This clause provides that the post of Director of Fair Access to Higher Education ceases to exist.

333 This provision forms part of the law of England and Wales.

## **Chapter 24: Interpretation**

### **Clause 77: Meaning of "English higher education provider" etc**

334 This clause sets out the definition of various terms relating to higher education providers used in Part 1 of the Bill.

335 This provision forms part of the law of England and Wales.

### **Clause 78: Designation of other providers of higher education**

336 This clause provides for the Secretary of State to designate providers of higher education.

337 This provision forms part of the law of England and Wales.

### **Clause 79: Other definitions**

338 This clause sets out the definition of certain terms which are used in this Bill. It includes the definition of "fees" in relation to undertaking a course, which replicates, so far as possible, the definition of "fees" in section 41 of the Higher Education Act 2004. It provides that in relation to undertaking a course "fees" means fees in respect of or otherwise in connection with, undertaking the course, including admission, registration, tuition and graduation fees and fees payable for awarding or accrediting a qualification in respect of the course. It excludes fees such as fees payable for board or lodging. In common with the definition in the Higher Education Act 2004, it provides that the Secretary of State may prescribe by regulation (subject to the negative procedure) fees which should be excluded from the definition of "fees".

339 This provision forms part of the law of England and Wales.

## Part 2: Other Education Measures

### Chapter 25: Financial support for students

#### Clause 80: Power to make alternative payments

- 340 In England and Wales, student loans for higher and further education are currently provided under regulations made under section 22 of the Teaching and Higher Education Act 1998. This clause amends section 22 of the Teaching and Higher Education Act 1998 to enable regulations to make provision for alternative student finance, alongside grants or loans. This additional type of student finance is called an “alternative payment”.
- 341 Section 22 of the Teaching and Higher Education Act 1998 sets out what regulations may include, for instance, eligibility criteria for student support, maximum amounts of support, the categories of attendance eligible for support, and the terms and conditions for repayment. The amendments to this clause ensure that regulations making alternative payments can make the same provision.
- 342 The Government intends that regulations made under an amended section 22 of the Teaching and Higher Education Act 1998 would support the provision of alternative student finance with a view to helping those who, for religious reasons, might feel they do not wish to access interest-bearing loans to support their education. Alternative student finance would be available to those of all faiths and none.
- 343 Alternative student finance would offer no financial advantage or disadvantage relative to equivalent student loans. This clause also ensures that regulations can provide that bankruptcy will not cancel out any liability to make contributions, in the same way that a student loan liability is not cancelled by bankruptcy.
- 344 This clause amends section 46 of the Teaching and Higher Education Act 1998 to reflect the extent of the new amended section 22. This clause sets out where functions in relation to Wales are exercisable by the Secretary of State.
- 345 This provision forms part of the law of the United Kingdom.

#### Clause 81: Section 80: consequential amendments

- 346 This clause makes consequential amendments to existing legislation to take account of the new category of student support.
- 347 Paragraph 15 of schedule 2 to the Commissioners for Revenue and Customs Act 2005, section 73E of the Education (Scotland) Act 1980, section 24 of the Teaching and Higher Education Act 1998 and article 5 of the Education (Student Support) (Northern Ireland) Order 1998 will be amended to allow for HM Revenue and Customs to disclose information to ministers and delegated bodies in relation to alternative payments (as well as student loans as present).
- 348 Section 23(7)(a)(i) of the Teaching and Higher Education Act 1998 will be amended to allow for the Secretary of State's functions in relation to alternative payments to be delegated, for example, to the Student Loans Company.
- 349 This provision forms part of the law of the United Kingdom.

#### Clause 82: Other amendments relating to financial support

- 350 This clause amends section 22 (power to give financial support for students) of the Teaching and Higher Education Act 1998.

351 Section 22 of the Teaching and Higher Education Act 1998 enables the Secretary of State or Welsh Ministers to offer students grants and loans in connection with higher education courses which are designated by or under regulations. This clause amends section 22(2) by adding a new subsection (aa) to enable the Secretary of State when making such regulations, to make provision designating higher education courses by reference to matters determined or published by OfS or other persons. The purpose of this provision is to enable regulations under section 22(1) to refer to matters such as different categories of the OfS register, and the lists published by the OfS for example under clauses 16 (Suspension of registration) and 18 (Deregistration by the OfS.)

352 Section 22 of the Teaching and Higher Education 1998 currently enables the Secretary of State to offer student loans and grants. In particular, section 22(2)(b) which permits regulations to be made by the Secretary of State prescribing, in relation to any grant or loan, the maximum amount available to any person for any prescribed purpose for that year. As amended, section 22(2A) would enable the Secretary of State when making such regulations under subsection (2)(b) in respect of higher education courses, to make provision prescribing such maximum amount by reference to matters determined or published by the Secretary of State or other persons. This, for example, would permit regulations made under section (2)(b) of the Teaching and Higher Education Act 1998 to refer matters such as the list published by the OfS under clause 11 and the sub-level amounts determined by the Secretary of State under schedule 2.

353 This clause also amends section 22 of the Teaching and Higher Education Act 1998 to give the Secretary of State a power to cancel entitlement to suspended student loans and grants. On occasion it may be necessary for the Secretary of State or Welsh Ministers to suspend payments of student loans and grants, if there are doubts as to whether the payments are properly due under the regulations. Once the suspension has come to an end this provision clarifies the powers of the Secretary of State and Welsh Ministers to cancel entitlement for the period of suspension for example, if an investigation found that payments were not due. There is a similar power in clause 80 in relation to alternative payments.

354 This provision forms part of the law of England and Wales.

## **Chapter 26: Student complaints regime**

### **Clause 83: Qualifying institutions for purposes of student complaints scheme**

355 This clause will expand the list of higher education providers which are required to join the higher education complaints handling scheme. All registered providers will be required to join. This scheme was set up under the provisions of the Higher Education Act 2004 and is operated by the Office of the Independent Adjudicator for Higher Education.

356 Where an organisation ceases to be registered with the OfS, then the provider will be considered to be a transitional member of the complaints handling scheme for 12 months after that date. Complaints will be considered for activities that took place before the provider became a transitional member.

357 This provision forms part of the law of England and Wales.

## **Chapter 27: Deregulation of higher education corporations**

### **Clause 84: Higher education corporations in England**

358 This clause gives effect to schedule 8, which amends the Education Reform Act 1988 to deregulate higher education corporations, and bring regulatory requirements more closely into line with other publicly-funded higher education providers.

359 This provision forms part of the law of England and Wales.

## Part 3: Research

### Chapter 28: Establishment of United Kingdom Research and Innovation

#### Clause 85: United Kingdom Research and Innovation

360 This clause establishes a body corporate, "United Kingdom Research and Innovation" which is referenced as "UKRI" in the Bill and in these notes. It also gives the Welsh language name for UKRI, "Ymchwil ac Arloesedd y Deyrnas Unedig".

361 Clause 86 and schedule 9 cover in more detail how UKRI is structured and how it will operate.

362 This provision forms part of the law of the United Kingdom.

#### Clause 86: The Councils of UKRI

363 This clause establishes nine UKRI committees, which are referred to as "Councils". These committees consist of the seven research councils (subsection (1)(a)-(g)), Innovate UK (subsection (1)(h)) and the research funding functions currently exercised by the Higher Education Funding Council for England (subsection (1)(i)).

364 The Secretary of State has the power by regulation to add, omit or change the names of a Council, however this power does not extend to either Innovate UK or Research England.

365 This provision forms part of the law of the United Kingdom.

### Chapter 29: Research and innovation functions and role of the Councils

#### Clause 87: UK research and innovation functions

366 This clause outlines UKRI's functions in relation to research into science, technology, arts and humanities. This Bill revokes these Royal Charters under clause 103. UKRI may carry out, facilitate and encourage research, support the development and exploitation of research, collect and disseminate knowledge, and promote awareness and understanding – these activities must all be in relation to science, technology, humanities and new ideas. UKRI may also provide advice on its functions and promote awareness and understanding of its activities.

367 Research undertaken or supported by UKRI can be carried out anywhere.

368 UKRI may, in particular, when exercising its functions in sub-clause (1)(a)-(e) encourage and support postgraduate training in sciences, technology, humanities and new ideas.

369 This provision forms part of the law of the United Kingdom.

#### Clause 88: Financial support: supplementary provision

370 This clause provides detail about the power to provide financial support under clause 87, which includes the power to make grants, loans or other payments.

371 UKRI may set terms and conditions as it considers appropriate when providing financial support, and this clause outlines what in particular UKRI can set through terms and conditions:

- a. to require repayment of finance provided where terms and conditions are not followed by recipients;
- b. to allow interest to be charged where UKRI is owed money by recipients; and
- c. to require recipients to provide UKRI with information it requests in relation to the exercise of its functions.

372 When providing financial support under clause 87, UKRI has a duty to take into account the need not to discourage funding recipients from securing alternative sources of income. This provision is intended to ensure that public money does not displace other sources of finance.

373 This provision forms part of the law of the United Kingdom.

### Clause 89: Exercise of functions by science and humanities Councils

374 This clause provides a duty for UKRI to arrange for its functions (as outlined in clause 87) to be exercisable by the Councils listed in the table with respect to the corresponding fields of activity in the table.

375 In particular, UKRI may enable these Councils to exercise UKRI's power to appoint employees, in respect of specialist employees. "Specialist employees" refers to research and scientific staff within the relevant field of that Council including, for example, associated research institutes and units. Such staff will be UKRI employees.

376 In exercising functions under this section, each Council has a duty to have regard to the desirability of both (a) contributing to economic growth in the United Kingdom; and (b) improving quality of life in the United Kingdom or elsewhere.

377 The Secretary of State has the power by regulations to amend the Councils listed in the in tandem with exercising the power (under clause 86) to add, omit or change the names of a Council.

378 The Secretary of State also has the power by regulations to amend the Councils' fields of activity outlined in the second column of the table.

379 This provision forms part of the law of the United Kingdom.

### Clause 90: Exercise of functions by Innovate UK

380 This clause provides a duty for UKRI to arrange for such of its functions (as outlined in clause 87) to be exercisable by Innovate UK for the purpose of increasing economic growth in the United Kingdom. UKRI may not, however, arrange for Innovate UK to exercise the function under clause 87 subsection (1)(a).

381 Innovate UK has a duty to have regard to exercising its functions for the direct or indirect benefit of persons carrying on business in the United Kingdom.

382 In exercising these functions, Innovate UK also has a duty to have regard to the desirability of improving the quality of life in the United Kingdom.

383 This provision forms part of the law of the United Kingdom.

### Clause 91: Exercise of functions by Research England

384 This clause provides a duty for UKRI to arrange for such of its functions (as outlined in clause 87) to be exercisable by Research England for the purpose of providing financial support as outlined in subsections (2) and (3).

385 Under subsection (2), financial support refers to finance provided for the undertaking of research, or activities associated with or for the purpose of undertaking research - such as the provision of facilities or laboratories - by eligible higher education providers. Eligible higher education providers are defined in clause 37, subsection (3). Financial support is to be provided by Research England to the governing body of the eligible education provider, and can be in respect of spending already incurred or that will be incurred in the future.

386 Subsection (3) allows Research England to provide finance to a person or organisation for purposes associated with the undertaking of research by eligible higher education providers.

387 Research England, acting under UKRI, may determine terms and conditions for the provision of finance under this clause, but before doing so it has a duty to consult with persons it considers appropriate.

388 This provision forms part of the law of England and Wales.

### Clause 92: Exercise of functions by the Councils: supplementary

389 This clause provides supplementary provisions for the exercise of UKRI functions.

390 Subsection (1) of this clause provides that UKRI may, as it sees fit, arrange for a council to exercise any other function in addition to those it may exercise under clauses 89, 90 or 91. This allows UKRI to enable a Council to exercise a function outside of its field of activity, for example in respect of cross-disciplinary research.

391 Subsection (2) states that this allows for a particular function of UKRI to be exercised by more than one Council.

392 Subsection (3) of this clause ensures that UKRI retains the ability to exercise any function it makes exercisable by a council. This will, for example, allow UKRI to manage funds for multi-disciplinary research, or to address a failure by a council to carry out its functions.

393 Under subsection (4), each Council (including Innovate UK and Research England) must provide UKRI with advice or information about its exercise of UKRI functions, on request from UKRI.

394 This provision forms part of the law of the United Kingdom.

## Chapter 30: Strategies and strategic delivery plans

### Clause 93: UKRI's research and innovation strategy

395 This clause gives the Secretary of State the power to request UKRI to prepare and submit a strategy for the exercise of its functions over a given time period. This "research and innovation strategy" must require each Council to submit a strategic plan to UKRI within a given period. The Secretary of State may approve the "research and innovation strategy" with or without changes.

396 A "research and innovation" strategy must specify when each Council must submit a "strategic delivery plan" under clause 94.

397 UKRI is under a duty to publish an approved "research and innovation strategy" in such a manner as determined by the Secretary of State. The Secretary of State may, for example, require such a strategy to be published electronically.

398 This provision forms part of the law of the United Kingdom.

## Clause 94: Councils' strategic delivery plans

399 This clause places a duty on each Council to prepare a strategic delivery plan within a period of time - as determined by UKRI (under clause 93). These plans will be submitted to UKRI, who may approve each "strategic delivery plan" with or without changes. This clause will allow UKRI to ensure the coordination of activities between Councils.

400 The strategic delivery plan will set-out how the Council will exercise its functions under clauses 89 to 92. The Councils' plans will set the strategic direction for their discipline or area and will form the basis for how its functions will be carried out.

401 Councils have a duty to exercise their functions under clauses 89 to 92 in accordance with their strategic delivery plans.

402 UKRI is under a duty to publish Councils' approved strategic delivery plans in such a manner as determined by the Secretary of State. The Secretary of State may, for example, require such a strategy to be published electronically.

403 This provision forms part of the law of the United Kingdom.

## Chapter 31: Funding and directions

### Clause 95: Grants to UKRI from the Secretary of State

404 This clause provides the Secretary of State with a funding power in relation to UKRI. Funding is provided by means of grants and the Secretary of State can make these grants with terms and conditions as he or she considers appropriate.

405 Subsections (2) and (3) place restrictions upon the terms and conditions that the Secretary of State can impose with respect to Research England functions under clause 91. These restrictions reflect the restrictions placed upon the Secretary of State's power to set terms and condition when providing grants to the Higher Education Funding Council for England under section 68 of the Further and Higher Education Act 1992.

406 Subsection (4) provides specific terms and conditions that can be applied:

- a. to require repayment of finance provided where terms and conditions are not followed by UKRI; and
- b. to allow interest to be charged where UKRI owes money to the Secretary of State.

407 This provision forms part of the law of the United Kingdom.

### Clause 96: Secretary of State's power to give directions to UKRI

408 This clause provides the Secretary of State with the power to provide directions to UKRI in relation to the use and expenditure of money provided by the Secretary of State under clause 95; and a duty upon UKRI to comply with such a direction. This reflects the duty on research councils to follow directions in the Science and Technology Act 1965 under section 3(7).

409 The clause places restrictions on the Secretary of State's power to give directions with respect to Research England functions under clause 89, which mirror the restrictions under clause 95, subsection (2) and (3).

410 This provision forms part of the law of the United Kingdom.

### Clause 97: Balanced funding and advice from UKRI

411 This clause outlines matters that the Secretary of State has a duty to consider before:

- a. Making a grant and determining terms and conditions for such a grant, under clause 95; and
- b. giving a direction under clause 96.

412 The Secretary of State must have regard to the "balanced funding" principle. The clause defines the balanced funding principle, which ensures a reasonable balance of funding between the functions exercisable by the science and humanities Councils (see clause 89) and the support provided by Research England (see clause 91). This provides legislative protection for the "dual support" system in England.

413 The Secretary of State must also have regard to any advice provided by UKRI.

414 This provision forms part of the law of the United Kingdom.

## Chapter 32: General functions

### Clause 98: General duties

415 This clause sets out certain things that UKRI must consider when performing its functions.

416 Subsection (1) of this clause sets out that UKRI must have regard to using its resources in the most efficient, effective and economic way.

417 Subsection (2) of this clause places a duty on UKRI to have regard to any guidance issued by the Secretary of State.

418 This provision forms part of the law of the United Kingdom.

### Clause 99: Power to require information and advice from UKRI

419 This clause provides UKRI with a duty to provide information or advice to the Secretary of State, howsoever requested, in relation to the exercise of its functions.

420 This provision forms part of the law of the United Kingdom.

### Clause 100: Studies for improving economy, efficiency and effectiveness

421 This clause replicates a power currently held by the Higher Education Funding Council for England. It also makes arrangements to ensure that those carrying out an efficiency study will have access to the information they need.

422 This provision forms part of the law of the United Kingdom.

### Clause 101: Provision of research services

423 This clause provides UKRI with the power to provide research services to anyone inside or outside the United Kingdom. UKRI may charge for these services and may set any terms and conditions as it determines.

424 Research services are defined in subsection (2).

425 This provision forms part of the law of the United Kingdom.

### Clause 102: Representing the United Kingdom

426 This clause places a duty for UKRI to represent the United Kingdom in matters relating to international relations in any field related to its functions, if requested by the Secretary of State.

427 This provision forms part of the law of the United Kingdom.

## Chapter 33: Supplementary

### Clause 103: Predecessor bodies and preservation of symbolic property

428 Subsection (1) revokes the Royal Charters of all current research councils established under the Science and Technology Act 1965 and the Higher Education Act 2004. This includes the seven research councils and Innovate UK. Innovate UK is a research council with the legal name "Technology Strategy Board". These eight bodies corporate cease to exist (subsection (2)).

429 The clause preserves the symbolic property of the research councils by providing that it may be transferred to UKRI as part of any property transfer scheme under clause 109 and schedule 10. Symbolic property refers to the name, goodwill in the name, logo, insignia and seal of a council (subsection (4)).

430 This provision forms part of the law of the United Kingdom.

### Clause 104: Amendments to powers to support research

431 This clause makes amendments to the Science and Technology Act 1965 and the Higher Education Act 2004 to clarify that the powers of the Secretary of State and Ministers of the Devolved Administrations, in regard to their respective jurisdictions have the power to fund research through grants, loans or other payments, and can specify terms and conditions.

432 This provision forms part of the law of the United Kingdom.

### Clause 105: Definitions

433 This clause provides the definitions of certain terms for this Part of the Bill.

434 This provision forms part of the law of the United Kingdom.

## Part 4: General

### Chapter 34: General

#### Clause 106: Cooperation and information sharing between OfS and UKRI

435 This clause sets out the circumstances in which the OfS and UKRI have the power to cooperate and share information. This could relate to information that will aid the Secretary in decision making with respect to the matters described in clause 97(2) (Balanced funding and advice from UKRI).

436 The OfS and UKRI have a duty to cooperate where instructed to do so by the Secretary of State.

437 This provision forms part of the law of the United Kingdom.

#### Clause 107: Joint working

438 This clause enables a number of authorities the power to exercise their functions jointly where doing so would enable them to discharge their functions more efficiently or effectively. These authorities are the OfS, UKRI (but only in relation to functions exercisable by Research England), the Higher Education Funding Council for Wales, The Scottish Further and Higher Education Funding Council, the Secretary of State (to the extent that the Secretary of State is exercising functions under section 14 of the Education Act 2002), the Welsh Ministers (to the extent that they are exercising their functions under Part 2 of the Learning and Skills Act 2000), and the Department for the Economy in Northern Ireland, or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (in relation to funding higher education, or research, in Northern Ireland but only to the extent that the Department is exercising functions in connection with such funding).

439 This provision forms part of the law of the United Kingdom.

### Clause 108: Advice to Northern Ireland departments

440 This clause gives UKRI and the OfS powers to provide advice to the Northern Ireland Executive and replicates existing powers set out in section 69(3) of the Further and Higher Education Act 1992.

441 This provision forms part of the law of the United Kingdom.

### Clause 109: Transfer schemes

442 This clause introduces schedule 10, which makes provision about schemes for the transfer of staff and property, rights and liabilities as a result of a body established by or ceasing to exist by virtue of the Bill.

443 This provision forms part of the law of the United Kingdom.

### Clause 110: Power to make consequential provision etc

444 This clause enables the Secretary of State, by regulations, to make provision which is consequential on any provision made by or under the Bill. This includes power to amend, repeal, revoke or modify primary legislation, secondary legislation or, for specific purposes only, Royal Charters.

445 Subsection (3) allows the Secretary of State to make amendments to Royal Charters for the purposes of degree awarding powers and university title only. This is to ensure that the OfS' powers, as they relate to degree awarding powers or university title, are not unduly hindered via provisions contained in Royal Charters under, or pursuant to which, some institutions obtained degree awarding powers or "university" title.

446 This provision forms part of the law of the United Kingdom.

### Clause 111: Transitional, transitory or saving provision

447 This clause enables transitional, transitory or saving provisions to be made by regulations.

448 This provision forms part of the law of the United Kingdom.

### Clause 112: Pre-commencement consultation

449 This clause enables both the OfS and UKRI to use and rely upon consultations carried out as specified in this clause before and after both bodies become legal entities and become subject to express consultation obligations set out in the Bill.

450 Subsections (1), (2) and (3) concern the OfS. Subsections (4), (5) and (6) concern UKRI. Subsection (7) contains two relevant definitions.

451 Subsection (1) prescribes that the consultations referred to in subsections (2) and (3) only relate to those which the OfS would have been enabled to conduct under the clauses in the Bill.

452 Subsections (2) and (3) enable the Secretary of State, the Director of Fair Access to Higher Education (DFA) or Higher Education Funding Council for England (HEFCE), or any of them acting together, to carry out consultations that the OfS would have been able to, or under a duty to carry out if the relevant provision was in force. The OfS has discretion as to whether it, once established, treats any such consultations or anything done under subsection (5) as being conducted by itself.

453 Subsection (4) prescribes that the consultations referred to in subsections (5) and (6) only relate to those which UKRI would have been enabled to conduct under the clauses in the Bill.

454 Subsections (5) and (6) enable the Secretary of State or HEFCE, or the Secretary of State and HEFCE acting together, to carry out consultations that UKRI would have been able to, or under a duty to carry out if the relevant provision was in force. UKRI has discretion as to whether it, once established, treats any such consultations or anything done under subsection (5) as being conducted by itself.

455 This provision forms part of the law of the United Kingdom.

### Clause 113: Regulations

456 This clause lists the powers in the Bill to make regulations that are subject to the affirmative procedure.

457 This provision forms part of the law of the United Kingdom.

### Clause 114: Directions

458 This clause is self-explanatory.

459 This provision forms part of the law of the United Kingdom.

### Clause 115: General interpretation

460 This clause defines certain terms and acronyms which are used in the Bill.

461 This provision forms part of the law of the United Kingdom.

### Clause 116: Minor and consequential amendments

462 This clause introduces schedules 11 and 12, which make minor and consequential changes to Parts 1 and 3 respectively.

463 This provision forms part of the law of the United Kingdom.

### Clause 117: Extent

464 See paragraphs 45 to 52 above and Annex A below.

465 This provision forms part of the law of the United Kingdom. Any amendment, repeal or revocation made by the Bill has the same extent within the United Kingdom as the enactment amended, repealed or revoked.

### Clause 118: Commencement

466 See paragraphs 596 to 598 below.

467 This provision forms part of the law of the United Kingdom.

### Clause 119: Short title

468 This clause is self-explanatory.

469 This provision forms part of the law of the United Kingdom.

## Schedules

### Schedule 1: The Office for Students

470 The provisions in schedule 1 carry across the effect of the substance of existing legislative provisions (within the Further and Higher Education Act 1992), with appropriate modification, to a new body with a wider regulatory remit, with the exception of sub-paragraphs 2 and 3 which introduce new policy.

- 471 Sub-paragraph 1 sets out that the OfS is separate and distinct from, and is not working on behalf of, the Crown and that the OfS will not derive any benefits that might be associated with working on behalf of the Crown. This provision removes possible liability that may fall upon the OfS through its relationship with the Crown. It also sets out that property of the OfS does not belong to, nor is being held by the OfS on behalf of, the Crown.
- 472 A precise definition of 'the Crown' does not exist, but it is generally taken to represent the state in all its aspects, including executive, legislative and judicial i.e. the Government, government departments or agencies, ministers or civil servants.
- 473 Subsection 2 (1) requires that the OfS board must have a minimum of 10 and a maximum of 15 members including a Chair, Chief Executive Officer and a Director for Fair Access and Participation, each appointed by ministers.
- 474 Subsection 2 (2) sets out the range of skills, knowledge and experience which are desirable to see represented on the board and requires ministers to have regard to seeking these qualities when making appointments. It also requires ministers to consider representation from across the range of different types of higher education provider when appointing members to the board and requires at least one member of the OfS to have experience of representing or promoting the interests of individual students or students generally.
- 475 Subsections 2 (3) and 2 (4) state that that civil servants may not be appointed to the OfS board.
- 476 Sub-paragraph 3 requires the Director for Fair Access and Participation to report to the other members of the OfS on the OfS' performance of its access and participation functions, relating to agreeing and enforcing access and participation plans, advising on good practice, protecting academic freedom in the performance of access and participation functions and reporting on matters relating to equality of opportunity. The Director may also report to the other members on measures taken to comply with the OfS' duty to have regard to the need to promote equality of opportunity in connection with access to and participation in higher education.
- 477 Sub-paragraphs 4 and 5 explain the ways in which terms and conditions of appointment for board members are set and the powers for the Secretary of State to appoint and remove members. This refers to all members including the Chair, Chief Executive Officer, Director for Fair Access and Participation and ordinary members of the board.
- 478 Sub-paragraph 6 places a duty on the OfS to pay salaries, and upon it to pay or make provisions for paying pensions, allowances or gratuities to OfS members as determined by the Secretary of State. It also provides that if someone ceases to be an OfS member, the Secretary of State may determine that they should be compensated due to special circumstances. Should the Secretary of State do so, OfS is under a duty to pay that person such compensation as the Secretary of State has determined.
- 479 Sub-paragraph 7 empowers the OfS to appoint staff and determine their pay and allowances subject to the approval of the Secretary of State, and to pay those staff. It empowers the OfS to make pension provision and to pay gratuities for staff or former other than under the Superannuation Act 1972 and to pay former staff allowances or expenses subject to approval by the Secretary of State. The OfS is also being admitted as a name body in Schedule 1 of the Superannuation Act 1972.
- 480 Sub-paragraph 7 empowers the OfS to appoint staff and determine their pay and allowances subject to the approval of the Secretary of State, and to pay those staff. It empowers the OfS to make pension provision and to pay gratuities for staff or former staff other than under the

Superannuation Act 1972 and to pay former staff allowances or expenses subject to approval by the Secretary of State. The OfS is also being admitted as a named body in Schedule 1 of the Superannuation Act 1972.

- 481 Sub-paragraph 8 gives the OfS powers to establish committees and subcommittees and sets conditions for appointing committee members, paying allowances and reviewing the structure and activities of the committees and subcommittees.
- 482 Sub-paragraphs 9 and 10 empower the OfS to set its own procedures, that is, to determine the proceedings of the board and committees as it sees fit. It sets a requirement for half of members to be present for a board meeting to be quorate. It enables the Secretary of State to send a representative to board and committee meetings and to request papers but not to be involved in decision-making at those meetings.
- 483 Sub-paragraph 11 enables the OfS board, provided it is quorate, to delegate functions to individual members, OfS employees and committees on terms that it determines, in order to facilitate the normal running of an organisation and enable it to perform its functions.
- 484 Sub-paragraph 12 sets out the requirements on the OfS to maintain a record of its financial accounts and clear records of the information that underpins them, in line with HM Treasury requirements. It also requires that the OfS sets out an annual statement on its financial operations for each financial year, to be laid before Parliament annually.
- 485 Sub-paragraph 13 requires the OfS to produce a report that covers the period of every financial year and which provides a commentary on its functions during that period and the annual financial statement referred to in sub-paragraph 12 (1). It sets out the requirements relating to when the report must be submitted to the Secretary of State and places a duty on him or her to lay it before Parliament.
- 486 Subsection 14 (1) sets out that on those occasions where the OfS' name or emblem is being used for official purposes, its use needs to have been authorised by the chair of the OfS through his or her signature, or the signature of another OfS staff member who has been authorised by the OfS to do so. In these circumstances, in addition to the chair or the authorised OfS representative, the signature of one other OfS member of staff will also be required.
- 487 Subsection 14 (2) sets out that a document which is recognised as being an official OfS document – in line with sub-paragraph 14 (1) – should be treated by the person and / or organisation receiving the document as evidence from the OfS, unless the document sets out that it should not be treated as such.
- 488 Sub-paragraph 15 allows the OfS to use its discretion to pursue any course of action, apart from borrowing money, which allows it to fulfil its role and duties. These powers include, but are not limited to, acquiring and disposing of land and property, entering into contracts, making investments and accepting gifts of money, land or other property.
- 489 Sub-paragraph 16 requires that 'The Office for Students' is inserted at the appropriate place in Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958. This means that any records produced by the OfS from the moment of its creation should be treated as public records and be subject to the restrictions and principles governing public records.
- 490 Sub-paragraph 17 requires that 'The Office for Students' is inserted at the appropriate place in Schedule 2 of the Parliamentary Commissioner Act 1967. This means that the OfS is listed as one of the bodies that can be subject to investigation by the Parliamentary Commissioner for Administration (Parliamentary Ombudsman); the body that is responsible for investigating the administrative actions of central government departments and public authorities.

491 Sub-paragraph 18 requires that 'The Office for Students' is inserted at the appropriate place in Part 2 of Schedule 1 of the House of Commons Disqualification Act 1975. The Act prohibits certain categories of people from becoming members of the House of Commons, and this provision therefore means that members of staff of the OfS are prohibited from becoming members of the House of Commons.

492 Sub-paragraph 19 requires that 'The Office for Students' is inserted at the appropriate place in Part 2 of Schedule 1 of the Northern Ireland Assembly Disqualification Act 1975. The Act prohibits certain categories of people from becoming members of the Northern Ireland Assembly, and the provision therefore means that members of staff of the OfS are prohibited from becoming members of the Northern Ireland Assembly.

493 Sub-paragraph 20 requires that 'The Office for Students' is inserted at the appropriate place in Part 6 of Schedule 1 of the Freedom of Information Act 2000. This means that the OfS is listed as one of the public bodies that are subject to the provisions of the Freedom of Information Act 2000. The Act sets out a framework for the general public to have a general right of access to information that is held by public authorities, subject to certain restrictions.

494 Sub-paragraph 21 requires that 'The Office for Students' is inserted at the appropriate place in the group of entries under the heading 'Other educational bodies' in Part 1 of Schedule 19 of the Equality Act 2010. This means that the OfS is listed as one of the bodies that are subject to the provisions of the Equality Act 2010 which sets out the equality duties to which organisations are required to have due regard.

## Schedule 2: The fee limit

495 Clause 10 (Mandatory fee limit condition for certain providers) provides that the OfS must ensure that the ongoing registration conditions of each registered provider of a prescribed description include a fee limit condition (see clause 10 above). Schedule 2 contains provision for determining the fee limit. It sets out the fee limit where the provider has an access and participation plan (sub-paragraph 2), the fee limit where the provider has no access and participation plan (sub-paragraph 3) and provides the various procedures for these (sub-paragraph 4).

496 Sub-paragraph 2 sets out the fee limit where the provider has an access and participation plan under clause 28:

- a. If the provider has a "high level quality rating" (a rating under clause 25) at the relevant time (i.e. the time when the plan is approved), the fee limit is such limit, not exceeding the higher amount, as is provided by the plan for the relevant course and the relevant academic year;
- b. In any other case, the fee limit is such limit, not exceeding the applicable sub-level amount, as is provided by the plan for the relevant course and for the relevant academic year.

497 The "higher amount" is an amount prescribed by regulations (subsection 2(5) and sub-paragraph 11). The "sub-level amount" is determined administratively by the Secretary of State and can be different amounts for different descriptions of provider (subsection 2 (6) and can be set by reference only to whether or not a provider has a rating under clause 25 and the level, type or description of that rating (subsection 2(7)). The sub-level must not exceed the higher amount and must be greater than the floor amount (subsection 2 (8)). The "floor amount" to the higher amount is an amount prescribed by regulations (subsection 2 (9) and sub-paragraph 11).

498 Paragraph 3 sets out the fee limit where the provider has no access and participation plan under clause 28:

- a. if the provider has a "high level quality rating" at the relevant time (i.e. on 1 January in the calendar year in which the relevant academic year begins), the fee limit is the basic amount;
- b. in any other case, the fee limit is the applicable sub-level amount.

499 The "basic amount" is an amount prescribed by regulations (paragraph 3(4) and (10)). For "sub-level amount" see above, save for it must not exceed the basic amount and must be greater than the floor amount (paragraph 3(7)). The "floor amount" to the basic amount is an amount prescribed by regulations (paragraph 3(8) and (10)).

500 Paragraph 4 sets out the procedures in respect of fee limits. Sub-paragraph (1) deals with the requirement for the Secretary of State to notify the OfS of initial and subsequent determinations e.g. the high level quality rating. The parliamentary procedure for regulations setting out the "higher", "basic" and "floor" amounts is the negative procedure where the Secretary of State is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms (paragraph 4(2)(a), (3)(a) and (4)(a)), and the affirmative procedure where the increase is greater than that (paragraph 4(2)(b), (3)(b) and 4(b)) (and in respect of the higher amount, the affirmative procedure requires the particular matters in paragraph 4(2)(b)).

501 The parliamentary procedures for regulations setting out the "higher" and "basic" amounts require the same levels of parliamentary scrutiny as required for regulations under the Higher Education Act 2004 setting out those amounts (see sections 26(2) and 47(2) and (3)(a) of the Higher Education Act 2004, save that it is no longer appropriate for there to be an equivalent provision to 26(1) of the Higher Education Act 2004 requiring the first set of regulations to be under the affirmative procedure). The "floor" amount is a new amount and is not provided for in the Higher Education Act 2004, however it follows the same procedures as the basic amount.

502 For the purposes of regulations setting the higher, basic and floor amounts under the negative procedure, the Secretary of State is to have regard to such index of prices in regulations made under the Schedule (paragraph 4(5)).

### Schedule 3: Monetary penalties: procedure, appeals and recovery

503 This schedule sets out the process that must be followed by the OfS in the event that it imposes a monetary penalty on a registered higher education provider.

504 The OfS must write to the provider before imposing the penalty setting out the amount of the penalty, why it is being imposed and a timescale (not less than 28 days) for the provider to make a representation to the OfS.

505 The OfS is obliged to consider any such representation before making a final decision to impose any monetary penalty.

506 In the event that a monetary penalty is imposed, the OfS must inform the provider of its decision, the amount of the penalty, how and when it must be paid, the implications of non-payment, and advice to the provider on right to appeal and associated timescales.

507 Income from penalties and interest cannot be retained by the OfS and must be paid to the Secretary of State.

## Schedule 4: Assessing higher education: designated body

508 Part 1 of this schedule makes provision for the designation of a body to perform the assessment functions set out in clause 26 (see above), Part 2 deals with oversight of the designated body by the OfS and Part 3 deals with interpretation.

509 Paragraph 1 deals with the consultation prior to recommendation. It sets out that the OfS may consult about whether there is a body that is suitable to perform the assessment functions (paragraph 1(1)). However, the OfS cannot proceed to make a recommendation under paragraph 2 unless it has undertaken a consultation. It also provides that the Secretary of State may direct the OfS to undertake such a consultation (paragraph 1(2)). It sets out the stakeholders who must be consulted in either instance (paragraph 1(3)).

510 Paragraph 2 concerns the making of a recommendation by the OfS and only applies if the OfS has consulted in line with paragraph 1. Under paragraph 2(2) the OfS must consider whether there is a body suitable to perform the assessment functions, and if only one body is identified that body must be recommended to the Secretary of State (paragraph 2(3)). If more than one body is identified as suitable, the OfS will recommend whichever body it considers would be the most appropriate for securing the effective assessment of the quality of and standards applied to higher education provided by English higher education providers (paragraph 2(4) and (5)). If no suitable body is identified, the OfS cannot make a recommendation to designate a body to the Secretary of State.

511 Under paragraph 2(7) the OfS must notify the Secretary of State of its decision, and publish the decision.

512 Paragraph 3 deals with the designation. Where a body is recommended, the Secretary of State can only designate that body if he considers that designating the body would be appropriate for securing the effective assessment of the quality and standards of higher education provided by English higher education providers, and the body is suitable to perform the assessment functions (paragraph 3(2)). If the Secretary of State decides to designate the recommended body, the Secretary of State is required to notify the body, and publish notice of the designation, before the designation takes effect (paragraph 3(3) and (4)). If the Secretary of State decides not to designate, the Secretary of State must publish the reasons for not doing so (paragraph 3(5)).

513 Paragraph 4 sets out the criteria that a body must meet in order to be suitable to perform the assessment functions. The criteria are that it must be capable of performing the functions in an effective manner; that those who determine the strategic priorities of the body represent a broad range of registered higher education providers; that it commands the confidence of such providers; that it exercises its functions independent of any particular higher education provider; that it consents to be designated, and that it is a body corporate and is not a servant or agent of the Crown or a body to which the Secretary of State appoints members.

514 Paragraph 5 enables the Secretary of State to remove a designation by notice if he or she is satisfied that removal would be appropriate for securing the effective assessment of quality and standards of higher education provided by English higher education providers or the body consents to the removal of the designation. It requires the Secretary of State to consult before removing the designation, and the stakeholders that the Secretary of State must consult are listed at paragraph 5(4).

515 In Part 2, paragraph 7 makes provision for oversight of the designated body by the OfS, and paragraph 8 requires the body to provide an annual report to the OfS about the performance of the assessment functions. Paragraph 9 requires the OfS to prepare and send to the Secretary of State a triennial report which includes an assessment of how the designated body has

performed its functions, and requires the OfS to take account of the views of specified persons including registered higher education providers and persons representing the interests of employers, graduates and students in the preparation of the triennial report.

516 Paragraph 10 makes provision for the OfS to give general directions to the designated body with regard to the performance of any of the assessment functions. The OfS must have regard to the need to protect the expertise of the designated body when issuing such directions.

517 Paragraph 11 places a duty on the OfS to inform the Secretary of State if it has significant concerns about how the designated body is performing the assessment functions or the continued suitability of that body to carry out those functions.

518 This provision forms part of the law of England and Wales.

## Schedule 5: Powers of entry and search etc

519 This schedule is explained in the commentary on clause 56.

## Schedule 6: English higher education information: designated body

520 Paragraph 1 deals with the consultation prior to recommendation. It sets out that the OfS may consult about whether there is a body that is suitable to perform the data functions (paragraph 1(1)). However, the OfS cannot proceed to make a recommendation under paragraph 2 unless it has undertaken a consultation. It also provides that the Secretary of State may direct the OfS to undertake such a consultation (paragraph 1(2)). It sets out the stakeholders who must be consulted in either instance (paragraph 1(3)).

521 Paragraph 2A concerns the making of a recommendation by the OfS and only applies if the OfS has consulted in line with paragraph 1. Under sub-paragraph 2A(2) the OfS must consider whether there is a body suitable to perform the data functions, and if only one body is identified that body must be recommended to the Secretary of State (paragraph 2A(3)). If more than one body is identified as suitable, the OfS will recommend whichever body it considers would be appropriate to perform the data functions (paragraph 2A(4)). If no suitable body is identified, the OfS cannot make a recommendation to designate a body to the Secretary of State (2A(5)).

522 Under paragraph 2(6), the OfS must notify the Secretary of State of its decision, and publish the decision.

523 Paragraph 3 determines that where a body is recommended, the Secretary of State can only designate that body if he considers that designating the body would be appropriate for conducting the data publication function. The Secretary of State is required to notify the body, and publish notice of the designation, before the designation takes effect. If the Secretary of State decides not to designate, the Secretary of State must publish the reasons for not doing so.

524 Paragraph 4 of Part 1 sets out the criteria that a body must meet in order to be suitable to perform the data publication function. The criteria are that it must be capable of performing the functions in an effective manner; that those who determine the strategic priorities of the body represent a broad range of higher education providers; that it commands the confidence of such providers; that it exercises its functions independent of any particular provider; that it consents to be designated, and that it is a body corporate.

525 Paragraph 5 enables the Secretary of State to remove a designation if removal would be appropriate or if the designated body consents to the removal. The Secretary of State is required to consult before removing the designation. The schedule sets out the stakeholders who must be consulted. When considering removal, the Secretary of State must also consider any relevant information provided by the OfS.

526 In Part 2, provision is made for the oversight of the designated body by the OfS. Paragraph 8 requires the body to prepare an annual report on its performance to the OfS. Paragraph 9 requires the OfS to prepare and send to the Secretary of State a triennial report which includes an assessment of how the designated body has performed its duty, and requires the OfS to take account of the views of higher education providers, student representatives, employers of graduates, and other appropriate persons in the preparation of the triennial report.

527 Paragraph 10 places a duty on the OfS to inform the Secretary of State if it has significant concerns about how the designated body is performing its duty or the suitability of the body to carry out that duty.

### Schedule 7: Costs recovery: procedure, appeals and recovery

528 This schedule sets out the provisions regarding how the OfS can recover costs relating to the imposition of sanctions on higher education providers, appeals processes available to providers and how costs can be recovered.

529 Sub-paragraph 1 sets out that schedule 7 applies to scenarios where the OfS has imposed a sanction on a provider and needs to recover the costs related to the imposition of that sanction.

530 Sub-paragraph 2 requires that the OfS, in notifying the provider of the cost recovery, must specify the amount that is being sought and the time period within which payment needs to be made. In notifying the provider, the OfS is also required to set out how the payment should be made, any rights of appeal the provider has including the timeframe within which appeals should be made, and the consequences of the payment not being made. The provider can require the OfS to set out a detailed breakdown of the cost and that the requirement to pay the cost is suspended when an appeal is pending or when an appeal could be submitted. If the higher education provider informs the OfS that it does not intend to appeal then the requirement to pay the costs still stands.

531 Sub-paragraph 3 sets out the mechanism by which appeals against the decision to require costs to be covered can be made. A provider can appeal to the First-tier Tribunal against either the decision itself to require the provider to pay costs or the amount that has been specified. An appeal can be made based on the decision being based on incorrect facts, it being incorrect in legal terms, or the decision being unreasonable. Sub-paragraph 3 also sets out that the Tribunal hearing the appeal has the power to withdraw the requirement on the provider to pay, confirm that the payment does need to be made, alter in some way the requirement to pay, take any steps that the OfS has the ability to take leading up to the imposition of the original sanction, or delegate the decision on the requirement to pay back to the OfS.

532 Sub-paragraph 4 sets out provisions relating to interest that may be owed on a payment. It sets out that interest is owed on any costs that have not been paid by the deadline for payment and that this interest is charged at the rate set out in section 17 of the Judgements Act 1838. It also sets out that the unpaid amount is not subject to interest as a judgement debt under that same piece of legislation. It specifies that the interest charged should not exceed the amount of the costs, that the OfS has the power to recover the costs owed to it - and the associated interest - as a civil debt, and that any costs recovered, including interest owed should be paid into the Consolidated Fund.

533 Sub-paragraph 5 sets out that income received by way of cost recovery and interest must be paid to the Secretary of State with the consent of HM Treasury.

### Schedule 8: Higher Education Corporations in England

534 Sub-paragraphs 1 to 5 amend the Education Reform Act 1988 as follows:

- a. The existing provisions of the Act in relation to higher education corporations are retained for higher education corporations in Wales, to ensure that higher education institutions maintained by local authorities in Wales and further education corporations in Wales can still reincorporate as higher education corporations through an order made by the Secretary of State and the established Privy Council approval process;
- b. New provisions are inserted for England so that further education corporations in England can still reincorporate as higher education corporations through an order made by the Secretary of State. This will be the only way in which new higher education corporations can be incorporated in England once these provisions are in force, closing the route for higher education institutions maintained by local authorities to reincorporate as higher education corporations.

535 Sub-paragraph 6 sets out the principal powers or objects of higher education corporations in England, which include the provision of higher, further and secondary education. It then sets out the supplementary powers of higher education corporations in England, which consist of the power to do anything which appears to the corporation to be necessary or expedient for the purpose of, or in connection with, the exercise of any of their principal powers.

536 Sub-paragraph 7 amends the existing provisions in the Education Reform Act 1988 in relation to the powers of higher education corporations so that these continue to apply to higher education corporations in Wales.

537 Sub-paragraph 8 provides that higher education corporations in England must have instruments of government in place. Higher education corporations in England may amend, replace or revoke their instrument of government provided that in doing so they do not cease to be a charity. This sub-paragraph also removes current statutory requirements as to certain provisions that need to be included in instruments of higher education corporations in England, and allows higher education corporations in England greater freedom to draft and amend their instruments, subject always to their remaining a charity.

538 Sub-paragraph 8 also ensures that certain basic provisions relating to the validity of proceedings of higher education corporations in England, the effect of instruments issued by them, and the requirement for their members to be known as the "board of governors" of the institution that they are established to conduct, will continue to apply to higher education corporations in England.

539 Sub-paragraphs 9 to 11 amend existing provisions in the Education Reform Act 1988 regarding the constitution and conduct of higher education corporations so that they continue to apply to higher education corporations in Wales, and the Secretary of State's powers to appoint the first members of higher education corporations are retained for higher education corporations in Wales. These provisions will no longer apply to higher education corporations in England, except for the provisions in respect of the need to keep accounts.

540 Sub-paragraph 12 provides that higher education corporations in England have to have articles of government in place relating to the conduct of the institutions they are established to run. The articles of government may make provision with respect to the supplementary powers of the higher education corporation. Higher education corporations in England may amend, replace or revoke their articles of government provided that in doing so they do not cease to be a charity.

541 Sub-paragraph 13 amends existing provisions in the Education Reform Act 1988 in relation to the articles of government of higher education corporations so that these continue to apply to higher education corporations in Wales. These provisions cover:

- a. requirements relating to the articles of government, and;
- b. the process for Privy Council approval of the articles of government.

542 These provisions of the Education Reform Act 1988 no longer apply to higher education corporations in England, meaning they can amend their articles of government without the requirement for Privy Council approval.

543 Sub-paragraph 14 ensures that definitions in the Education Reform Act 1988 are consistent so that higher education corporations are referred to throughout as either 'higher education corporations in Wales' or 'higher education corporations in England'.

544 Sub-paragraph 15 clarifies that section 127 of the Education Reform Act 1988 only applies where a local-authority-maintained higher education institution reincorporates as a higher education corporation. This option will only continue to be available in Wales.

545 Sub-paragraph 16 provides that a higher education corporation in England can no longer be dissolved by order of the Secretary of State unless this process is instigated by the higher education corporation itself; and that the Secretary of State must consult the OfS before making any such order. It also makes provision as to which persons or entities a higher education corporation's property, rights or liabilities can be transferred to on dissolution. This includes a person appearing to the Secretary of State to be engaged in the provision of educational facilities or services, a body corporate established for purposes which include the provision of such facilities or services or the OfS, provided they give their consent. Where the recipient is not a charity established for charitable purposes which are exclusively educational, any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational.

546 Sub-paragraph 17 amends the existing dissolution provisions in the Education Reform Act 1988 so that these continue to apply to higher education corporations in Wales.

547 Sub-paragraph 18 amends the definition on what is deemed a 'successor company' to a higher education corporation for the purposes of section 129(5)(e) of the Education Reform Act 1988 (designation of institutions) so that this includes any higher education corporations in England dissolved by the Secretary of State on request by the higher education corporation, as set out in sub-paragraph 16 above.

548 Sub-paragraph 19 ensures that Privy Council oversight of variations of trust deeds under section 157(2)(a) of the Education Reform Act 1988 (variation of trust deeds etc: institutions conducted by higher education corporations) only continues to apply to higher education corporations in Wales, and will no longer apply to higher education corporations in England.

549 Sub-paragraph 20 inserts new definitions into the Education Reform Act 1988 so that a distinction is drawn between higher education corporations "in England" and higher education corporations "in Wales", as these will now be subject to different regulatory requirements.

550 Sub-paragraph 21 provides that Schedule 7 of the Education Reform Act 1988 will only apply in relation to higher education corporations in Wales once these provisions come into force.

551 Sub-paragraph 22 provides that Schedule 7A of the Education Reform Act 1988 will only apply to higher education corporations in Wales once these provisions come into force. This means that the provisions in Schedule 7A, which detail requirements of instruments of government for higher education corporations and Privy Council oversight of these, will no longer apply to higher education corporations in England.

552 Sub-paragraphs 23 to 25 make consequential amendments to the Further and Higher Education Act 1992.

## Schedule 9: United Kingdom Research and Innovation

553 Sub-paragraph 1 sets out that UKRI is separate and distinct from, and is not working on behalf of, the Crown. This provision removes possible liability that may fall upon the UKRI through its relationship with the Crown. It also sets out that property of the UKRI does not belong to, nor is being held by the UKRI on behalf of, the Crown.

554 Sub-paragraph 2(1) describes the formal members of UKRI who constitute UKRI and are appointed by the Secretary of State.

555 Sub-paragraphs 2(3) to 2(7) set out how the members of UKRI will be appointed. In total the Secretary of State will appoint between 12 and 15 members to make up UKRI. This will consist of a chair, the UKRI Chief Executive Officer, the UKRI Chief Finance Officer and between nine and 12 other members. The chair cannot be either the Chief Executive Officer or the Chief Finance Officer. When making these appointments, with the exception of the chair, the Secretary of State has a duty to consult the UKRI chair.

556 Subsection 2(5) sets out the Secretary of State's duty to have regard to the desirability of there being a mixture of research, business and industry expertise, including the exploitation of research between UKRI's members.

557 Subsection 2(6) sets out the Secretary of State's duty, when appointing members of UKRI, to have regard to the desirability of those members including at least one person with relevant experience in relation to at least one of Wales, Scotland and Northern Ireland.

558 Subsection 2(7) defines "relevant experience" in relation to sub-paragraph 2(6). This means experience of research into, or the development or exploitation of, science, technology, humanities or new ideas. It also includes experience of industrial, commercial or financial matters or the practice of any profession.

559 Sub-paragraph 3 describes the composition of UKRI's nine Councils and how individuals are appointed to them. Each Council is comprised of one executive chair (who is appointed by the Secretary of State) and between five and nine ordinary Council members. Each Executive chair will be appointed by the Secretary of State. The Secretary of State may also choose to appoint one additional ordinary Council member for each Council. All other ordinary Council members are appointed by UKRI after consulting that Council's executive chair. A majority of each Council's ordinary members must also be persons who are neither members, nor employees, of UKRI.

560 Sub-paragraphs 4 and 5 explain the ways in which terms and conditions of appointment are set for UKRI members, executive chairs, and those ordinary council members appointed directly by the Secretary of State. It also sets out how the Secretary of State may appoint and remove these individuals and how they may resign, namely by notifying the Secretary of State.

561 Sub-paragraph 6 sets out how terms and conditions are set for those ordinary council members appointed by UKRI. It also explains how such individuals are appointed or removed and how they may resign, namely by notifying UKRI.

562 Sub-paragraph 7 places a duty on UKRI to pay salaries, and upon it to pay or make provision for paying, pensions, allowances, compensation and expenses or gratuities to UKRI and Council members as determined by the Secretary of State. It also provides that if someone ceases to be a member of UKRI or a Council, the Secretary of State may determine that they should be compensated due to special circumstances. Should the Secretary of State do so, UKRI is under a duty to pay that person such compensation as the Secretary of State has determined.

- 563 Sub-paragraph 8 empowers the UKRI to appoint staff and determine their pay and allowances subject to the approval of the Secretary of State and to pay those staff. It empowers UKRI to make pension provision and to pay gratuities for staff or former staff other than under the Superannuation Act 1972 and to pay former staff allowances or expenses subject to approval by the Secretary of State. UKRI is also being admitted as a named body in Schedule 1 of the Superannuation Act 1972.
- 564 Sub-paragraph 9 gives UKRI powers to establish further committees in addition to those described as Councils. It also allows committees and Councils to establish sub-committees. A committee or sub-committee (under this sub-paragraph) may include persons who are not members of UKRI, Council members or UKRI employees. This sub-paragraph also sets conditions for appointing such committee or sub-committee members, paying allowances and reviewing the structure and activities of the committees and sub-committees.
- 565 Sub-paragraphs 10 and 11 empower UKRI and the Councils to set their own procedures, that is, to determine the proceedings of meetings of UKRI, Councils and Council sub-committees as they see fit. It sets a requirement for half of the members of UKRI or its Councils to be present at UKRI or Council meetings respectively for such a meeting to be quorate. It enables the Secretary of State to attend or send a representative to meetings of UKRI, committee and sub-committee meetings, to be provided with papers and participate in those meetings. However the Secretary of State or his or her representative may not be involved in decision-making at those meetings.
- 566 Sub-paragraph 12 enables UKRI to delegate functions to individual members of UKRI (i.e. Board members), members of UKRI staff, councils, other committees or Council sub-committees on terms that it determines.
- 567 Subsection 13(1) requires UKRI to maintain a record of its financial accounts and clear records of the information that underpins them. It also requires that UKRI sets out an annual statement of its accounts for each financial year.
- 568 Subsection 13(2) requires that UKRI's annual statement of accounts should adhere to and be prepared in line with any instructions that have previously been provided to it by the Secretary of State and HM Treasury. Instructions may relate to the content and form of the annual statement, the way in which it has been developed and any extra information that it has been deemed necessary to provide directly to Parliament.
- 569 Subsection 13(3) requires that copies of the annual financial statement must be sent by the UKRI to the Secretary of State and the Comptroller and Auditor General – the head of the National Audit Office; the organisation that scrutinises the spending of public bodies – before the end of August that follows the financial year to which the financial statement relates.
- 570 Subsection 13(4) requires the Comptroller and Auditor General to scrutinise UKRI's annual statement of accounts and to provide a report to the Secretary of State certifying whether UKRI's statement is truthful and accurate.
- 571 Subsection 13(5) requires the Secretary of State to provide a copy of the Comptroller and Auditor's report on UKRI's statement of accounts to Parliament.
- 572 Subsection 13(6) provides a description of the period of time that 'financial year' refers to. It states that the financial year counts as the period of time from the date that the UKRI is set up to the second 31 March following that date. Each subsequent period of 12 months from that point on then constitutes a new financial year.
- 573 Subsection 14(1) requires UKRI to produce a report that covers the period of every financial year and which provides a commentary on its functions during that period.

- 574 Subsection 14(2) sets out that the annual report on UKRI's functions should include the annual statement of accounts referred to in subsection 13(1).
- 575 Subsection 14(3) requires the annual report to be produced and finalised as soon as possible after the end of the financial year to which it relates.
- 576 Subsection 14(4) requires the UKRI to send the report to the Secretary of State.
- 577 Subsection 14(5) requires the Secretary of State to provide a copy of UKRI's annual report to Parliament.
- 578 Subsection 15(1) sets out that on those occasions where UKRI's seal is being used, its use needs to have been authorised by the signature of a member of UKRI or the signature of another person authorised by UKRI. However, this provision does not apply if the document being executed is being signed under Scottish law.
- 579 Subsection 15(2) sets out that a document which is recognised as being an official UKRI document – in line with sub-paragraph 15 (1) – should be treated by the person and / or organisation receiving the document as evidence from UKRI, unless the document sets out that it should not be treated as such.
- 580 Subsection 16(1) allows UKRI to use its discretion to do anything necessary or expedient which allows it to fulfil its role and duties.
- 581 Subsection 16(2) allows, in particular, UKRI to acquire and dispose of land and property, enter into contracts and accept gifts or money, land and other property. This list is non exhaustive.
- 582 Subsection 16(3) requires UKRI to seek permission from the Secretary of State to undertake a number of specified activities.
- 583 Sub-paragraph 17 requires that 'United Kingdom Research and Innovation' is inserted at the appropriate place in Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958. This means that any records produced by UKRI from the moment of its creation should be treated as public records and be subject to the restrictions and principles governing public records.
- 584 Sub-paragraph 18 requires that 'United Kingdom Research and Innovation' is inserted at the appropriate place in Schedule 2 of the Parliamentary Commissioner Act 1967. This means that UKRI is listed as one of the bodies that can be subject to investigation by the Parliamentary Commissioner for Administration (Parliamentary Ombudsman); the body that is responsible for investigating the administrative actions of central government departments and public authorities.
- 585 Sub-paragraph 19 requires that 'United Kingdom Research and Innovation' is inserted at the appropriate place in Part 2 of Schedule 1 of the House of Commons Disqualification Act 1975. The Act prohibits certain categories of people from becoming members of the House of Commons, and the provision therefore means that members of UKRI, members of UKRI staff and members of Councils, committees and sub-committees are prohibited from becoming members of the House of Commons and vice versa.
- 586 Sub-paragraph 20 requires that 'United Kingdom Research and Innovation' is inserted at the appropriate place in Part 2 of Schedule 1 of the Northern Ireland Assembly Disqualification Act 1975. The Act prohibits certain categories of people from becoming members of the Northern Ireland Assembly, and the provision therefore means that members of UKRI, member of UKRI staff and members of Councils, committee and sub-committee are prohibited from becoming members of the Northern Ireland Assembly and vice versa.

587 Sub-paragraph 21 requires that 'United Kingdom Research and Innovation' is inserted at the appropriate place in Part 6 of Schedule 1 of the Freedom of Information Act 2000. This means that UKRI is listed as one of the public bodies that are subject to the provisions of the Freedom of Information Act 2000. The Act sets out a framework for the general public to have a general right of access to information that is held by public authorities, subject to certain restrictions.

588 Sub-paragraph 22 requires that 'United Kingdom Research and Innovation' is inserted at the appropriate place in the group of entries under the heading 'Other educational bodies' in Part 1 of Schedule 19 of the Equality Act 2010. This means that UKRI is listed as one of the bodies that are subject to the provisions of the Equality Act 2010 which sets out an array of equality duties that organisations are required to have due regard to.

### Schedule 10: Transfer schemes

589 This schedule gives the Secretary of State powers to make property transfer schemes and staff transfer schemes in connection with the establishment of the OfS or UKRI or the Higher Education Funding Council for England, Office for Fair Access and the research councils ceasing to exist by virtue of the Bill. Permitted transferees under transfer schemes would be the OfS, UKRI, the Secretary of State or another person specified in the scheme. Permitted transferors would be the Secretary of State, the Higher Education Funding Council for England, the Director of Fair Access to Higher Education or the research councils.

590 Staff transfer schemes may make provision which is the same as or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE Regulations).

### Schedule 11: Minor and consequential amendments relating to Part 1

591 This schedule sets out the changes to other legislation in consequence of the provisions of Part 1 of the Bill.

592 These include amendments in consequence of the Higher Education Funding Council for England, and the Director for Fair Access to Higher Education, ceasing to exist.

### Schedule 12: Minor and consequential amendments relating to Part 3

593 This schedule sets out the changes to other legislation in consequence of the provisions of Part 3 of the Bill.

## Commencement

- 594 Clause 118 makes provision about the coming into force of the provisions of the Act. The commentary on individual sections and schedules includes an explanation of the effect of this section.
- 595 The Bill provides for Part 4 of the Bill (General), apart from the provisions on cooperation and information sharing between OfS and UKRI, joint working and on pre-commencement consultation, to come into force on the day of Royal Assent.
- 596 The remaining provisions of this Bill will come into force on a day or days that the Secretary of State or Welsh Ministers as appropriate appoint through regulations made by statutory instrument. These regulations may appoint different days for different purposes or different areas.

## Financial implications of the Bill

- 597 The creation of the two new bodies – the Office for Students and UK Research and Innovation will result in efficiency savings from the merger of regulatory functions and reduced costs resulting from the reduction of the current duplication of functions and outputs across the funding bodies. The creation of a single entry gateway and the move towards a more flexible and risk-based regulation framework is likely to be a source of further savings to government (e.g. from reduced monitoring costs) and provide better safeguarding of public money.
- 598 It is proposed that part of the cost of regulation is borne by the sector rather than the taxpayer, given budget pressures and moving to a similar model to central regulators in other sectors (e.g. healthcare, school education, utilities). This funding model will result in savings for the taxpayer, while allocating costs fairly across providers and avoiding creating barriers to entry to the sector as a result of transferring the costs of regulating the sector onto providers.
- 599 More broadly, widening participation, increasing capacity and allowing institutions that demonstrate teaching excellence to maintain their fees up to inflation, will require additional student loan outlay. However, this could be offset by improved graduate outcomes – driven by greater competition, more informed choice and better incentives to increase teaching quality - leading to faster loan repayments and increased tax revenues in the longer-run.

## Parliamentary approval for financial costs or for charges imposed

- 600 A money resolution and a ways and means resolution for the Bill were passed by the House of Commons on 19 July 2016. There is potential expenditure by the Secretary of State under various provisions of the Bill. In particular, there is power under clauses 68 and 95 for the Secretary of State to pay grants to the OfS and UKRI. There are also provisions in the Bill which may lead to increases in payments out of money provided by Parliament under other Acts, for example, under section 22 of the Teaching and Higher Education Act 1998 (see clause 80). There is power in clauses 27(2)(b) and 61(1) for bodies who are designated under the Bill to perform certain functions to charge annual fees to registered higher education providers. Clause 64 enables the OfS to charge initial and ongoing registration fees.

## Compatibility with the European Convention on Human Rights

601 Section 19 of the Human Rights Act 1998 requires a minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with the Convention Rights (as defined by section 1 of that Act). The Secretary of State for Business Innovation and Skills, The Right Honourable Sajid Javid MP, has made the following statement: "In my view, the provisions of the Higher Education and Research Bill are compatible with the Convention rights.

### Related documents

602 The following documents are relevant to the Bill and can be read at the stated locations:

- Delegated Powers Memorandum
- Human Rights Act 1998 - [www.legislation.gov.uk/ukpga/1998/42](http://www.legislation.gov.uk/ukpga/1998/42)
- Higher Education Act 2004 - [www.legislation.gov.uk/ukpga/2004/8](http://www.legislation.gov.uk/ukpga/2004/8)
- Teaching and Higher Education Act 1998 - [www.legislation.gov.uk/ukpga/1998/30](http://www.legislation.gov.uk/ukpga/1998/30)
- Further and Higher Education Act 1992 - [www.legislation.gov.uk/ukpga/1992/13](http://www.legislation.gov.uk/ukpga/1992/13)
- Science and Technology Act 1965 - [www.legislation.gov.uk/ukpga/1965/4](http://www.legislation.gov.uk/ukpga/1965/4)

## Annex A - Territorial extent and application

603 The table below sets out the position at Lords Introduction and is subject to change.

604 The clauses contained in Part 1 of the Bill, The Office for Students, extend to England and Wales. Clauses 25, 73, 74 and 77 also extend to Scotland and Northern Ireland. The clauses in Part 1 apply to England, and clauses 25, 73 and 74 also apply to Wales, Scotland and Northern Ireland. Clause 77 (an interpretation provision) also applies to Wales, Scotland and Northern Ireland to the extent that it is needed to apply there for the purposes of clause 25. The amendments made by clauses 49, 50 and 52 to existing legislation have the same extent as the legislation they amend (that is England, Wales and Scotland in the case of clauses 49 and 50 and the United Kingdom in the case of clause 52). In the view of the Government of the United Kingdom, provisions corresponding to each clause that applies only to England or England and Wales would be within the legislative competence of the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.

605 The clauses contained in Part 2 of the Bill, Other Education Provisions, extend to England and Wales. Clauses 80 and 81 also extend to Scotland and Northern Ireland. The clauses in Part 2 apply to England and, in the case of Clauses 80-82, Wales. In the view of the Government of the United Kingdom, provision corresponding to clause 82 would be within the legislative competence of the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly; provision corresponding to clause 82 would be within the legislative competence of the Scottish Parliament and National Assembly for Wales.

606 The clauses contained in Part 3 of the Bill, Research, extend and apply to the entire United Kingdom. The exception is clause 91, which applies to England. In the view of the Government of the United Kingdom, provisions corresponding to clause 91 would be within the legislative competence of the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.

607 The clauses contained in Part 4 of the Bill, General, extend and apply to England, Wales, Scotland and Northern Ireland.

608 The extent and application of Schedules match the clauses which introduce them, with the exception of Schedules 11 and 12 which extend to England, Scotland, Wales and Northern Ireland and apply in part to England, Scotland, Wales and Northern Ireland.

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1 Clauses 1-24	Yes	No	No	No	Yes	Yes	Yes	No
Part 1 Clause 25	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (all)

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1 Clauses 26-39	Yes	No	No	No	Yes	Yes	Yes	No
Part 1 Clauses 40-72	Yes	No	No	No	Yes	Yes	Yes	No
Part 1 Clauses 73-4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 1 Clauses 75-76	Yes	No	No	No	Yes	Yes	Yes	No
Part 1 Clause 77	Yes (in part)	Yes (in part)	Yes (in part)	Yes	N/A	N/A	N/A	No (except to the extent covered by the LCMs for Clause 25.)
Part 1 Clauses 78-79	Yes	No	No	No	Yes	Yes	Yes	No
Part 2 Clause 80-81	Yes	Yes	No	No	No	No	No	Yes (Wales only)
Part 2 Clause 82	Yes	Yes	No	No	Yes	Yes	Yes	Yes (Wales only)
Part 2 Clause 83	Yes	No	No	No	Yes	Yes	No	No
Part 2 Clause 84	Yes	No	No	No	Yes	Yes	Yes	No
Part 3 Clause 85-90	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 3 Clause 91	Yes	No	No	No	Yes	Yes	Yes	No

*These Explanatory Notes relate to the Higher Education and Research Bill as brought from the House of Commons on 22 November 2016 (HL Bill 76)*

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 3 Clauses 92-103	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 3 Clause 104	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (all)
Part 3 Clause 105-106	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 4 Clause 107	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (all)
Part 4 Clauses 108	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 4 Clauses 109-117	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 4 Clause 118	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (all)
Part 4 Clause 119	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedules 1-3	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 4	Yes	No	No	No	Yes	Yes	Yes	No
Schedules 5-7	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 8	Yes	No	No	No	No	Yes	Yes	No
Schedule 9	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 10	Yes	Yes	Yes	Yes	N/A	N/A	N/A	N/A
Schedules 11-12	Yes	In part	In part	In part	N/A	N/A	N/A	No

*These Explanatory Notes relate to the Higher Education and Research Bill as brought from the House of Commons on 22 November 2016 (HL Bill 76)*

## Minor or consequential effects<sup>1</sup>

### Provisions that apply to England

609 The following provisions that apply to England may have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential.

#### Clauses 1 to 24, 26 to 72, 75, 76, 78 and 79 (Part 1) and schedules 1 to 8: The Office for Students

610 These provisions:

- a. establish the OfS and make provisions for its functions;
- b. establish a system of registration of English higher education providers, including conditions of registration that will or may apply upon initial or continuing registration;
- c. make provision about varying tuition fee limits for registered providers according to whether an institution has a particular rating of its quality and standards and has had approved an access and participation plan;
- d. make provision about the assessment of quality and standards in higher education, including of teaching;
- e. make provision about financial support that can be given by the OfS to registered providers;
- f. make provision about the award, variation and revocation of degree awarding powers and the award and revocation of university title;
- g. make provision about a power of entry and search for the OfS or the Secretary of State in the event of a breach of conditions of funding;
- h. make provision about how the OfS is to be funded;
- i. make provision about the collection of data from providers and admissions bodies by the OfS and the Secretary of State;
- j. dissolve the Higher Education Funding Council for England and the Director of Fair Access.

611 Generally, these provisions have effect in respect of English higher education providers which may seek inclusion in the register to be maintained by the OfS or who are, in fact, registered. An “English higher education provider” is a provider of higher education whose activities are carried on in England or principally in England (see clause 77, subsection (1)). One of the requirements for registration is that the institution is or intends to become an English higher education provider.

612 On this basis the provisions either have no effect outside England or, if they do because a provider carries on some of (but not principally) its activities outside England, in the Government’s view, those effects are minor and consequential.

---

<sup>1</sup> References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

## Clauses 83 and 84: Other Education Measures

613 These provisions:

- a. extend the student complaints regime to cover all providers registered with OfS;
- b. deregulate higher education corporations, bringing regulatory requirements more closely into line with other publicly-funded higher education providers.

614 Clause 83 has effect in relation to providers registered with the OfS. As outlined above, this means the provisions either have no effect outside England or, if they do because a provider carries on some of (but not principally) its activities outside England, those effects are, in the Government's view, minor and consequential.

615 Clause 84 brings schedule 8 into force which makes various changes to the governance of higher education corporations in England. These are aimed, principally, at rationalising the procedure by which those corporations can change their governing instruments and apply for dissolution by the Secretary of State. The changes apply in relation to English higher education corporations; the position in relation to higher education corporations in Wales is to remain the same, including the role of the Privy Council in approving the governing documents of higher education corporations in Wales. Any effects on higher education providers outside England will, in the Government's view, be minor and consequential.

## Clause 91: Research Councils

616 Clause 91 relates to the functions of UKRI to be exercisable by Research England. This involves providing financial support to higher education providers in England.

617 For the same reasons outlined in the paragraphs above, the provisions either have no effect outside England or, if they do because a provider carries on some of (but not principally) its activities outside England, those effects are considered by the Government to be minor and consequential.

## Provisions that apply to England and Wales

618 The following provisions that apply to England and Wales have effects outside that area, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

## Clauses 80 to 82: Other Education Measures

619 Clause 80 enables regulations to be made so the Secretary of State and Welsh ministers can offer students alternative finance alongside grants or loans to support their higher or further education, and provide for their repayment by way of contributions. This is achieved by amending section 22 of the Teaching and Higher Education Act 1998.

620 Section 22 of the Teaching and Higher Education Act 1998 applies to both England and Wales and extends to Scotland to a limited degree (see section 46(7) of the Teaching and Higher Education Act 1998) and in a similar way it extends to Northern Ireland (see section 46(8) of the Teaching and Higher Education Act 1998).

621 The clause relates exclusively to England and Wales because the effects in Scotland and Northern Ireland are consequential: they flow from a policy in relation to student support which has its principal effect in England and Wales. The consequential effects are that regulations may impose rights or requirements on borrowers, employers or HM Revenue and Customs anywhere in the United Kingdom in relation to repayments. HM Revenue and Customs will be empowered to collect contributions from students anywhere in the United Kingdom if they have taken out alternative payments in England or Wales and regulations may require employers to make deductions from pay anywhere in the United Kingdom.

Furthermore, regulations can provide that if a student who has taken out an alternative payment in England or Wales becomes bankrupt or enters an individual voluntary arrangement (IVA) in Northern Ireland, the bankruptcy/IVA will not cancel out their liability to make contributions.

- 622 Clause 81 makes consequential amendments to existing legislation to take account of the new category of student support.
- 623 Paragraph 15 of schedule 2 to the Commissioners for Revenue and Customs Act 2005, section 73E of the Education (Scotland) Act 1980, section 24 of the Teaching and Higher Education Act 1998 and Article 5 of the Education (Student Support) (Northern Ireland) Order 1998 will be amended to allow for HM Revenue and Customs to disclose information to ministers and delegated bodies and bodies to whom functions have been transferred, in relation to alternative payments (as well as student loans as present). The clause relates exclusively to England and Wales because the effects in Scotland and Northern Ireland are, in the Government's view, consequential: they flow from a policy in relation to alternative payments which has its principal effect in England and Wales. The consequential effects are that HM Revenue and Customs would be empowered to share information in relation to students who take out alternative payments in England and Wales but move elsewhere in the United Kingdom.
- 624 Section 23(7)(a)(i) of the Teaching and Higher Education Act 1998 will be amended to allow for the Secretary of State to pay to any person to whom functions in relation to alternative payments are delegated or transferred amounts to meet expenditure and administrative expenses (in the same way as in relation to loans and grants). The clause relates exclusively to England and Wales because, in the Government's view, the effects in Scotland and Northern Ireland are consequential, flowing from a policy to offer alternative payments in England and Wales.
- 625 Clause 82(4) provides the Secretary of State with a power make regulations to set the maximum amount of loan in reference to matters determined or published by her or other persons. It deals with provision which can be made under section 22(2)(b) of the Teaching and Higher Education Act 1998 and extends and applies to England and Wales only.
- 626 Clause 82(2) amends section 22 of the Teaching and Higher Education Act 1998 to enable designation of a higher education course under section 22(1) to be determined by reference to matters determined or published by the OfS or other persons. This provision extends and applies to England and Wales only.
- 627 Clause 82(3) and (5) also clarifies the Secretary of State's power to cancel entitlement to loans and grants in connection with higher education courses that have first been suspended in such circumstances as may be prescribed by regulations, or determined by the Secretary of State under the regulations (in Wales this will be Welsh Ministers rather than the Secretary of State). These provisions extend and apply to England and Wales.

## **Subject matter and legislative competence of devolved legislatures**

### **Part 1: The Office for Students**

- 628 This Part makes provision about higher education that extends to England and Wales, with the exception of clauses 25, 73, 74 and 77 which extend to the United Kingdom; It applies to England, and clauses 25, 73 and 74 also apply to Wales, Scotland and Northern Ireland. Clause 77 (an interpretation provision) also applies to Wales, Scotland and Northern Ireland to the extent that it is needed to apply there for the purposes of clause 25. Clauses 49 and 50 (which

amend the Education Reform Act 1988) extend to England, Wales and Scotland but apply in England only; and clause 52 (which amends the Teaching and Higher Education Act 1998) extends to the United Kingdom and applies in England.

629 By virtue of it not being included in the list of reserved matters in schedule 5 to the Scotland Act 1998, higher education is within devolved legislative competence in Scotland. Education is not within schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act). Education is within paragraph 5 of schedule 7 to the Government of Wales Act 2006 and is not within one of the exceptions listed therein nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act). Accordingly. In the view of the Government of the United Kingdom, provisions corresponding to each clause that applies only to England or England and Wales would be within the legislative competence of the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.

## Part 2: Other education measures

630 This Part makes provision about higher education and, in respect of alternative student finance, the power of the Secretary of State to make provision about student support in respect of higher and further education students. By virtue of the provisions referred to above these matters are within the legislative competence of the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly, with the exception given below.

631 The alternative finance provisions also make provision relating to the repayment of student support. In doing so, they make provision in relation to the functions of HM Revenue and Customs. These matters are not within the legislative competence of the Scottish Parliament, National Assembly for Wales, or Northern Ireland Assembly.

## Part 3: Research

632 This part makes provision relating to the establishment of a new United Kingdom-wide body, UKRI, which has the functions specified in clause 87. The functions of UKRI which clause 91 provides for Research England to exercise are only exercisable in relation to England. Whilst research is a reserved matter, by virtue of the provisions above the matters in clause 91 are within the devolved legislative competence of the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.

# HIGHER EDUCATION AND RESEARCH BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the Higher Education and Research Bill as brought from the House of Commons on 22 November 2016 (HL Bill 76).

---

Ordered by the House of Lords to be printed, 22 November 2016

---

© Parliamentary copyright 2016

This publication may be reproduced under the terms of the Open Parliament Licence which is published at [www.parliament.uk/site-information/copyright](http://www.parliament.uk/site-information/copyright)

THE HOUSE OF LORDS