Summary

1. The Higher Education and Research Bill fundamentally reforms the regulatory architecture of higher education in England, and the government’s research agencies that operate across the UK. The last time such comprehensive reforms were introduced was through the Further and Higher Education Act 1992. Accompanying the Bill is the White Paper, ‘Higher education: success as a knowledge economy’.

2. The UK’s higher education sector is a national success story, attracting students and researchers from around the world. Universities are also operating in an increasingly competitive environment and as such are responsive to the needs of students and employers. 86% of students studying in the UK are satisfied with their course and we outperform our international competitors in 15 out of 23 international student barometer benchmarks.

3. Universities UK (UUK) – which represents 133 institutions in England, Wales, Scotland and Northern Ireland – supports the government’s aim to protect the interests of students and to ensure universities demonstrate the value of the education which they provide. We welcome the opportunity that the White Paper and Bill provide to take stock of the landscape and consider the changes needed to support the sector’s continued success.

4. However, the government should seek to build on the regulatory approach currently taken where this underpins the strengths and successes of our world-class university sector. We already have a diverse and competitive sector, fostered by a relatively high degree of institutional autonomy which allows universities to act flexibly. Our universities are not standing still as they respond to long-term challenges and to students’ needs. The autonomy of our universities contributes significantly to their global success.

5. Universities operate across both devolved and reserved policy areas, with some aspects of the Bill applying only to English universities and others affecting universities in Wales, Scotland and Northern Ireland as well. In devolved policy areas there is significant need for continued collaboration and appetite for shared frameworks, and the regulatory bodies should have appropriate responsibilities and powers to reflect this.

6. UUK has concerns about the government’s intentions to significantly relax requirements made of new entrants to the higher education sector seeking to be able to grant their own degrees. The interests of students are best protected by robust requirements being made of higher education institutions. The diversity, choice and healthy competition that is encouraged
by new providers needs to be balanced by the need to protect the interests of students, and
the integrity and reputation – both domestic and international – of the sector as a whole.

7. The Bill establishes a new regulatory body, the Office for Students (OfS), which will be the
principal regulator of the sector and will have widespread powers over higher education
institutions. There are some respects in which the Bill gives unnecessary powers to the
secretary of state and/or the OfS which could undermine the institutional autonomy on which
our sector’s success is built. UUK believes that many of these new regulatory powers are
only necessary as a result of the decision to relax requirements applied to new institutions.

8. The Bill creates separate regulatory and funding bodies for teaching (the Office for Students)
and research (UK Research and Innovation), which risks undermining the positive interaction
of teaching, research and innovation activity in universities. As a result of the recent change
to move responsibility for higher education into the Department for Education, the OfS will
report to the Department for Education while UKRI will report to the Department for Business,
Energy and Industrial Strategy. Universities UK is concerned that promises in the White
Paper that the OfS will take “a holistic view of the sector and institutions” is made significantly
more difficult as a result of these recent changes – even with a minister (Jo Johnson MP)
working across both departments.

Key reforms proposed by the Bill

9. The principal reforms legislated for in the Bill include:

• reducing the number of arm’s-length bodies, from 10 to two:
  o the Office for Students: merging the Office for Fair Access with the learning and
teaching functions of the Higher Education Funding Council for England
  o UK Research and Innovation: bringing together the seven research councils,
Innovate UK, and the current research functions of the Higher Education Funding
Council for England in a committee of UK Research and Innovation, to be called
Research England

• establishing the Teaching Excellence Framework, which will assess institutions on the
quality of their teaching, and provide for a link between performance in this assessment
and the fee cap which applies to the institution

• allowing the secretary of state to limit those institutions which can increase tuition fees
in line with inflation to those that can demonstrate high-quality teaching, based on
performance in the Teaching Excellence Framework

• giving the Office for Students significant power over granting and revoking degree
awarding powers, allowing for the possibility of ‘probationary’ degree awarding powers
and a quicker route to gaining university title
• requiring all providers to have protection plans in place setting out how students would be supported in the event of course or university closure
• placing a requirement on universities and admissions bodies to publish data related to admissions and course completion rates

Key issues for Universities UK

10. The government should not dilute requirements which are made of new providers, such as demonstrating a track record in delivering higher education, in an attempt to make entry into the market swifter. Higher education is already a competitive market, and the UK has a diverse sector. Lowering requirements made of new providers could significantly the risk of low-quality or unstable providers entering the market, which would harm students and undermine trust in the university sector as a whole – and risk our international reputation. We ask that MPs suggest the government reconsider their plans to dilute requirements attached to degree awarding powers and university title.

11. We support the government’s intention to rationalise and update the regulatory architecture governing higher education, and the creation of a single ‘gateway’ to operating as a higher education provider that will be provided by the Office for Students. However, some of the powers given to this new body, and the degree of control that the Secretary of State will have over the sector through it, are considerably greater than are currently the case and could undermine the healthy autonomy of individual institutions. In particular, we ask MPs to question:

  a. the ability of the Secretary of State to ‘frame guidance’ in terms of particular courses, something which is explicitly excluded from current powers.
  b. the level of evidence required by the OfS before they take sanctions against an institution, which in the Bill is currently that a breach ‘appears to’ the OfS to have taken place

12. Although higher education is a devolved policy area, there is considerable flow of students between the nations and a high degree of collaboration in both institutions and on policy matters. We ask that MPs ask the minister to make clear that the OfS will have the ability to co-operate with its equivalent bodies in the devolved nations to ensure that cross-UK frameworks and initiatives can be implemented, where there is an appetite for this from institutions and the relevant governments.

13. We support the government in allowing institutions to increase tuition fees in line with inflation, and the principle that this is tied to strong performance in an effective Teaching Excellence Framework. However, an effective TEF must both allow for healthy diversity in teaching methods across the sector, and be subject to proper evaluation to ensure it is robust, fair and helpful to students.
14. HEFCE currently funds both research and knowledge exchange activities in universities. It is not clear whether the latter function will be transferred to Research England alongside the former. **We seek clarity from the minister as to whether knowledge exchange will be a formal part of Research England’s remit.**

15. The division of universities policy between the DfE and DBEIS potentially creates challenges in ensuring that government policy is able to take a holistic view of the sector and institutions. The Higher Education White Paper promised to address the risk by making the OfS fulfill this function, but while the Bill allows for co-operation between the OfS and UKRI it doesn’t make such co-operation or the crafting of a holistic strategy a required function of either body. **We ask that the Government consider introducing amendments to:**

   a. *Give the OfS the same power to provide advice to Ministers as is proposed for UKRI in relation to research; and*
   b. *Require the OfS and UKRI jointly to prepare a strategy for higher education and research*

**Entry to the market for new higher education providers**

16. The Bill gives the newly-created Office for Students (OfS) the ability to give institutions degree awarding powers (DAPs). This power currently sits with the Privy Council, which acts on the basis of guidance and criteria set out by the Department for Business, Innovation and Skills (BIS), with advice from the Quality Assurance Agency. In using these powers, the OfS will also act according to guidance from the appropriate government department. UUK welcomes the opportunity to modernise this process, although we do not think that the OfS should have unlimited powers in this area. It is important there is effective independent scrutiny of the OfS in how it awards DAPs.

17. The government has made clear in the White Paper that the criteria for institutions wishing to be granted DAPs will be less restrictive than they are at present. The current criteria involve a requirement for a track record in delivering higher education (normally through a validation arrangement with another institution which has its own DAPs). Currently, institutions are required to have delivered higher education for a period of at least four consecutive years before they can be given the power to award their own degrees.

18. The White Paper also outlines plans for institutions to be given probationary degree awarding powers through which they could award degrees on a probationary basis for a period of three years with no requirement for a previous track record in delivering higher education.

19. UUK welcomes the government’s intention to allow new providers into the system to secure greater choice for students and to ensure appropriate competition in the higher education sector. However, we believe that the current arrangements – such as the track record requirement outlined in paragraph 16 above – do not represent appropriate requirements for
new providers to meet in order to maintain the quality of, and confidence in, the system as a whole. We would not want to see a significant departure from current requirements, and oppose the adoption of probationary degree awarding powers.

20. While the government’s proposed reforms may allow providers swifter access to degree awarding powers, it is vital that changes serve the interests of students, not the interests of new entrants. Students, their parents, employers – and other universities in the sector – need assurance of the long-term viability and of the quality of new providers.

21. The requirement in the Bill for institutions to put in place a Student Protection Plan should give additional assurances to students that their interests will be protected should institutions or courses close. However, it is important that requirements for protection plans are proportionate to the actual risk of closure or institutional failure. Protection plans should be a tool of last resort, and not serve as justification for allowing riskier or potentially transitory providers into the system.

22. In the context of the government’s stated objective to significantly widen the pool of institutions with degree awarding powers, and the removal of the separation of powers that currently exists through the role of the Privy Council, it is important that there are appropriate checks and balances in place. This could include a requirement for formal input from an independent committee into the process of awarding DAPs to an institution, or a legislative requirement that the OfS must have regard to the need to maintain confidence in the higher education sector, and in the degree qualifications awarded by it, in making use of its powers to grant DAPs and university title.

23. The Bill also transfers powers to award the use of university title (the ability for an institution to call itself a university) to the OfS. The White Paper sets out the intention to remove the requirements to teach a minimum of 1,000 full-time equivalent students and reduces the minimum time to be eligible for university title from eight years to six years. This increases the risk of lower-quality or transitory providers being awarded university title and creates the potential to undermine trust in the sector through rapid expansion – particularly from small, teaching-only institutions.

24. The use of university title has strong reputational implications. We would therefore want to ensure the criteria for this are sufficiently robust and reflect the important roles of higher education institutions in teaching, research and scholarship, as well as wider civic and social roles.

25. UUK believes that there should be a mechanism to provide independent scrutiny of and advice to the OfS in relation to its power to award university title. This body might also provide advice in relation to DAPs. There might also be a case for it being reflected in the legislation that universities:

   i. must provide teaching that is informed by research and scholarship
   ii. are institutions that play a wider civic role in their local areas and in society at large
Powers of the Office for Students and the secretary of state

26. The Bill proposes extensive new powers for the Office for Students and the secretary of state over a currently successful, autonomous and co-regulated sector. It seems that a number of these powers are required primarily because of the intention to facilitate the entry of new providers into the sector more quickly than in the past, with fewer checks and tests being applied at the gateway. UUK has concerns about some of the powers that the Bill also gives to the OfS and secretary of state, and the degree of discretion available in the use of these powers.

Discretion as to use of sanctions by the OfS

27. The Bill grants the OfS the power to make use of a range of sanctions against institutions, some with no formal means of independent appeal. The sanctions available to the OfS include fines, removal from the formal register of higher education providers, and removal or suspension of the ability to award degrees or university title – including from institutions awarded university title or DAPs through specific Royal Charters or Acts of Parliament.

28. The threshold for the OfS to make use of these sanctions is that it ‘appears to’ the OfS that there has been some breach of the conditions which are attached to an institution being registered as a higher education provider. Given that these sanctions include those that could effectively shut down a higher education institution’s activities, with associated impact for students and the reputation of UK higher education as a whole, UUK believes that a higher threshold of evidence should be required than is currently in the Bill. In particular, we believe that the OfS ought to be required to ‘have evidence’ that there is a breach of a condition of registration.

Power to ‘frame guidance by reference to particular courses’

29. The Bill allows for the secretary of state to ‘frame’ the guidance given to the OfS ‘by reference to particular courses’. This is in contrast to the current legislation (the Further and Higher Education Act 1992), in which the secretary of state is specifically forbidden from setting out guidance to the Higher Education Funding Council for England (HEFCE) in this granular fashion.

30. UUK is concerned that the Bill potentially allows the secretary of state to set out guidance to the OfS relating to the creation or closure of courses of particular types by institutions. While this guidance cannot relate to particular institutions, it could be framed so as to require the OfS to act to block institutions which had decided to open or close courses of particular types.

31. This creates the potential for an unprecedented breach of the autonomy of institutions to decide for themselves what courses should be run. This decision is made by institutions responding to the demands of students and the needs of employers, the social and cultural needs of the country, and the strategic direction of the individual university. The underlying philosophy of the Bill and the White Paper furthers the role of informed student choice in
shaping the sector. Allowing the secretary of state to provide guidance to the OfS which relates to the creation or closure of particular courses contradicts this underlying philosophy.

32. We recognise that the legal frameworks should allow for the secretary of state to give guidance to the OfS to ensure that appropriate incentives are in place to support the teaching of subjects which are expensive to teach, or else strategically important, as is currently the case. However, this can be achieved alongside specific protection to prevent the secretary of state from being able to give guidance on matters directly related to course creation or closure.

**Overall role of the OfS**

33. HEFCE currently operates both as a regulator of the sector, but also a source of expertise and advice in relation to matters of higher education policy. Its close working with institutions means that it is respected by both the sector and by ministers and officials. We would want to ensure that the OfS continues this role, in particular through having a formal responsibility to provide advice to the Secretary of State on relevant matters. This would reflect a similar role for UKRI in relation to research through Clauses 91 and 95.

34. We also consider that the ‘guiding principles’ of the OfS, as set out in Clause 2, are unduly narrow, and fail to ensure that the OfS has reasonable regard to important matters such as maintaining confidence in the sector as a whole, and its international reputation.

**Teaching Excellence Framework and tuition fees**

35. The Bill provides the legislative framework for the government to introduce the Teaching Excellence Framework (TEF) that is outlined in its White Paper. The TEF will be an assessment of the quality of institutions’ teaching (with the intention of assessments at course level in the future), which will be made available both to inform students and to have a role in determining the fee cap which applies to individual institutions.

36. Although the details as to how the TEF will operate is currently being consulted upon and little detail is given in the Bill, it is a key element of the government’s intended reforms and we hope that Parliament takes the opportunity presented by the passage of the Bill to consider how it should be implemented.

37. Students at universities report high levels of satisfaction with their courses. In every year between 2013 and 2016 the HEPI/HEA Student Academic Experience Survey shows that between 85 and 87% of students report they are very satisfied or quite satisfied with their course. In this year’s survey only 13% reported that their experience had not met their expectations. The latest National Student Survey in 2015 found a very similar proportion (86%) reporting satisfaction. Universities are also responding to the demands of students, including by investing in teaching facilities in spite of cuts to capital grants.
38. We welcome that the government has listened to the views of UUK and the sector and that
the introduction of the TEF will be more phased, with a trial year for some aspects in 2017–18
and an opportunity for proper evaluation. This is vital if government wishes this exercise to
command the confidence of students, their parents, teachers/advisers, employers and the
universities which take part.

39. It is important that the process is developed in a way which does not reduce the varied and
complex outcomes and benefits of a higher education to a few metrics. There are many ways
in which an excellent higher education can be delivered, and this diversity is an important
feature of the UK’s higher education sector. The TEF process must be able to account for this
diversity, and avoid compelling or incentivising the standardisation of teaching methods or
practices.

40. While the aim of TEF is to give students more information and data before they choose
courses to help better match students to courses and to increase competition, there is limited
evidence as to what particular pieces of information would be most useful in aiding students
to make these decisions. The focus should be on providing that information which is helpful,
while avoiding an overload of data.

41. We welcome the government’s commitment to allow tuition fees to be maintained in real
terms (subject to demonstrating high-quality teaching through an effective TEF). The
development of an effective TEF must take due note of the validity of proposed metrics,
appropriate granularity of assessment, and suitable timing of the introduction of specific
features. Universities will be able to use an effective and meaningful TEF to demonstrate
excellent teaching and show their value to students, taxpayers and government. However, a
world-class university system can only be maintained through sustained investment.Allowing
universities to increase fees in line with inflation, on the condition of being able to
demonstrate high-quality teaching through an effective TEF, is a balanced and sustainable
response to these two objectives.

****Social mobility

42. UUK fully supports the government’s priority to widen participation in higher education and is
pleased to take forward the Social Mobility Advisory Group, which is due to report later this
year. The group – which includes representatives from schools, universities and employers –
will provide advice to the government on how universities in England can deliver the former
prime minister David Cameron’s 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 to 20% by 2020. Although we now have a new prime minister, in her speech on
Monday 11 July 2016, Mrs May echoed the calls to improve the life chances of under-
represented groups.
43. The advisory group is looking at how data can be used to help support social mobility and widening participation objectives. UUK supports greater transparency to support effective decisions and policy making.

44. However, we seek reassurance from the minister that the government does not intend through the Bill to require institutions to provide information on a course-level basis. Given the number of ‘cuts’ of the required data set out in Clause 9 of the Bill, this would create a significant bureaucratic burden and create a significant amount of data that related to very small samples of students which is likely to be unrepresentative.

45. In addition to this, the OfS has new powers to require institutions to provide data on a number of measures relating to admissions and the retention of students – including from UCAS. We are broadly supportive of these measures, which may help rigorous research to be conducted to support policies in this area, although there are legitimate concerns around the assurances that UCAS will be able to give to both students and institutions about the data which it will be required to provide to the secretary of state.

46. The new OfS retains the power currently held by the Office for Fair Access to require universities to submit and adhere to specific plans in relation to access and participation if they are to charge fees above the ‘basic rate’ (currently £6,000 per year).

Research and innovation agencies

47. The Bill allows for the reforms of the government agencies which fund and support research in the UK, many of which reflect the recommendations of the Nurse Review published in November 2015. The various existing research councils and Innovate UK will be brought together as ‘autonomous councils’ of one body: UK Research and Innovation (UKRI). These councils will, as at present, operate across the UK as a whole.

48. Innovate UK currently has a very specific and qualitatively different focus than the existing research councils or the research functions of HEFCE. There is a great deal of uncertainty over how the relationship between Innovate UK and other committees within UKRI will operate, and concern that the business-facing role of IUK does not sit comfortably with the university-facing role of the research councils.

49. Also within UKRI will be an autonomous Research England, which will have responsibility for funding research in higher education institutions in England. This stream of funding will reflect that currently dispersed by HEFCE through the quality-related (QR) funding stream. This is funding that is granted on the basis of research excellence, rather than to fund a particular named research project. This type of funding plays an important role in underpinning the sector as a whole, allowing for investment in interdisciplinary and experimental research, and for institutions to establish research centres and projects in new areas. QR funding is
complementary to funding delivered through research councils, with the latter covering less than 75% of the total costs of research projects.

50. We welcome the commitment in the Bill to maintaining the dual support system of research funding (made up of project-based funding and quality-related funding). It may be helpful to recognise through legislation that the two funding streams should be grounded in complementary evaluation and allocation mechanisms, with QR funding based on a retrospective evaluation of research excellence.

51. The reorganisation of the (currently autonomous) research councils into a single organisation could undermine efforts to ensure that they are led by researchers of distinction. It is important that these posts are attractive to world-leading research administrators; if not, the long-term autonomy and vitality of individual councils (and therefore disciplines) may be undermined if uncertainty over the role and status of executive heads of the research councils in the new system remains.

52. Given the role that the board of UKRI will have in advising the secretary of state as to allocations of funding to the councils, it is important that the board is predominantly made up of researchers, independent of the government, and representing a variety of disciplines and parts of the UK. The voice of businesses and others should be reflected, but not at the expense of a breadth of research expertise. It is important to recognise that innovation and exploitation of research, while important, should not be the primary driver of research allocation decisions.

53. The Bill allows the minister to change or alter the committee/council line-up through regulation, with the exception of Innovate UK and Research England, which have additional protections. While occasional changes in the line-up of UKRI’s research committees may be necessary, such changes should take place only after consultation with the sector and, if appropriate, substantive consideration by parliament or one of its committees.

54. The Bill provides for cooperation and information sharing between UKRI and the OfS and the White Paper states that there will be close working between the two bodies. However, there are some concerns around the separation of teaching and research funding (teaching sitting within the OfS and research within UKRI), and questions around how both UKRI and OfS will in practice ensure research and teaching mutually benefit each other. Higher education institutions also take a strategic view of managing their research, teaching and knowledge exchange activities. It is important that a holistic and strategic view of how institutions operate is not lost.

Devolution

55. Devolution impacts the Bill and its policy objectives in ways that are likely to be complex and will require further discussion and scrutiny. The sector is made up of institutions with
functions split across devolved and non-devolved policy areas. In devolved policy areas, such as higher education, the government needs to be mindful of the fact that the current sector operates largely as a UK-wide market. As a result of this, in a number of policy areas there may be a desire from the sector to maintain at least the opportunity for a UK-wide approach. For example, Scottish, Welsh and Northern Irish institutions may choose (whether en masse or individually) to ‘opt in’ to the TEF, and HEFCE currently operates elements of the Research Excellence Framework process on behalf of the funding councils in all four nations. We would want to ensure such cooperation and coordination was possible and feasible.

56. The OfS and UKRI to have the ability to enter discussions with the relevant funding bodies in the devolved nations and to perform functions on a UK-wide basis when this is agreed. Therefore the provisions relating to funding for and charging by the OfS and designated bodies needs to be able to accommodate this possibility.

57. There are important questions about the way that UKRI will fulfil its functions, which include both UK-wide and England-only responsibilities. There must be clarity on the way in which UKRI will be able to work with, and take account of, the priorities of the devolved governments, where appropriate. There is a case for ensuring its board includes representatives who have knowledge of the research and innovation environment in the devolved nations.

For more information or to arrange a briefing, please contact:

Alex Leonhardt  
Senior Political Affairs Officer  
alex.leonhardt@universitiesuk.ac.uk  
T: 020 7419 5605  
M: 07588 857180

Karmjit Kaur  
Political Affairs Manager  
karmjit.kaur@universitiesuk.ac.uk  
T: 020 7419 5411  
M: 07464 480 043

Nicky Old  
Deputy Director – Communications and External Relations  
Nicky.Old@universitiesuk.ac.uk  
T: 020 7419 5472  
M: 07827 894525