

## Higher Education and Research Bill: House of Lords Second Reading

6 December 2016

### Background

The UK higher education sector is a UK success story that has a global reputation for excellence in teaching and research. The sector offers a diverse range of high quality provision that supports over 2.5 million students from the UK and around the world to achieve their educational goals each year, and is internationally renowned for its strong, innovative and exceptionally efficient research base.

Universities UK (UUK) understands why a new bill is deemed necessary at this time as the sector – and the environment in which it operates – has changed significantly since the last major piece of legislation, the Further and Higher Education Act 1992.

The broad outline of the regulatory regime set out in the Higher Education and Research Bill is similar in many ways to the recommendations advocated in UUK's 2015 report on regulation *Quality, Equity and Sustainability*. In particular, we welcome the establishment of a single 'gateway' for degree awarding powers, university title and awarding of grant funding or teaching for all those in the sector.

However, while we are supportive of new legislation in principle, our members still have significant concerns about many aspects of the bill which have remained unchanged during the Commons stages.

We welcome the recent amendments to the bill from the Secretary of State for Education as a positive step in the right direction – particularly the amendments concerning a new duty for the OfS to monitor the financial sustainability of the sector and restrictions on the Secretary of State's ability to frame guidance with respect to particular courses. Changes relating to UKRI are also welcome, including the addition of postgraduate training in UKRI's functions and the requirement for at least one UKRI board member to have experience of research, science or business in Wales, Scotland or Northern Ireland.

This is further evidence, on top of the reassurances given by the Minister for Universities, Science, Research and Innovation during Committee Stage, that government is listening to the concerns raised by universities, students and those working in the sector.

This briefing for Second Reading in the House of Lords therefore highlights **seven** areas where Universities UK believes there is more to be done. These are:

1. Ensuring the powers of the Office for Students and the Secretary of State are compatible with the principle of institutional autonomy
2. Separating 'quality' and 'standards' in the bill, and ensuring that academic standards continue to be owned by the sector
3. Protecting students, employers and the reputation of the sector by ensuring a suitably high bar for new entrants
4. Strengthening checks and balances for giving and revoking Degree Awarding Powers and University Title
5. Removing the ability for the OfS to validate degrees and clarifying its role as regulator
6. Ensuring the duties of the OfS reflects the diverse range of activities carried out by universities
7. Ensuring that changes to the research landscape are made with full consultation with the research community and the link between teaching and research is fully reflected in the face of the bill

Further information about our proposals on these areas, and other areas for proposed amendments, are included in Annexe A at the end of this briefing.

## 1. Institutional autonomy

The UK higher education sector is made up of autonomous and independent institutions with robust governance arrangements and a high level of internal and public scrutiny. Ensuring that new legislation does not – by design or default – undermine existing autonomy for universities is undoubtedly the biggest area of concern in terms of ensuring the ongoing quality of teaching and learning in the sector for UUK's members and its Board.

In order to be successful, universities need to be able to take their own decisions in order to be flexible and responsive to the environment in which they are working. This is now more important than ever with the uncertainties created by the decision for Britain to leave the European Union. Successive policy statements made by pan-European higher education groups have recognised the fundamental importance of institutional autonomy in delivering world-class,

competitive and effective higher education institutions and systems.<sup>1</sup> Reducing autonomy has been linked to lower performance, and over-regulation of ‘autonomous’ institutions through overly bureaucratic accountability mechanisms also have the effect of reducing autonomy and negatively impacting on performance.<sup>2</sup>

We believe that an autonomous system contributes significantly to the global success of the UK’s university sector; allowing institutions to be flexible and responsive to the needs of their students and employers, to think long term about global challenges, and remain free from direct political interference.

The ability for every institution to make the decision about the courses it provides – what it chooses to open or the difficult decision to close a course – should be made free from government interference. We therefore welcome the amendment that: *“Guidance framed by reference to a particular course of study must not guide the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study”* to address this concern.

However, autonomy is such a fundamental principle of the UK higher education system that we would want the bill to go further and for the OfS to have regard (under Clause 2) to *“the need to act in a manner compatible with the principle of institutional autonomy”*.

## 2. Standards

Central to our concerns about the erosion of university autonomy is the need for the government, and the bill, to be clearer in its approach to standards. UUK and others have noted that the bill unhelpfully elides quality and standards – two separate concepts in higher education policy – in a number of places. Whilst there is a legitimate role for the new Office for Students in assessing quality (defined by the Quality Code as “how well the learning opportunities made available to students enable them to achieve their qualification”<sup>3</sup>), standards are rightly the preserve of independent academic institutions.

The bill as currently drafted includes a wide latitude for the OfS and government to intervene in academic judgements and standards. It is essential that amendments are made to the bill to improve the definition of standards and clarify that the essential autonomy of independent academic institutions in this area will not be infringed upon by the OfS.

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<sup>1</sup> Salamanca Declaration, [2001](#); Graz Declaration, [2003](#); Lisbon Declaration, [2007](#); Prague Declaration, [2009](#)

<sup>2</sup> Easterman et al., 2009, [2011](#)

<sup>3</sup> UK Quality Code for Higher Education

The Quality Assurance Agency's Quality Code defines academic standards as "*the standards that individual degree-awarding bodies set and maintain for the award of their academic credit or qualifications.*" Individual degree-awarding bodies (often individual higher education institutions) are therefore responsible for defining their own academic standards, including setting the pass marks and determining the grading and marking schemes. This is an area where we have significant concerns about the current drafting of the bill as the lack of clarity about what is meant by standards, and the fact that it does not explicitly acknowledge that academic standards are matters for individual institutions, in line with sector agreed practices and frameworks, could allow government intervention in the future.

In session 9 of Public Bill Committee the minister provided some clarification and reassurance, saying: "*Let me be absolutely clear... this is not about undermining the prerogative of providers in determining standards. This is about ensuring that all providers in the system are meeting the threshold standards set out in the "Frameworks for Higher Education Qualifications", a document endorsed and agreed by the sector.*"

*"We are clear that the Government have no role in prescribing course content or structure and that institutional autonomy, as well as the consequential diversity of content and teaching styles across the sector, are crucial to the reputation and vibrancy of UK HE. However, it is important that we can ensure that the overall quality of HE in this country is not undermined by providers offering substandard qualifications, thus ensuring that students get what they pay for and that the taxpayer receives value for money".*

If this is the intention, then we believe the bill should build on the system and approaches currently in place which largely meet these objectives already, balancing sector autonomy with effective regulation.

We are not saying that all references to standards should be erased from the bill as we recognise, and support, the QAA's role through the Quality Code to ensure that minimum standards are met. This means that the QAA has a role to consider that "*Degree Awarding Bodies ensure that their programmes are designed, approved and assessed in accordance with the UK threshold standards...and their own standards set out in their academic frameworks and regulations.*"<sup>4</sup>

As currently drafted, the bill conflates quality and standards. Introducing these changes could lead to a centrally mandated set of academic standards that would be incompatible with a diverse, autonomous and high-quality higher education sector, and would likely be unworkable. This would be a significant departure from the approach currently taken in which institutions are responsible for setting the standards required of students, in line with sector-agreed practices

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<sup>4</sup> QAA Quality Code (2015)

and frameworks. It also goes against the commitments made publicly by the minister which are quoted above.

It is our view that the OfS, and its designated quality body, should be concerned with ensuring appropriate institutional and sector governance and other processes relating to standards, rather than being able to act, potentially, as a higher education version of Ofqual. UUK therefore continues to call for changes to the bill (Clauses 13, 25, 26) which:

- Separate quality and standards
- Define standards (academic and threshold)
- Recognise that academic standards are sector-owned (and ensuring a sector-owned process for agreeing standards)
- Remove (or limit) the reference to standards in relation to the TEF
- Give the designated body responsibility for administering registration requirements relating to standards

### **3. New entrants and probationary DAPs**

UUK welcomes competition, collaboration and new entrants to the sector; indeed our diverse membership includes some new providers who meet our membership criteria. However, we believe the bar to entry must be high in order to protect students and the global reputation of the sector.

For students, choosing to go to university represents a significant personal and financial investment and we must ensure the students have assurances that they are choosing an institution which will support them. In 2014, the National Audit Office found that dropout rates at nine alternative providers were higher than 20% in 2012/13. This compares to an average dropout rate of just 4% across the rest of the sector.

It is essential that new providers can demonstrate that they can provide high quality education. This includes robust governance that maintains academic quality and protects the student interest, and a demonstrable track record of delivering high quality education before being granted degree awarding powers.

Our position is straightforward: any new higher education provider awarding their own degrees or calling themselves a 'university' must meet the same high requirements as existing universities. Appropriately robust market entry standards serve the interests of students by minimising the risk of early institutional failure or the need for intervention by the OfS, and we are not reassured that this is currently the case in the proposals put forward by the government.

We are concerned that the ability for the OfS to grant probationary degree awarding powers (DAPs) is firmly in the interest of new providers seeking to test entry into the market, but is not in the interest of students who could end up with no degree or a degree which is not valued in the eyes of employers. We therefore remain unconvinced about the introduction of probationary DAPs without further safeguards for students.

UUK recommends that a requirement of provisional DAPs should be that the provider is validated by a degree awarding body (either another provider takes this role voluntarily, or under the new commissioning arrangements under section 46). Students can in this way enrol with the probationary body fully aware that if the body fails its probation they will receive an award from a named and identified established source in the validating body. If the probationary body passes its probation they will receive its award.

This approach is consistent with the expectations of consumer protection law in that students will understand up front what the consequences of a probationary failure will be. Validation will also provide opportunities for development and continuous improvement through the oversight of the validating body, reducing the likelihood that the provider will fail its probation.

The Quality Assurance Agency has highlighted the benefits of new entrants working closely with existing providers.<sup>5</sup> This report shows that while there are some new providers offering innovative and high quality education under the current arrangements, newer and smaller institutions are more likely to fail quality assurance reviews than more established and larger providers. The report also notes that those alternative providers who work closely with universities as their degree awarding bodies tend to be higher performing institutions. Both of the alternative providers who received particular commendations from the QAA in this period have validation arrangements in place with university partners.

#### **4. Degree Awarding Powers and University Title**

The bill amends the 1992 Act to give the newly-created Office for Students the ability to grant and remove institutions' degree awarding powers (DAPs) and to award or remove the use of university title (UT). The power to grant DAPs and UT 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 (QAA). The ability to remove DAPs and UT from a provider is a new power.

The Department for Education will retain a role in providing guidance to the OfS in its use of these powers. However, we are concerned that the bill currently gives the OfS unchecked and

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<sup>5</sup> QAA Reviews of Alternative Providers, [Key Findings](#) 2013-15. [Hansard record](#).

unlimited powers in this area. It is a substantial change from current arrangements as the Higher Education Funding Council for England does not have the power to take away the use of the university title, and this is a cause for concern in the sector.

We believe that the focus should primarily be on strengthening the process to ensure that new providers with the ability to develop, flourish and enrich the sector can go forward to gain DAPs and be awarded the use of university title. The OfS should also have appropriate and effective checks and balances in place in terms of how it uses these powers.

UUK is therefore proposing a new clause legislating for a degree of independent oversight of the process for awarding DAPs and UT to provide checks and balances on these very important decisions and ensure these are made at arm's length from government.

In practice, this would require the OfS to take the advice of a specialist committee within the designated quality body, or where no quality body is designated, the OfS should be required to set up an independent committee along the lines of the existing Advisory Committee on Degree Awarding Powers.

We also propose a legislative requirement that the OfS must have regard to the need to maintain confidence in the higher education sector as a whole in making use of its powers to grant DAPs and university title (Clause 40 or Clause 2).

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.

## **5. Validation and the OfS as regulator**

Clause 47 – the ability for the sector's regulator (the OfS) to validate degrees – is the only clause of the bill that UUK strongly urges should be removed from the bill.

In our view it is a conflict of interest and therefore wholly inappropriate for a regulator to participate in the market which it regulates. No other regulator is empowered to act in this way for good reason.

There are no circumstances in which we think this would be appropriate, even as a 'backstop' power. The policy intent is covered by Clause 46, which allows the OfS to make arrangements with a higher education provider to act as a 'validator of last resort'. We therefore urge the government to revisit this section of the bill.

We understand that the OfS is not simply HEFCE by a new name and that its remit and duties are designed to reflect the new environment as well as its regulatory role. But we do not know whether the intention is that the OfS is a Specified Regulator for the purposes of the Legislative and Regulatory Reform Act 2006.

Specified Regulators are obliged to comply with the principles of the Regulator's Code, or explain why they are not complying. It includes the requirement that regulatory activities must be based on risk, be evidence-based and reflect the specific compliance records of those they are regulating. This would give us confidence that the OfS should act in a proportionate, evidence-based manner when carrying out its functions.

There are a number of occasions in the bill where "if it appears to [the OfS]" is used, most significantly in relation to the powers of enforcement (monetary penalties, suspension, deregistration and refusal to renew an access and participation plan at sections 15 - 21). This 'appears to' formulation appears frequently elsewhere in legislation, including in the current Further and Higher Education Act 1992, but with some important differences to note. Few, if any, of the examples use the formulation in the context of the decision to take enforcement action, which is what is raising concern about its use in the bill. We therefore suggest that use of the phrase "has reasonable grounds to believe" which is used elsewhere is substituted in the bill.

## 6. Duties of the OfS

Clause 2 of the bill sets out the broad role and remit of the OfS with a set of 'general duties' that the OfS must have regard to in fulfilling its functions. Collectively these set out some guiding principles of the OfS, and therefore the approach that will be taken to regulating the sector.

We maintain that a broader version of section 2 is needed to reflect what a regulator needs to do and who it needs to work with to function effectively. The lack of a holistic overview of universities including the sustainability of institutions and the health of the sector is a major concern to our members.

The role of the OfS should be extended to allow the OfS to provide advice to the secretary of state on matters relevant to its remit, without specific instruction by the secretary of state to do so (this is in line with FHE Act, Clause 69 (1)(b))

And we still consider that the bill could go further than the amendment for the OfS to monitor the financial sustainability of the sector (as in the government amendment, 14 November 2016) and take a more holistic view of the sector by having a duty to have due regard to the financial health and viability of providers when it exercises its decisions. This does not mean that the OfS would have responsibility for any institution in financial difficulty, but that in exercising its duties - and in

cooperation with UKRI – it should ensure that in taking decisions it considers the impact on the financial health of the sector.

We propose:

- Inserting a general duty to maintain confidence in and integrity of the higher education sector.
- Amending the general duty on competition to require OfS to promote collaboration where this is in interests of students, employers and in the public interest.
- Amending the general duty on choice to insert a requirement to support part-time and other alternative modes of provision.
- Inserting a general duty for the OfS to have regard to the financial health and viability of providers when it exercises its duties (in addition to the government's new section on monitoring the financial health of the sector).
- Strengthening the role and independence of the OfS by requiring that the Secretary of State have due regard to advice which it gives.

## 7. Changes to the research landscape

The bill reforms the government agencies which fund and support research in the UK. These reforms broadly reflect the recommendations of the Nurse Review published in November 2015. The seven 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 presently, operate across the UK as a whole. Also within UKRI will be an autonomous Research England, which will have responsibility for funding research in higher education institutions in England.

In the proposed Bill (clause 86 (2)), the secretary of state has the power to:

- (a) add or omit a Council, or*
- (b) change the name of a Council.*

While we recognise and understand that the research landscape is constantly evolving and there should be scope for the Secretary of State to make changes to reflect this, such decisions should be made in consultation with the research community. We welcome the Minister Jo Johnson's remarks in the Commons Committee stage wherein he stressed that changes to research councils would not be made without an affirmative resolution, Universities UK believes that the duty to consult should be on the face of the bill.

The creation of the OfS and UKRI will split the governance and funding arrangements for teaching and research. In the context of universities, teaching and research are intrinsically linked with staff, infrastructure and financial resources used to deliver research, education and innovation-related activities often being one and the same. The close links between teaching and research often supports universities to respond to emerging research, help students develop key skills and better equip graduates for employment.

While we acknowledge that the government published a [factsheet on 15 November 2016](#) outlining plans for a memorandum of understanding between UKRI and OfS and detailing areas where they will work together, we think this should be strengthened further. We therefore recommend that the government requires this cooperation on the face of the bill.

Innovate UK currently has a very specific focus that is qualitatively distinct from the existing research councils or the research functions of HEFCE. There is a great deal of uncertainty about how the relationship between Innovate UK and other committees within UKRI will operate, and concern that the business-facing role of Innovate UK does not sit comfortably with the university-facing role of the research councils. There is a specific concern that Innovate UK may become a commercialisation arm for research funded by the councils. This would be more limited and less beneficial than its current role. It would therefore be particularly helpful if the bill clarifies that Innovate UK's unique business facing focus will be retained within UKRI.

## Other issues for consideration

### **Brexit**

The current political environment outside of the bill also raises some significant opportunities and challenges for the higher education sector, in particular the aftermath of this summer's vote to leave the European Union.

The UK's withdrawal from the EU poses a number of significant threats to the university sector, while also offering some key opportunities if the government pursues policies which enable our universities to prosper following Brexit.

However, Universities UK does not hold the position that the bill should be rejected or paused in the context of these potential implications. The vote to leave the EU does not change the need for reform and modernisation of the legislation which underpins the regulation of higher education. Further, delaying the bill has the potential to create additional uncertainty over a greater period and it may well be more positive for the sector to have the new infrastructure - particularly UKRI - in place when the UK leaves the EU in order to make a strong case for UK universities.

Regarding the implications of Brexit, UUK continues to work closely with government, European and international partners to ensure that when we do exit the EU, we do so in an environment where the UK's universities can continue to thrive.

### **International students**

UK universities are truly global institutions, and the important economic, societal and cultural benefits of international students should not be underestimated. Universities UK has serious

concerns regarding potential changes to the visa regime which would see a significant drop in the number of genuine international students coming to study in the UK.

In October 2016 the Home Secretary announced an upcoming consultation on entry rules for international students, which proposes different visa rules for “lower quality” universities and courses. How quality will be defined must be at the centre of this consultation. Small high-quality specialist institutions, such as conservatoires, may lose out due to their size and the range or number of courses they offer despite the fact that they produce some of the world’s most talented artists. Further, some of the current most highly ranked UK universities in the world may not score particularly highly in the government’s proposed Teaching Excellence Framework as it currently stands.

UUK is concerned that any additional barriers to attracting international students to study in the UK will see a reduction in numbers that could see local economies lose out on the significant economic and employment benefits that international students bring. This is particularly significant in the context of the Industrial Strategy and promoting strong, regional growth. International students can also protect the sustainability of many courses for British students, often in subjects where we need more UK graduates such as STEM.

While we acknowledge that the upcoming Home Office consultation (expected in the new year) is independent of the passage of the bill, any strengthening of the higher education system through legislation will be undermined if it is coupled with a punitive set of policies when it comes to international students. We therefore support members in raising concerns on this topic within the broader scrutiny of the bill.

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## Annexe A: Summary of UUK’s proposed amendments

This annexe compiles the main amendments UUK proposes for consideration, many of which are highlighted in this evidence. It is intended to assist peers in their consideration of the bill, but is not intended to be comprehensive or final: there are a number of less substantive amendments that we will be seeking throughout the bill, and the amendments below will be subject to change as the bill progresses through committee.

Section of the bill	Issue with which the amendment is concerned	Summary of amendment sought
2	<p>We maintain that a broader version of clause 2 is needed to reflect what a regulator needs to do and who it needs to work with to function effectively.</p> <p>The lack of holistic overview of universities continues to be of concern to our members.</p>	<p>We propose further consideration of the need to broaden clause 2, including by:</p> <ul style="list-style-type: none"> <li>• Inserting a general duty to maintain confidence in and integrity of the higher education sector.</li> <li>• Amending the general duty on competition to require OfS to promote collaboration where this is in interests of students, employers and in the public interest.</li> <li>• Amending the general duty on choice to insert a requirement to support part-time and other alternative modes of provision.</li> <li>• Strengthening the general duty for the OfS to have regard to the financial health and viability of providers when it exercises its duties (in addition to the government’s new section on monitoring the financial health of the sector).</li> <li>• Strengthening the role and independence of the OfS by requiring that the Secretary of State have due regard to advice which it gives.</li> </ul> <p>We also suggest removing the reference to ‘greater’ in connection to choice as the duty should be to ensure that there is choice of an appropriate quality within the sector, and not simply to increase the amount of choice without</p>

		regard to the effectiveness or quality of it.
NC 2A or sub-section 2, 68, 71, 72	We believe it is important for the regulator to be able to give unsolicited advice to the Secretary of State, based on trends or emerging issues, without a specific request to do so.	The OfS should have among its functions the ability to give advice to the Secretary of State on the provision of higher education in England, as HEFCE does at present. The Secretary of State should have to have regard to this advice in issuing guidance or directions to the OfS and setting the terms and conditions of its grant.
NC 2B	<p>In order to be successful universities need to be able to take their own decisions to be flexible and responsive to the environment in which they are working. The bill as currently drafted includes a number of areas where a future regime could seek to intervene in areas which are matters for individual institutions.</p> <p>We seek to build upon reassurances about protecting university autonomy by enshrining this on the face of the bill.</p>	<p>We welcome the government’s amendment that “<i>Guidance framed by reference to a particular course of study must not guide the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study</i>” to address concerns about the government directing individual institutions about courses which they can open or close.</p> <p>However, autonomy is such a fundamental principle of the UK higher education system that we would want the bill to go further. preferable if instead the OfS and SoS (and indeed UKRI) had a duty to act in a manner compatible with the principle of institutional autonomy. This could be done as a new overarching clause or an amendment to clause 2.</p>
8	We support the creation of a register as a single gateway for the sector, and a single place for those seeking information about the sector. However, we want to ensure that reporting burdens on all providers are reasonable and proportionate.	We would suggest consideration of whether some ‘reasonableness’ amendments are required (i.e. is it reasonable to inform the OfS of ‘any’ change? This may depend on what level of detail is required by the OfS for the purpose of ongoing registration).
5 or 9	Transparency of providers	Universities are currently subject to the Freedom of Information Act 2000. We propose further consideration be given to whether adherence to FoI should be a condition for initial registration.
13 (and	Central to our concerns about the erosion of	We therefore propose changes to the bill (Clauses 13, 23, 25, 26) which:

<p>potentially consequently to 23, 27 and Schedule 4)</p>	<p>university autonomy is the need for the government, and the bill, to be clearer in its approach to standards. UUK and others have noted that the bill unhelpfully elides quality and standards – two separate concepts in higher education policy – in a number of places. Whilst there is a legitimate role for the new Office for Students in assessing quality, standards are the preserve of independent academic institutions and should be free from political interference.</p>	<ul style="list-style-type: none"> <li>• Separate quality and standards to enable different treatment in subsequent clauses</li> <li>• Clarify the definition of standards to focus on threshold standards and a condition of registration focused on academic governance of standards</li> <li>• Recognise that academic standards are sector-owned (and ensuring a sector-owned process for agreeing threshold standards)</li> <li>• Remove (or limit) the reference to standards in relation to the TEF as it is inappropriate to attempt to rank standards.</li> </ul>
<p>15, 16, 18, 21</p>	<p>It is important that the threshold of evidence required by OfS in order to impose sanctions is suitably robust. At present the bill uses the phrase “if it appears to the OfS” in various places in the bill, most significantly in relation to the powers of enforcement (monetary penalties, suspension, deregistration and refusal to renew access and participation plans at sections 15-21). While “<i>if it appears to x</i>” is widely used in other legislation, few use the formulation in the context of a decision to take enforcement action, which is what raises concerns.</p>	<p>We therefore suggest the following:</p> <ul style="list-style-type: none"> <li>• Due consideration is given to an alternative formulation: “has reasonable grounds to believe”</li> <li>• Further clarification about the appropriate supporting evidence which would be required before enforcement action is taken</li> <li>• Clarification about whether the OfS will be a specified regulator for the purposes of the Legislative and Regulatory Reform Act 2006.</li> </ul>
<p>18-20</p>	<p>There has already been some discussion about the appropriate length of the specified period in connection with the sanctions outlined in these sections.</p>	<p>We suggest an amendment (clause 19) to require confidentiality during the notice period.</p>

	<p>For us, there is an issue regarding appropriate confidentiality in the process – particularly where allegations are not subsequently upheld – because of the significant risks to the reputation of an individual provider and the HE sector as a whole.</p>	
25	<p>While it is coherent for the TEF to compare the quality of provision between providers so as to come to a comparison of levels of excellence, we do not think the same applies to comparisons of standards.</p> <p>We therefore think the TEF should be explicitly focused on the quality of provision and outcomes for students, rather than attempting to also ‘rate’ standards.</p>	<p>We therefore suggest the reference to ‘standards’ is removed in this clause, or further clarification and reassurance be given about the use of standards in this context.</p>
40	<p>Power of OfS to authorise research degree awarding powers</p>	<p>A new sub-clause requiring input from UKRI before an institution is granted the power to award research degrees</p>
40	<p>We are concerned that the ability for the OfS to grant probationary degree awarding powers is not in the interest of students, who in the event of an institution failing could end up with no degree or a degree which is not valued in the eyes of employers, but is firmly in the interest of new providers seeking to enter the market.</p> <p>We therefore remain unconvinced about the introduction of probationary DAPs without further</p>	<p>We propose, as a requirement of provisional DAPs, that the provider is validated by a degree awarding body (either another provider takes this role voluntarily, or under the new commissioning arrangements under section 46). Students can in this way enrol with the probationary body fully aware that if the body fails its probation they will receive an award from a named and identified established source in the validating body. If the probationary body passes its probation they will receive its award.</p>

	safeguards for students.	
NC 40A	<p>The bill amends the 1992 Act to give the newly-created Office for Students the ability to give and remove institutions' degree awarding powers (DAPs) and to award or remove the use of university title (UT). 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 (QAA). It is important that any new higher education providers awarding their own degrees or calling themselves 'university' meet the same high requirements as existing universities. Appropriately robust market entry standards serve the interests of students by minimising the risk of early institutional failure or the need for intervention by the OfS and we are not reassured that this is currently the case in the proposals put forward by government.</p>	<p>We propose a new clause legislating for a degree of independent oversight of the OfS in awarding degrees <u>and</u> university title to provide checks and balances on these very important decisions.</p> <p>In practice, this would require the OfS to take the advice of an independent, specialist committee within the designated quality body, or where no quality body is designated for the OfS to set up a statutory committee along the lines of the existing Advisory Committee on Degree Awarding Powers.</p>
51	<p>The use of university title has strong reputational implications. It is therefore important 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.</p>	<p>A new subsection making it clear that the criteria for award university title should require that universities:</p> <ul style="list-style-type: none"> <li>• Must provide teaching that is informed by research and scholarship</li> <li>• Must be institutions that play a wider civic role in their local areas and in society at large.</li> </ul>
47	Clause 47 – the ability for the sector's regulator	Clause to be deleted.

	<p>(the OfS) to also validate degrees – is the only clause of the bill UUK strongly suggest should be struck from the bill.</p> <p>In our view it is a conflict of interest and therefore wholly inappropriate for a regulator to participate in the market which it regulates. No other regulator is empowered to act in this way for good reason.</p>	<p>The policy intent is covered by Clause 46, which allows the OfS to make arrangements with a higher education provider to act as a ‘validator of last resort’.</p>
27, 64 and 65	<p>Funding of the OfS and body designated for the purpose of assessing quality</p>	<p>Ensure that providers requiring little regulation are not charged fees to cover the higher costs associated with new or riskier provision; and ensure that the OfS can receive funding for any activities it undertakes on behalf of the devolved nations.</p>
87	<p>The loss of independence and autonomy of the seven research councils as enshrined through the Royal Charters has raised significant concerns, not least from the perspective of the Haldane principle.</p> <p>In the bill as currently drafted the SoS has the power to add or omit a Council, or change the name of a Council without consultation or direct parliamentary scrutiny.</p> <p>The ability to fundamentally reform the research landscape without proper consultation significantly reduces the autonomy and status of the individual councils. Both Research England and Innovate UK are given additional protections in the bill: the SoS cannot change or omit either of these units by</p>	<p>We therefore propose:</p> <ul style="list-style-type: none"> <li>• Inserting a requirement for the SoS to undertake consultation before proposing to add or omit a council, or change the name of a council</li> <li>• Strengthening parliamentary scrutiny for any proposals to add or omit a council, or change the name of a council, by requiring the SoS to obtain an affirmative resolution.</li> </ul> <p>Note that parliamentary scrutiny should not be seen as a proxy for consultation with the sector.</p>

	<p>regulation. This appears to be an inconsistency, and ensuring that all councils have the higher level of protection would help demonstrate that they continue to be autonomous units.</p>	
91	<p>HEFCE currently supports universities in their innovation and knowledge-transfer activities through the Higher Education Innovation Fund (HEIF). HEIF is widely regarded as an effective and cost-efficient policy, and is highly valued by universities. This fund, and the wider knowledge exchange functions of HEFCE, should not be lost in the transfer to Research England.</p> <p>We are concerned that the remit of Research England, set out in sub-clause 89(2), might prevent Research England from operating HEIF or similar schemes.</p>	<p>We propose that the remit of Research England, set out in sub-clause 89(2) should be amended in the bill to explicitly include support for knowledge transfer activities in universities.</p>
Schedule 5	<p>Conditions of a warrant for search and entry powers</p>	<p>Include an additional requirement in sub-paragraph 1(3) that the breach of registration condition be one concerned with fraud, or financial mismanagement. Add a requirement that the court must be satisfied that use of entry and search powers is the only practicable way for matter to be investigated.</p>
NC	<p>We believe that the prevalence of essay mills (where students can pay to access essays to pass off as their own) poses a clear risk to the quality of higher education provision. There is also a risk that an apparently thriving essay mill industry in the UK indicates to students that there is nothing</p>	<p>We propose consideration be given to the introduction of a legal prohibition on drafting, offering to draft, distributing and/or selling academic assignments to a paying third party. The advertising of such services would also be prohibited.</p>

	wrong with using their services.	
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