

2 March 2017

Dear Member,

As the President of Universities UK and Chair of GuildHE, collectively representing over 170 higher education providers in England, Wales, Scotland and Northern Ireland, we are writing to you ahead of Report Stage of the Higher Education and Research Bill to signal our strong support for the suite of amendments tabled by government on 24 February 2017. Taken together, these amendments represent a substantial and positive change to the bill. We are grateful to government for listening to our concerns and to the many compelling and effective arguments put forward by peers which were instrumental in securing these amendments.

On behalf of the members of both Universities UK and GuildHE, we are very pleased to be able to write to you today to indicate that our major concerns about the bill have been addressed with welcome, sensible and workable safeguards. We believe that the amended bill represents a good outcome, and one to which we are happy to give our support.

UUK and GuildHE have always agreed with government that new legislation is necessary. The current regulatory framework has not kept up with the implications of fee changes, increased competition and the growth in new alternative providers. That is why we have always supported the objectives of the bill to provide greater protection for students and ensure that all providers of higher education – old and new – can be regulated fairly, consistently and on the basis of risk.

Nevertheless, we have consistently highlighted a number of significant areas where we believed further review would improve the bill and guarantee the continued success and reputation of a higher education sector comprised of highly achieving autonomous institutions. We outlined these concerns in our joint letter to *The Guardian* on 5 December 2016, and in our letter to members of the House of Lords on 19 January 2017. The new amendments, together with further explanation and clarification given in both Houses during the course of debate on the priorities we have collectively raised, have given us the reassurance to now give our explicit support to this bill.

We recognised many of the concerns raised about the introduction and implementation of the Teaching Excellence Framework (TEF) in recent debates, but would like to stress that our two organisations acknowledge the important and positive role that the TEF will play in driving a focus on teaching quality across the sector. Our long-held position is that we support an effective TEF: that is one which is useful for students, informative for staff, which drives up quality, and which ultimately produces ratings which enhance the reputation of the sector domestically and internationally. We believe that adding more to the bill about the TEF (beyond the existing clause which allows this framework to be established) risks damaging the flexibility which is required to allow the sector and government to work together to achieve a tool which is ultimately useful for students, staff and employers.

The government continues to demonstrate a genuine commitment to work with the sector as the TEF evolves. This was illustrated by the recent announcement that there would be a genuine lessons-learned exercise including, amongst other things, the opportunity to look at the balance between metrics and provider submissions and the number and names of the ratings, as well as an extension to the pilot phase for the subject-level TEF.

We have welcomed the constructive engagement which UUK and GuildHE have had with peers, with ministers and with officials during the passage of this bill and believe this has helped get us to the position we are in now. Our summary below illustrates how the government amendments address the concerns we have previously raised, producing a bill which we now consider to be fit for purpose.

On behalf of our member institutions, our students and staff, thank you for your support in improving and amending the Higher Education and Research Bill.



Dame Julia Goodfellow
President of Universities UK and
Vice-Chancellor of the University of Kent



Professor Joy Carter
Chair of GuildHE and
Vice-Chancellor of the University
of Winchester

- **Protecting institutional autonomy**

UUK and GuildHE welcome the new government amendment on this issue which ensures the Office for Students has to have “regard to the need to protect institutional autonomy” in everything it does, protecting providers from government interference in many areas. This includes protection from direct intervention in areas such as course content, staff management and admissions processes. This proposal is similar to Lord Kerslake’s amendment 65, which UUK and GuildHE supported at Committee stage.

We believe this new amendment is stronger than New Clause 1 which was passed in Committee. We do not think NC 1 fully addresses the sector’s concerns about the effect the bill will have on institutional autonomy. In fact, NC 1 constrains universities by being prescriptive about the activities they should be involved in and risks excluding existing high quality specialist universities. For this reason, we do not think that it is helpful to have this definition of a university on the face of the bill.

We consider that any amendments on institutional autonomy should be framed around the relationship between universities and the government, such as in the proposal put forward by Lord Stevenson, Viscount Younger, Lord Kerslake and Baroness Garden and therefore encourage you to support this amendment.

- **Separating – and properly defining – quality and standards in the bill**

As outlined in our previous briefings, ‘quality’ and ‘standards’ have very specific definitions in the higher education sector. We believe that the bill as originally drafted was unclear about the difference between ‘threshold standards’ and ‘academic standards’, what role the OfS should play in standards, and the vital importance that institutions retain the independence to define academic standards. This has been one of our most pressing concerns about the bill over the last nine months, and we are most appreciative of the time peers spent dissecting and debating the question of standards during Committee stage.

The government has now tabled its own amendments which separate quality and standards in the bill, and protect the autonomy of institutions to define their own academic standards.

UUK and GuildHE warmly welcome these proposals which ensure that the powers of the Office for Students around standards are tied to sector definitions, and we therefore support these amendments which address our concerns.

- **Creating a strong, independent body to scrutinise the award of Degree Awarding Powers and University Title**

UUK and GuildHE believe it is vital to the reputation and integrity of our university sector, and the interests of students, to have proper scrutiny when giving degree awarding powers (DAPs) and university title (UT) to providers. The present regulatory system for higher education providers is complex, with varying entry routes into the sector and differing levels of accountability across types of providers. With the continuing growth of alternative providers, it is essential that we have a single gateway into the sector and a common regulatory framework which sets out robust and transparent requirements for all registered providers.

At Committee stage we therefore supported amendment 269, which would have required the OfS to take the advice of an independent, specialist committee within the designated quality body when granting or revoking DAPs/UT 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 (ACDAP).

We therefore welcome and support the new government amendment which serves the same purpose. In addition to examining the granting of DAPs and UT, the independent body would also look at varying and revocation of these designations. This proposal ensures that independent expert scrutiny is built into the system, and that the views of existing providers with expertise of awarding degrees/running a university play a very significant part when granting DAPs.

UUK and GuildHE also welcome other government amendments which specify additional conditions which must be met before the OfS revokes or varies institutional designations and prevent the full revocation of royal charters. These issues are important to many of our members, and we support the inclusion of these additional protections in the bill.

- **Promoting collaboration as well as competition**

Competition is vital to driving up quality in our university sector, and it is right that the OfS has a duty in the bill to encourage this activity. Since the bill was introduced, UUK and GuildHE have been backing calls for amendments to the legislation to ensure that the OfS also encourages collaboration where it is beneficial to students, the economy and society.

This is another issue where the House of Lords has made a strong case. We are therefore strongly backing the government's amendment which places a duty on the OfS to encourage collaboration in the higher education sector, in addition to competition.

- **Ensuring appropriate confidentiality during ongoing investigations and fair, transparent and proportionate use of powers**

At Committee, UUK and GuildHE urged parliamentarians to support amendments 144, 148 and 153 to the bill. These changes would have ensured confidentiality while providers are under investigation for alleged misconduct. This was designed to ensure appropriate confidentiality in the sanctioning process, particularly where allegations are not subsequently upheld, because of the significant risks to the reputation of an individual provider and the higher education sector as a whole.

While the government has not come forward with amendments on this subject, we have been reassured by Baroness Goldie's statement on the process made at Committee debate. In this, she said that it is *"highly unlikely to be in the interests of the OfS to disclose that it is considering sanctions"* and that the OfS *"would not look to disclose information prematurely or unnecessarily that could have an adverse effect on a provider before a decision was taken. To do so would not be in accordance with regulatory best practice."* In light of this, we no longer think an amendment is necessary.

- **Ensuring the Secretary of State exercises his/her powers appropriately – including taking unsolicited advice from the OfS and prohibiting the Secretary of State from directing the OfS to stop funding particular courses**

UUK and GuildHE are pleased that the government has given assurances that the bill will not *"constrain the OfS from giving open and honest advice and analysis to the Government on matters within its regulatory remit"* and that ministers *"confidently anticipate that the OfS will be involved, where appropriate, in the policy-making process, just as HEFCE has been."*

We believe that in addition to safeguards introduced in the Commons to Clause 3 of the bill, the government amendment on institutional autonomy should be sufficient to prevent the Secretary of State interfering in the particular courses which higher education providers offer.

- **A holistic view of the sector – UKRI and OfS working and reporting jointly**

As set out in previous briefings, joint working between UKRI and the OfS is vital to the success of the UK higher education sector. With research and teaching funding now separated between the two organisations, there are many areas where it will be essential for the bodies to collaborate.

This is an area where the government has heard the concerns of the sector and parliamentarians resulting in a government amendment, which we support, requiring the OfS to publish an annual report on its cooperation with the UKRI in order to improve collaboration between the two bodies (and vice versa). We also welcome other amendments throughout the bill which clearly signal the need for cooperation and closer working, such as the need for UKRI to advise OfS on the designation of research DAPs. We would therefore urge peers to support the government's amendments at Report.

- **Encouraging international students and staff recruitment**

UK universities are truly global institutions, and the important economic, societal and cultural benefits of international students and staff should not be underestimated. Our universities are highly regarded around the world for the quality of their research and scholarship. To retain this enviable position and the economic and social benefits that come with it, it is imperative that universities remain able to recruit genuine international students and academics and researchers from around the world.

Parliamentarians in both chambers and from all parties have long shown support for the important role of international staff in keeping our universities world-leading, for the 'soft power' influence spread around the globe from educating international students, and the economic contribution of overseas students felt across all regions and nations. Further, polling has shown that the British public not only recognises the economic benefits of international students in their towns and cities, but do not consider the majority of students to be permanent migrants, viewing them instead as welcome temporary migrants who return home following their study.

We therefore support the principles of the amendment tabled by Lord Hannay and colleagues (after Clause 85) which seeks to introduce a duty to encourage international students to attend higher education providers; to maximise international research collaboration; ensure that no student who has received an offer to study is treated for public policy as a long-term migrant to the UK, and that international staff with an offer of employment or students with an offer to study should not be subject to more restrictive immigration controls going forward.

- **Maintaining diversity in the sector**

UUK and GuildHE are pleased that the government has come forward with an amendment which would ensure that the OfS encourages diversity in the higher education sector with respect to the types of provider and models of study, including part-time and distance learning provision. This is a cause that has been particularly championed by GuildHE, given the varied characteristics of its members.

In light of the importance of diversity to the success of the UK higher education sector, and the opportunities posed by encouraging innovative ways of learning, we would urge peers to support this amendment to Clause 3 at Report stage.