

## Higher Education and Research Bill

### Commons report stage and third reading briefing from the University and College Union (UCU)

#### November 2016

The University and College Union (UCU) is the UK's largest trade union for academics and academic-related staff in higher and further education representing around 60,000 members working in UK universities. We also represent around 30,000 members working in further education (FE) colleges, many of whom also teach undergraduate and other HE courses.

The Higher Education and Research Bill proposes significant changes to the regulatory and financial framework of UK higher education. UCU is concerned that the proposals will not achieve the government's stated aim to improve the quality of, and access to, higher education in the interests of students.

Following the vote for Brexit and its impact on higher education, UCU also believes that this is the wrong time for a bill, and has called for the bill to be halted.

UCU has also raised the following concerns in relation to the bill:

- Opposed to measures which make it easier for new providers to award their own degrees and gain university title, especially where those providers are operating for-profit;
- Opposed to measures which imbue the Secretary of State/Office for Students with powers which threaten university autonomy and academic freedom (e.g. revocation of royal charters);
- Opposed to the use of teaching quality assessment (TEF) as a determining factor for tuition fee levels, and calling for increased parliamentary scrutiny of any measures which would be used for tuition fee variation;
- Strengthen the representation of staff and students within the regulatory structures, and increasing the duty to consult staff representatives on future policy decisions;
- Strengthen the requirements on institutions to widen participation and promote access.

**UCU are pleased to see amendments to areas of the bill of particular concern and are broadly supportive of amendments 36, 37, 40, 41, 47 and 50 as well as new clauses 6 and 13. However, in light of the concerns outlined above, UCU opposes this bill, and urges MPs to vote against it at the third reading.**

## UCU's key concerns about the Higher Education and Research Bill

### Competition, student choice and new providers

UCU rejects the assertion in the white paper, *Success as a Knowledge Economy*, that “insufficient competition and a lack of informed choice” are the primary weaknesses of the higher education system in England, and that opening up the market to new providers will drive improvements in quality.

Market-based reforms in the UK and US to date have led to several examples of worse outcomes and value for students, employers and taxpayers<sup>1</sup>. Research by Paul Temple and Claire Callender<sup>2</sup> has also shown how market forces can change institutional priorities in ways that may not be beneficial for students. In the US, for example, competition between providers has led to increased spend on marketing and recruitment, with for-profit institutions spending 22.7% of revenue on this area – 5% more than is spent on teaching.<sup>3</sup>

Recent research from the Higher Education Policy Institute has also shown that students would prefer institutions to spend less on buildings and facilities<sup>4</sup> and more on investment in teaching. This suggests that the most helpful way for government to address student 'dissatisfaction' is to provide a framework which encourages universities to focus resources and support directly on the core activity of teaching and those who do it.

#### *New providers and deregulation*

If providers are allowed a quick, low-quality, route into establishing universities and awarding degrees, those studying and working in the sector are seriously vulnerable to the threat from organisations looking to move into the market for financial gain rather than any desire to provide students with a high quality education and teaching experience.<sup>5</sup> This whole approach seems at odds with the bill's declared commitment to student interests.

According to the former Department for Business, Innovation and Skills' (BIS) own figures<sup>6</sup>, since 2010, the number of alternative providers designated for student support has risen from 94 in 2010 to 122 in 2014/15, with student support funding rising from £43.2 million to over £600 million in the same time. BIS projected that the number of institutions would rise to 145 by 2018/19 and to 311 by 2027/28, as money available to these institutions also rises exponentially.

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<sup>1</sup> American Federation of Teachers [http://www.aft.org/sites/default/files/hied\\_toobigtofail2016.pdf](http://www.aft.org/sites/default/files/hied_toobigtofail2016.pdf)

<sup>2</sup> <https://www.heacademy.ac.uk/resource/managing-student-experience-shifting-higher-education-landscape>

<sup>3</sup> US Senate Committee on Health, Education, Labor and Pensions, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, July 2012

[http://www.help.senate.gov/imo/media/for\\_profit\\_report/Contents.pdf](http://www.help.senate.gov/imo/media/for_profit_report/Contents.pdf)

<sup>4</sup> HEPI / HEA, *Student Academic Experience Survey 2016*, June 2016 <http://www.hepi.ac.uk/wp-content/uploads/2016/06/Student-Academic-Experience-Survey-2016.pdf>

<sup>5</sup> THE on QAA report <https://www.timeshighereducation.com/news/quality-assurance-agency-reviews-raise-questions-over-sector-expansion-plans>

<sup>6</sup> BIS impact assessment on HE Bill

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524517/bis-16-264-he-research-bill-impact-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524517/bis-16-264-he-research-bill-impact-assessment.pdf)

The government's own advisor, Dame Alison Wolf<sup>7</sup>, has warned of an impending 'American-style catastrophe' should the current proposals take effect, stating her concerns that the number of poor quality colleges would increase, the reputation of higher education could be damaged and students risk using their student loans to obtain worthless degrees.

*Robust regulation is needed to protect students and the sector*

The recent rate and scale of expansion of the higher education sector is evidence that the current regulatory system is not a significant barrier to market entry. Government should therefore be looking to reform the system from the perspective of protecting students and quality and looking towards a process of levelling up not levelling down as is currently proposed.

While UCU recognises that some alternative providers have reported difficulties in establishing validating partnerships, this is not a reason to remove the 'track record' requirement currently in place which requires institutions to have been part of a validating agreement for a minimum period before applying for full degree-awarding powers. The focus should be on streamlining the process for matching alternative providers with validating partners rather than removing this requirement entirely.

**UCU suggested amendments:**

- In Part 1, clause 40 (4), insert new sub-section to read 'c) the provider shows evidence of high-quality higher education delivery for a minimum of three years operating in partnership with a validating provider.'

**Aim:** *This amendment would retain the current track record requirement providers wishing to obtain degree-awarding powers*

- In Part 1, clause 40 (10), insert 'subject to a resolution of both houses' after 'exercisable by statutory instrument'

**Aim:** *This amendment would require that any statutory instrument which gives effect to degree-awarding powers is subject to approval in both houses.*

**UCU is broadly supportive of the following tabled amendment:**

(Amendment number 40)

Gordon Marsden

Angela Rayner

Clause **40**, page **23**, line **22**, at end insert—

“(c) the OfS is assured that the provider is able to maintain the required standards of a UK degree for the duration of the authorisation; and

(d) the OfS is assured that the provider operates in students' and the public interests.”

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<sup>7</sup> <https://www.theguardian.com/education/2016/mar/20/tory-plan-worthless-degrees>

***Aim:** This amendment requires the OfS to be assured about the maintenance of standards and about students' and the public interest before issuing authorisation to grant degrees.*

**UCU is strongly supportive of the following tabled amendment:**

(Amendment number 41)

Gordon Marsden

Angela Rayner

Clause **40**, page **23**, line **47**, at end insert—

“(9A) In making any orders under this section, and sections 41, 42 and 43, the OfS must have due regard to the need to maintain confidence in the higher education sector, and in the awards which they collectively grant, among students, employers, and the wider public.”

***Aim:** This amendment would ensure that the granting and removal of degree awarding powers would be linked to a need to maintain confidence in the sector, and with a view to preserving its excellent reputation.*

**Tuition fees and teaching excellence**

UCU, in common with many university leaders, opposes the government’s plans to raise tuition fees and link variable rises to a rating system for university teaching, as outlined in Schedule 2 of the bill, and the related section 25. Graduate debt in the UK is already amongst the highest in the world, and average tuition fees at UK institutions are the highest in OECD countries<sup>8</sup>.

A ComRes survey of young people’s perceptions of higher education found that cost and lack of a guaranteed graduate job were the two biggest reasons cited for not wishing to enter higher education.<sup>9</sup> When asked why they did not want to go to university, over one third (36%) of respondents said that university is ‘too expensive’, while a quarter (26%) cited a desire to avoid debt.

UCU is further concerned that the proposed Teaching Excellence Framework (TEF)- the system by which institutions would achieve the ‘high level quality rating’– is:

- based on flawed metrics
- unhelpful in failing to address many of the workforce issues which impact on quality in universities; and
- not subject to adequate parliamentary scrutiny.

UCU believes that the employment model used in universities, which relies extensively on temporary and casual teaching contracts, has a direct impact on quality but this is not

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<sup>8</sup> OECD, *Education at a Glance, (Chart B5.2)*, Sep 2015: [http://www.keepeek.com/Digital-Asset-Management/oced/education/education-at-a-glance-2015\\_eag-2015-en#page267](http://www.keepeek.com/Digital-Asset-Management/oced/education/education-at-a-glance-2015_eag-2015-en#page267)

<sup>9</sup> ComRes/UCU, *Young people’s perceptions about post-18 education and training options*, Dec 2014: [https://www.ucu.org.uk/media/6949/Young-peoples-perceptions-about-post-18-education-and-training-options--ComRes-report-for-UCU-Dec-14/pdf/ucu\\_comres\\_youngpeoplesperceptionsaboutpost18\\_dec14.pdf](https://www.ucu.org.uk/media/6949/Young-peoples-perceptions-about-post-18-education-and-training-options--ComRes-report-for-UCU-Dec-14/pdf/ucu_comres_youngpeoplesperceptionsaboutpost18_dec14.pdf)

addressed by the TEF. Despite the best efforts of the many excellent temporary teachers, the current situation is not sustainable.

The government's proposals to link the TEF to tuition fees will create a high-stakes system, placing additional bureaucratic pressures on teaching staff and potentially leading to unintended consequences such as curriculum narrowing as institutions focus on those subject areas which are more financially lucrative.

**UCU suggested amendments:**

- In Part 1, clause 23 (1) insert 'subject to regular parliamentary review' after 'higher education providers'
- In Part 1, clause 25 (1), insert 'subject to parliamentary approval', after 'The OfS may'

**Aim:** *These amendments would require that the full criteria of any quality ratings scheme, upon which a variation in tuition fees may be based, be subject to full parliamentary scrutiny.*

**UCU is strongly supportive of the following tabled amendments:**

(Amendment number 47)

Gordon Marsden

Angela Rayner

Clause **25**, page **16**, line **23**, at end insert—

“(7) No arrangements for a scheme shall be made under subsection (1) unless a draft of the scheme has been laid before and approved by a resolution of both Houses of Parliament.”

**Aim:** *This amendment and amendment 47 would ensure TEF measures were subject to scrutiny by, and approval of, both Houses of Parliament.*

(Amendment number 50)

Paul Blomfield

Clause **25**, page **16**, line **23**, at end insert—

“(7) In making arrangements under sub-section (1), the OfS must make an assessment of—

(a) the evidence that any proposed metric for assessing teaching quality is correlated to teaching quality, and

(b) the potential unintended consequences that could arise from implementing the scheme including proposals on how such risks can be mitigated.

(8) Prior to making an assessment under subsection (7) the OfS must consult—

(a) bodies representing the interests of academic staff employed at English higher education providers,

(b) bodies representing the interests of students enrolled on higher education courses, and

(c) such other persons as the OfS considers appropriate.

(9) The assessments made under subsection (7) must be published.”

**Aim:** *This amendment would require an assessment of the evidence of the reliability of the TEF metrics to be made and for the assessment to be published.*

(NC 6)

Gordon Marsden

Angela Rayner

### **New Clause 6**

To move the following Clause—

#### **“Higher Education loans: restrictions on modification of repayment conditions**

(1) A loan made by the Secretary of State to eligible students in connection with their undertaking a higher education course or further education course under the Teaching and Higher Education Act 1998 shall—

(a) not be subject to changes in repayment conditions retroactively without agreement from both Houses of Parliament;

(b) not be subject to changes in repayment conditions in the event of the loan being sold to private concerns, unless these changes are made to all loans, in the manner prescribed above;

(c) be subject to beneficial changes, principally to the repayment threshold, in line with average earnings.

(2) In section 8 of the Sale of Student Loans Act 2008, for subsection (1) substitute—

“(1) Loans made in accordance with regulations under section 22 of the Teaching and Higher Education Act 1998 (c. 30) are to be regulated by the Consumer Credit Act 1974 (c. 39).”

***Aim:** This new clause would ensure no retroactive changes could be made to student loan repayment conditions without agreement from both Houses of Parliament.*

### **Office for Students, regulatory structures and staff representation**

We are concerned that the proposed Office for Students (OfS) will become a government-led body, rather than one which genuinely reflects the interests of students or staff. It is crucial in our view that the principle of keeping bodies like the OfS independent from day-to-day political and governmental interference which has served higher education well should not now be abandoned.

Whilst we welcome the inclusion of new government amendments to ensure student representation on the main governing body of the OfS, we feel there is a need for increased consultation with the higher education workforce on key elements of the regulatory framework.

There are also opportunities with the creation of a new body for an increased emphasis on important workforce issues like insecure contracts and student/staff ratios which directly impact upon quality and the student experience, but which the Higher Education Funding Council for England (HEFCE) has had a poor record in either analysing or addressing.

### **UCU suggested amendments:**

- In Part 1, clause 59 (6), insert new point after point c to read: ‘(d) a number of persons that, taken together, appear to the OfS to represent, or promote the interests of, higher education staff, and’

**Aim:** *This amendment would ensure appropriate consultation with bodies representing higher education staff on the exercise of duties relating to higher education information*

- In Part 1, clause 68 (8), insert new point after point b to read: ‘(c) bodies representing the interests of, higher education staff, and’

**Aim:** *This amendment would ensure appropriate consultation with bodies representing higher education staff on the exercise of duties relating to the regulatory framework for higher education*

- In Schedule 4, clauses 2(3) and 5(4) and Schedule 6, clause 2(3) and 5(4), insert new subsection to read: ‘a number of persons that, taken together, appear to the OfS to represent, or promote the interests of, higher education staff’

**Aim:** *This amendment would ensure appropriate consultation with bodies representing higher education staff on the designation of bodies with functions for higher education assessment and information*

- In Part 1, clause 51 (2 (A1) c), omit ‘the Office for Students (instead of the Privy Council)’ and insert ‘the Office for Students and the Privy Council’ in its place

**Aim:** *This amendment would retain Privy Council involvement in the granting and revocation of English university titles, as opposed to the complete transfer of these powers to the OfS, a body entirely appointed and overseen by the Secretary of State.*

- In Part 1, clause 59 (5) insert ‘(d) existing and potential higher education staff.’

**Aim:** *This amendment would include information useful to existing and potential higher education staff within mandatory reporting requirements*

- Add additional sub-section to clause 59, as follows:

‘11) The information must cover key workforce data at individual institutions, including:

- number of staff employed on non-permanent contracts;
- proportion of teaching delivered by staff on non-permanent contracts and;
- staff-to-student ratios.’

**Aim:** *This amendment would require the OfS to publish data on the use of non-permanent contracts in higher education and staff-to-student ratios.*

**UCU is strongly supportive of the following tabled amendments:**

(Amendment number 37)

Gordon Marsden

Angela Rayner

Clause 5, page 4, line 17, after “providers” insert “, staff and students”

**Aim:** *This amendment would ensure consultation with bodies representing higher education staff and students.*

(Amendment number 36)

Gordon Marsden

Angela Rayner

Schedule 1, page 69, line 37, at end insert—

“(h) being an employee of a higher education provider, particularly in the capacity of teaching or researching.”

**Aim:** *This amendment would ensure the Secretary of State had regard for the experience of higher education employees, teaching or research staff.*

(Amendment number 48)

Wes Streeting

Schedule 1, page 69, line 37, at end insert—

“(h) representing or promoting the interests of employees in higher education establishments.”

**Aim:** *This amendment requires that at least one of the ordinary members of the OfS has experience of representing or promoting the interests of employees in higher education.*

### **Access, widening participation and social mobility**

Between 2010/11 and 2014/15, the number of UK/EU part-time undergraduate entrants fell by 143,000, a decrease of 55%<sup>10</sup>. The massive drop in part-time enrolment is one of the major higher education policy failures of recent years. The proposals in the legislation do not adequately address how we promote fair access for part-time students and we have called for part-time and postgraduate student issues to be included as part of the remit of the new social mobility advisory group.

Staff are also concerned about how the current university admissions system works. In a survey<sup>11</sup> of admissions staff working both in universities and colleges, 70% backed a complete overhaul of the system to allow prospective students to apply for university after they receive their exam results – a so called Post Qualification Admissions (PQA) system.

### **UCU suggested amendments:**

- In Part 1, insert new section after clause 12 to read:  
‘Duty to promote widening participation and access’
  - 1) The OfS must undertake or commission regular reviews, in consultation with relevant bodies, of:
    - The university admissions system
    - The numbers of, and range of provision available to, part-time and mature students’

**Aim:** *to place additional duties on the OfS to take action in relation to access and participation, review of the current system of university admissions and explore alternative models, including Post Qualification Admissions*

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<sup>10</sup> It’s the finance stupid! The decline of part-time higher education and what to do about it

[http://www.hepi.ac.uk/wp-content/uploads/2015/10/part-time\\_web.pdf](http://www.hepi.ac.uk/wp-content/uploads/2015/10/part-time_web.pdf)

<sup>11</sup> <https://www.ucu.org.uk/thecaseforpqa>



- In Part 1, clause 12 (1), insert new subsection to read ‘the institution is in receipt of public funding’

***Aim:** make access and participation plans mandatory for all higher education institutions charging tuition fees*

**UCU is supportive of the following tabled amendments:**

Gordon Marsden

Angela Rayner

**New Clause 13**

To move the following Clause—

**“Standing Commission on Lifelong Learning and Adult Education**

(1) The Secretary of State shall establish a Standing Commission on Lifelong Learning and Adult Education.

(2) The terms of reference of the Commission shall include the following purposes—

(a) to report on progress being made in respect of the opportunities available to individuals, employers and communities in lifelong learning and adult education in England;

(b) to establish world class benchmarks for participation in, and for the quality of, lifelong learning and adult education;

(c) to consider the potential to update and review the range of higher qualifications available for adult students;

(d) to evaluate current funding systems with respect to the opportunities available to individuals, employers and communities in life-long learning, in England;

(e) to examine and report on the introduction of personal learning accounts—

(i) funded on the contributory principle from employers, individuals and structures of devolved local and national government, and

(ii) on the arrangements that will operate to facilitate input from corporate or trade union bodies, which can be used to support lifelong learning and adult education;

(f) to examine and report on the potential to develop education and skills accounts (ESAs) with an emphasis on creating equality of opportunity for learners at all points in their life, including the possibility of a single lifetime tertiary education entitlement;

(g) to examine and report on the establishment of a national credit rating, accumulation and transfer system as a mechanism to improve flexible learning in adult, further and higher education, and on the feasibility of a digital credit system , which could also facilitate where appropriate the integration of work- based and lifelong learning; and

(h) to examine and report on the role of commissioners of devolved adult education budgets and how the expansion of lifelong learning and adult education could support delivery of full employment.

(3) The Commission will make the following reports on the matters set out at subsection (2) to be laid before Parliament—

(a) within 12 months of its establishment and

(b) thereafter annually.

(4) When report in respect of ESAs required at subsection (2)(f) has been made, the Secretary of State may authorise the OfS to work with education providers, employers and financial institutions to develop a framework place for ESAs.”