

## Higher Education and Research Bill

### House of Lords second reading briefing from the University and College Union (UCU) - December 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 over 60,000 members working in UK universities. We also represent over 30,000 members working in further education colleges, many of whom 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, UCU also believes that this is the wrong time for a major overhaul of the sector, and has called for the bill to be halted.

The UK's university sector is world leading and makes a substantial social and economic contribution to the UK. If the UK is to retain its global position it must continue to be a place where academic staff and students are able to work and study. The government needs to recognise the international nature of this important sector and act to ensure that EU nationals and indeed those beyond Europe continue to feel welcome at our universities.

The current system is not perfect, but this is the wrong bill at the wrong time. The UK is home to some of the world's best universities, and higher education is one of our most successful exports. In the current climate of political and economic instability, we need to avoid further uncertainty and ensure that government reforms don't undermine the reputation of the sector or leave students in the lurch.

Throughout the progress of the bill so far UCU has been:

- 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 a **Teaching Excellence Framework (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;
- **Pushing for stronger representation of staff** within the regulatory structures, and increasing the duty to consult staff representatives on future policy decisions;
- **Pushing for stronger requirements on institutions to widen participation** and promote access.

## 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<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

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<sup>1</sup> American Federation of Teachers [http://www.aft.org/sites/default/files/hied\\_toobigtotofail2016.pdf](http://www.aft.org/sites/default/files/hied_toobigtotofail2016.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)

to 145 by 2018/19 and to 311 by 2027/28, as money available to these institutions also rises exponentially.

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. Any new providers should be subject to the same high standards that are applied to current universities.

It is vital for the reputation of the sector that we don't allow the university brand to be diluted by poor-quality providers. Students must be protected from the possibility of a new provider failing and leaving them with nowhere to complete their studies, or with a worthless qualification. We need only look at the recent controversy over Trump University to see the harm and confusion that a lack of regulation can cause. Additional choice for students must not be at the expense of high standards, so we are calling on peers to ensure that student and public interest is at the forefront of the government's approach to new providers.

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 approval in both Houses' after 'statutory instrument'

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

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

## 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 currently:

- based on flawed metrics which fail to measure 'quality'
- unhelpful in failing to address many of the workforce issues which do 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 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 by affirmative resolution', 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.*

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

## **Office for Students, regulatory structures, autonomy 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 should not now be abandoned. The bill represents a significant change to the current system; HEFCE does not currently have the power to revoke university title and the bill would also remove the parliamentary scrutiny of the Privy Council as a check and balance in this regard.

Whilst we welcome the inclusion of new government amendments on student representation on the main governing body of the OfS, we feel there is a need for increased representation of the higher education workforce on the OfS and consultation with them on key elements of the regulatory framework as they are a vital part of the sector.

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 1(3) and 5(4) and Schedule 6, clause 1(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

- In clause 59, add additional sub-section, 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.

### **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, clause 2 insert new section to read: '(g) the need to promote widening participation and access by undertaking or commissioning 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'

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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>

***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

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

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

### **Research and innovation**

A new body, UK Research and Innovation (UKRI) will allocate funding for research and innovation. UKRI will incorporate the functions of the seven current Research Councils, Innovate UK, and HEFCE’s research funding functions. The latter of which will be known as ‘Research England’.

Research is of vital importance the sector and we are disappointed that little or no attempt has been made to strengthen the positive relationship between teaching and research. We are therefore concerned about the institutional separation between research and teaching within the new structure and call for the UKRI’s remit to include the promotion of sustainable research careers.

No provision is made in the bill to meet the infrastructure funding needs which serve both teaching and research, such as libraries and laboratories. We would also like to see a specified role for research and teaching communities to influence strategic capacity building which straddles research and teaching.

The nine committees (described in the bill as ‘councils’) within UKRI will have only ‘delegated autonomy and authority’ and the Secretary of State will ‘set budgets for each’ through the ‘annual grant letter’ to UKRI.

Whilst we welcome proposals to protect the dual funding system, it is unclear whether the proposals will be sufficient to prevent ministerial interference in the research funding process, as this will be left entirely to UKRI and the Secretary of State. We also echo concerns around the loss of independence and autonomy of the seven research councils that is currently enshrined through Royal Charter.

We would recommend amendments to the bill to ensure proper consultation before making changes to research councils, along with greater scrutiny from Parliament, via the affirmative resolution procedure.

On research funding, we have previously called for a more fundamental review<sup>12</sup> of current research policy than the proposals outlined in either the Nurse review or the current legislation. However, in the absence of a wider review, we call for additional protections for

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<sup>12</sup> <https://www.ucu.org.uk/article/7322/Report-calls-for-university-research-overhaul>

the block grant element of research funding and for research-teaching links to be an essential criteria in both the TEF and the REF.

We would also welcome amendments which introduce a duty to consult with relevant research communities regarding the funding system, and the structure and functions of UKRI alongside strengthening parliamentary scrutiny of further changes. The UKRI should also have a specific role in promoting sustainable research careers.

**UCU suggested amendment:**

- In Part 3, clause 86 (2), insert after ‘The Secretary of State may by regulations’, ‘following consultation and approval of both Houses by affirmative resolution’

***Aim:*** ensure proper consultation and parliamentary scrutiny of changes to UKRI committees (referred to in the bill as Councils)

- In Part 3, clause 87 (1), insert a new subsection to read ‘(h) promote research as a sustainable career path within higher education’

***Aim:*** ensure the promotion of research as a sustainable career and the benefits this brings to staff the sector