

Higher Education and Research Bill – March 2017

House of Lords report stage briefing from the University and College Union (UCU)

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.

UCU is concerned that the proposals in the Higher Education and Research Bill 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.

Throughout the progress of the bill so far UCU has adopted the following positions:

- Opposed to measures which open the sector up to marketisation and 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**
- Opposed to the use of a **Teaching Excellence Framework (TEF)** as ratings system for universities and a determining factor for tuition fee levels. Called 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 more openness and information around workforce issues** such as use of non-permanent contracts and staff to student ratios
- **Pushing for stronger requirements on institutions to widen participation** and promote access.

Government amendments and issues for report stage

Despite attempted reassurances from the government, there is still a great deal of concern regarding the proposed reforms, both from within the sector and from peers themselves, and we hope that parliamentarians will continue to press for assurances and amendments as the bill enters its final stages.

We were pleased that recent opposition amendments around the definition and functions of a university were passed, and that campaigning from the sector has pushed the government to propose further changes to the bill. We still, however, feel that the bill is not fit for purpose and call on peers of all parties to ensure the sector is not weakened by the wider proposals and any attempts to dilute changes that have already been agreed to.

The concessions proposed by the government do not change the direction of travel that the legislation will take the sector in, and the bill will still open up higher education to a market driven agenda that has been shown to have a negative impact for those studying and working in universities and colleges.

Regarding the proposals around two-year degrees, UCU supports a range of modes of delivery for higher education but has a number of concerns about raising annual fees for accelerated courses. We do not believe that increasing the cost of courses will stimulate demand; in fact it may serve as a further disincentive to mature students with existing financial responsibilities who may be more debt averse. We are further concerned that, at a time when we are struggling to maintain relationships with universities and academics in the EU and beyond, introducing a raft of new courses that would not fit in with the Bologna process risks worsening our standing internationally.

Some of the key amendments announced by the government ahead of report stage include:

- **Joint government/Labour amendments tabled on university autonomy:** New amendments outline universities' freedom 'to conduct their day to day management in an effective and competent way' and enshrines academic freedom by putting the freedom of academic staff to 'to question and test received wisdom' without placing themselves in jeopardy of losing their jobs or privileges on the face of the bill. Although it is welcome that the government has recognised the need to strengthen the legislation in these areas, importantly the new amendments do not offer a definition of university functions as in the current clause 1 which they are designed to replace. UCU supports the assertion in clause 1 that universities must offer a broad range of subjects, promote lifelong learning and contribute to society, and would not wish to see this lost from the face of the bill.
- **Degree-awarding powers:** a new amendment to clause 44 stipulates that the OfS must request advice when awarding, varying or revoking degree awarding powers (either from a quality assurance committee or from one of the OfS's own committees). New amendments also state specific conditions that would need to be met before a provider's degree awarding powers or university title can be revoked and will no longer give the OfS the power to remove Royal Charters entirely.
- **Accelerated degrees:** proposed amendments to schedule 2 would allow higher fees to be charged for accelerated courses. UCU feels that allowing institutions to offer more high-cost, shorter degrees, whilst good news for the for-profit companies, would risk worsening ties with other countries and would do little to open up the university experience to more students. Although we support a range of modes of delivery for higher education, we remain concerned that accelerated degrees risk undermining the well-rounded education upon which our universities' reputation is based and place a huge additional burden on staff.
- **Duty to collaborate:** the amendment to clause 3 would require OfS to have regard to the benefits for students and employers resulting from collaboration between higher education providers, not just competition as was originally the case. This is something that UCU specifically asked for and welcome this amendment. We also welcome government amendments which will place greater emphasis on the need for OfS and UKRI to collaborate with each other and the devolved nations.
- **Research:** amendments to clauses 97 and 99 would enshrine the Haldane principle on the face of the bill, and give clear separate budgets for each of the Research Councils under UKRI. This is, again, something that UCU and others have pushed for and we are glad that the government has strengthened some of its proposals around research.

Remaining concerns

UCU has previously set out its detailed concerns on different aspects of the bill; these can be found in [earlier briefings](#). For the report stage, UCU would encourage peers to focus on securing stronger protections in the following areas:

Degree-awarding powers and university title

According to a recent survey¹ of academics, four in five (81%) stated that government plans to give new providers easier access to degree-awarding powers and a university title will have a negative impact on UK higher education. This level of concern from staff must be cause for alarm. 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.

We therefore strongly support the amendment tabled for clause 41 which would require new providers to demonstrate a track record of successful higher education delivery before gaining their own degree-awarding powers.

Teaching quality and information about staff

UCU has made clear its opposition to the government's Teaching Excellence Framework and plans to link variable tuition fee rises to an assessment of university teaching.

Whilst UCU does not object to more information about teaching being made available for students, we do not feel that it should be used as a way to penalise universities via an unhelpful and simplistic rating system which is:

- based on flawed metrics which fail to measure 'quality'
- flawed in the way it fails to address many of the workforce and contract issues which impact on quality in universities; and
- not subject to adequate parliamentary scrutiny.

We support any amendments aimed at breaking the link between TEF and fees and also welcome the amendment tabled to clause 26 by Lord Blunkett, Baroness Garden and Baroness Wolf which seeks to facilitate the provision of information for students without creating a punitive ranking system, as well as ensuring appropriate parliamentary scrutiny of any measures used to assess teaching quality.

¹ UCU survey <https://www.ucu.org.uk/article/8584/Academics-survey-shows-little-support-for-HE-Bill-amid-Brexit-brain-drain-fears?list=1676>

If the government really wants to improve teaching quality in universities, UCU believes it must look at how staff are employed within institutions. Research from the USA² demonstrates that students who take large numbers of courses with teachers employed on insecure contracts, or who are in institutions with large numbers of non-permanent staff, tend to graduate at a lower rate and are more likely to drop out of college. In line with the government's drive for transparent information to be made available to students, we are calling for better data to be collected on the contractual status of staff and staff-to-student ratios.

We strongly support the amendment tabled by Lord Stevenson to clause 61 that calls for more workforce data to be made available on the use of non-permanent contracts and staff-to-student ratios.

Staff representation

UCU believes there is a need for increased representation of the higher education workforce within the new structures which the bill would create. We welcome the previous changes regarding student representation on the OfS, but are still concerned that the body will become government-led rather than one which truly represents the interests of the sector as a whole.

Schedule 1 is currently ambiguous about the potential role of higher education staff on the OfS board.

UCU therefore proposes that Part 2 of Schedule 1 be amended to clarify that experience of undertaking higher education teaching or research is desirable for members of the OfS board. We suggest the following amendment:

Page 74, line 25, leave out (b) and insert:

(b) undertaking higher education teaching or research on behalf of an English higher education provider or being responsible for the provision of higher education teaching or research by such a provider.

We would also welcome amendments to:

- *increase staff representation on the bodies created in clauses 61 and 71.*
- *Ensure staff are consulted alongside other stakeholders on aspects of designation outlined in parts 1 and 5 of Schedule 4*

² <https://www.nea.org/assets/docs/HE/e-Kezar.pdf> and <http://rossier.usc.edu/delphi-project-creates-new-tool-for-evaluating-adjunct-faculty-working-conditions/>

Prevent duty

UCU's opposition to the Prevent duty in universities is widely documented. Higher education staff take their duty of care to students very seriously, but we do not believe that draconian crackdowns on the rights to debate controversial issues will achieve the ends the government says it seeks.

We therefore support the amendment by Lord Dubs to insert a new clause calling for an independent review of the Prevent duty in higher education.

Access and disability

UCU is fully committed to widening access and reducing unnecessary barriers to participation in higher education.

We support the amendments tabled by Lords Addington and Tankerness which would provide greater protections for disabled students and better information on students with protected characteristics within the bill.

If you would like any further information about the issues contained in this briefing, please contact the UCU parliamentary team on publicaffairs@ucu.org.uk

UCU supports the principles of the following amendments tabled for report stage:

Clause 3

LORD STEVENSON OF BALMACARA

VISCOUNT YOUNGER OF LECKIE

BARONESS GARDEN OF FROGNAL

Page 2, line 6, at end insert—

“(za) the need to protect the institutional autonomy of English higher education providers,”

VISCOUNT YOUNGER OF LECKIE

Page 2, line 12, at end insert “while also having regard to the benefits for students and employers resulting from collaboration between such providers,”

BARONESS O'NEILL OF BENGARVE

Page 2, line 17, at end insert—

“() the need to ensure that all English higher education providers have the same duties to make reasonable adjustments for students with disabilities;”

VISCOUNT YOUNGER OF LECKIE

BARONESS GARDEN OF FROGNAL

Page 2, line 23, at end insert—

“() The reference in subsection (1)(a) to choice in the provision of higher education by English higher education providers includes choice amongst a diverse range of—

(a) types of provider,

(b) higher education courses, and

(c) means by which they are provided (for example, full-time or part-time study, distance learning or accelerated courses).”

After Clause 11

LORD KERSLAKE

LORD STEVENSON OF BALMACARA

BARONESS GARDEN OF FROGNAL

Insert the following new Clause—

“Regulated course fees etc: use in relation to section 26

(1) The scheme established under section 26 must not be used to rank English higher education providers as to the regulated course fees they charge to a qualifying person; or the unregulated course fees they charge to an international student; or the number of fee paying students they recruit, whether they are qualifying persons or international students.

(2) In this section “regulated course fees”, “qualifying person” and “international student” have the same meaning as in section 11.”

Clause 15

BARONESS ROYALL OF BLAISDON

BARONESS GARDEN OF FROGNAL

Page 9, line 16, at end insert—

“(2A) The list of principles may include a requirement that every provider—

(a) provides all eligible students with the opportunity to opt in to be added to the electoral register through the process of enrolling with that provider, and

(b) enters into a data sharing agreement with the local electoral registration officer to add eligible students to the electoral register.

(2B) For the purposes of subsection (2A)—

(a) a “data sharing agreement” is an agreement between the higher education provider and their local authority whereby the provider shares the—

(i) name,

(ii) address,

(iii) nationality,

(iv) date of birth, and

(v) national insurance data,

of all eligible students enrolling or enrolled (or both) with the provider who opt in under subsection (2A)(a);

(b) “eligible” means those persons who are—

(i) entitled to vote in accordance with section 1 of the Representation of the People Act 1983, and

(ii) a resident in the same local authority as the higher education provider.

(2C) Subsection (2A) does not apply to the Open University and other distance learning institutions.”

After Clause 16

LORD STEVENSON OF BALMACARA

Insert the following new Clause—

“Power to restrict enrolments

(1) If the OfS has reasonable grounds for believing that a registered higher education provider is in breach of an ongoing registration condition with respect to the quality of the higher education provided by the provider, or to its ability to implement a student protection plan which forms a condition of its registration, the OfS may place quantitative restrictions on the number of

new students that the provider may enrol.

(2) The Secretary of State may by regulations make provision about the procedures for imposing such restrictions and about rights of appeal.”

Clause 25

LORD STEVENSON OF BALMACARA

Page 15, line 42, at end insert “, and the collective experience of the members must span a broad range of the different types of higher education providers in England, including those offering part-time and distance learning.”

Page 16, line 6, at end insert—

“() At least one member of the Committee must, at the time of their appointment, be engaged in the representation or promotion of the interests of individual students, or students generally, on higher education courses provided by higher education providers.”

Clause 26

LORD BLUNKETT

BARONESS GARDEN OF FROGNAL

BARONESS WOLF OF DULWICH

Leave out Clause 26 and insert the following new Clause—

“Scheme to provide information about the quality of higher education and higher education teaching

(1) The Secretary of State must by order bring forward a scheme to assess and provide consistent and reliable information about the quality of education and teaching at English higher education providers and at higher education providers in Wales, Scotland or Northern Ireland which apply to participate in such a scheme.

(2) The scheme must be wholly or mainly based on the systems in place in higher education providers which ensure that the courses offered are taught to a high standard.

(3) The Secretary of State, or that body designated by the Secretary of State to develop such a scheme, must, before such a scheme is introduced, and on a regular basis thereafter, obtain independent evaluations, including an evaluation from the Office for National Statistics, of the validity of any data or metrics included in such a scheme.

(4) Any scheme introduced must evaluate and report on whether an institution meets expectations or fails to meet expectations on quality measures, but must not be used to create a single composite ranking of English higher education providers.

(5) The Secretary of State’s power to make an order under subsection (1) is exercisable by statutory instrument, a draft of which must be laid before, and approved by, a resolution of each House of Parliament.”

After Clause 26

BARONESS GARDEN OF FROGNAL

LORD STOREY

Insert the following new Clause—

“Assessments under section 25: international students

The ability of a student to enter the UK in order to attend a course provided by a registered higher education provider in England or Wales shall not be affected by the quality rating attributed to that provider under section 25 of this Act.”

Clause 26

LORD BEW

LORD LIPSEY

Page 16, line 17, at end insert—

“() Before any scheme under subsection (1) is introduced which would draw upon indicators of student opinion derived from the National Student Survey, the Secretary of State must establish an independent inquiry into the statistical validity of that survey and its appropriateness as a source of metrics used in the scheme.”

Clause 32

LORD ADDINGTON

Page 20, line 16, at end insert “and, in the case of students with disabilities or special educational needs who will require changes in methods of teaching and delivery of information, a guide must be prepared which states how best to achieve this and provides examples of existing good practice and the effective use of technology to achieve this end”

Clause 36

LORD STEVENSON OF BALMACARA

VISCOUNT YOUNGER OF LECKIE

BARONESS GARDEN OF FROGNAL

Page 21, line 32, at end insert—

“() In performing those functions, subsection (1) applies instead of section 3(1)(za) (duty of OfS to have regard to the need to protect institutional autonomy) in relation to the freedoms mentioned in subsection (7)(b) and (c) of that section.”

Clause 41

BARONESS WOLF OF DULWICH

LORD STEVENSON OF BALMACARA

Page 24, line 8, at end insert—

“() The OfS must not recommend to the Secretary of State the authorisation of a provider under subsection (1) unless—

(a) the provider has been established for a minimum of four years with satisfactory validation arrangements in place, or

(b) the Quality Assessment Committee is assured that the provider is fully able to maintain the required standard expected for the granting of a United Kingdom degree for the duration of the authorisation, and may therefore be authorised to grant taught awards or research awards or

both, and has reported to the Secretary of State; and the OfS is assured that the provider operated in the public interest and in the interest of students.

() In this section the “Quality Assessment Committee” is the Committee established under section 25 and “validation arrangements” has the same meaning as in section 47(4).”

After Clause 44

VISCOUNT YOUNGER OF LECKIE

Insert the following new Clause—

“Grant, variation or revocation of authorisation: advice on quality etc

(1) The OfS must request advice from the relevant body regarding the quality of, or the standards applied to, higher education provided by a provider before making—

- (a) an order under section 41(1) authorising the provider to grant taught awards or research awards,
- (b) a further order under section 41(1)—
 - (i) varying an authorisation given to the provider by a previous order under section 41(1), or
 - (ii) revoking such an authorisation on the ground that condition B in section 43(4) is satisfied, or
- (c) an order under section 44(1)—
 - (i) varying an authorisation given to the provider, as described in that provision, to grant taught awards or research awards, or
 - (ii) revoking such an authorisation on the ground that condition B in section 44(5A) is satisfied.
- (2) In this section “the relevant body” means—
 - (a) the designated assessment body, or
 - (b) if there is no such body, a committee which the OfS must establish under paragraph 8 of Schedule 1 for the purpose of performing the functions of the relevant body under this section.
- (3) Where the OfS requests advice under subsection (1), the relevant body must provide it.
- (4) The advice provided by the relevant body must be informed by the views of persons who (between them) have experience of—
 - (a) providing higher education on behalf of, or being responsible for the provision of higher education by—
 - (i) an English higher education provider which is neither authorised to grant taught awards nor authorised to grant research awards,
 - (ii) an English further education provider, and
 - (iii) an English higher education provider which is within neither sub-paragraph (i) nor sub-paragraph (ii),
 - (b) representing or promoting the interests of individual students, or students generally, on higher education courses provided by higher education providers,
 - (c) employing graduates of higher education courses provided by higher education providers,
 - (d) research into science, technology, humanities or new ideas, and
 - (e) encouraging competition in industry or another sector of society.
- (5) Where the order authorises the provider to grant research awards or varies or revokes such an authorisation, the advice provided by the relevant body must also be informed by the views of UKRI.
- (6) Subsections (4) and (5) do not prevent the advice given by the relevant body also being informed by the views of others.
- (7) The OfS must have regard to advice provided to it by the relevant body under subsection (3) in deciding whether to make the order.
- (8) But that does not prevent the OfS having regard to advice from others regarding quality or standards.
- (9) Where the order varies or revokes an authorisation, the advice under subsection (1) may be requested before or after the governing body of the provider is notified under section 45 of the OfS’s intention to make the order.

(10) Where there are one or more sector-recognised standards, for the purposes subsections (1) and (8)—

- (a) the advice regarding the standards applied must be advice regarding the standards applied in respect of matters for which there are sector recognised standards, and
- (b) that advice must be regarding those standards as assessed against sector-recognised standards.

(11) In this section—

“designated assessment body” means a body for the time being designated under Schedule 4 ;

“humanities” and “science” have the same meaning as in Part 3 (see section 107).”

Clause 61

LORD STEVENSON OF BALMACARA

Page 39, line 7, at end insert—

“() The information must cover key workforce data at individual institutions, including—

- (a) number of staff employed on non-permanent contracts;
- (b) proportion of teaching delivered by staff on non-permanent contracts; and
- (c) staff-to-student ratios.”

After Clause 84

BARONESS O'NEILL OF BENGARVE

BARONESS WOLF OF DULWICH

LORD NORTON OF LOUTH

LORD STEVENSON OF BALMACARA

Insert the following new Clause—

“Unincorporated higher education providers: financial support

Students enrolled on a course provided by a higher education provider that is not incorporated under the law of the United Kingdom do not qualify for publicly funded student support.”

After Clause 85

LORD HANNAY OF CHISWICK

BARONESS ROYALL OF BLAISDON

BARONESS GARDEN OF FROGNAL

LORD PATTEN OF BARNES

Insert the following new Clause—

“Students and academic staff at higher education providers

(1) The Secretary of State has a duty to encourage international students to attend higher education providers covered by this Act, and UKRI must take every possible opportunity to encourage and facilitate the maximum co-operation between British higher education and research establishments and those based outside the UK, in particular with projects and programmes funded by the European Union.

(2) The Secretary of State shall ensure that no student, either undergraduate or postgraduate, who has received an offer to study at such a higher education provider, be

treated for public policy purposes as a long term migrant to the UK, for the duration of their studies at such an establishment.

(3) Persons, who are not British citizens, who receive an offer to study as an undergraduate or postgraduate, or who receive an offer of employment as a member of academic staff at a higher education provider, shall not, in respect of that course of study, or that employment, be subject to more restrictive immigration controls or conditions than were in force for a person in their position on the day on which this Act was passed.”

After Clause 86

BARONESS DEECH

LORD STEVENSON OF BALMACARA

BARONESS GARDEN OF FROGNAL

Insert the following new Clause—

“Higher education providers: freedom of speech and preventing unlawful speech

(1) All English higher education providers must ensure that their students, staff and invited speakers are able to practise freedom of speech within the law in the provider’s premises, forums and events and must put in place measures to prevent unlawful speech.

(2) Subsection (1) extends to the premises, forums and events of the provider’s student unions.”

After Clause 86

LORD DUBS

Insert the following new Clause—“Independent review of the Prevent strategy in higher education institutions(1) Before the end of the period of three months beginning on the day on which this Act is passed, the Secretary of State must appoint an independent reviewer to—

(a) conduct an independent review of the operation and effectiveness of the Prevent strategy in relevant higher education institutions; and

(b) submit a report to the Secretary of State on the findings of the review.

(2) The report must address, though may not be limited to, the following matters—

(a) the operation and effectiveness of the Prevent strategy in higher education institutions;

(b) the interaction of Prevent with—

(i) other legal duties on higher education institutions; and

(ii) the criminal law as it relates to higher education institutions;

(c) existing arrangements for the inspection and monitoring of higher education institutions’ compliance with the Prevent duty; and

(d) the nature and extent of training provided to staff working in higher education institutions.

(3) The independent reviewer may invite evidence from civil society groups and others with expertise in, or experience of, Prevent.

(4) An individual must not be appointed to the role of independent reviewer if that individual—

(a) has a close association with Her Majesty’s Government ; or

(b) has concurrent obligations as a Government appointed reviewer.

(5) The reviewer must have access to security sensitive information on the same basis as the reviewer appointed under section 36 of the Terrorism Act 2006.

(6) In appointing the reviewer, the Secretary of State must have regard to the need to ensure the reviewer has the relevant qualifications, including legal qualifications, to carry out his functions.

(7) The Secretary of State, after consultation with the independent reviewer, must provide the reviewer with such staff as are sufficient to ensure that the reviewer is able properly to carry out his functions.

(8) The Secretary of State must pay to the reviewer—

(a) expenses incurred in carrying out his functions under this section; and

(b) such allowances as the Secretary of State determines.

(9) The Secretary of State must lay before each House of Parliament a copy of the report received under subsection (1)(b).

(10) In this section, “Prevent” means the Prevent strand of Her Majesty’s Government’s counter-terrorism strategy CONTEST, including the statutory Prevent structure; and “statutory Prevent structure” means the provisions set out at Part 5 of the Counter-Terrorism and Security Act 2015.”

Clause 112

VISCOUNT YOUNGER OF LECKIE

Page 69, line 9, leave out “subsection (3)” and insert “subsections (3) and (4)”

Page 69, line 14, at end insert—

“(4) Provision made under subsection (1) by virtue of subsection (2)(b) may not revoke a Royal Charter in its entirety.”

Schedule 1

BARONESS BLACKSTONE

Page 75, line 22, at end insert—

“() The Director must report annually to each House of Parliament on the performance of the OfS's access and participation functions.”

Schedule 6

LORD STEVENSON OF BALMACARA

Page 94, line 27, at end insert—

“() a number of persons that, taken together, appear to the OfS to represent, or promote the interests of, higher education staff,”

Page 96, line 19, at end insert—

“() a number of persons that, taken together, appear to the OfS to represent, or promote the interests of, higher education staff,”