



Higher Education and Research Bill - House of Lords Second Reading: Briefing note from GuildHE

Introduction

1. GuildHE is, with Universities UK, one of the two officially recognised representative bodies for UK Higher Education. Our members include universities, university colleges, further education colleges and specialist institutions from both the traditional and private (“for profit” and “not for profit”) sectors.
2. This note provides briefing for Lords’ Second Reading. We will provide further, more detailed briefing at Committee stage.

Summary

3. GuildHE welcomes the Higher Education and Research Bill. New primary legislation has been essential since the fee changes of 2012. Regulation has not kept up with the changes to funding, increased competition and the growth in alternative providers. The Bill allows financial, reputational and student protection risks to be addressed. And it allows all providers of higher education – old or new - to be regulated fairly, consistently and on the basis of risk.
4. We welcome government amendments in the Commons that addressed some of the concerns raised by GuildHE and others in the higher education sector, including:
 - Requiring a dedicated Board member of the Office for Students (OfS) with experience of representing or promoting the interests of students.
 - Requiring providers to publish student protection plans and bring them to students’ attention;
 - Giving the OfS a new duty related to monitoring the financial sustainability of the sector; and
 - Including postgraduate training explicitly in the list of UKRI’s functions.
5. **But we do still have concerns about aspects of the Bill**, in particular:
 - Government amendments restricting the ability of the Secretary of State to frame guidance etc., in relation to particular courses of study don’t go far enough and still leave Ministers able to tell the OfS what courses they should and should not fund;
 - The Bill’s treatment of quality and standards risks unintentionally damaging the principle of institutional autonomy;

- We think the Bill could do more to protect the existing diversity of the higher education sector and so enhance student choice;
- The potential risks to the student interest and the international reputation of UK higher education of speeding up the entry of new providers to the higher education market;
- The implications of separating teaching and research.

Guidance, directions and terms and conditions of grant framed by reference to particular courses of study – Clauses 2, 68, 71

6. The Bill proposes to reverse the current legal position that prevents Ministers giving guidance and directions about particular courses of study. We have been told the power is needed to resolve an existing legal lack of clarity about the Secretary of State's power to communicate her/his priorities.

7. We welcome the government's amendment that means the Secretary of State cannot now guide or direct the OfS to prevent either the closure of existing courses or the creation of new ones.

8. But the Bill would still allow the SoS to decide, in part, what subjects should or should not be funded. Although most funding for teaching will come from fees backed by student loans, direct funding from OfS is essential to meet the additional costs of subjects that are expensive to teach (for example, chemistry, engineering, archeology, creative art and design). The Bill would give the Secretary of State a new power to tell the OfS not to fund a particular subject – even if that subject cost more to teach than the maximum fee the university was allowed to charge. This goes significantly beyond the current power to give general directions about Ministerial priorities, which the Funding Council translates into allocations to universities.

9. We think Clause 2 of the Bill needs amending to ***prevent guidance given by the Secretary of State, which is framed by reference to a particular course of study, guiding the OfS to perform a function in a way that prohibits the OfS from funding a particular course of study.*** Ministers would still be able to give the OfS guidance about their priorities for the funding available. But final decisions would be taken by the OfS, as they are now by the Funding Council. ***And that further amendments should place corresponding restrictions on the Secretary of State's power to impose terms and conditions of a grant to the OfS under clause 68, or to give directions under clause 71.***

Quality and standards - Clauses 13 and 23 to 25

10. At various points, the Bill brackets quality and standards together when they are related but distinct elements of quality assurance and assessment. Academic quality covers how an institution supports students to enable them to progress and achieve their award. Academic standards are the student outcome standards that individual degree awarding bodies set and maintain for the award of their own academic credit or qualifications. As drafted, the Bill risks the OfS being able

in future to define and determine the standards applied rather than ensuring that the standards set by autonomous universities are met.

11. During the Commons Committee stage, the Minister gave some 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.” This was helpful. But the lack of clarity in the Bill should be addressed. It is essential that student outcome standards remain the responsibility of autonomous institutional academic communities and continue to reflect the pedagogical diversity of higher education. We think the Bill needs to be amended to:

- ***Separate the conditions relating to quality and standards to enable clearer delineation at various points in the Bill;***
- ***Recognise that academic standards are owned and agreed by the higher education sector;***
- ***Strengthen the role of the proposed Quality Assessment Committee by ensuring the OfS must have regard to its advice.***

Protecting the diversity of the sector

12. We welcome the government’s commitment to student choice but think the Bill could do more to protect the existing diversity of the higher education sector. The Bill gives the OfS a duty to promote choice for students. But the risk is that “choice” is narrowly interpreted in terms of subjects and doesn’t take full account of diverse learning environments. Specialist institutions and institutions founded by the churches provide distinctive and valued learning environments that enhance choice for students and for graduate employers. We think the Bill should draw on existing provisions in the Further and Higher Education Act 1992 and that a new Clause should be inserted to ***require the OfS to consider the importance of students having a choice of higher education that includes providers of a denominational character and providers with distinctive characteristics.***

Market entry

13. GuildHE supports the government’s intention to make it easier for high quality new providers to enter the market. We believe diverse provision enables greater student choice and is key to maintaining an excellent higher education sector. But we think the government has not provided enough detail about significant policy changes, such as:

- Probationary degree awarding powers. What happens to a student if a provider fails probation? Who awards their degree? These are fundamental questions that aren’t answered by the government’s technical note on market entry and quality assurance or in the companion note on student protection plans. We think government must provide answers to these questions.

- The new power to revoke degree awarding powers, including those acquired by Royal Charter or other Acts of Parliament. The government's technical note says the power would be "very rarely" used but does not say in what precise circumstances this power might be considered or what criteria would apply. Instead it says, the "detailed circumstances in which these powers will be used will be consulted on and set out in guidance." ***We think that guidance should be subject to parliamentary approval.***

14. On the reforms to university title, we agree with the government's White Paper that the requirement for a set number of students "was at odds with the historic concept of universities as small, academic communities, and prevents small, high quality providers from accessing the benefits of a university title." But we think government should reinforce the idea of "academic communities" by ensuring that securing university title requires a clear and continuing commitment to teaching informed by research, scholarship and, where relevant, professional practice and to genuine community engagement. ***This could be achieved though guidance and through the list of public interest principles that Clause 14 requires the OfS to determine and publish.***

15. We do not agree with the government's proposal that providers awarded full degree awarding powers should then have to wait a further three years before acquiring university title. There is no waiting period at present. This proposal means high quality providers, judged capable of awarding their own degrees, would wait longer for university title than they do now.

The implications of separating teaching and research

16. The Bill creates separate regulatory and funding bodies for teaching and research. This risks undermining the positive interaction of teaching, research and innovation activity in universities. Government has gone some way to address this by giving the OfS a new duty to monitor the financial sustainability of the sector and by publishing a note on joint working between OfS and UKRI. But we think the Bill could do more to deliver what the Higher Education White Paper promised – that the OfS would "take a holistic view of the sector and institutions". This could be done by:

- ***Giving OfS the same power to provide advice to Ministers (without specific instruction to do so) that is being proposed for UKRI; and***
- ***Requiring OfS and UKRI jointly to prepare a strategy for higher education and research.***