

## PARLIAMENTARY BRIEFING

# The Higher Education and Research Bill 2016

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## MillionPlus analysis of the Higher Education and Research Bill 2016 for Second Reading, 19<sup>th</sup> July

### SUMMARY

The proposals set forward in this Bill seek to alter some of the fundamental structures in the higher education sector, and as such they require intensive scrutiny. The government's stated intention to introduce an increasingly market-focused and pro-competition system must be examined very closely, including the proposals for new providers and changes to the research architecture.

Competition has always been a feature of the higher education sector. The UK has a global reputation for universities that are high quality, innovative in course delivery and which support internationally excellent research throughout the sector as a whole. However, competition that is manufactured without a sound evidence base risks unbalancing an already vibrant and healthy market. Equally, reforms that are underwritten by an acceptance of market failure will damage the domestic and international reputation of one of the UK's strongest and most successful sectors, and will put the future prospects of students at unnecessary risk.

MillionPlus believes that, although there are some positive steps taken in this Bill, in its current form it poses too many unanswered questions and requires more thought and consultation to achieve its stated objectives. To be truly successful the Bill must ensure that:

- One body is mandated to ensure holistic oversight of the entire sector
- The criteria needed to become a university is not relaxed, and that university title is defined, protected and valued
- Market failure should be mitigated and students remain fully protected
- University autonomy remains intact, and the role of government is better defined
- More is done for part-time students
- Research is valued and balanced funding guaranteed
- Greater clarity is established on the proposed research architecture
- UK wide implications of the Bill are fully considered and the subject of consultation

The recent decision of the UK to exit the European Union must also inform scrutiny of this Bill. The environment for higher education institutions throughout the UK has become more uncertain in respect of future staffing, student mobility, research and European structural funds in which universities have been key players. The Bill should therefore be considered in the light of the need to provide greater certainty and continuing investment rather than instability in the future.

The proposed changes will also have a profound effect on universities in Scotland, Wales and Northern Ireland, and as such the consequences of the proposals, be they intended or not, should be scrutinised very carefully in a UK-wide context, and not seen as necessarily limited by national borders.

## **PART 1: THE OFFICE FOR STUDENTS**

The Bill will establish the Office for Students (OfS), dissolving the Higher Education Funding Council for England (HEFCE) and the Office for Fair Access (OFFA). Unlike HEFCE and OFFA, the OfS will be explicitly focused on the promotion of competition and choice, with students as consumers, rather than on the promotion, growth and quality of the sector as a whole. MillionPlus believes the creation of the OfS poses significant questions and risks which must be addressed.

### **Oversight**

The closure of HEFCE and OFFA, and their replacement with the OfS, will not mean a direct transfer of roles and responsibilities. The proposed system will mean no single body has oversight of the entire sector, with the power to take action if required. A lack of this direction, or any subsequent drift towards a separation of the constituent parts of higher education (teaching, research and knowledge exchange) would be to the severe detriment of students and the sector's reputation.

**Holistic oversight must be maintained as the responsibility of one single body.**

### **Degree Awarding Powers and University Title**

The proposals on awarding full taught degree awarding powers to new providers are a significant break from the current system. Under the established rules any new entrant must work alongside an existing provider for up to four years to oversee two full cohorts of students before they can be awarded full degree awarding powers. This helps ensure success and the sharing of best practice. Under these proposals, this collaboration is removed, and new providers can acquire provisional degree awarding powers from the moment they enter the market. Provisional degrees would be rendered worthless to students if the institution then fails to pass the criteria to move out of provisional status, putting the future prospects of entire cohorts of students into serious and unnecessary risk.

**Proposals to grant provisional degrees from entrants into the market should be withdrawn.**

The decision to then validate these new providers after only three years (or one cohort of students) is also a potential risk, as it may not demonstrate the long-term viability of a provider. When further education colleges were granted the ability to apply for foundation degree awarding powers in 2007 the Conservative Opposition were very clear that the same level of rigour must be kept within the system, and amendments were moved to ensure that the process of having a six-year probationary time period (i.e. so that it would cover two cohorts of students) was an important safeguard<sup>12</sup>. However, this new system goes against these basic principles.

**Any proposals to relax the criteria for validating degree awarding powers should be withdrawn.**

Proposals to remove the minimum number of students an institution needs to become a university also require investigation. This change could lead to providers becoming universities with only one subject being taught and with only a handful of students. MillionPlus believes that the value of a degree from a UK university is based on excellence in teaching, research and student experience across different disciplines. All new entrants, regardless of size or scope, should adhere to these basic principles to access university title. Anything that risks devaluing this is risking the reputation of the entire sector, and the strength of the degrees awarded to UK graduates.

**The UK university title is highly valued, it must be clearly defined and protected.**

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<sup>1</sup> <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070208/debtext/70208-0001.htm#07020828000668>

<sup>2</sup> <http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70227-0009.htm>

### Market Failure

The push towards a market style system means that institutions may be allowed to fail and exit the market, be they new providers or those that are long established. Accepting the failure of some providers could be devastating for a local area or for that institution's students (past and present). Market failure will also impact on the local, national and global reputation of UK universities, and could make the entire sector worse off as a consequence. UK universities are national assets and should be protected wherever possible, and encouraging this element of a market system will not increase healthy competition but it could lead to profoundly negative effects on the sector as a whole.

**Government must ensure providers, local areas and students are protected wherever possible, and any push towards a system based on an acceptable level of market failure should be rethought.**

### Relationship with Government

The OfS will no longer be fully-funded by BIS, but largely through subscriptions from providers themselves. This raises questions about how a regulator can distribute funding to organisations it regulates while being funded by those same organisations, and how far Ministers can be allowed to direct policy owing to the lack of central government funding. HEFCE acted as a buffer body, advising and critiquing government policy when necessary, and this is a healthy relationship that should be maintained under the OfS.

**These regulatory relationships must therefore be clarified, and the new architecture cannot simply be justified by the need to keep costs down.**

Proposals to allow the Secretary of State powers to direct the OfS in relation to particular courses at universities is a direct and explicit reversal of the position outlined in the Further and Higher Education Act 1992. This could fundamentally challenge the autonomy of universities to manage their own institutions, and could see Ministers interfering directly on which courses should or should not be offered. This goes against the market orientated focus of the Bill, and it gives too much power to the Secretary of State of the day.

**These proposals should be amended to ensure Ministers cannot directly interfere in university courses, and that institutions retain academic and administrative freedom.**

### Ratings and Standards

The OfS is also mandated to implement a ratings system for higher education institutions in England, which the government have called the Teaching Excellence Framework (TEF). Although not explicit in the Bill itself the planned implementation of the TEF is underway and is due to be linked with tuition fees in the near future. MillionPlus believes there are serious issues around the implementation of the TEF, and its link with fees. Please see Annex A at the end of this briefing for more information on the TEF.

## **PART 2: FINANCIAL SUPPORT FOR STUDENTS**

### Part-Time Students and Flexible Study

The proposals set out in the Bill do not do nearly enough to address the current problems faced by part-time students, or those who wish to have more flexible study arrangements. This is a missed opportunity and one that the Bill should be rectified to address. Allowing for greater flexibility over how fees are paid (rather than only based on a year of tuition), or how much of a course of study for a degree has to be done in any given year would help more part-time learners access higher education, and would help to combat the continuing decline in part-time and older learners taking part in higher education. Greater flexibility could also enable more universities to consider offering accelerated degrees (e.g. three years of study done in two years) as currently the costs outweigh what universities are legally allowed to charge undergraduate students.

**The Bill should do far more to address part-time study, and measures should be adopted to ease access for greater flexibility of study.**

### Alternative Funding

The ability to enable alternative forms of student loan repayment are important in a modern and diverse higher education sector. MillionPlus believes the measures to enable a non-interest bearing loan repayment system for students whose beliefs prohibit the payment of interest is a positive step, and one which we have advocated for some time. These measures must be robust enough to allow all students who wish to take this option to do so, and must also not advantage or disadvantage any given student who chooses either option available to them.

**The proposals are to be welcomed but it is important to ensure they are suitably robust.**

### **PART 3: RESEARCH**

The proposed changes to the research framework in the Bill are extremely significant, and they will radically alter how research and innovation funding is managed throughout the UK. These proposals are far reaching and the government must ensure that they are able to justify that the investment it will put into restructuring this architecture will significantly improve UK research and innovation.

### UKRI

Currently there are seven research councils.<sup>3</sup> Through the Bill these councils will be subsumed as committees into a new body called UK Research and Innovation (UKRI), which will have the power to rename the councils and change their focus if desired. The councils will also lose their Royal Charters. Although perhaps intended as a superficial change, the loss of these charters is nevertheless a downgrading of the power and influence of the research councils. This will have an impact on the way they are viewed, and the leadership they will be able to both project and attract, which could do damage to the reputation of UK research both domestically and internationally.

**The importance of the councils should be underlined and the Royal Charters maintained.**

The creation of UKRI and the OfS out of soon to be defunct bodies will mean that the functions that were previously carried out by one organisation (HEFCE) will now be divided. As stated above, this risks a lack of clear oversight of the sector, however the detachment of a direct link between research and the other elements crucial to higher education could see these bodies work in silo and move the sector in different directions. This could be potentially even more damaging in a post-Brexit world with many within higher education already feeling uncertain of the future and looking for stability and a measure of continuity.

**The government must ensure that there is direction in the sector under one body, enshrined in legislation, and that the OfS and UKRI work collaboratively for the good of the sector.**

### Research England and Dual Support

As highlighted above, UKRI will also incorporate the research functions currently undertaken by HEFCE, and will pool them into a new committee called Research England. Its job will be to assess and allocate quality-related research funding to universities. The Bill is incredibly vague around the remit of Research England, and what direction it will have under UKRI. With such an important role it is concerning that so little is within the legislation setting out what it should be mandated to do, and this should be looked into closely by Parliamentarians.

**The Bill should be much clearer on the role the government intends to give Research England.**

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<sup>3</sup> Engineering and Physical Sciences, Biotechnology and Biological Science, Economic and Social, Medical, Arts and Humanities, Natural Environment, Science and Technology Facilities Council

The Bill does enshrine the principle of 'dual-support' into legislation, whereby funding for research is allocated to universities for them to use at their discretion, rather than for specific projects (as is the case with the research councils). In addition, the principle of dual support is backed up by the Haldane Principle, whereby the Secretary of State and Research England (and formerly HEFCE) cannot dictate to universities how they can allocate the funding they receive.

However, under the proposed system it is likely that the process of allocating funding will be influenced by external pressures based on other areas of UKRI responsibility, including potentially the direction of the government of the day. There are risks that in such a case one area of research, for example STEM, could be prioritised above all others, which would have detrimental impacts on other areas of research (such as allied health professions) and the institutions that specialise in them. It will be therefore important to ensure that Research England is robust enough within UKRI to avoid any domination of one area, as the long-term consequences of such a move could be damaging to areas of the UK economy.

**Dual Support is essential and the protection of it in legislation is to be welcomed, but Research England must be robust and ensure a fair balance in research funding across all disciplines.**

#### Innovate UK

Any moves to improve collaboration between businesses and universities is welcome. However, UKRI must ensure that the creation of Innovate UK is not simply seen as a way to commercialise the work of the research councils. Universities need to work much more closely with SMEs as well as big business, and Innovate UK should be a conduit for helping facilitate that. It should not be simply the commercial arm of UKRI, otherwise it will not address the structural issues within UK research, and it will be a missed opportunity to bring all types of businesses closer to world-leading research and innovation.

**Innovate UK must not be a simple commercialisation of research, and must have a deeper function.**

It is also important that funding that would otherwise go to universities is not simply allowed to be transferred over to businesses to pay for their own in-house research programmes, as this will have an extremely negative impact upon UK universities, and particularly those with the lowest research funding already. The sector needs a truly collaborative relationship between higher education and business, not one based on competition for resources.

**Innovate UK must be a truly collaborative partner, bringing the sector and business together.**

#### UK-Wide implications

Universities in Scotland, Wales and Northern Ireland are entitled to bid for funding from the research councils, however there is no clear information from the government on their plans regarding these countries. A number of key features currently undertaken by HEFCE, especially around the management of the Research Excellence Framework (REF), are done in collaboration with the devolved administrations, so the government must set out a clear plan, consulting the devolved governments, to ensure this Bill will not adversely impact any area of the UK.

**The UK-wide implications of these proposals need to be fully considered and the situation regarding the remit of HEFCE clarified.**

## **CONCLUSION**

The proposals set forth in the Bill are ambitious and do seek to address a number of major issues facing the sector. However, there are some serious concerns regarding the proposed architecture and direction of higher education as set out in the Bill which must be addressed for the reforms to be successful in the long-term.

Competition is positive, and is happening already, and any new structures need to understand the way the market currently operates within higher education before any new system is imposed.

Higher education remains one of the UK's most successful sectors, with widespread respect and an extremely strong international reputation. This needs to be protected, and all reforms need to be carefully thought through with the health of the entire sector in mind.

MillionPlus believes that the legislative process should therefore be extensive and detailed to ensure that every consideration is given to each of the proposals, as they will have extremely far-reaching consequences for both providers and future students. This Bill requires a number of amendments, and we cannot support it in its current form, but with changes it has the potential to improve higher education within the UK.

**For more information, please contact our Senior Parliamentary Officer, Adam Haxell, at [adamhaxell@millionplus.ac.uk](mailto:adamhaxell@millionplus.ac.uk) or on 0207 717 1687**

## **ANNEX A:**

### **TEACHING EXCELLENCE FRAMEWORK**

Although not explicitly mentioned within the Bill, Section 25 of the legislation alludes to the implementation of the Teaching Excellence Framework (TEF), which was widely championed in the related White Paper and Green Paper.

The TEF is a system designed to use various metrics to determine the quality of teaching at a university. The rating received by a university will then inform by how much tuition fees can be raised, thereby creating differentiation in the market. Investment in teaching is essential so students can continue to receive excellent higher education, and with the government no longer providing direct grants to universities, the tuition fee is the only mechanism to achieve this.

We welcome the government's amendment of the timetable to delay the introduction of TEF Year Two and, by allowing universities to increase fees with inflation from 2017/18, the acknowledgement that the university experience requires investment if students are going to benefit from high quality teaching and academic support.

However, if the TEF Year Two is to be introduced, MillionPlus still believes that more thought needs to be given to how it is constructed before it is allowed to impact on the sector.

#### **Piloting**

The criteria to be used are still proxy measures that were established for the purposes of measuring other elements of higher education. While these are to some extent measures of a successful student experience, they do not in themselves measure quality of teaching. We would like to see far more piloting and evaluation of these measures over a longer timescale rather than the very short 6-month pilot that the government has committed to holding between autumn 2016 and spring 2017. This would provide the government with the opportunity to attain a far better evaluation of how the assessment panel will convert the scores into grading.

Although the TEF is optional for them, a longer pilot would also provide more opportunity for discussions in particular with universities in Scotland over the use of quality enhancement review in TEF Year Two assessment.

#### **Impact of Proposed Ratings**

There are concerns about how the ratings will be perceived by the public, potential students and businesses (both domestically and internationally). The TEF ratings will come with government backing, and are likely to be taken extremely seriously. They will become a descriptive badge for individual providers, and will be taken as aggregate statements about the sector as a whole.

In this context, the phrase 'meets expectations' is negative. Based as it is on quality review, this judgement actually demonstrates highly successful practice and management by an institution. A far more positive descriptor would be the word 'good' which would still enable a hierarchy of ratings as the government wants, but be a more effective and useful 'label' for institutions. In other sectors where there is a ratings and assessment process, 'good' is held up to be a reasonable category that clearly marks successful practice. The importance of the reputational benefit conferred on providers and the sector by the TEF must be taken into account, which means language can make a difference in perceptions.

The three ratings should be:

- Good
- Excellent
- Outstanding

#### Link with Fees

The link with tuition fees is a mistake, and it only serves to create the appearance of market differentiation with none of the benefits of genuine competition. Other than the agreement to allow institutions to increase fees in line with inflation as part of TEF 1, any planned link between TEF 2 and subsequent years and differential fees set by government should be scrapped. The economic consequence of the vote to leave the European Union are also a factor in the link between the TEF and increased fees.

**For more information, please contact our Senior Parliamentary Officer, Adam Haxell, at [adamhaxell@millionplus.ac.uk](mailto:adamhaxell@millionplus.ac.uk) or on 0207 717 1687**