



# THE CONVENTION FOR HIGHER EDUCATION

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April 2017

## HIGHER EDUCATION AND RESEARCH BILL

This briefing explains why MPs must support amendments introduced by the Lords to the Higher Education and Research Bill, which is likely to return to the Commons during the “wash up” period before Parliament is dissolved ahead of the 8 June election.

The briefing was produced by the CHE is a non-partisan grouping of concerned academic staff from across Higher Education. It brings together members of the University and College Union, the Campaign for Public Higher Education, and the Council for the Defence of British Universities, and many others. We have been warning of the dangers to universities, students and local communities posed by the Bill, including in our previous briefing (attached). In short, we anticipate the Bill will accelerate marketization; financially destabilise and possibly bankrupt established, high-quality institutions; permit low-quality providers to become ‘universities’ and provide sub-prime degrees to cost-conscious students; and degrade the global reputation of British universities.

The government rightly accepted several important amendments to its Bill following the Lords Committee stage. However, further voted-on amendments include additional, sensible and proportionate measures to safeguard universities and students.

### Teaching Excellence Framework (TEF) and Fees

The new **Clause 12** severs the link between TEF scores and fee inflation, while the new **Clause 27** insists that any measure of teaching excellence must be rigorous, independently scrutinised by the Office for National Statistics, and not be used to create crude, composite rankings. TEF had not previously been mentioned in the Bill, despite the government’s intention to rush in a new, untested, bureaucratic ranking system for teaching quality, branding universities ‘gold’, ‘silver’, ‘bronze’ and ‘ungraded’, and allowing gold/silver ranked institutions to raise fees in line with inflation. These amendments are crucial because:

- TEF and its component elements are almost universally derided by academics, teaching quality experts, and statisticians as an unfit measure of teaching excellence.
- The Royal Statistical Society opposes both TEF and the National Student Survey (NSS) – one of TEF’s component elements – as inappropriate, stating they are subject to ‘gaming’, do not allow meaningful ranking, and ‘inadvertently encourage’ mediocrity.
- NSS data may not even be available, since the NSS is being boycotted by the National Union of Students, and student unions from dozens of top universities, including Oxford, Cambridge, Kings, LSE, and UCL. Students have generally opposed the Bill as a whole, despite government claims that the Bill will benefit students.
- UK universities already spend over £1bn p/a on quality assurance; the TEF would only increase costs and, since fee rises are limited to inflation, reduce resources for teaching. Several top universities have already said they will not participate for this reason.

- ‘Silver’ and ‘bronze’ rankings will convey the message, especially overseas, that UK universities are poor quality, when in reality they are world leading. This endangers the huge economic and cultural benefits international students bring to the UK – at a time when Brexit is already negatively impacting overseas student recruitment.

### **The Integrity of British Universities and Protection of Students**

The amended **Clause 47** (subsections 12-13) extends to four years the probationary period for new providers before they can be awarded the title of ‘university’ and given degree-awarding powers, and strengthens the role of the Quality Assessment Committee of the new Office for Students (OfS). This revises the government’s intention to give degree-awarding powers immediately to private providers. The amendment is essential to prevent untried and untested private firms with no track record in education setting up as universities offering cut-price, low-quality degrees. A longer probationary period is particularly crucial because the Bill allows such companies to shut down at will, potentially leaving existing students in the lurch and graduates without the university that issued their degrees. This sensible amendment ensures that only stable institutions with a proven track record of providing high-quality education can gain university title.

The new **Clause 49** also allows institutions to appeal against the revocation of university title. The Bill initially granted the new OfS power to revoke this title to facilitate the closing-down of universities. However, this gave a state regulator the power to abolish universities, which could potentially be abused, in the wrong hands, to coerce universities. This amendment is a common-sense safeguard to maintain our universities’ autonomy from political interference.

### **Students’ Voting Rights**

The amended **Clause 16** allows eligible students to opt for automatic inclusion onto the Electoral Roll. This would restore the status quo before the 2014 introduction of the Individual Electoral Registration (IER) protocol, which resulted in 920,000 people – many of them students – dropping off the Electoral Roll. The IER was a sensible measure to combat electoral fraud by stopping ‘heads of household’ registering all residents then using their votes. However, the same risk does not exist in universities. Restoring the opt-in will re-enfranchise hundreds of thousands of young citizens, whom many politicians rightly wish to be more active in political life.

### **Overseas Student Numbers and Immigration Figures**

The new **Clause 90** excludes overseas student numbers from UK immigration statistics. This is sensible for several reasons.

- The difficulty of reducing immigration has made overseas students an easy – but entirely inappropriate – target for governments committed to this policy. While eliminating bogus institutions is important, the crackdown has extended to entirely legitimate universities. It conveys the wrong message that the UK is an unwelcoming, xenophobic country – compounded by some rhetoric around Brexit – and harms overseas student recruitment.
- This damages universities and the wider economy and society. Universities UK research found that, in 2014/15, the UK’s 437,000 overseas students (19% of the total) and their visitors: generated £25.8bn in economic activity, £10.8bn in export earnings, and £1bn in tax revenue, and supported 206,000 jobs. Many universities’ finances rely on overseas recruitment. The government’s target is to grow educational exports to £30bn by 2020; this cannot be achieved while simultaneously suppressing overseas student recruitment. Foreign

students also vastly enrich our campuses' cultural and intellectual life, help UK students create global networks, and enhance UK 'soft power'.

- Overseas students are not 'immigrants' and the public do not regard them as such. The vast majority are temporary residents, returning to their home countries after completing their courses. An October 2016 poll for UUK found that only 24% UK citizens see foreign students as immigrants and only 21% want their numbers reduced, while two-thirds saw their presence as economically beneficial and wanted numbers to either be maintained or increased. Nearly a half (47%) actually favoured allowing foreign graduates unlimited residency to help contribute their skills to the UK economy.

The amendments proposed by the Lords are sensible, proportionate, and reflect the extensive Higher Education expertise contained in the upper house. We urge all MPs to support these amendments or, if they are not accepted, to vote against the Bill.



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## Higher Education and Research Bill 2016-17 Third Reading Briefing October 2016

### Introduction

This briefing was prepared by the Convention for Higher Education (CHE), a non-partisan group of academics drawn from across the university sector. The CHE is deeply concerned by the damage that this bill would do to Higher Education across the UK. We appeal to all Members of Parliament to vote against the bill, for the reasons below.

### **1. The 'Teaching Excellence Framework' (TEF) Will Reduce, not Improve, the Quality of Education and Graduates**

The bill says little about TEF, but one of its central purposes is to create the enabling institutions for it. Given its centrality, it is alarming that the TEF is not being subjected to properly parliamentary scrutiny or ongoing oversight, but is instead being developed via a separate technical consultation. The TEF would involve measuring and grading university teaching in a similar way to university research (the Research Excellence Framework, REF), with higher TEF scores driving higher fees, though capped at inflation. Since decades of educational research has failed to develop any reliable measurement of teaching quality, there will be a heavy reliance on crude metrics.

Whatever metrics are eventually used, TEF will inevitably incentivise not excellent higher learning but rather 'teaching to the test'. For example, the government is currently trialling examinations to measure students' overall 'learning gain'. If this becomes the metric for teaching excellence, universities will inevitably start coaching students on how to ace 'learning gain' tests. The metric will cease to measure real learning outcomes and existing subject curricula will be hollowed out, as academics are forced to turn over class time for this purpose. Students will thus learn less, not more.

Other proposed TEF metrics – notably student satisfaction – have similar pitfalls. Student 'satisfaction' is affected as much by the quality of student accommodation, sports clubs and bars as by teaching. Incentivising universities to boost 'satisfaction' will likely compel the redirection of resources *away* from teaching to these peripheral facilities. Moreover, academics will be discouraged from designing difficult, challenging courses or grading fairly, for fear of making students 'dissatisfied'. Course content will be dumbed down and grade inflation – already endemic – will escalate sharply, devaluing degrees. Again, introducing TEF will mean students learn *less* at university.

Moreover, as academics are increasingly held accountable for students' learning outcomes, students' sense of responsibility for their own learning – historically a core aspect of higher education – will diminish. We are already seeing students dissatisfied with their grades suing their universities. If the TEF is introduced, an ancient system of independent student, guided by subject experts, will be supplanted by spoon-feeding – as seen in our secondary schools thanks to the rise of metrics and league tables. The result will be less independent, less resilient and less responsible

graduates who are less useful employees and less capable of assuming the responsibilities of citizenship.

## **2. The Bill Introduces Wasteful Bureaucracy, with Poorly Calibrated Regulation That Puts Students at Risk**

A major opportunity offered by Brexit is to review and reduce the burden of red tape facing all UK institutions. Yet this bill proposes *additional* and wasteful bureaucracy. The existing 'quality assurance' regime for UK universities already costs us £1.1bn annually, 8 percent of the teaching budget. Despite the bill's talk of 'light touch regulation', in reality the TEF will be costly and burdensome, as universities develop internal bureaucracies and processes to 'game' the system. The 2016 Stern Review noted this practice around the REF, the cost of which was conservatively estimated at £246m in 2014. TEF bureaucrats have already been hired at several universities and many more will follow.

Crucially, the TEF's costs will be borne by universities themselves, which will be forced to pass on these costs to students and their families. And, since even the highest TEF scores will only allow fee increases equal to inflation, even the best universities can only hope to *maintain* their real-terms income. Subtracting the costs of TEF results in a net loss. Thus, despite rising fees, universities will actually have *less* money to devote to improving teaching. This will accelerate a tendency within universities, caused by government policy, to reallocate scarce funds to peripheral functions like marketing, spending on which rose 33% from 2010-11 to 2012-13, to over £36m.

The TEF is also entirely wasteful because there is simply no solid evidence that UK university teaching is of such poor quality that additional regulation is needed. Although it is widely alleged that universities prioritise research over teaching, statistical analysis shows no correlation between the best research universities and low scores in the annual National Student Satisfaction Survey (NSS). The Higher Education Funding Council for England reports that NSS scores have 'increased steadily'. Research by the Department for Business, Innovation and Skills (BIS) found that employers were 'mostly satisfied with the graduates they had hired'. Research for the European Commission also ranks UK Higher Education as first for teaching, research, and value for money. Despite systematic underfunding, the UK university system is world class, second only to the United States. The bureaucratic government regulation of teaching is unnecessary and will only stifle existing excellence and creativity.

Conversely, the bill proposes extremely weak regulation where it is most necessary: the protection of students. The bill's primary purpose is to marketise higher education by facilitating both the entry of private providers and market 'exit' by universities – i.e. their closure, whether voluntary or forced (e.g. by bankruptcy). Enrolled students whose institutions 'exit' risk severe disruption to their education and their lives, particularly if they have relocated to study. Moreover, heavily indebted graduates risk being left with poor-quality degrees, awarded by defunct institutions that employers do not value or recognise. This has already occurred widely in the US. The 2012 Senate report, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, condemned the rise of 'sub-prime' private providers, which encouraged often-incapable students to take out state-backed student loans to enrol on their substandard programmes. The bill's proposed protections for such individuals are grossly inadequate. Providers will merely be required to have an entirely unspecified 'student protection plan' (§13(1)(c)) approved by the new Office for Students (OfS) – whose primary remit is not consumer protection.

### **3. Proposed Changes Threaten the Global Reputation of UK Higher Education**

Reflecting its world-class status, despite minimal government investment UK HE is currently world renowned. It boasts 4 of the world's top 10 universities, 5 of the top 20, 10 of the top 50, and 58 of the top 500 (*THE*), attracted 436,585 overseas students in 2014-15, and generated estimated export revenues of £10.7bn in 2011-12. The bill threatens to destroy this enviable position in two ways.

First, as a ranking system, the TEF will inevitably identify 'winners' and 'losers', with the result that some UK universities will be branded as providing 'poor' teaching relative to others, even if their teaching is objectively excellent. This will send a terrible message to prospective students, particularly those overseas: that many of our universities, and our university system as a whole, do not provide high quality education. The sector has already suffered from entirely baseless comments by the responsible Minister about 'lamentable' teaching. TEF would further 'talk down' our universities. The government's stated aim to expand educational exports to £30bn by 2020 will obviously be frustrated.

Secondly, the entry of poorly regulated private providers will devalue degrees and leave many graduates with 'sub-prime' qualifications. In 2015, UK HE's Quality Assurance (QA) system was significantly weakened, explicitly to permit 'different conceptions of "quality"', to be determined by providers. The bill further lowers the hurdle for private companies to attain the title of 'university', and provides no detail of the quality standards to be overseen by the OfS. We therefore anticipate the enabling of private providers to provide low-quality, cut-price degrees in cheap-to-provide areas where they can undercut established universities and attract fee income from state-backed student loans. As stated above, in the US, this approach has left hundreds of thousands of heavily indebted graduates with 'sub-prime' qualifications, unrecognised by relevant employers. The ease with which private providers can 'exit' the market makes it easy for them to cut and run, while graduates will be left carrying the burden for life. Replicating this scandal in the UK will grossly damage the global image of our university sector and its economic contribution.

### **4. Proposed Changes Threaten State Finances**

Reducing the government deficit is a top UK government priority, yet easing the market entry of many private providers in HE is highly likely to destabilise government finances. The shift to £9,000 fees has already weakened the government's long-term finances: since it is anticipated that around 40% of student loans will never be repaid, a huge asset write-off will occur in the late 2040s. The poorly-regulated entry of private providers has also *already* caused chaos in short-term government finances. In 2013, a sudden influx of private providers, which deliberately over-recruited, led to a trebling in their funding to £175m which, combined with austerity cuts and 'resource accounting and budgeting' pressures associated with student loans, produced a £1.4bn shortfall in the BIS budget. BIS was forced to suspend the 'designation' of 22 private colleges and halt all support funding to EU students, as well as abolishing maintenance grants and slashing in-year and future support for Science, Technology, Engineering and Mathematics teaching. In 2015, the Public Accounts Committee condemned BIS for pressing ahead 'with the expansion of the alternative provider sector without sufficient regulation in place to protect public money'. Yet, the temporary restrictions on private providers have since been lifted, and further expansion is now actively sought – again, without any real safeguards in place.

In the US, again, this approach has been calamitous. The expansion of private providers has in part been responsible for the near-tripling of total student debt over the past decade to US\$1.3 *trillion* (£1.01tr). Historically, the federal government has directly sequestered debt repayments from pay

packets, but as the 'sub-prime' education scandal has mounted, pressure for state-backed debt relief is growing. In May 2015, following a US\$1.1bn (£853m) court fine for fraud, Corinthian Colleges filed for bankruptcy, closing 91 colleges and leaving 110,000 students deeply indebted, without courses or degrees. In June, the federal government announced it would forgive the loans of Corinthian's defrauded students, with a possible cost of US\$3.5bn (£2.7bn). Another 'sub-prime' scandal is ongoing in Australia, with 'dodgy' vocational education providers offering individuals inducements like free laptops to enrol on courses they had no intention of taking, costing the state an estimated AU\$4bn (£2.4bn) in 2015 alone.

We fear that this bill is a recipe for fiscal disaster in the UK. Parliamentary oversight of student fees and the allocation of state support must be restored urgently.

### **5. Proposed Changes Threaten the Survival of Universities and the Weakening of Competition as Bad Drives Out Good**

The bill's premise is that intensifying competition between HE providers will drive up standards. In reality, the reverse is more likely.

Private providers' strategy so far – which will likely continue – has been to 'cherry pick': to focus on a few cheap-to-provide, low-quality, vocational degrees and entry-level courses like Higher National Diplomas and Certificates. To undercut established universities, these companies also cut costs by neglecting to provide many of the basic facilities of normal universities, such as libraries, student unions and their associated welfare and social services. They also employ staff on inferior and teaching-only contracts, providing no time or resources for research or scholarship.

Established, multi-faculty universities cannot possibly compete with such a business model. To survive, many will have to become more like the private providers, stripping back course provision to profitable areas and cutting services to students, including the closure of infrastructure established by past public funding. This will result in the closure of many courses, degree programmes and departments. This trend is already apparent at distressed institutions like London Metropolitan University (LMU), which abolished half of its degree programmes in 2011 and is currently seeking to close two of its three campuses and make redundant one-third of its staff. But the impact will be felt across the *entire* sector. Currently, universities can use surpluses from relatively cheap-to-provide subjects (predominantly in the humanities and social sciences) to cross-subsidise subjects that are costlier (predominantly STEM) or less popular (e.g. languages). If private providers cherry-pick cheap-to-provide courses, this cross-subsidisation will be rendered impossible. Thus, intensified competition does not drive up standards: bad will drive out good.

The socio-economic consequences of this intensified competition will often be unanticipated and highly undesirable from the perspective of stated government policy. For example:

- LMU once had more British Black and Minority Ethnic students than all 27 members of the Russell Group combined. Under growing private-sector competition, its student base has shrunk from 30,000 to a predicted 10,000. This decline, and its potential destruction, deals a terrible blow to government aspirations on widening access to HE and social mobility.
- Cross-subsidised STEM and languages subjects are central to delivering economic growth in an era of hi-tech industry and globalisation, but the influx of private providers has already compelled a cut in support for STEM, and internal cross-subsidisation is now under threat.
- Universities' stripping back of non-profitable functions in order to compete with private providers will undermine the broad and *pro bono* social provisions of universities, such as

public engagement activities, cultural events, free legal clinics, adult education, and other work with local businesses, charities, museums, schools, and community organisations. This not only violates the spirit of the 'big society'; it will have real social and economic costs for local communities.

The closure of courses, departments and entire universities will leave some areas and possibly whole regions without universities offering a broad range of subjects. This would not only *reduce* choice for students – contrary to the bill's stated intentions – it will compel many students to relocate for study, increasing their costs. Closure of parts of and whole universities will also devastate local economies. In 2011-12, UK universities accounted for over £73bn of output and 2.7% of total employment; in many constituencies they are the largest single employer after the NHS.

### **Proposed Amendments**

The Convention urges all MPs to vote against the Bill. However, below we also identify some amendments that would temper some of its most dangerous components. Note that these remain essential even after the Committee Stage, since the government's proposed amendments are only superficial changes that do not address the fundamental problems.

1. *Problem: University autonomy is not protected in the administrative structure proposed by the Bill.*

**Amendment 1:** That a separate monitoring body (the **Office for Educational Responsibility, OER**) be established, charged with monitoring the quality of educational provision within HE institutions, and with safeguarding the character of universities as places of free inquiry, and which will preserve its political impartiality by operating entirely independently of the Office for Students (OfS).

**Sections, Part 1,** OfS powers overall. (OfS structure outlined represents direct gov't control over universities and loss of university autonomy.)

**Sections, Part 3,** Clauses 3, 4, 5 (influence of Secretary of State / government on plans and in meetings; unrestrained researcher commercialisation in Clause 5, Subsec 99)

2. *Problem: Academic freedom is misunderstood, misrepresented, and unprotected in the Bill.*

**Amendment 2.1:** That the protection for academic freedom of inquiry in teaching and research will be explicitly defined as freedom for those engaged in its conduct, and not merely the institutions as corporate entities. (Well-defined only in Part 1, Clause 5, subsection 14).

**Amendment 2.2:** With regard to research, and in particular the prohibition on Secretaries of State from imposing conditions on the funding of research, protection should be strengthened by making explicit that sections 93 (2) and 94 (2) of the Bill, as taken from section 68 of the Further and Higher Education Act (1992), should be understood as reinforcing that prohibition.

**Amendment 2.3:** A commitment to the Haldane Principle should be explicitly stated in the Bill (it only appears in related documents).

**Sections Part 1:** Misunderstanding (as administrative ability) in 4 places: Part 1, Clause 2, **Subsec 2**; Part 1, Clause 9, **Subsec 35**; Part 1 Clause 17, **Subsec 66**; Part 1, Clause 20, **Subsec 69**.

**Sections Part 3:** Clauses 3, 4, 5 (influence of Secretary of State / government on plans and in meetings; unrestrained researcher commercialisation in Clause 5, Subsec 99)

**Amendment 2.4:** With regard to the revoking of the Royal Charters for Research Councils, there should be a clear statement of the objects of UKRI, and of its component Councils. At present a set of functions is given at 85(1) as what UKRIO 'may' undertake and are more limited than current objects (for example, there is no reference to social science). These objects should also have the protection of the Haldane principle (as was the case with the Royal Charter of the Medical Research Council when founded in 1919). The Secretary of State should not have power 'by regulations' to add or omit a component Council or vary its field (87.5).

3. *Problem: New providers are not sufficiently scrutinised.*

**Amendment:** That new 'providers' will be required to demonstrate a track record of high quality HE delivery for a minimum of four years before they can apply for independent degree-awarding powers.

**Sections:** Part 1, Clauses 2, 3, 5, 11, 12

4. *Problem: The existing funding structure for universities is removed, harming diverse subject provision and research.*

**Amendment 4.1:** That the proposed Office for Educational Responsibility (OER) will be charged with advising the Secretary of State on the levels of funding required to sustain an appropriate range of types of expertise (disciplines) in the UK HE sector, independently of the conditions imposed on research funding via UKRI.

**Amendment 4.2:** That the proposed Office of Educational Responsibility (OER) will be charged with ensuring adequate provision of library, IT, laboratory, studio and other resources for each of the disciplinary or interdisciplinary areas in each HE provider.

**Amendment 4.3:** That in line with the recommendations of the Stern Review on the requirement of long-term block grants as the stable basis necessary for strategic investment in research, the UKRI be composed of four sub-divisions, namely science and engineering, medicine, humanities and social science, and that each will bear an explicit remit to advance knowledge and provide trained academic scholars to meet the needs of users and beneficiaries, and to provide advice on, and disseminate knowledge and promote public understanding of, the disciplines in their respective domains.

**Sections:** Part 3

5. *Problem: Adequate means of measuring teaching quality are problematic as proposed (TEF).*

**Amendment 5.1:** That the proposed Office of Educational Responsibility (OER) will establish an appropriate body to make **direct assessments of teaching quality rather than determining quality on the basis of metrics that operate as proxies**, assessments which measure the quality of provision in specific courses rather than the prior characteristics of the students following the courses, and will launch a national initiative in the sector (involving all constituencies) on determining the appropriate criteria for such assessment. Such standards must be no less than those demanded currently by the QAA, and should be applied uniformly across the HE sector.

**Amendment 5.2:** That, in recognition of the distortions created by the considerable differences in the nature of different student bodies, both by institution and by subject area, and the difficulties in determining from the current process what is being assessed, the National Student Survey will not be used (as currently configured) for the purpose of course comparison.

**Sections:** Part 1, Clause 8

6. *Problem: Potential provider exit will disrupt student study, and Bill student protection provisions are inadequate.*

**Amendment 6:** All HE institutions in receipt of public funds will be required to complete the teaching of all courses for which they have admitted, and to offer to those students all of the core and option courses for which they originally contracted.

**Sections:** Part 1, Clauses 6, 7, 11, 12

7. *Problem: Student and academic staff representation is not ensured in decisionmaking.*

**Amendment(s) 7:** Ensure student and academic staff representation on all bodies in amendments to **Schedules 1, 4, 8, and 9.**