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Convener
Education and Skills Committee
The Scottish Parliament
Edinburgh
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Our ref: A15934208
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Dear Convener

UK Higher Education and Research Bill

Following my letter to you of 11 November, I write to provide the Committee with a further update in respect of the UK Government Higher Education and Research Bill, informed by correspondence received from Jo Johnston MP, Minister of State for Universities, Science, Research and Innovation on 14 November 2016.

As you will be aware from my previous correspondence, I have proposed a number of amendments to this Bill in respect of UK Research and Innovation (UKRI) and the dual support system for funding research across the UK (see **Annex A**). My officials and I continue to pursue these with the UK Government, as I consider they would be beneficial. The Minister of State has now confirmed in correspondence his position on various policy matters relevant to my proposed amendments.

UK Research and Innovation

Mr Johnson is aware of my view that eventual representatives on the Board of UKRI should have experience and understanding of the research and innovation policy context and landscape across the whole of the UK, including in Scotland. He has now tabled an amendment that requires the Secretary of State to have regard to the desirability of at least one member of the board of UKRI having relevant experience in relation to at least one of Scotland, Wales or Northern Ireland (with relevant experience noted in the amendment).

Whilst positive to see acknowledgement of the need for the Board of UKRI to include experience of the context as experienced in the devolved administrations, it is disappointing to note that the amendment requires experience of only one of the administrations, as opposed to having experience and understanding of the research and innovation landscape across all. This is a matter I will continue to pursue.



In his recent letter to me, Mr Johnson also states that he wants to ensure that UKRI has the tools to understand the policy context and landscape to operate effectively across the whole of the UK and to continue to work with the devolved funding bodies on areas of mutual interest. However, he does not consider that this requires further amendment to the Bill, beyond the amendment made at Committee stage to allow joint working between Research England and the devolved funding bodies. It is his view that this co-operation already happens. The Scottish Government will continue to liaise with the UK Government on this issue too.

Dual Funding of Research

Mr Johnson also confirms that mechanisms will be put in place to ensure the integrity of the dual support system is protected. Budgets will be set out by the Secretary of State for each of the Councils of UKRI in an annual grant letter, which he considers will provide transparency on the funding on a reserved and devolved basis. As a result, the UKRI Board would not be able to transfer funding between any of the Councils unless authorised to do so by the Secretary of State. This transparency is welcome, but does not adequately address the issue that I have raised with regard to defining the “balanced funding principle” to ensure that the integrity of the dual support system is fully protected in relation to any flow of funds between reserved and devolved budgets. We will continue to pursue this matter.

I hope this information is helpful to the Committee.

SHIRLEY-ANNE SOMERVILLE

Scottish Government proposed amendments to the UK Government Higher Education and Research Bill

UK Research and Innovation (UKRI)

- Require the Secretary of State (SoS) to take account of the need for UKRI members to have experience of the different research and innovation policy and structural landscapes across the UK, including in the devolved administrations; and consult Scottish Ministers (and their equivalents in other devolved administrations) before appointing UKRI members (Schedule 9 as amended);
- Impose a general duty on UKRI to ensure that it discharges its functions (clause 86 as amended) and develops its research and innovation strategy (clause 92 as amended) to take account of the different research and innovation policy and structural landscapes across the UK, including those in the devolved administrations; and that the Bill be amended to require the SoS to consult and to take account of the views of Scottish Ministers (and their equivalents in other devolved administrations) before approving the UKRI's research and innovation strategy; and
- Impose a general duty on the SoS that, in issuing direction to UKRI (clause 95 as amended), to take account of the different research and innovation policy and structural landscapes across the UK, including those in the devolved administrations; and to consult and to take account of the views of Scottish Ministers (and their equivalents in other devolved administrations) prior to issuing direction to the UKRI.

Dual Funding of Research

- Define the “balanced funding principle” (clause 96 as amended) to ensure it can be measured in relation to the proportion of funding allocated by the SoS for reserved (UK) and for devolved (England only) funding and to provide clarity of when it might not be achieved;
- Include a provision in the current Bill to ensure separate funding streams from the SoS to the Research Councils (collectively), to Innovate UK, and to Research England which are agreed annually by the UK Parliament on a transparent basis; and
- Include a provision which does not permit any in-year virement of funding between the Research Councils (collectively), Innovate UK, and Research England.



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14 November 2016

Dear Shirley-Anne,

Higher Education and Research Bill: Report Stage – Government Amendments

Thank you for your letter of 20th October. I am pleased that you have been following the progress of the Higher Education and Research Bill and I recognise you want to ensure there are no unintended consequences for research and innovation policy in Scotland from the creation of UKRI. I absolutely welcome the opportunity to correspond with you on these important issues.

I understand that John Kingman, interim chair of UKRI, enjoyed a thoughtful and productive discussion last month with you, John Swinney and Paul Wheelhouse. Our officials have scheduled a follow-up meeting on the Bill and I hope that this meaningful engagement will continue.

I can assure you that I want to ensure that UKRI has the tools to properly understand the policy context and landscape - and operate effectively - across the whole of the UK; and to continue to work with devolved funding bodies on area of mutual interest as per current practice. You will be aware that we have already made one key amendment to the Bill at its Committee stage which allows Research England to work with the devolved administrations and their funding bodies on matters such as the REF. However, I have not yet been convinced that it is necessary to place further conditions in statute as this co-operation already happens and will continue.

I would though like to take this opportunity to draw your attention to Government amendments which I have tabled today to the Higher Education and Research Bill.

During Commons Committee, members of the Committee proposed a number of amendments which I have carefully reflected on as I had indicated I would, and as a result have tabled the following amendments for Report.

To function effectively, UK Research and Innovation (UKRI) will need to develop and maintain a sophisticated understanding of the research and innovation environment across the whole of the UK. To ensure this is considered at the highest levels of UKRI, I have tabled an amendment

that will require the Secretary of State to consider the cross-UK experience of candidates when appointing members of the board.

In addition, I have tabled the following additional amendments:

1. Amendment to Schedule 1 to require a dedicated Board member of the Office for Students (OfS) who has experience of representing or promoting the interests of students
2. Introduction of a new clause to give the OfS a new duty related to monitoring the financial sustainability of the sector.
3. Amendments to clauses 2, 67 and 70 to restrict the ability of the Secretary of State to frame guidance, directions and terms and conditions of grant in relation to particular course of study that would lead to the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study.
4. Amendment to clause 13 to require providers to publish student protection plans and bring them to students' attention.
5. Amendment to clause 86 to include postgraduate training explicitly in the list of UKRI's functions.

I have alongside these amendments also tabled a number of technical but essential amendments which are annexed with this letter. I have also attached the full set of amendments as drafted with this letter.

On other points you raised in your letter, I want to reassure you that mechanisms will be put in place to ensure the integrity of the dual support system is protected. As we set out in the White Paper, the Secretary of State will set out the budgets for each of the Councils of UKRI in the annual grant letter, which will provide transparency on the funding provided on a reserved and devolved basis. The UKRI Board will not be able to transfer funding between any of the Councils unless authorised to do so by the Secretary of State. This mirrors the current approach to management of science and innovation budgets within BEIS.

I understand that plans are underway for a ministerial quadrilateral before Christmas to discuss a number of issues including the Higher Education and Research Bill and I look forward to the opportunity to take forward these discussions in person.

I am copying this letter to the Secretary of State for Scotland.

Yours sincerely,

JO JOHNSON MP



House of Commons

Monday 14 November 2016

CONSIDERATION OF BILL (REPORT STAGE)

HIGHER EDUCATION AND RESEARCH BILL, AS AMENDED

Secretary Justine Greening

1

To move the following Clause—

“Duty to monitor and report on financial sustainability

- (1) The OfS must monitor the financial sustainability of the following registered higher education providers—
 - (a) those who are funded wholly or partly by a grant, loan or other payment from the OfS under section 37 or 38 (financial support for providers),
 - (b) those who are not so funded but are eligible to receive such funding under section 37 or 38, and
 - (c) those who provide higher education courses which are designated for the purposes of section 22 of the Teaching and Higher Education Act 1998 (financial support for students) by or under regulations made under that section.
- (2) The OfS must include in its annual report a financial sustainability summary for the financial year to which the report relates.
- (3) “A financial sustainability summary” for a financial year is a summary of conclusions drawn by the OfS for that year, from its monitoring under subsection (1), regarding relevant patterns, trends or other matters which it has identified.
- (4) Patterns, trends or other matters are “relevant” if—
 - (a) they relate to the financial sustainability of some or all of the registered higher education providers monitored under subsection (1), and
 - (b) the OfS considers that they are appropriate to be brought to the attention of the Secretary of State.
- (5) In this section—

“annual report” means the annual report under paragraph 13 of Schedule 1;
“financial year” has the same meaning as in that Schedule (see paragraph 12(6)).”

Member’s explanatory statement

This new clause, which is for insertion after clause 61, requires the OfS to monitor the financial sustainability of registered higher education providers who are in receipt of, or eligible for, certain kinds of public funding. It requires the OfS to include in its annual report a summary of conclusions which it draws from that monitoring regarding patterns, trends or other matters which it has identified relating to the financial sustainability of some or all of the providers monitored and which

Higher Education and Research Bill, as amended, continued

it considers are appropriate to be brought to the attention of the Secretary of State.

Secretary Justine Greening

2

Clause 2, page 2, line 28, at end insert—

- “() Guidance framed by reference to a particular course of study must not guide the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study.”

Member’s explanatory statement

This amendment prevents 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 which prohibits or requires the provision of a particular course. Amendments 13 and 14 place corresponding restrictions on the Secretary of State’s power to impose terms and conditions of a grant to the OfS under clause 67, or to give directions under clause 70, which are framed by reference to a particular course.

Secretary Justine Greening

3

Clause 9, page 6, leave out lines 10 to 13

Member’s explanatory statement

This amendment is consequential on amendment 4.

Secretary Justine Greening

4

Clause 9, page 6, line 18, at the end insert—

- “() The information which the OfS may request in relation to the numbers mentioned in subsection (2) includes those numbers by reference to one or more of the following—
- (a) the gender of the individuals to which they relate;
 - (b) their ethnicity;
 - (c) their socio-economic background.”

Member’s explanatory statement

This amendment ensures that a registered higher education provider may be required by the OfS to provide and publish information in relation to the number of offers given and accepted, and the number of students who complete their courses (in addition to the applications received) by reference to the gender, ethnicity and socio-economic background of the individuals concerned.

Secretary Justine Greening

5

Clause 13, page 8, line 17, after “plan” insert “and to publish it”

Member’s explanatory statement

This amendment makes clear that the OfS may impose a registration condition requiring a provider to publish a student protection plan.

Secretary Justine Greening

6

Clause 27, page 17, line 7, at end insert—

- “(za) charge an institution a fee for any activity undertaken, or service provided, by the body in the performance by it of functions under section 23(1) (power to assess quality and standards) in relation to the institution,”

Higher Education and Research Bill, as amended, *continued*

Member's explanatory statement

Clause 27(2) enables a body designated to perform the assessment functions of the OfS under clause 23 to charge a fee for activities undertaken or services provided by the body in the performance by it of functions under clause 23(2). This amendment and amendment 8 extend that power to include functions under clause 23(1) too.

Secretary Justine Greening

7

Clause 27, page 17, line 9, leave out from “body” to end of line 12 and insert “in the performance by it of functions under section 23(2)(a) (duty to assess to determine if initial registration condition relating to quality or standards is met) in relation to the institution, and”

Member's explanatory statement

This amendment clarifies the drafting of clause 27(2)(a) to make clear that the power is to charge a fee for activities undertaken or services provided by the designated body in the performance by it of functions under clause 23(2)(a) in relation to an institution regardless of whether the assessment in question of the institution is being carried out by the body.

Secretary Justine Greening

8

Clause 27, page 17, line 17, at end insert—

- () The amount of a fee payable under subsection (2)(za) by an institution may be calculated by reference to costs incurred by the designated body in the performance by the body of functions under section 23(1) in relation to a different institution or of its general functions.
- () The total fees payable under subsection (2)(za) must not exceed in any period of 12 months the total costs incurred by the body in that period in the performance by the body of its functions under section 23(1) and of its general functions.”

Member's explanatory statement

See the explanatory statement for amendment 6.

Secretary Justine Greening

9

Clause 27, page 17, line 18, leave out “or provider”

Member's explanatory statement

This amendment removes some unnecessary wording from clause 27(3).

Secretary Justine Greening

10

Clause 27, page 17, line 23, leave out paragraph (b)

Member's explanatory statement

This amendment removes some unnecessary wording from clause 27(3) - having set out in that provision how the fees may be calculated, it is implicit that they may not be calculated by reference to functions other than those mentioned. That is consistent with clause 27(5).

Secretary Justine Greening

11

Clause 27, page 17, line 27, leave out “the functions” and insert “its functions”

Member's explanatory statement

This amendment and amendment 12 make clear that the limit on fees imposed by clause 27(4) and (6) includes costs incurred by the body in the performance by it of all of its functions under clause

Higher Education and Research Bill, as amended, continued

23(2)(a) or (b) (as the case may be) and not just the functions under those provisions in relation to which the fee was charged.

Secretary Justine Greening

12

Clause 27, page 17, line 35, leave out “the functions” and insert “its functions”

Member’s explanatory statement

See the explanatory statement for amendment 11.

Secretary Justine Greening

13

Clause 67, page 41, line 41, at end insert—

“() Terms and conditions under subsection (1) framed by reference to a particular course of study must not require the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study.”

Member’s explanatory statement

See the explanatory statement for amendment 2.

Secretary Justine Greening

14

Clause 70, page 44, line 8, at end insert—

“() Directions under subsection (1) framed by reference to a particular course of study must not direct the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study.”

Member’s explanatory statement

See the explanatory statement for amendment 2.

Secretary Justine Greening

15

Clause 79, page 50, line 23, leave out “Secretary of State’s opinion” and insert “opinion of the person making the regulations concerned”

Member’s explanatory statement

This amendment reflects the fact that the Welsh Ministers will have the function of making regulations for alternative payments in relation to Wales.

Secretary Justine Greening

16

Clause 79, page 50, line 34, leave out “and (f)” and insert “to (h)”

Member’s explanatory statement

This amendment provides that the Secretary of State has the function in relation to Wales (instead of the Welsh Ministers) of making provision in regulations about the effect, in relation to the alternative payment regime, of a person entering an individual voluntary arrangement.

Secretary Justine Greening

17

Clause 79, page 50, line 37, leave out subsection (10)

Member’s explanatory statement

This amendment leaves out an unnecessary provision.

Higher Education and Research Bill, as amended, *continued*

Secretary Justine Greening

18

Clause 86, page 55, line 3, at end insert—

- “() The functions conferred by subsection (1)(a) to (e) include, in particular, power to encourage and support the provision of postgraduate training in science, technology, humanities and new ideas.”

Member’s explanatory statement

This amendment makes clear that the functions of UKRI under clause 86(1)(a) to (e) include the power to encourage and support the provision of postgraduate training in science, technology, humanities and new ideas.

Secretary Justine Greening

19

Clause 112, page 66, line 23, leave out “or repeals” and insert “, repeals or revokes”

Member’s explanatory statement

This is a minor and technical amendment which ensures that clause 112(2)(f) refers to the revocation of a provision of a Royal Charter (rather than to the repeal of the provision) - revocation being the appropriate terminology in the case of a Royal Charter.

Secretary Justine Greening

20

Clause 112, page 66, line 34, after “provision” insert “, and

- () include provision framed by reference to matters determined or published by the OfS.”

Member’s explanatory statement

This amendment ensures that regulations under the Bill may be framed by reference to matters determined or published by the OfS - for example, by reference to the part of the register in which an English higher education provider is registered.

Secretary Justine Greening

21

Clause 116, page 67, line 26, at end insert—

- “() Section 79(9)—
- (a) so far as it relates to section 22(4B)(e) of the Teaching and Higher Education Act 1998, also extends to Scotland and Northern Ireland;
 - (b) so far as it relates to section 22(4B)(f), (g) and (h) of that Act, also extends to Northern Ireland.”

Member’s explanatory statement

This minor and technical amendment gives clause 79(9) (which, as amended by amendment 16, relates to new section 22(4B)(e), (f), (g) and (h) of the Teaching and Higher Education Act 1998) the same extent as the provisions to which it relates (see clause 116(4)).

Secretary Justine Greening

22

Schedule 1, page 69, line 37, at end insert—

- “() But at least one of the ordinary members must have experience of representing or promoting the interests of individual students, or students generally, on higher education courses provided by higher education providers.”

Member’s explanatory statement

This amendment requires that at least one of the ordinary members of the OfS has experience of

Higher Education and Research Bill, as amended, continued

representing or promoting the interests of students in higher education.

Secretary Justine Greening

23

Schedule 1, page 71, line 2, leave out “, allowances and expenses”

Member’s explanatory statement

This amendment removes an unnecessary reference in paragraph 6(1) of Schedule 1 to allowances and expenses for members of the OfS as they are covered in paragraph 6(2).

Secretary Justine Greening

24

Schedule 1, page 71, line 18, leave out “, allowances and expenses”

Member’s explanatory statement

This amendment is consequential on amendment 25.

Secretary Justine Greening

25

Schedule 1, page 71, line 20, at end insert—

“() The OfS must pay, or make provision for paying, to or in respect of a person who is an employee of the OfS, such sums as the OfS may determine with the approval of the Secretary of State in respect of allowances or expenses.”

Member’s explanatory statement

This amendment makes the duty to pay allowances and expenses to OfS’s employees consistent with the power to pay such allowances and expenses to former employees inserted by amendment 26.

Secretary Justine Greening

26

Schedule 1, page 71, line 20, at end insert—

“() The OfS may pay, or make provision for paying—
(a) to or in respect of a person who is or has been an employee of the OfS, such sums as the OfS may determine with the approval of the Secretary of State in respect of pensions or gratuities, and
(b) to or in respect of a person who has been an employee of the OfS, such sums as the OfS may determine with the approval of the Secretary of State in respect of allowances or expenses.”

Member’s explanatory statement

This amendment makes clear that the OfS has power, subject to approval by the Secretary of State, to make pension provision for its employees and former employees other than under the Superannuation Act 1972 (as provided for in paragraph 7(4) of Schedule 1), to pay them gratuities and to pay former employees allowances or expenses. The power in relation to non-civil service pensions is intended to be used in relation to staff transferring to the OfS.

Secretary Justine Greening

27

Schedule 4, page 79, line 6, leave out paragraph 1

Member’s explanatory statement

See explanatory statement for amendment 29.

Secretary Justine Greening

28

Schedule 4, page 79, line 13, leave out from beginning to “consult” in line 14 and

Higher Education and Research Bill, as amended, *continued*

insert “The OfS may”

Member’s explanatory statement

See the explanatory statement for amendment 29.

Secretary Justine Greening

29

Schedule 4, page 79, line 31, leave out sub-paragraphs (4) and (5) and insert—

“Recommendation

- 2A (1) This paragraph applies where the OfS has consulted in accordance with paragraph 2.
- (2) The OfS must consider whether there is a body that is suitable to perform the assessment functions.
- (3) If the OfS considers that there is only one body that is suitable to perform the assessment functions, the OfS must recommend that body to be designated to perform those functions.
- (4) If the OfS considers that there is more than one body that is suitable to perform the assessment functions, the OfS must recommend the most appropriate body to be designated to perform those functions.
- (5) “The most appropriate body” means, out of those bodies, the body whose designation the OfS considers would be most appropriate for securing the effective assessment of the quality of, and the standards applied to, higher education provided by English higher education providers.
- (6) If the OfS considers that there is no body that is suitable to perform the assessment functions, the OfS may not recommend a body to be designated to perform those functions.
- (7) The OfS must—
- (a) notify the Secretary of State of its recommendation or that no recommendation is made, and
 - (b) publish that notification.”

Member’s explanatory statement

This amendment and amendments 27 and 28 make changes to clarify when and how the OfS may recommend to the Secretary of State that a body is suitable to be designated to perform the assessment functions. The new paragraph 2A replaces paragraphs 1 and 2(4) and (5) of Schedule 4.

Secretary Justine Greening

30

Schedule 4, page 79, line 37, leave out “paragraphs 1 and 2” and insert “paragraph 2A”

Member’s explanatory statement

This amendment is consequential on amendments 27 and 29.

Secretary Justine Greening

31

Schedule 6, page 88, line 22, leave out paragraph 1

Member’s explanatory statement

See the explanatory statement for amendment 33.

Higher Education and Research Bill, as amended, continued

Secretary Justine Greening

32

Schedule 6, page 88, line 27, leave out from beginning to “consult” in line 28 and insert “The OfS may”

Member’s explanatory statement

See the explanatory statement for amendment 33.

Secretary Justine Greening

33

Schedule 6, page 89, line 5, leave out sub-paragraphs (4) and (5) and insert—

“Recommendation

- 2A (1) This paragraph applies where the OfS has consulted in accordance with paragraph 2.
- (2) The OfS must consider whether there is a body that is suitable to be designated under this Schedule.
- (3) If the OfS considers that there is only one body that is suitable to be designated under this Schedule, the OfS must recommend the designation of that body under this Schedule.
- (4) If the OfS considers that there is more than one body that is suitable to be designated under this Schedule, the OfS must recommend the designation under this Schedule of whichever one of those bodies it considers appropriate.
- (5) If the OfS considers that there is no body that is suitable to be designated under this Schedule, the OfS may not recommend the designation of a body under this Schedule.
- (6) The OfS must—
- (a) notify the Secretary of State of its recommendation or that no recommendation is made, and
 - (b) publish that notification.”

Member’s explanatory statement

This amendment and amendments 31 and 32 make changes to clarify when and how the OfS may recommend to the Secretary of State that a body should be designated under Schedule 6. The new paragraph 2A replaces paragraphs 1 and 2(4) and (5) of Schedule 6.

Secretary Justine Greening

34

Schedule 6, page 89, line 11, leave out “paragraphs 1 and 2” and insert “paragraph 2A”

Member’s explanatory statement

This amendment is consequential on amendments 31 and 33.

Secretary Justine Greening

35

Schedule 6, page 89, line 14, after “body” insert “for the purposes of section 59”

Member’s explanatory statement

This amendment is consequential on amendment 31.

Higher Education and Research Bill, as amended, *continued*

Secretary Justine Greening

36

Schedule 9, page 98, line 39, at end insert—

- “() The Secretary of State must, in appointing the members of UKRI, have regard to the desirability of the members including at least one person with relevant experience in relation to at least one of Wales, Scotland and Northern Ireland.
- () “Relevant experience” means experience of one or more of the following—
 - (a) research into science, technology, humanities or new ideas;
 - (b) the development or exploitation of science, technology, new ideas or advancements in humanities;
 - (c) industrial, commercial or financial matters or the practice of any profession.”

Member’s explanatory statement

This amendment requires the Secretary of State, when appointing members of UKRI, to have regard to the desirability of at least one of the members having relevant experience in relation to at least one of Wales, Scotland and Northern Ireland. “Relevant experience” is defined in the amendment.