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# University Alliance Position Paper: Higher Education & Research Bill

September 2016

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University Alliance represents 19 higher education institutions in England and Wales with a combined intake of 546,000 students – a quarter of the sector total in 2014/15. Together, our universities employ one in seven researchers working in UK higher education and have more than 260 world-class research units. We also have strong links to industry and employers, maintaining relationships with around 20,000 businesses including 14,000 SMEs.

This document summarises our position on the Higher Education and Research Bill as it enters House of Commons Committee Stage in September 2016. Appended at Annex A is a list of proposed amendments to the Bill.

## Summary

- University Alliance is broadly supportive of the Higher Education and Research Bill. The university sector has undergone huge transformation in recent years and we need legislation that is appropriate for the way it now operates.
- We welcome the duty on the new Office for Students (OfS) to promote participation as well as access and support a stronger focus on teaching excellence.
- We would, however, like a further duty to promote collaboration as well as competition between providers in the student interest.
- The proposed legislation would allow the OfS to encroach on institutional autonomy. Its powers should be limited.
- The OfS should also ensure the financial sustainability of the whole sector.
- We see value in the creation of a single body UK Research and Innovation (UKRI) to champion UK R&I domestically and overseas.
- Innovate UK must retain its business-facing focus.
- Since there are many benefits from the integration of research and teaching, we are pleased that the Bill provides for cooperation between the OfS and UKRI. It is essential that this is hardwired into the creation of both institutions.
- We are pleased that the Bill offers protection for the dual support system as the overall UK research base benefits if universities have both project funding and core support for research.
- The Bill presents an opportunity to require UKRI to distribute funding through fair and open competition to reward excellence wherever it is found.

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## Why is the Higher Education and Research Bill necessary?

1. Higher education in England has undergone huge transformation since the last major wave of legislation in 1992. There are now more providers with degree awarding powers and an ever-increasing number of students as a result of changes to access and funding.
2. The expansion of the sector has been positive, bringing with it the opportunity for many more students to go to university with attendant benefits for the economy and society. But it has also exposed a need for new legislation.
3. The existing statutory framework pre-dates the growth in new providers, having been introduced at a time when fewer individuals went to university and when grants, not tuition fees and loans, were the main source of funding.
4. Now that grant support has mostly been replaced by the tuition fee system, and the sector is larger, the role of the funding council HEFCE has to change. We believe the Office for Students (OfS) – into which the teaching and learning responsibilities of HEFCE will be rolled – can provide the necessary framework.
5. The HER Bill contains welcome provisions placing equality of opportunity at the heart of the OfS, promoting teaching excellence, and widening the government's access agenda to include participation and course completion.
6. On the research side, statutory protection for dual support – the name given to our two-part funding system of Research Council grants and Quality-related (QR) funding – is also welcome.
7. It is significant that teaching and research feature alongside each other in this single Bill as complementary aspects of universities' mission. The two must be considered together.

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### Office for Students

8. As the organisation responsible for regulating the higher education sector, the OfS will need to ensure that institutions operate in the interests of students. This includes assuring a basic standard of quality and financial stability.
9. The OfS is also the body through which the government expects to increase competition between existing higher education providers while lowering the bar for new entrants. The powers afforded to it are considerable. It is therefore important that the OfS is established on a sound statutory basis.

10. We welcome provisions in the HER Bill that promote participation as well as access and support a stronger focus on teaching excellence.
11. However, we are not convinced that competition is by itself sufficient to achieve access and participation goals and wider objectives of the higher education sector.
12. In addition to a duty to promote competition, we believe the OfS should promote collaboration in the interests of students, the economy and society. This is because the higher education market differs in some respects from other markets. It is expected to provide a wide range of public as well as private goods.
13. In areas such as widening participation, asset sharing and employability, for example, collaboration is more likely to be in the interest of students and wider society than competition. Where universities work together in a particular region, collaboration is likely to yield wider economic benefits.
14. Although the Bill does not prohibit such collaboration, Clause 2 sets out clear objectives for the OfS and should be the foundation of its strategic mission. It would therefore be helpful if a duty to collaborate were included.
15. It might also be helpful to set out in greater clarity the OfS' duty to have regard to the financial sustainability of the whole sector.
16. Further, we believe the OfS should have a duty to promote flexible course delivery, particularly part time provision.
17. We are concerned that the Bill allows for the OfS to encroach upon institutional autonomy. Since the OfS is to be more 'at arm's length' from the sector than HEFCE, it is even more important that its powers are limited.

*“The Bill presents an opportunity to require UKRI to distribute funding through fair and open competition.”*

18. It should be clear that where a designated body (e.g. QAA) is carrying out an assessment function that the OfS should have to stay at arm's length, to avoid confusion or the risk of incursion into institutional autonomy.
19. Provisions in the Bill that enable the OfS to be a validator of last resort creates potential for conflicts of interest. It would be preferable for the OfS to enter commissioning arrangements with a registered HE provider or a number of providers.
20. Finally, the Bill provides a rare opportunity to address some of the inflexibility driven by the current funding regime. Currently, this creates strong incentives for universities to offer only 3 or 4 year degrees as they can charge up to £9,000 a year, maximizing their income. Some students might prefer to take a degree compressed into fewer years, perhaps by studying additional modules over periods that are currently treated as holiday, and this kind of flexibility might also be favoured by employers. If universities could charge above £9,000 a year for programmes which have more than 120 credits in each year, it would make it financially viable for them to offer these compressed courses, where there is sufficient demand.

*“The proposed legislation would allow the Office for Students to encroach on institutional autonomy. Its powers should be limited.”*

## UK Research and innovation

21. We see value in the creation of a single body to promote multidisciplinary and champion UK research and innovation at home and overseas. An integrated body with a common funding pot is an optimal design for supporting research on cross-cutting global challenges.
22. The government’s commitment to preserving dual support (project funding and core support for university research) in legislation is welcome.
23. So too is the prospect of a joint research and innovation strategy which can increase knowledge exchange and mobility between universities and businesses.
24. Provided Innovate UK retains its business-facing function, and core knowledge exchange funding is retained, the closer integration of research and innovation can be beneficial for both. The HER Bill should be more explicit about the purpose and functions of Innovate UK and include knowledge exchange as a fundable activity under Research England.
25. The creation of UKRI provides an opportunity to redesign the way research funding is allocated in the UK. To ensure research excellence is rewarded wherever it exists, there should be a duty on UKRI (additional to those already present in the Bill) to promote fair and open competition for funding.
26. To foster dialogue between UKRI and OfS on the important interplay between teaching and learning, research and innovation and knowledge exchange, the UKRI board should include a member that also sits on the board of OfS. Cooperation between the two agencies must be hardwired in legislation.

*“Innovate UK must retain its unique business-facing focus.”*

## Annex A: University Alliance amendments to Higher Education and Research Bill

Clause	Amendment	Comment
2(1)	<p>In addition to a duty to promote competition, the OfS should promote <b>collaboration</b> where it is in the best interests of students. It should also promote innovation.</p> <p>It might be helpful to set out in this clause the OfS' duty to have regard to <b>the financial sustainability of the whole sector</b>. This may be implied by a wide interpretation of clause 1(a) but it might lead to greater clarity if this was spelt out.</p>	<p>This clause sets out in general terms what the OfS is for. Although it is not intended to be comprehensive or to exclude other activities, it will set the tone and dictate prioritisation. It is therefore important that all the major functions of the OfS are covered.</p> <p>Collaboration is more likely to be in the interest of students than competition in areas such as widening participation activity, asset sharing and local universities working together on employability schemes.</p>
New clause 2(2) (see 35(1) below)	<p>After listing the general duties of OfS, it would be helpful if the limitations of its power were also listed. This might be a similar list to that given in the current clause 2(3) to ensure the Secretary of State does not encroach on academic freedom – the OfS should not do this either.</p> <p>Alternatively, 2(3) and 2(4) could apply to the OfS generally and not only to the SoS guidance.</p>	<p>OfS is likely to be more “at arm’s length” from the sector than HEFCE. It is therefore important that it is explicitly prevented from encroaching on academic freedom.</p>
7(2)	<p>Insert “failing to meet its ongoing registration conditions” instead of “failing to comply with regulation by the OfS”</p>	<p>As currently drafted, it seems too broad and circular i.e. regulatory risk as defined by a failure to comply with regulation. The definition should be consistent with the definition of the same concept stated in 67(5), which is much better.</p>
8(1)(b)	<p>Insert “reasonably” between “may” and “require”. So “...<i>such information for the purposes of the performance of the OfS’s functions as the OfS may <b>reasonably</b> require...</i></p>	<p>This is to avoid the risk of unnecessarily onerous demands for information. (This was one of the most frequent complaints made against the QAA’s former quality assurance regime.)</p>

9(2)	It would be helpful if this clause could be amended to allow for delay in publication where fair competition could be impeded.	If this request were made in the middle of an application cycle, it could require HEIs to provide commercially sensitive information to the whole market – so a general provision allowing publication to be held back would be helpful.
10(3)(b)	It would be helpful if wording could be found (perhaps as an exception) that would allow for the delivery of compressed courses so that HEIs would not have to accept a financial penalty if they sought to continue teaching across the summer in order (for example) to complete 3 year degrees in 2 years.	Greater funding flexibility would allow for innovative course delivery – this would be good for students. It is likely that this would particularly benefit “earn as you learn” and “care as you learn” students.
25(1)	Delete “and standards applied to”	This extends TEF beyond the proposals currently being discussed. It is unnecessary as the TEF metrics should be outcomes focussed.
26(3)	Amend to say the opposite, i.e: <i>‘where a body has been designated under Schedule 4 to perform an assessment function, the OfS should not intervene in the performance of the function, beyond oversight of the designated body under the provisions of that Schedule’</i>	It should be clear that where a designated body is carrying out an assessment function, then the OfS should have to stay at arm’s length, otherwise there is risk of confusion in the system and undue incursion into institutional autonomy.
35(1)	Delete this section	As we have said above, there should be a duty on OfS to protect academic freedom in relation to all its functions, which we would put in section 2 or 3 of the bill.
47	Delete	The OfS itself should not be a validator of last resort as this creates potential for conflicts of interest. Better for the OfS to enter into commissioning arrangements with an authorised registered higher education provider. We know the Open University is willing to take on this role – there may also be others who would do so.
64	Make it clear that any costs that arise from the behaviour/activities of any one institution are only payable by that institution.	It would be unfair to expect well-managed and high-performing HEIs to pick up costs relating to substandard HEIs.

85(1)	Add "support for postgraduate/research student study and skills" to list of UKRI functions	Nurturing talent is critical for the future of the UK research base.
85(1)(c)	Insert " <i>humanities</i> " after technology so ..." <i>science, technology, <b>humanities</b> and new ideas</i> "	Appears to be an accidental omission.
88(1)	The stated purpose of Innovate UK should be extended to include "welfare" or "quality of life" alongside "economic growth"	Innovation achieves more than economic growth alone.
88	To have regard for skills (talent, capacity) in the functions of Innovate UK	Developing innovation talent should be a priority along with support research students by other parts of UKRI.
89	Add a new item (c) to explicitly cover knowledge-exchange activities "the undertaking of activity to collect, disseminate and advance knowledge in..."	To ensure Research England can fully fund innovation activity through the block grant to institutions.
93	Could conflict with sector autonomy if SoS restrictions with regards to Research England are not applied across whole of UKRI	
93(2)(a)	Could conflict with sector autonomy if SoS restrictions with regards to Research England are not applied across whole of UKRI	By design, the funding system should not be allowed to privilege some institutions over others.
96	Add new item (3) "In exercising its functions, UKRI must promote fair and open competition for funding amongst all those bodies and persons it deems eligible for funding in general"	To ensure UKRI funds all research organisations that are able to compete for public funding – UKRI should not be able to set up funding competitions with restrictive entry criteria.
Schedule 9 (2)	Membership of UKRI should include a board member that also sits on the board of OFS	This will foster dialogue between the two agencies on the interplay between teaching and learning, research and innovation, and knowledge exchange.
Schedule 9 (16)(3)	Clause appears to conflict with expectation that Innovate UK could offer equity loans and other financial products	



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## About University Alliance

We are universities with a a common mission to make the difference to our cities and regions. We use our experience of providing high quality teaching and research with real world impact to shape higher education and research policy for the benefit of our students and business and civic partners. We innovate together, learn from each other and support every member to transform lives and deliver growth.

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