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for Education



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*Dear Colleagues,*

## **HIGHER EDUCATION AND RESEARCH BILL**

Following the sixth day of Committee scrutiny of the Higher Education and Research Bill on 25 January, I am writing to offer clarification on a number of questions that were raised by Peers, on some of which Baroness Goldie and I committed to write. This letter responds to a small number of specific questions relating to the Office for Students' powers and duties, and includes further information on the Government's Industrial Strategy and its links to the education sector.

### **Student support and OfS regulations: ambulatory referencing**

Lord Stevenson of Balmacara highlighted that the Government amendments 440, 441 and 513 were moved formally rather than being moved properly and debated. I therefore committed to write to explain the purpose and effect of these amendments, which are technical in nature and relate to ambulatory references in regulations made under the Higher Education and Research Bill and under section 22 of the Teaching and Higher Education Act 1998.

The purpose of these amendments is to ensure that regulations can work correctly with referenced lists or documents that are either published before, or updated after, the regulations are made. The register of providers, which the Office for Students (OfS) will maintain and update on a rolling basis, and the list of Teaching Excellence Framework (TEF) awards, which will be published annually, are examples of these "living" lists or documents that will be referenced in regulations.

As an example, student support regulations made under section 22 of the Teaching and Higher Education Act 1998 as amended in clause 82 of the Bill, which set the maximum loan available to students, can do so by referencing the list of TEF results published by the OfS, so that a student attending a provider that has qualified for the full fee limit uplift is eligible for a loan equal to that amount. The government amendments make sure that these regulations can take account of changes to the TEF list (for instance, if ratings were to change, or two providers were to merge) after the regulations are made, thus ensuring that the loan amount available to the student will be “up-to-date” and align with the course fee. Similarly, it is proposed that the student support regulations will rely on the designated status of the provider, with reference to the register of providers that the OfS will maintain. It is the Government’s intention that providers in the “approved” and “approved (fee cap)” categories will be designated for student support. The regulations therefore need to be able to capture the register as it is updated, so that if a provider is deregistered, the effect is that it is also de-designated for student support purposes (subject to any transitional provisions made).

The Government amendment 513 to clause 113 has the same effect for general regulations made under the Bill. This is because several sets of regulations may need to rely on the OfS’s categorisation of providers in order to distinguish between different types provider. For example, regulations denoting which providers are eligible for OfS grant funding under clause 37, and regulations setting out registration fees that are payable by providers under clause 64.

### **Powers of entry and search**

On the powers of entry and search, Lord Mackay suggested during the debate that it would be useful to have a requirement that the magistrate should certify that he or she is satisfied on conditions which must be met for a warrant to be granted. It is not usual practice within powers of entry provisions for the magistrate to sign any type of certification document, and we are unaware of any examples of this. The relevant clause in the Bill sets out the considerations that magistrates would have to take into account when making their judicial decision to grant a warrant or not, and we have full confidence that this constitutes a sufficient safeguard to ensure a warrant would be granted only where strictly necessary.

### **Consultation of staff and OfS committees**

Lord Watson asked what recourse would be open to staff if it were shown that the OfS were not considering their views. In carrying out a consultation exercise under clause 59 about what information should be published, the OfS will be obliged to comply with the requirements of clause 59(6) which makes provision for who the OfS is to consult. In exercising its discretion about whom to consult, we would expect the OfS to adopt an open approach, consulting those with relevant experience and/or knowledge (for example - and where appropriate - staff). The OfS will, in any event, be required to act fairly and rationally. The OfS will be obliged to comply with well-established public law requirements governing the conduct of consultations (often referred to as the Sedley or Gunning requirements). One of these requirements is that responses to consultations must be conscientiously taken into account.

Furthermore, Lord Adonis asked about the OfS’s power to establish committees. I can

confirm to him that the OfS will have the power to establish committees on any OfS issue it considers appropriate, and such committees can include non-OfS members.

### Industrial strategy

Lord Willetts asked about where education could sit within the Government's Industrial Strategy. As Peers will be aware, the Government published its Industrial Strategy Green Paper on 23 January. In it, we highlighted the need to have a strong skills system that can drive increases in productivity and create a workforce fit for the future. Clearly the education sector will be essential to the success of a modern Industrial Strategy. The Green Paper sets out wide-ranging reforms to technical education to improve basic skills, help address regional skills imbalances, address shortages in STEM skills and make it easier for adults to enhance their skills throughout their working lives. Alongside this, the role of the education sector in providing world-class research and innovation across the UK clearly underpins many other aspects of the Government's Industrial Strategy.

Lord Willetts was right to point to the importance of education as a successful business sector and British export. For example, four UK universities were in the top 10 of the QS 2016 World Rankings. In addition, the UK's K-12 curriculum is taught in more than 41% of international schools, making it the most popular across the globe, and the UK has more triple-accredited business schools than any other country in the world. Analysis conducted by the Department for Business, Innovation and Skills in 2013, when Lord Willetts was Minister of State for Universities and Science, highlighted that the UK's education exports were worth an estimated £17.5bn in 2011. The Government wants to maximise the opportunities for UK providers in the sector and for education to play an increasing part in our total export picture and is committed to working with UK providers and overseas partners to facilitate this.

Through the Industrial Strategy Green Paper, we are eager to maximise the potential of important sectors and we will work with any sector which can organise behind strong leadership to address shared challenges and opportunities. The Government welcomes responses from the education sector to the Green Paper and will give careful consideration to how it can continue to play a strong role in the UK economy.

I look forward to further debate and scrutiny of the Bill as we pass through Committee and on to the Report stage. I am very happy to discuss the clarifications above, or the Bill itself, further with Peers who wish to do so. I am placing a copy of this letter in the library of the House.

Yours ever,  
James Younger

VISCOUNT YOUNGER OF LECKIE