



Department
for Education



Department for
Business, Energy
& Industrial Strategy

Lord Mackay
House of Lords
London
SW1A 0PW

Viscount Younger of Leckie
Lords Spokesperson (Department
for Education)
House of Lords
London
SW1A 0PW

Lord Young of Cookham
Government Whip
House of Lords
London
SW1A 0PW

15 March 2017

Sean James,

HIGHER EDUCATION AND RESEARCH BILL: POWERS TO ENTER AND SEARCH

We are writing following the Lords Report debate on the amendment you tabled to the powers to enter and search in Schedule 5 of the Higher Education and Research Bill.

Thank you again for your valuable contribution to the debate on this matter. We undertook during the debate to consider your points before Third Reading. We have taken further advice from the HM Courts and Tribunals Service (HMCTS), and we are now writing to clarify the Government's position.

The Government considers that the conditions set out in Schedule 5, which must be met for a warrant to be granted, constitute a strong and sufficient safeguard to ensure a warrant would be granted only where necessary. HMCTS have informed me that, when being asked to consider issuing a warrant, magistrates are always supported by a legal adviser who will be conversant with the law on powers of entry and relevant guidance. HMCTS issued in December last year updated guidance on search warrants in general to both the magistracy and the legal advisers from the Justices' Clerks' Society. In our view, the additional provision you are seeking would not add any further safeguards to the use of the new power in the Bill. In addition, there are two reasons why having a provision of this type in respect of a warrant issued under this power, but no other power, would be undesirable:

- If, for some reason, the information required to be endorsed on a warrant changes, then this will require separate primary legislation to change that information;
- We understand that HMCTS are currently actively trying to standardise processes for this type of application, because having different procedures for different types of warrant increases the risk of error, both on the part of the applicant and the JP. The critical risk is that a warrant might be issued in which some very small part of the process was not followed to the letter, with an ensuing litigation risk.

We hope that this clarifies our rationale for considering that Schedule 5 should stand as drafted. Please let me know if you would like to meet before Third Reading to discuss further.

We are placing a copy of this letter in the House library.

Yours ever,

James

VISCOUNT YOUNGER OF LECKIE

A handwritten signature in black ink, appearing to be 'A. Young', written in a cursive style.

LORD YOUNG OF COOKHAM