



Department  
for Education



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Dear Colleague,

## HIGHER EDUCATION AND RESEARCH BILL

Following Lords Report of the Higher Education and Research Bill, we are writing to offer clarification on the questions that were raised by Peers throughout Lords Report, on which we committed to write.

### Institutional Autonomy and Academic Freedom

As we said in Report, we are grateful to Lord Kerslake and Lord Stevenson for the amendments on institutional autonomy and the helpful and constructive engagement we have had with them and many other noble Lords. We are also grateful for the positive debate we had on these amendments in Report.

Institutional autonomy and academic freedom are the keystone of our higher education sector's strength and so we are glad that institutional autonomy is one of the areas where we have found common ground. Throughout the Bill, we have sought to protect these values, but we recognised and understood the importance of extending these protections to the work of the Office for Students and of enshrining institutional autonomy itself in legislation for the first time.

Lord Lucas asked about the proposed new subsection (7)l in amendment 11, in particular why the "freedom" in this subsection is restricted to only these activities and why this section did not explicitly protect the freedom of academic staff to promote popular, as well as unpopular, opinions.

We would like to provide reassurance that we share Lord Lucas' views that those who have worked to "popularise" science and other academic subjects have done much to add to and enhance the public's understanding. Like Lord Lucas, we also deplore the criticism which too many of these academics face.

Let me also provide assurance that sub-section (7) I(i) protects the right of academics to test received wisdom. In the Government's view, this latter line includes the ability for an academic to question popular views held within the institution which may not be shared by others outside.

We should add that sub-section (7) overall replicates existing protections in legislation for the freedom of speech for academic staff. In particular, it reproduces provisions in the Education Reform Act (2) 1998 in this area. These provisions have been effective over an extended period of time and are well understood in the sector. For example, in this latter connection, these protections are also included in the Code of Conduct of the Chairs of University Councils, and the Privy Council currently requires all publicly funded providers to adhere to this element of that Code.

We took the view that on this crucial issue of institutional autonomy, relying on a tried, tested and effective formula represented the best way forward.

## **Royal Charters**

Lord Stevenson asked for clarification as to whether the Government would be able to revoke part of an Institution's Royal Charter and how this power may be used in the future. The Secretary of State's power to amend, revoke or otherwise modify a Royal Charter is expected to be exercised where the OfS had varied or revoked the institution's Degree Awarding Powers or removed its University Title through the exercise of its powers under clauses 41-56 of the Bill.

Use of this power may be necessary to ensure that the Royal Charter accurately reflects the institution's Degree Awarding Powers and/or status as a university following a change made by an OfS order. The Charter could for example be amended by the Secretary of State to reflect that the institution in question no longer has Degree Awarding Powers and/or University Title. The Regulations providing for such amendments or revocations made by the Secretary of State would be subject to parliamentary scrutiny via the affirmative procedure. It will not be possible for the Secretary of State to revoke an entire Royal Charter using these powers.

At present, institutions can obtain Degree Awarding Powers and University Title by or under an Act of Parliament and by Royal Charters. Clause 112 enables the Secretary of State to take a consistent approach to the amendment of instruments bestowing Degree Awarding Powers or University Title as and when it is appropriate in consequence of the Bill. Amendments to primary legislation and Royal Charters would be by affirmative regulations. Amendments to secondary legislation would be by negative regulations.

## **Appeals against a regulators decision**

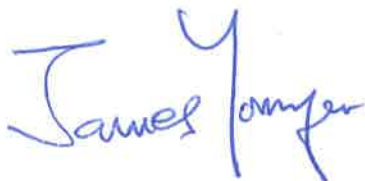
Lord Hope asked about the usual pattern for appeals against a regulator's decision. We cannot cite any examples where the exact formula in amendments 117 and 123 is used, although there is similar wording in the Energy Information Regulations 2011. There are instances where a tribunal could decide an appeal on its merits, for example this happens in relation to regulators such as Ofcom, Ofgem and the Pensions Regulator.

The grounds for appeal that were included in the Bill originally follow those in other legislation, for example the appeal provisions in relation to the Electoral Commission in the Political Parties, Elections and Referendums Act 2000 and those in relation to Ofqual in the Apprenticeships,

Skills, Children and Learning Act 2009. There is therefore no single precedent for which approach should be used.

We are very happy to discuss the clarifications above, or the Bill itself, further with Peers who wish to do so. We are placing a copy of this letter in the library of the House.

Yours ever

A handwritten signature in blue ink that reads "James Younger". The signature is written in a cursive style with a large, prominent 'Y' at the beginning.

**VISCOUNT YOUNGER OF LECKIE**

A handwritten signature in blue ink that reads "Lord Young of Cookham". The signature is written in a cursive style with a large, prominent 'Y' at the beginning.

**LORD YOUNG OF COOKHAM**