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for Education



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Dear Colleagues,

Before we reach the various market entry clauses at Report stage today, I wanted to write to you to address some common misconceptions, and explain in some more detail our government amendments which we tabled on 24 February.

We are justifiably proud of our world-class HE sector, but we have to make sure it is able to innovate and respond to a changing environment. New providers and increased competition in the system will improve the capacity and agility of the higher education sector. This will encourage innovation and transform the sector's ability to respond to economic demands and the rapidly changing graduate employment landscape.

It is therefore vital that we remove those aspects of the current system that are simply onerous and can hold back new, high quality providers, while maintaining the strengths of the system in ensuring that the quality of our HE sector remains world class.

Current system:

At present, any provider looking to apply for Degree Awarding Powers (DAPs) is required to demonstrate that their institution has a four-year record of successful HE delivery. In practice, this usually means they have to rely on another provider to validate or franchise their provision for this period. The only real alternative to building a track record via a validation or franchising arrangement is for the provider to operate for four-years with entirely self-funded students without access to any student loan funding, and without awarding degrees. This is not realistic for the vast majority of providers.

Since only incumbent providers are able to validate or enter into a franchise arrangement with new providers, this creates a system where new providers generally have to rely on existing providers, who in many cases stand to lose students to the new provider. Furthermore these incumbents are in a position to pick and choose when to enter into and indeed terminate validation agreements, on what terms, and with what providers.

There are many examples where providers have struggled with validation. In compiling his review, Lord Browne said he and his panel “spoke to many such organisations and found that in many instances the validation arrangements simply did not work. Highly lucrative for the established providers, they created a closed shop that stifled innovation and competition among new entrants and as a result reduced student choice”. For example:

- Following a change of leadership Teeside University unexpectedly withdrew important validation services to ten local colleges, based on a change of strategic direction and not as a reflection on the quality of the provision. This left providers having to quickly find a new validator or risk not being able to offer degrees.
- Le Cordon Bleu, a leading international culinary institute, cannot deliver its own degrees in the UK, although it can do so in other countries. This is because the validation arrangement it needs to deliver degrees before it receives Degree Awarding Powers cannot protect the intellectual property in its programmes; it must be willing to hand over its recipes and techniques and individual culinary style to another institution in order to have its course recognised.

You may also wish to read an interim report by the Open University and Independent Higher Education on a joint project piloting a streamlined approach to validation. The report highlights for example restrictive “behaviour on the part of some validating universities” and “insufficient support for alternative delivery models including accelerated and more work-based degrees.”

Market Entry Reforms:

Our reforms are designed to make it simpler to enter the market in two key areas:

- **Direct access to DAPs for high quality providers**
- **Improvement of the validation provision on offer.**

Direct access to Degree Awarding Powers

At present the Privy Council can authorise institutions to grant degrees. The way the Privy Council’s powers are used are set out in departmental guidance. Current guidance sets out the expectation that providers have a track record. We intend to keep open the current track record route for those providers who already have, or prefer to build up, a track record and intend to set this out in guidance.

The powers in the Bill will allow the OfS to grant DAPs to registered higher education providers. We recognise that the track record can be a key obstacle for new providers so, going forward, we intend to issue guidance to the OfS to support providers that do not have a track record obtaining DAPs. Instead, under our plans, providers will need to meet a tough entry test, and operate under closer supervision by the Quality body and the OfS for three years.

We are clear that this will not be a way in via the back door for poor providers – we will hold them to the same, high standards as everyone else - testing quality and other standards as appropriate. In fact, we expect only the highest quality providers will be able to meet the specific entry test criteria required to access DAPs without a track record. The entry test is designed to ensure adequate financial resources are available, and robust governance arrangements are in place, as well as testing the quality of the provision. We do not expect the criteria for financial sustainability to be any lower than for other providers.

We set out how we envisage this working in more detail in our Factsheet on Degree Awarding Powers and University Title, published at Committee stage, which I have attached as an annex.

Improvement of validation provision

We recognise that many validation arrangements are highly successful and beneficial to both parties and to students. There is no intention to change such relationships or preclude them in future. However, as illustrated by the examples above, validation agreements are not always what they should be.

As part of its duties, in particular to have regard to the need to encourage choice and competition where this is in the interests of students and employers, the OfS will be able to take concrete steps to improve validation services, and address some of the barriers new providers can face when seeking a validating partner. In particular, we would expect the OfS to address the lack of transparency and opportunity for providers to compare various offers, and to set out exemplar validation arrangements to help inform negotiation between validators and providers who seek validation.

In the event that the OfS' interventions do not adequately solve validation problems, the Bill gives the OfS powers to enter into commissioning arrangements and, ultimately, act as a validator of last resort.

Commissioning Arrangements

I want to be clear that the OfS cannot force providers to enter into commissioning arrangements (which may be contractual or which may be less formal). Once a provider enters into the commissioning arrangement the OfS could require that provider, in line with the terms of the arrangement, to offer to validate. This is not unlike other arrangements where, for example, a party to a contract may require – in line with the terms of the contract - another party to do something. Remedies for failing to act in accordance with the arrangements, and for resolving disputes about them, are expected to be provided for in the commissioning arrangements. Where they are not other laws (such as the law of contract) may apply.

OfS as a validator of last resort

We recognise that there are remaining concerns around the OfS possible role as a validator of last resort under clause 48, and I would like to emphasise once again that this is a last resort power, which we expect to be used only where the OfS has been unable to address significant shortcomings in the validation market through other means.

I would also like to stress that the OfS can only act as a validator of last resort if authorised by regulations made by the Secretary of State. These regulations are subject to Parliamentary scrutiny, so there will be an opportunity to scrutinise these powers again. At that point the circumstances will be clear, and the Secretary of State as well as Parliament will be able to take a much more informed view than we can now.

We expect the OfS to make a case to the Secretary of State as to why it is necessary for it to act as a validator of last resort. This is most likely to be in the form of an evidence based report, clearly setting out the nature and severity of the issues in the validation market. Before advising the Secretary of State, we would expect the OfS to consult with key stakeholders to gain a full understanding of the root causes of any problems.

If the OfS was authorised by the Secretary of State to act as a validator of last resort itself, we would expect the regulations to attach certain conditions to this, to ensure the service the OfS provides is underpinned by the necessary expertise, and is sufficiently independent from its regulatory function – for instance by being housed in a separate division.

We expect the OfS to draw on expertise from across its organisation, the designated quality body, and the sector to ensure that their invaluable experience of quality and good and bad practice in the system can inform the provision of their own validation service.

As now, we would expect students and alumni to talk about having studied at a particular institution – i.e. the institution teaching the course - not having secured an award from the OfS. We would expect any degree certificate to reflect this – i.e. name the institution the student studied at - whilst also making reference to the fact that the degree was validated and thus awarded by the OfS. We have set this all out in more detail in our factsheet on validation, which we published during Committee and I have attached as an annex to this letter.

In order to provide some further reassurance, and enable further scrutiny of our proposals, **I can announce today that as part of the regulatory framework consultation in the Autumn we will consult on how the OfS would best provide a validation service, to ensure it is underpinned by the necessary expertise, and operates in a way that prevents or effectively mitigates conflicts of interest.** This would enable the OfS to have a blueprint, which has been stress tested with the sector through consultation, and be ready to act, subject to Secretary of State and Parliamentary approval, as a validator of last resort should this become necessary.

Government Amendments

We believe these reforms are vital to ensure our HE sector remains world-class for the decades to come. However we have heard, and listened to the very well-informed debates at Committee stage, and the concerns that were expressed in particular around safeguards on OfS powers.

We have therefore tabled two main sets of government amendments in this area:

- **Need to seek expert advice in relation to Degree Awarding Powers**
- **Specify that the OfS can only revoke Degree Awarding Powers or University Title if certain conditions are met**

Need to seek expert advice in relation to Degree Awarding Powers

We had always envisaged that the important decision of awarding DAPs must be based on objective advice, which reflects the views of a relevant range of experts. Therefore, the amendments ensure that the OfS **must** request advice from the Designated Quality Body or, if no body is designated, from a specially formed committee of the OfS.

We envisage that there will be strong representation in the designated quality body or, the relevant committee of the OfS where no body has been designated, from persons who have experience of granting degrees, but the advice should also be informed by representatives of challenger institutions, further education providers, student representatives and employers. Crucially, this amendment also provides that any advice regarding RDAPs must be informed by the views of UKRI – giving it a role that neither HEFCE nor the research councils have at present.

The advice is required before the OfS can award any kind of DAPs – whether to a new entrant or to a provider with a track record.

Specify that the OfS can only revoke Degree Awarding Powers or University Title if certain conditions are met

We are clear that the powers to revoke DAPs or University Title should only be used in very serious situations, where other interventions are not appropriate or have failed to produce the necessary results.

We have listened to the concerns that such wide-ranging powers should be more clearly defined in legislation. We have therefore tabled government amendments that ensure the OfS can **only revoke DAPs or University Title in certain, limited, and clearly defined circumstances, such as serious quality concerns.**

The government believes the OfS as an independent regulator will be best placed to make these decisions, and that these amendments, the statutory procedures set out in the bill, and a right of appeal to the independent judiciary provide for strong safeguards. I am placing a copy of this letter in the Library of the House.

Yours sincerely,



JO JOHNSON MP



VISCOUNT YOUNGER OF LECKIE