16 January 2016

Dear Colleagues,

HIGHER EDUCATION AND RESEARCH BILL

Following the second day of Committee scrutiny of the Higher Education and Research Bill on 11 January, I am writing to offer clarification on a number of areas of concern that were raised by Peers. This letter provides further information on the role of the Director for Fair Access and Participation, an outline of how we envisage future quality arrangements will work, and answers to specific questions relating to the Office for Students (OfS) and part-time and disabled students.

Widening participation and the Director for Fair Access and Participation

Lord Stevenson raised a number of questions in relation to the role of the Director for Fair Access and Participation (DFAP). I thought it might be helpful if I set out our policy intent in this area. This was originally outlined in the White Paper ‘Success as a Knowledge Economy’ (May 2016) which confirmed that the Office for Students would be established as an independent body, including the functions of the Director of Fair Access. The rationale is to bring together responsibilities for widening participation; currently both the Director for Fair Access and HEFCE have a role in this area.

This should bring a more strategic focus; for example, the DFAP will be able to co-ordinate the funding Government makes available to support widening participation and the money providers spend through their Access and Participation Plans.

We are clear that the DFAP is an important role, and our expectation has always been
that they will have day-to-day responsibility for agreeing access and participation plans. We listened carefully to concerns that the Bill as previously drafted did not do this, and so we have amended it to clarify this important role. I am assured that these clarifications achieve our policy intent and the current Director of Fair Access has welcomed these amendments confirming that they strengthen the Bill.

Baroness Brinton asked for examples of the circumstances under which the OfS might not delegate responsibility for access and participation activities to the DFAP. We would only expect this to happen in exceptional circumstances, where, for example, the DFAP might be unwell. To signify that we expect the delegation of the access and participation function to someone other than the DFAP would be exceptional, we have amended the Bill so that where the OfS has not delegated the access and participation function to the DFAP, the OfS has to explain why it has not in its annual report. The amendments also make clear that if these functions are delegated, they can only be delegated to the DFAP.

The Earl of Listowel raised concerns about the need to ensure that young people from low-income backgrounds are encouraged into science. I share the Noble Lord’s concerns, and I would like to reassure him that there are a range of programmes currently operating that are aimed at raising interest in science, technology, engineering and maths (STEM) subjects and awareness of STEM careers amongst more young people. In particular, these programmes look at a more diverse range of young people (including girls and other under-represented groups in the STEM workforce) and those that influence their subject choices at school. Programmes include ‘The Inspiring Science Fund’, STEM Ambassadors, Crest Awards, UK Principia Education programme, Polar Explorer Programme, Engineer Your Future and British Science Week. We can provide you with further details on these programmes if you wish.

Furthermore, many higher education providers run outreach activities that aim to raise awareness, aspirations and attainment among people from disadvantaged backgrounds, for example summer schools that give a taste of university life, homework clubs for pupils who may not have anywhere to study at home, or universities forming and sustaining links with employers and communities. These will include outreach in STEM subjects.

I would like to thank Lord Willetts for his helpful interventions regarding the role of the DFAP, and in particular the meaning of the term "access and participation" in the Bill. His statements on this, including that “it is not simply about the participation of people who come from a disadvantaged background and benefit directly from an access agreement; getting into university is only the start of the journey” were helpful in clarifying understanding on this.

Since 2014, and the publication of the National Strategy for Access and Success for Disadvantaged Students (developed by HEFCE and OFFA and endorsed by Government), work with disadvantaged students has extended to a “whole lifecycle approach”. This means that higher education providers have already been supporting the participation of students throughout their courses, helping to tackle drop-out rates, attainment of qualifications and progression from higher education. This Bill puts this on a firm legislative footing.

Disabled students and the Equality Act
Lord Addington and Baroness O'Neill raised the important issue of students with disabilities. As I highlighted during the debate, there is already legislation in place which places a duty on certain higher education providers to make reasonable adjustments for disabled people, to ensure they are not substantially disadvantaged compared to non-disabled students. The reform of the Disabled Students' Allowance is intended to ensure higher education providers are consistently meeting their duties to disabled students under the Equality Act 2010.

Lord Addington also asked for more information about guidance to help institutions comply with this duty. I expect this to be published imminently. Following its publication, I should be very happy to meet with him and other Peers, to discuss the guidance and any wider concerns about provision for students with disabilities.

The development of inclusive learning environments (for example providing lecture notes to all students, so that a disabled student does not need to ask for this as an adjustment) will ensure that disabled people considering higher education can be confident that their needs will be met.

**How future quality arrangements will work**

Lord Sutherland raised a question about the assessment of quality for universities and providers, and how this would work.

We anticipate the future system of quality assessment that will be managed under the OfS will contain key elements of the HEFCE quality assessment approach introduced in 2016/17. This features: baseline regulatory requirements tested through review visits to providers seeking to enter the higher education system; a period of closer engagement and monitoring for recent entrants; risk-based and context-sensitive review arrangements for established providers, and introduces Annual Provider Reviews based on enhanced data checks that will prompt quicker intervention where there is evidence or concern about a provider's performance.

Under OfS quality arrangements, we envisage that, once a provider has been assessed as meeting the baseline entry requirements for the OfS register (we expect this will be against the expectations of the Quality Code), those providers that are in the categories Approved and Approved (Fee Cap) should be subject to an ongoing system of quality assessment. It is our intention that this assessment system will work through a light-touch Annual Provider Review, bringing together the desk-based scrutiny of a range of indicators, including changes in student numbers, retention and progression of students and their employment outcomes; information from an annual visit; and a range of other intelligence.

It will be for the OfS to decide how it will manage its regulatory processes, but we anticipate the Annual Provider Review (APR) will be managed by the OfS with any necessary in-depth reviews undertaken by an independent quality body, where one is designated, using experts and peer reviewers with expertise and experience in setting, maintaining and assuring academic standards and quality. We would expect the frequency and focus of these intensive reviews to vary according to the risk profile of the provider.
The OfS will have robust powers to intervene quickly if there are concerns over the quality or standards at an institution. For example, the OfS will be given new powers to: require an action plan to address areas of weakness; impose student number controls; impose fines; not-renew, vary or, in very serious circumstances, remove Degree Awarding Powers and remove university title; and ultimately remove a provider from the register if it continues to cause serious concern. I have enclosed the technical paper factsheet that we published in September 2016 relating to ‘Market Entry and Quality Assurance’ which provides further information.

Oversight of the quality process and decisions

The OfS will need to put in place its arrangements to manage the APR process and provide appropriate oversight that includes oversight of how judgements are made.

We anticipate that the management of quality processes by the OfS could include people with expertise and understanding of the higher education sector, who have a strategic view of the context in which individual providers are operating. We envisage that quality judgements would be made by people with sector expertise, and appropriate levels of independence from the provider that is subject to the judgement in question.

As set out in the Bill, a Quality Assessment Committee will be established to give advice to the OfS about the performance of its assessment functions.

Remuneration of senior OfS officials

Lord Stevenson, asked whether salaries for senior OfS officials would be subject to the cap on public sector salaries. I can reassure him that these salaries will be public sector salaries, and while there is no formal cap on public sector salaries, any public sector salary which is higher than the Prime Minister’s salary must be approved by the Chief Secretary to the Treasury. Once appointed, the OfS Chair and Chief Executive’s salaries will be on a list of senior civil servants and senior officials in departments, agencies and non-departmental public bodies, which is made publicly available on an annual basis.

The OfS and the definition of a “regulator”

Lord Stevenson asked for clarity on how we interpret the term ‘regulator’, and whether general provisions applied to regulators would apply to the OfS; for example the duties of the Regulators’ Code. There is no single formal definition of a regulator. In the case of the OfS, the Government uses the term regulator to mean the organisation which sets the framework in which registered higher education providers must operate, and the conditions they must meet if they want to receive direct funding for teaching and research, or get access to student support funding for their students.

The OfS’s general duties give the organisation a broad set of public policy priorities to which it must have regard in carrying out its functions, including a duty to have regard to the principles of best regulatory practice. While the Regulators’ Code will not formally apply to the OfS (and indeed does not apply to other education regulators), this duty ensures that the OfS must have regard to the same core principles of regulation where they are relevant, including ensuring that regulation is transparent, consistent and proportionate.
Part time students

A number of Peers, including Baroness Blackstone and Baroness Lister, raised the important issue of part-time students. I will first address Baroness Blackstone’s question as to whether the Bill should allocate a specific OfS Board position to someone with experience of the provision of part-time and distance learning.

The Government believes that it is essential that the OfS Board should be representative of the broad range of stakeholders in the higher education system. However, as there would at most be twelve ordinary members of the Board, it would be impractical if the Secretary of State were legally bound to appoint people with specific experience of particular methods of higher education delivery. This could impact representation of other modes of provision or other important aspects of the effective functioning of the OfS.

This Bill does not prevent the appointment of Board members with broad expertise in diverse forms of education provision including distance learning and part-time provision. It provides the crucial flexibility needed by the Secretary of State to constitute the OfS Board in the most appropriate way to meet the challenges and priorities of the day.

I would now like to move on to the question raised by Baroness Lister concerning the reasons for the drop in part-time student numbers.

As we discussed, the reasons for the decline in part-time numbers since their peak in 2008 are complex. There are a number of contributing factors, including:

- The removal in 2008/09 of the HEFCE teaching-grant for equivalent and lower level qualifications (ELQs), which made part-time provision more expensive for providers and students;

- The 2008 recession that resulted in poor macro-economic conditions and public sector austerity, and reduced employer funding for part-time provision; and

- Changing demand for part-time study relative to other methods of learning, for example among nursing and teacher training students.

The Government agrees with Peers that there is enormous value in part-time study, distance learning and adult education to individuals, the economy and employers. Consequently, the Government has taken action to support part-time students, distance education and adult education in a number of areas. These actions include:

- The offer of tuition fee loans for part-time students so that how a student chooses to study does not affect the tuition support available;

- Provision of financial maintenance support to part-time students similar to the support we give to full-time students. We intend to introduce new part time maintenance loans in 2018/19, on which we are currently consulting; and,

- Relaxation of ELQ rules by supporting students who already hold an honours degree qualification who wish to retrain on a part-time basis in a science,
technology, engineering and mathematics (STEM) subject.

As I noted during debate, there is no silver bullet to responding to this decline in part-time student demand, but by allowing new high quality providers into the system, prospective students can expect greater choice of HE provision, including via part-time and distance learning.

Alongside our other measures to support flexible learning, the Bill goes further than ever before to help hardworking people who want to gain new skills and advance their careers by studying part-time.

I look forward to further debate and scrutiny of the Bill as we pass through Committee. I am very happy to discuss the clarifications above, or the Bill itself, further with Peers who wish to do so. Officials from the Department of Education and the Department for Business, Energy and Industrial Strategy will also be available for factual briefings on the Bill during Committee stage of the Higher Education and Research Bill. I am placing a copy of this letter in the library of the House.

Yours ever,

[Signature]

VISCOUNT YOUNGER OF LECKIE