Dear Colleagues,

HIGHER EDUCATION AND RESEARCH BILL

I am writing to address a series of issues raised during the first day of Lords Committee scrutiny of the Higher Education and Research Bill on 9 January, on some of which I committed to write to Noble Lords. I hope this letter provides further clarity and reassurance regarding how we envisage our reforms will work in practice, including the register of higher education providers that the Office for Students (OfS) will operate, provisions around quality and standards, and the awarding of university title.

First of all, I would like to provide reassurance to the Noble Lord, Lord Hannay, who asked about institutional autonomy and the forthcoming consultation about possible change to non-EU work and study visas.

I can confirm that the Government remains fully committed to the autonomy of higher education institutions. As I explained in my reply in the chamber, there are no plans to cap the number of genuine students who can come to the UK to study, nor any plans to limit an institution’s ability to recruit genuine international students, based on its TEF rating or any other basis.

Related to this, I can also reassure you that the Government has no desire to control, or interfere with, the courses which institutions offer or what they can teach. The Bill contains explicit protections for institutional autonomy, which apply to all of the ways in which the Secretary of State may influence the OfS: guidance, conditions of grant and directions. In each case, the Bill places a statutory duty on the Secretary of State to have regard to the need to protect academic freedom and the freedom of English HE providers.

We have strengthened these protections during the passage of the Bill to make clear that the Secretary of State cannot compel the Office for Students to take any action which would prohibit or require the provision of particular courses. I can also assure you that the Bill contains no powers for Government to guide or compel institutions directly on what courses they can offer.
The Register

The Noble Lord, Lord Stevenson, raised concerns around how the register, as proposed by the Bill, will operate. I hope I can provide some clarity on the matter. Clause 3 of the Bill places the OfS under a duty to establish and maintain a register of English higher education providers. The register may be divided by the OfS into different parts for different categories of registration, as set out in the 2016 White Paper Success as a Knowledge Economy, and providers will be able to choose their category of registration. The intention is that different categories of providers will be linked to the benefits that providers and their students will be able to access, and the responsibilities that these providers will have.

Some providers currently operate entirely outside of the regulated sector and do not want access to Government funding or student support, but do want to be officially recognised as HE providers. Provided that their courses match the baseline requirements for standards (currently described in the Framework for Higher Education Qualifications (FHEQ) at Level 4 or higher - see below), and that they are prepared to subscribe to the independent student complaints body, then they too will have the opportunity to register with the OfS.

The register will therefore include all providers with students receiving student support and, while separate to the Bill, providers with a Tier 4 licence to recruit international students. Other providers delivering higher education may join the register on a voluntary basis if they meet the registration criteria although they will not be able to access the benefits of registration such as access to student support funding, or grant funding.

As set out above, the Bill requires the OfS to register only those providers that apply to be included in the register, and provides for the OfS to be able to set out how providers must apply, along with the information that providers must supply to support their registration application. The information that providers will be required to support their registration application will be directly linked to the initial registration conditions that providers must be able to satisfy. It will fall to the OfS to assess whether or not providers meet those registration conditions. In this way, students, employers and the taxpayer can be assured that all registered providers meet the necessary standards and requirements that are commensurate with the benefits they will receive.

To provide further clarity over the oversight of the OfS, as raised by the Noble Lord, Lord Stevenson, I would like to reiterate that, as with the Higher Education Funding Council for England (HEFCE), the OfS will be established as an independent Non-Departmental Public Body. The OfS board will determine its day to day operations and make decisions independently of Government. The OfS will report annually to the Secretary of State, who must lay the report in Parliament. The Secretary of State will also appoint the Chair and CEO, and ministers in turn are held accountable by Parliament for their decisions and appointments.

And as I set out on the floor of the House, we have heard the points made about the need to take the time to make sure the new regulatory framework is taken forward in a way that minimises disruption. We therefore intend, subject to the passage of the Bill, that OfS will consult on its new regulatory framework in the autumn of this year and to begin accepting and assessing applications from new and existing providers in 2018, in time for the 2019-20 academic year rather than in 2018-19 as originally proposed.
Academic Standards

The Noble Lord, Lord Stevenson, also raised a concern around threshold standards for a provider's degree provision. The threshold standards - or the level which a student is required to meet in order to attain a degree or other qualification - are embedded into the UK Quality Code in the form of reference points that are established and supported by the HE sector, including the Framework for Higher Education Qualifications.

The UK Quality Code for Higher Education has been developed and maintained by the Quality Assurance Agency (QAA), through consultation with the HE sector. The new UK wide Standing Committee for Quality Assessment chaired by Andrew Wathey, the Vice Chancellor of the University of Northumbria, will confirm the baseline regulatory requirements that will underpin the new quality assessment model being implemented in England and Northern Ireland from 2016 by HEFCE. It will also work with the QAA to develop the Quality Code as an important UK-wide reference point for quality and standards.

In future arrangements, we envisage that the OfS and designated quality body will pursue a co-regulatory approach to determining the baseline requirements for quality and standards. These are currently set out in the UK Quality Code and including the sector agreed Framework for Higher Education Qualifications.

Quality Assessment

Furthermore, the Noble Lord, Lord Stevenson, raised a concern over the assessment of the quality of degrees granted by higher education providers. In order to answer this in full, let me explain the current and future arrangements, as we envisage them.

Current arrangements

The existing quality assessment system is the responsibility of HEFCE, which holds the current statutory responsibility for assuring quality in providers in receipt of public grant, with the QAA undertaking reviews of providers where closer scrutiny is needed.

HEFCE introduced a reformed quality assessment approach in 2016/17. It 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 introducing Annual Provider Reviews based on enhanced data checks that will prompt quicker intervention where there is evidence or concern about a provider’s performance.

Until the OfS regulatory framework is operational, Alternative Providers will continue to be subject to the QAA’s Higher Education Review checks and annual checks for course designation purposes.

Future arrangements

We anticipate the future system of quality assessment that will be managed under the OfS will contain some key elements of the HEFCE quality assessment approach.

The quality system is expected to be risk-based and outcome focussed and assess how far providers are delivering high quality employment and other graduate opportunities for its students. This means that high quality institutions will see less regulation and bureaucracy than
is currently the case, allowing the OfS to focus its resources on those providers which may pose a concern.

We are working to adopt planned reforms to strengthen the external examining system, and focus the quality regime more clearly on ensuring that quality and standards have been maintained in practice, rather than simply reviewing the operation of processes designed to achieve this.

In practice, once a provider has been assessed as meeting the baseline entry requirements for the OfS register, those providers that are in the categories Approved and Approved (Fee Cap) should be subject to an ongoing system of quality assessment that 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 the existing annual visit; and any other intelligence.

If there is evidence from this annual check that indicates concern about a provider’s performance, this will trigger more intensive scrutiny including more detailed quality review visits by peer reviewers with expertise and experience in setting, maintaining and assuring academic standards and quality. The frequency and focus of these intensive reviews will vary according to the risk profile of the provider. We anticipate that the majority of providers will see less of a burden than now, but a few will see significantly more.

The OfS will have strengthened powers to intervene quickly if there are concerns over the quality or standards at an institution. For example OfS will be given new powers and could: require an action plan to address areas of weakness; impose student number controls; charge fines; not-renew, vary or, in very serious circumstances, remove DAPs and remove university title; and ultimately remove a provider from the register if it continues to cause concern.

**University Title**

Finally, the Noble Lord, Lord Stevenson raised a concern around the criteria for an institution to be awarded University Title. Under our reforms, we want the OfS to be able to grant University Title for all providers who apply and meet the published criteria. Like now, we intend to set out the criteria and processes for obtaining University Title in guidance, and we plan to consult on the detail of this before publication.

As set out in the White Paper, we envisage that registered providers will only be eligible for University Title if they are: in either the approved, or the approved (fee cap) category of the register and have undergone strict financial sustainability and quality checks; have over 55% of full time equivalent students studying Higher Education; and have successfully operated with full Degree Awarding Powers for three years. Under our plans, decisions on University Title will continue to be made by an arms-length body, having regard to departmental guidance – just as the Privy Council does now.

Decisions on removal of Degree Awarding Powers or University Title will be taken by the OfS, having regard to published criteria contained in guidance, the detail of which the department intends to consult on. The OfS, as an independent regulator, is best placed to decide whether UT or DAPs should be revoked.
This process will be supported by a detailed statutory procedure ensuring that any affected providers are given adequate notice and have the ability to make effective representations as to their case. Institutions will also have the right to appeal to the First Tier Tribunal where a decision is unreasonable or was legally or factually flawed.

I also want to further assure Peers, as I wrote on 21 December, that this Bill does not allow the OfS to take away the Royal Charters establishing any of our universities. Under Clause 110 of the Bill, the Secretary of State may look to amend or revoke the relevant provisions of a Royal Charter which deal with Degree Awarding Powers or University Title. This power can be used only in so far as is necessary to reflect any changes made by the OfS to Degree Awarding Powers or University Title contained in a Royal Charter.

Importantly, any amendments or revocations made by the Secretary of State would be subject to parliamentary scrutiny via the affirmative procedure.

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 any Noble Lords 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 sincerely,

[Signature]

VISCOUNT YOUNGER OF LECKIE