21st December 2016

Dear Colleagues,

I am writing to address some of the issues raised in our second reading debate on the Higher Education and Research Bill, on 6 December. I appreciated the engagement and expert contributions during the debate. However with sixty nine Peers speaking, I was unable, regrettably, to address every point. I would like to take this opportunity to address two key areas of the debate: institutional autonomy and research and innovation.

Institutional Autonomy

Many Peers raised questions relating to academic freedom and institutional autonomy, including the Secretary of State’s powers in relation to the Office for Students (OfS), and the powers of the OfS.

I want to provide assurance that the Government sees academic freedoms and institutional autonomy as crucial keystones of our higher education system and characteristics which underpin our sector’s world class status. The Bill includes a broad range of protections for the freedom of HE providers which reflect the reformed funding arrangements for higher education and, in some important respects, add to the protections enshrined in the Further and Higher Education Act 1992.

A Secretary of State may issue guidance to the OfS, set conditions of the grant made to the OfS or issue specific directions to the OfS, in tightly defined circumstances. For each of these ways in which the Secretary of State may influence the OfS, the Bill places an explicit and specific statutory duty on the Secretary of State to have regard to the need to protect academic freedom. This duty relates, in particular, to the freedom of higher education providers to determine course content and teaching, set criteria for staff appointments, and set criteria for student admissions.
This is the first time such statutory duties have been explicitly set out in legislation, and in the case of guidance, this specific power and the academic freedom protections are included in legislation for the first time. For the direction power, it is the first time that any academic freedom protections have been included in legislation.

It is essential that the Government has the ability to provide strategic guidance to the OfS about subjects which are of economic or cultural importance. Some of these subjects, typically the science, technology, engineering and maths (STEM) subjects or creative and performing arts courses, cost more to teach than the maximum fee. Government needs to be able to guide the OfS to provide direct grant funding for these courses, to ensure that higher education providers can continue to teach them sustainably.

However, the Bill also lists specific areas in which providers must have freedom; those areas where the Secretary of State may not interfere. These include course content, how courses are taught, supervised and assessed, the criteria for selection of academic staff, and the criteria for admission of students. After listening to the representations made during the passage of the Bill in the other place, the Government has also added protections which prevent the Secretary of State from putting forward guidance, grant conditions or directions in such a way as to require the opening or closing of particular courses.

In creating a new market regulator for the higher education sector, the Government is mindful in particular of the points made by Lord Norton on the principle of subsidiarity. The OfS’s powers are those which we believe are essential in order to enable it to regulate on the basis of a more level playing field. The co-regulatory approach in relation to quality and standards which has proved so successful in higher education over past decades is being enshrined in the Bill, most notably in the role of the designated quality body.

I know that some Peers had concerns about references to standards within the bill. I want to reiterate the points I made in my closing speech: the Government is clear that the standards to which the Bill refers are those that are defined by the sector themselves in the Frameworks for Higher Education Qualifications in England, Wales and Northern Ireland.

I also want to further assure Peers that this Bill does not allow the OfS to take away the Royal Charters of any of our universities. Through the measures in the Bill, the OfS will have a power to remove an institution’s ability to award degrees or call itself a university. If these powers are contained in a Royal Charter the Secretary of State may, subject to parliamentary scrutiny, amend the Charter to reflect the loss of degree awarding powers or university title. This should only happen in rare circumstances and where other interventions have failed to produce the necessary results. It will ensure that students and the global reputation of our higher education sector are properly protected if an institution is not delivering the quality expected.
Research and Innovation

A number of Peers spoke about the inclusion of Innovate UK in UKRI, with many, including Baroness Young, Lord Mair and Baroness Neville-Jones, emphasising the importance of maintaining Innovate UK’s business-facing focus. This Bill enshrines Innovate UK’s functions in primary legislation for the first time, and we have committed to retaining its separate budget. The Government has recently committed to investing an extra £2 billion a year in R&D by the end of this Parliament, which will include a substantial increase in grant funding through Innovate UK to support the growth of UK business. The UKRI Board will also involve significant business and innovation expertise, including a specific member who will lead in promoting and championing innovation and business interests.

The dual support funding system was also discussed by many Noble Lords. Lord Smith, Lord Liddle, Lord Patten and Lord Kakkar sought reassurance that dual support would be protected, now and in the future. This Bill provides legal protection for the dual support system in England for the first time through the balanced funding principle. This goes beyond dual support in ensuring not only that there must be two streams of funding but that their quantum must be reasonably balanced. When making funding decisions the Secretary of State will carefully consider the appropriate balance between UK-wide competitive project funding and England-only research funding, taking into account advice from UKRI.

I am aware that there was some concern in the chamber about a potential loss of autonomy for the Research Councils, articulated by a number of Noble Lords. I would like to offer my reassurance that the fields of activity, autonomy and independence of the councils within their areas are protected by this Bill.

Specifically, Government is committed to ensuring that the Haldane Principle remains the basis of decision making on which research to fund. The structure and design of UKRI as set out in the Bill cements the Haldane Principle at its heart. This includes that:

- UKRI will be established as an arm’s length body independent of Whitehall;
- UKRI will be required to devolve functions within specified fields of activity to its constituent councils; ensuring that individual funding decisions are made by the relevant experts;
- Subsidiarity in the design of UKRI will ensure that the councils take all scientific and other decisions in their area where expert knowledge is essential to driving excellence;
- Through UKRI, the Councils will retain the right to use their names, brands and insignia;
• The Secretary of State will be prohibited from attaching any direction regarding particular courses of study or programmes of research to grants to Research England under UKRI.

The Bill also affords further protections to the science and humanities Councils of UKRI, requiring an affirmative resolution in both Houses of Parliament before any changes to their names, numbers or fields of activity. I would also like to assure Lord Krebs that Government would undertake proper consultation with the research community before changes were even put to Parliament.

I would also like to address concerns raised by Lord Patel and Lord Sharkey, about the Councils’ ability to form strategic partnerships with other funders in the charity and business sectors. Such relationships are a core strength of the UK research base, and Government recognises their vital importance. They will in no way be impeded and will continue to flourish under UKRI.

Finally, Lord Wallace and Lord Patel spoke passionately about the implications of UKRI for institutions outside England. I would like to emphasise that UKRI will be a UK-wide institution. Having studied at the University of St. Andrews, I am very aware of the fantastic quality and important contributions of institutions in the Devolved Administrations. Just as now, Research Councils and Innovate UK will fund excellence wherever it is found.

I look forward to further debate and scrutiny of the Bill at 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.

Yours sincerely,

[Signature]

VISCOUNT YOUNGER OF LECKIE