18 January 2017

Dear Colleagues,

HIGHER EDUCATION AND RESEARCH BILL

Following the third day of Committee scrutiny of the Higher Education and Research Bill on 16 January, I am writing to offer clarification on a number of questions that were raised by Peers, on some of which Baroness Goldie and I committed to write. This letter provides further information on standards, and a small number of additional clarifications. I have also attached, as further annexes, a short briefing on the Teaching Excellence Framework (drawn from publicly available information) in advance of today’s debate, and a Cabinet Office briefing note on student electoral registration that was referred to during Monday’s Committee session.

Standards

As I said in the debate on Monday, I have listened carefully to the arguments made on the issue of standards in the Bill and I reassure Peers that, based on the strength of feeling expressed, the Minister for Universities, Science, Research and Innovation and I will actively consider what more we can do to address the concerns raised about the Bill in relation to standards.

There were some specific points of detail raised which I did not have the opportunity to address, and I have provided further clarification in Annex A to this letter, in particular in relation to points that were made by Lord Mackay and Lord Stevenson later in Committee.

Definition and incorporation of English higher education providers

Baroness O’Neill asked whether English higher education providers must be incorporated under English law. I thought it would be helpful if I set out our policy intent in this area. The Government wants to provide young people with options and choice, and to enable them to pursue the path that is best for them. New universities, including from overseas, who can meet our standards on quality of provision are one part of this, and our reforms will make it easier for
new, high quality and innovative providers to join the English higher education sector. Any overseas institutions able to meet the entry requirements for the OfS Register will be welcome. However, only providers that are, or intend to become, ‘English Higher Education Providers’ may be registered by the OfS. Clause 77 of the Bill provides a definition of English Higher Education Provider: “a higher education provider whose activities are carried on, or principally carried on, in England”. Under Clause 77 a ‘higher education provider’ means an institution which provides higher education.

The provider’s physical location would need to be more than just a registered address – it would need to reflect where work is carried out. The term ‘activities’ takes its normal dictionary meaning – essentially the work of an organisation to achieve its aims. When assessing where a provider carries out most of its activities we would expect considerations to include where the provider carries out most of its work and where students are taught. The term ‘institution’ also has its ordinary dictionary meaning and is not defined further in the Bill (except to include any training provider delivering teacher training as defined in the Education Act 2005).

If an overseas university wishes to set up a base in England and wishes it to appear on the register, for its students to be potentially eligible for student support and be eligible to apply for English Degree Awarding Powers and University Title, but most of its students are based overseas, then it will need to set up its presence in England as a separate institution in order to meet the definition that is set out at Clause 77 of the Bill.

But if it was the case that such an overseas university had more students based in England than overseas, it would be able to meet the definition set out at Clause 77 without establishing a separate institution in England. The OfS would of course have to apply a risk based approach to regulating such institutions, as required under clause 7, and could impose stricter initial or ongoing registration conditions where it considered that such an institution presented a greater degree of regulatory risk.

This is an improvement on the current legislative arrangements, whereby ‘alternative providers’ that are not based in England may have their courses ‘designated’ so that students can access student grants and loans, but there are no powers to impose additional conditions. Finally, corporation tax is a matter for HMRC to consider on a case by case basis.

**HESA’s statistical database**

Lord Willis raised an issue in relation to the Government amendments regarding the designated data body, and specifically the availability of HESA’s statistical data.

As I know you will be aware, a large amount of data and analysis is published on the HESA website. This includes freely available open data as well as a range of publications. This is consistent with the Government’s open data strategy, publishing data in an open and accessible format as a routine part of business, wherever it is reasonable and practical to do so. In addition, HESA has systems in place to ensure that data can be made available on an appropriate and cost-only basis to the sector, academics and those with a legitimate but specific interest in the data. Peers are also able to use normal parliamentary procedures to ask questions that require analysis of HESA data as a means of accessing the data they require.

We would expect the OfS to work in conjunction with any future designated data body to make continuous improvements in this area, although making the full HESA database generally available is unlikely to be consistent with data protection law.
Clarification of affirmative or negative regulations

Lord Stevenson asked whether the regulations specifying the information which must be contained in an institution's entry in the register would be subject to affirmative or negative resolution. I can confirm that the regulations that will be made under clause 3 (6) of the Bill will be subject to the negative resolution procedure, i.e. subject to annulment in pursuance of a resolution of either House of Parliament. The provisions on regulations under the Bill are detailed in clause 113.

Student Electoral Registration: Cabinet Office Briefing note

During the debate on amendment 75, Baroness Garden referred to a Cabinet Office briefing note she had received on the actions the Government is taking to improve registration. This had been passed initially to Peers who had added their names to the amendment but, as I confirmed in the House, I am circulating a copy to all Peers and a copy will be placed in the Library of the House. The note is attached at Annex C.

Definition of direct public funding

Lord Liddle raised a question around the definition of higher education providers that receive direct public funding, and if by this we mean a provider where a student can receive student support. I hope I can provide clarification on the matter.

The "direct public funding" that I highlighted on Monday refers to grant funding from the Government (through HEFCE and, in future and subject to Parliament, the OfS and UK Research and Innovation (UKRI)), including the research funding for English providers currently provided by HEFCE, which will in future be allocated by UK Research and Innovation.

As set out in our White Paper, those providers in the ‘approved (fee cap)’ category of the register will be eligible to receive this direct grant funding from both OfS and UKRI. In addition to the requirements for ‘approved’ status, ‘approved (fee cap)’ providers will need to comply with more stringent financial sustainability, management and governance (FSGM) requirements, comparable to those currently required of HEFCE-funded providers in line with the HE Code of Governance. If they receive Government direct grant funding, they will also have to be able to demonstrate their compliance with the relevant terms and conditions of that funding, so that OfS can give assurance to Parliament of appropriate use of public funds.

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 for 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,

Viscount Younger of Leckie
Standards

The important work of the QAA and HEFCE on standards is currently done as part of HEFCE’s role in assessing quality under section 70 of the Further and Higher Education Act 1992. Examples of this include the explicit reference in the Quality Code to ‘maintaining of academic standards’ and the work currently being carried out by HEFCE to strengthen the external examining system.

That provision of the 1992 Act does not expressly refer to ‘standards’, and the understanding of what is meant by ‘quality’ and ‘standards’ has evolved since then. The debate in Committee underlined that quality and standards are often now considered to be separate things. In the past some in the sector have therefore queried the ability of HEFCE to look at standards. The bill therefore explicitly references standards as well as quality, to ensure that the OfS can maintain the current approach.

The point was made in Committee that we need to retain what is good in the current quality system, and with this I fully agree. For example, it is important that the OfS and/or the Designated Quality Body can ensure that a provider cannot teach what is no more than an A-Level or GCSE standard course and pass it off as a degree.

Various points were made at Committee on who sets standards and what the definition of standards should be. Amendments 135 and 136 proposed a similar change. The Bill is not intended to give the OfS powers to define standards. I repeated the points made in Committee in the other place by the Minister for Universities, Science, Research and Innovation, Jo Johnson:

“this is not about undermining the prerogative of providers in determining standards. This is about ensuring that all providers in the system are meeting the threshold standards set out in the ‘Frameworks for Higher Education Qualifications’ [FHEQ], a document endorsed and agreed by the sector.

I believe that the standards that are regulated against should be, first and foremost, the standards that are agreed by the sector, rather than seeking to define standards too narrowly within legislation, without the ability to review and update them over time. I agree with points made in the debate that sector ownership of standards is integral to a co-regulatory approach. The FHEQ is contained within the UK quality code, currently steered by the UK Standing Committee on Quality Assessment, chaired by Professor Andrew Wathey, Vice Chancellor of Northumbria University, and an explicit aim of the code is to “safeguard the academic standards of UK higher education”. The sector and regulators work together on steering and maintaining the code, and I emphasise again that we have no wish to change this approach.

Amendment 63 proposed to limit the guidance that the Secretary of State can give to the OfS, to prevent it from relating to the standards applied to a particular course of study. We have no intention of giving such guidance, and indeed it would be extremely difficult for the Secretary of State to do so without falling foul of the restrictions in clause 2(4) of the Bill. These restrictions provide that the Secretary of State’s guidance to the OfS cannot relate to particular parts of courses of study, the
content of courses, and/or the manner in which they are taught, supervised or assessed.

Amendments 129 and 130 proposed to amend clause 13 of the Bill to create a separate registration condition on standards, and amendments 214 and 215 similarly proposed to split out references to conditions on quality and standards in clause 27. Whilst our drafting of clause 13(1)(a) allows for the separation of the two for the purposes of the registration conditions, I do not believe it is necessary to decouple them further. Our approach reflects that taken by the sector and regulators currently, which is to consider both quality and standards within the quality code and during quality assessments in order to protect the value of a qualification and reputation of the sector.

Amendments 131, 167, 169 and 170 proposed to limit the assessment of standards and resulting conditions to the systems and processes the provider has in place to ensure appropriate standards are applied. I fully agree that checking that appropriate systems and processes are in place would be a key feature of assessment, but to focus solely on this would not be sufficient. To return to the case cited above, of a provider which is attempting to pass off an A-Level or GCSE standard course as a degree - it would be possible for that provider to have excellent systems and processes - and yet the course should still not be considered a degree. Narrowing the legislative approach in accordance with these amendments would limit the important work of the type that QAA and HEFCE currently undertake, and that we would want the OfS or designated quality body to undertake in the future.

Amendments 206 and 210 proposed to amend references to standards within schedule 4. The effect of these amendments would be such that, when the Secretary of State is considering whether a quality body should be designated, or the designation should be removed, instead of considering whether that is appropriate for securing the effective assessment of the standards applied to Higher Education provided, he would consider whether it is appropriate for securing the effective assessment of the standards ... for the purposes of registration. The assessment functions are the functions of the OfS under clause 23. These functions are partly concerned with ensuring that providers satisfy initial and ongoing conditions of registration but not wholly concerned with this. The OfS has the power, under clause 23(1), to assess, or make arrangements for the assessment of, the quality of and standards applied to higher education provided by unregistered higher education providers. The OfS or designated quality body could also undertake other important functions which are not strictly limited to registration, such as baseline checks for the granting of Degree Awarding Powers. Consequently, we would not be able to support these amendments.

I turn now to the Teaching Excellence Framework (TEF) which we touched on in Committee. Amendments 180 and 184 proposed to remove consideration of standards from clause 25, so that they cannot be considered as part of the TEF. There is no intention for baseline assessments of quality and standards to be repeated as part of the TEF, and there is also no intention to "rate" standards as part of the TEF. However, part of excellence in teaching is ensuring that students are stretched to achieve their full potential. One of the TEF criteria is, therefore, the extent to which course design, development, standards and assessment are
effective in stretching students to develop independence, knowledge, understanding and skills that reflect their full potential, and we have consulted with the sector in getting to this position. For this reason, the inclusion of standards is crucial to ensuring that the TEF can make a true holistic assessment of teaching excellence.

There were two amendments which I believe are already achieved by the Bill as it stands. Amendment 168 proposed that the OfS must have regard to the advice of the Quality Assessment Committee when assessing standards. The Quality Assessment Committee under 24(2)(a) has the function of giving the OfS advice on the exercise of its assessment functions under section 23. As a public body, the OfS will be subject to the general principles of public law, and will be required to act reasonably, which would include having regard to the advice that the Quality Assessment Committee provides. And amendment 210 proposed to amend schedule 4 to clarify that the definition of standards that applies is that within clause 13. That is already the case under schedule 4 part 3 paragraph 12.

Finally, I would like to turn to points made later in the Committee session by Lord Mackay and Lord Stevenson around the duties of the designated quality and data bodies. I will take this opportunity to set out the respective parts of the Bill so that it is clear under which sections the roles of the quality and data designated bodies are set out.

**Designated Quality Body**
Clause 23 sets out the OfS' duties and powers in relation to the assessment of quality and standards. Clause 24 requires the OfS to establish a Quality Assessment Committee to advise the OfS on the exercise of its assessment functions under clause 23. Clause 25 allows the OfS to make arrangements for the TEF scheme. Clauses 26 and 27, together with Schedule 4, enable the Secretary of State to designate a body to perform the OfS' assessment functions, set out the remit of the designated quality body, its powers to charge fees, and the process and conditions for its designation.

Under clause 26, where designated, a quality body will undertake "the assessment functions". These are the functions of the OfS under clause 23, i.e. the power to assess the quality of, and standards applied to, higher education provided by English higher education providers, and the duty to assess the quality of, and standards applied to, higher education provided by institutions who have applied to be on the register, or are already on the register for the purposes of determining whether they satisfy any initial or ongoing registration conditions relating to quality or standards, as applicable. If they are not undertaken by the quality body, these functions are undertaken by the OfS alongside its other duties.

We have already set out, in the Technical Note on Market Entry and Quality (published in September 2016 and attached as an annex to my letter of 16 January), the fact that we intend the designated quality body, not the OfS, to be carrying out detailed assessments of both quality and standards, and the Bill, as presently drafted, ensures that if such a body is designated, the assessment of both quality and standards must be devolved **together** to that body.
ANNEX A

Designated Data Body
Clauses 59-61, schedule 6 and the new clause proposed through Government amendment 365 ‘Duty to compile and make available higher education information’ set out the powers and duties of the OfS and the designated data body to publish, compile and make available information, as well as the powers of the designated data body to charge fees for these functions, and the process and conditions for its designation.
Summary of the Teaching Excellence Framework (TEF) Assessment Process
There have been a number of questions asking how the TEF assessment process will work. The following note summarizes the key aspects of the process for assessing Teaching Excellence at an institutional level.

This framework was produced after extensive engagement with the sector (including 2 consultations) and has developed iteratively to respond to concerns raised by both students and Higher Education providers to ensure that it offers a robust assessment without constraining institutional autonomy or innovation. This framework is already operational, with the first assessment results due in May 2017.

We expect TEF will also assess subject level performance in future years, and will be carrying out a subject level TEF pilot in Autumn 2017. This pilot will be purely developmental, with no financial or reputational implications attached to the results.

What is the TEF?
The Teaching Excellence Framework (TEF) aims to assess, recognise and reward high quality teaching in higher education. The purpose is to:

- Give students clear information about where teaching quality is best and where students have achieved the best outcomes;
- Encourage a stronger focus on the quality of teaching in higher education.

How will the TEF work?
Each provider that wishes to apply will be assessed against ten criteria that sit across three broad aspects of teaching excellence: Teaching Quality, Learning Environment and Student Outcomes and Learning Gain.

The TEF Panel, a peer review panel made up of academics, students, widening participation experts and employer representatives, will assess the provider against these criteria using two principal sources of evidence:

- A set of core metrics provided by HEFCE to show: how many students do not continue with their studies after starting; how satisfied students are with key aspects of their teaching and learning; and graduates’ employment after they leave. The metrics are benchmarked to take account of different student characteristics and the mix of subjects studied at each provider.

- A provider submission, to put forward additional evidence of teaching excellence. An optional submission which the provider can prepare can be up to 15 pages.

The metrics and submission will be accompanied by standard data about the context of the provider (including maps reflecting the employment of that region) and the make-up of its students, so that the assessment can take account of the diversity of higher education providers.
ANNEX B

This diagram summarizes how the process works:

<table>
<thead>
<tr>
<th>APPLICATIONS</th>
<th>ASSESSMENT</th>
<th>OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>The provider applies</td>
<td>Assessors review the application</td>
<td>TEF Panel makes final judgement</td>
</tr>
<tr>
<td>Providers receive their metrics from HEFCE. They then prepare and make their submission, and are encouraged to involve students in this.</td>
<td>The evidence (metrics, submission, and contextual data) will be assessed by a pool of experts in teaching and learning. All applications will be reviewed by both academic and student assessors. The assessors will review performance against the criteria firstly by reviewing the metrics and then the submission. They will then make an overall recommendation about the rating that should be awarded.</td>
<td>The TEF Panel will consider recommendations and make the final judgements about the ratings, ensuring that a consistent approach has been taken to assessing all applications. The TEF Panel is made up of academics, students, widening participation experts and employer representatives.</td>
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Assessment Criteria

The criteria have been designed to allow recognition of diverse forms of excellence and to avoid constraining innovation. The criteria have been designed to allow recognition of diverse forms of excellence and to avoid constraining innovation. TEF Assessors will use evidence from the core and split metrics, supplemented by additional evidence, to assess performance against the criteria to determine a provider’s TEF rating.

Table 1: TEF Assessment Criteria

<table>
<thead>
<tr>
<th>Aspect of Quality</th>
<th>Reference</th>
<th>Criterion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Areas of teaching and learning quality</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Teaching Quality</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Student Engagement (TQ1)</td>
<td>Teaching provides effective stimulation, challenge and contact time that encourages students to engage and actively commit to their studies</td>
<td></td>
</tr>
<tr>
<td>Valuing Teaching (TQ2)</td>
<td>Institutional culture facilitates, recognises and rewards excellent teaching</td>
<td></td>
</tr>
<tr>
<td>Rigour and Stretch (TQ3)</td>
<td>Course design, development, standards and assessment are effective in stretching students to develop independence, knowledge, understanding and skills that reflect their full potential</td>
<td></td>
</tr>
<tr>
<td>Feedback (TQ4)</td>
<td>Assessment and feedback are used effectively in supporting students’ development, progression and attainment</td>
<td></td>
</tr>
</tbody>
</table>
## ANNEX B

<table>
<thead>
<tr>
<th>Learning Environment</th>
<th>Resources (LE1)</th>
<th>Physical and digital resources are used effectively to aid students’ learning and the development of independent study and research skills</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scholarship, Research and Professional Practice (LE2)</td>
<td>The learning environment is enriched by student exposure to and involvement in provision at the forefront of scholarship, research and/or professional practice</td>
</tr>
<tr>
<td></td>
<td>Personalised Learning (LE3)</td>
<td>Students’ academic experiences are tailored to the individual, maximising rates of retention, attainment and progression</td>
</tr>
<tr>
<td>Student Outcomes and Learning Gain</td>
<td>Employment and Further Study (SO1)</td>
<td>Students achieve their educational and professional goals, in particular progression to further study or highly skilled employment</td>
</tr>
<tr>
<td></td>
<td>Employability and Transferrable Skills (SO2)</td>
<td>Students acquire knowledge, skills and attributes that are valued by employers and that enhance their personal and/or professional lives</td>
</tr>
<tr>
<td></td>
<td>Positive Outcomes for All (SO3)</td>
<td>Positive outcomes are achieved by its students from all backgrounds, in particular those from disadvantaged backgrounds or those who are at greater risk of not achieving positive outcomes.</td>
</tr>
</tbody>
</table>

### TEF Metrics

The TEF will draw on currently available, nationally collected data, to provide assessors with a common set of metrics that relate to each of the aspects of teaching excellence. These metrics will be considered by assessors alongside the evidence contained in a provider submission to inform their judgements.

### Table 2: TEF metrics aligned with aspects of quality

<table>
<thead>
<tr>
<th>Aspect</th>
<th>Metric</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teaching Quality</td>
<td>Teaching on my course</td>
<td>National Student Survey (NSS) Q1-4</td>
</tr>
<tr>
<td>Teaching Quality</td>
<td>Assessment and feedback</td>
<td>NSS Q5-9</td>
</tr>
</tbody>
</table>
We recognise some of the concerns raised by peers around using the NSS and want to clarify that:

- The assessment framework stresses to assessors that they should not overweight the NSS and should give particular weight to the core and split metrics on retention and highly skilled employment since students should expect to be supported to complete their studies and attain a job appropriate to their qualification and skills.

- The assessment framework mitigates the risk that courses could be “dumbed down”, to encourage providers trying to game the NSS. To ensure that does not happen we have included rigour and stretch as one of the criteria for the TEF and explicitly warned assessors that this may be inversely correlated with a provider’s NSS score.

The provider submission will be carefully considered for every provider and will always be taken into account in determining the final rating. In addition, the assessment sets out certain circumstances in which the submission is likely to be particularly important, including when a provider:

- has a mixture of positive and negative significance flags
- has no or few significance flags
- has fewer than three years of core metrics
- is very small, meaning that significance flags are less likely
- a provider’s own data dominates its benchmark
- displays a core metric and split metric with a contrary flag
- The minority mode of provision covers a significant proportion of the provider’s students, but the core metrics are not reportable.
- has a concentration of positive or negative flags in one or more aspects that are not replicated in other aspects.

Outcomes
TEF outcomes will include the overall rating (Gold, Silver or Bronze) and a brief statement of findings setting out the high level reason for the rating. There is no quota or limit as to the number of providers which can achieve each rating.
ANNEX B

TEF outcomes from Year Two assessments will be published by HEFCE. They will also be available on the UCAS website and on Unistats (or equivalent) in time to inform the decisions of students applying for courses starting in 2018/19.

**Further detail on the TEF:**
Further detail on the TEF – including copies of the full TEF specification, TEF consultation and other documents relating to the TEF can be found on gov.uk: [https://www.gov.uk/government/collections/teaching-excellence-framework](https://www.gov.uk/government/collections/teaching-excellence-framework)

Further guidance for providers and assessors can be found on the HEFCE website: [http://www.hefce.ac.uk/pubs/year/2016/201632/](http://www.hefce.ac.uk/pubs/year/2016/201632/)
ANNEX C

BRIEFING NOTE

Higher Education and Research Bill - Amendment 75 (Clause 5)
Student Electoral Registration

1. This note provides background on the government’s policy on student electoral enrolment as background for discussion of Amendment 75.

**Government policy on student registration**

The Government is committed to improving voter registration including students.

**A Democracy That Works for Everyone**

- As part of the *Democracy That Works For Everyone* campaign:
  - The Government will continue to drive improvements to our electoral registration system to ensure it is fit for the 21st century, while putting in place measures to make the system more secure.

**Every Voice Matters**

- As part of the Government's *Every Voice Matters* campaign:
  - The Government will reach out to all communities, including those who feel socially excluded, to encourage and empower them to have their say – ensuring no community is left behind.
  - As part of this, the Minister for the Constitution is holding a series of roundtables, including with the Higher and Further education sector, to assess what barriers there may be to electoral registration and what government could do to address these.

**Government plans for student registration**

The Government is taking action to encourage student registration including:

- A student roundtable hosted by the Minister for the Constitution organised by the Cabinet Office will be held later this month.
- Evaluate the outcomes of the project delivered by the University of Sheffield using the system proposed in the amendment.
- Ensure it is fit for purpose before writing out to all Higher and Further Education institutions, encouraging them to voluntarily take up this or a different model that better suits their specific needs and circumstances – should they choose to.

Furthermore the Government is also:
ANNEX C

- Continuing to work with partners including the Electoral Commission and the student sector to promote student registration.

- Looking at modernising and streamlining the annual registration canvass. Impacts on students from the current process will be picked up as part of the Modernising Electoral Registration programme.

- Considering other options to increase student registration including as part of the Government’s Democratic Engagement Strategy.

Background

- Previously, under the old system of household registration, universities could “block” enrol students. With the advent of Individual Electoral Registration (IER), this arrangement ceased to exist, deliberately shifting the focus to each individual to register. The benefit of this system is that it is more resilient to fraud and has reduced the risk of a student being registered at two locations.

- The Electoral Commission reported in July 2016 that the December 2015 parliamentary register – the first drawn up fully under IER – was no less complete (at 85 per cent) but more accurate (at 91 per cent, up from 86 per cent) than before.

- There have been concerns that student electoral registration has fallen, although the extent to which students are under-represented on the electoral register is unclear, as they may be registering and voting at their home address. Indeed, research by Youth Insight, a research agency, suggests that 60% actively choose to vote at home.

- A project at the University of Sheffield, supported and part-funded by the Cabinet Office, integrated student enrolment and student electoral registration. This is one method of improving student electoral registration but not the only one.

- Many institutions such as Sheffield Hallam, Cardiff University, University of Birmingham, Coventry University, University of Bath, Bath Spa University, Lancaster University, Manchester Metropolitan University, Newcastle University and Robert Gordon in Scotland have or are in the process of introducing this system in 2017.