



BRIEFING PAPER

Number 7608, 30 June 2016

Higher Education and Research Bill 2016 [Bill No 004 of 2016-17]

By Sue Hubble
David Foster, Paul Bolton



Contents:

1. Background
2. The consultation process
3. The Higher Education and Research Bill 2016
4. Part 1: The Office for Students
5. Quality and standards
6. Access and participation
7. Power to give financial support
8. Power to grant degrees
9. Validation arrangements
10. University Title
11. Power of entry and search
12. Information powers
13. Other functions of the OfS
14. Part 2: Financial support for students – Alternative Payments
15. Other measures
16. Part 3: Research
17. Part 4: General
18. Government analysis of the Bill's impact
19. Reaction to the Bill
- Annex 1: Alternative providers
- Annex 2: Teaching quality in higher education and the TEF
- Annex 3: Widening participation and social mobility
- Annex 4: Research funding system

Contents

Summary	5
1. Background	7
1.1 Higher education in England	7
2. The consultation process	9
2.1 The Higher Education Green Paper 2015	9
2.2 Responses to the Green Paper	9
2.3 The Higher Education White Paper 2016	10
3. The Higher Education and Research Bill 2016	11
4. Part 1: The Office for Students	12
4.1 Background: the HE regulatory framework	12
The Higher Education Funding Council for England	12
4.2 The White Paper proposals	13
4.3 The Bill (clauses 1-22)	14
4.4 Comment	17
Opening up the sector	17
4.5 Issues	18
Increased public cost of student support	18
Cost of establishing the OfS	19
Market exit	19
Reputational risk to UK of new providers	20
5. Quality and standards	21
5.1 Background: quality assessment procedures	21
5.2 The Bill (clauses 23-27)	21
5.3 Comment	22
6. Access and participation	24
6.1 Background: the Office for Fair Access	24
6.2 The Bill (clauses 28-36)	24
6.3 Comment	25
7. Power to give financial support	26
7.1 Background	26
7.2 The Bill (clauses 37-39)	26
7.3 Comment	26
8. Power to grant degrees	27
8.1 Background	27
8.2 White Paper proposals	28
8.3 The Bill (clauses 40 – 45)	28
8.4 Comment	29
9. Validation arrangements	30
9.1 Background	30
9.2 White Paper proposals	30
9.3 The Bill (clauses 46-50)	30
9.4 Comment	31
10. University Title	32
10.1 Background	32
10.2 White Paper proposals	32

10.3	The Bill (clauses 51-55)	32
10.4	Comment	33
11.	Power of entry and search	34
11.1	The Bill (clause 56)	34
11.2	Comment	34
12.	Information powers	35
12.1	Background	35
12.2	The Bill (clauses 57-61)	36
12.3	Comment	37
13.	Other functions of the OfS	38
13.1	Funding of the OfS (clauses 63-66)	38
13.2	Regulatory Framework (clauses 67-68)	39
13.3	Directions from the Secretary of State (clause 69)	39
13.4	Powers of the Secretary of State to obtain information (clauses 70-71)	39
14.	Part 2: Financial support for students – Alternative Payments	40
14.1	Background	40
14.2	The White Paper proposals	40
14.3	The Bill (clauses 78-80)	40
14.4	Comment	41
15.	Other measures	42
15.1	Power to determine the maximum amount of fees (clause 80)	42
15.2	Student complaint regime (clause 81)	42
15.3	Deregulation of higher education corporations (clause 82)	42
16.	Part 3: Research	43
16.3	The Bill (clauses 83-102)	47
17.	Part 4: General	57
17.1	Cooperation and information sharing (clause 103)	57
17.2	Transfer schemes (clause 104)	57
17.3	Power to make consequential provision (clauses 105-107)	57
18.	Government analysis of the Bill's impact	58
Financial		58
TEF costs		59
Costs associated with entry to the sector		60
Equalities		60
19.	Reaction to the Bill	63
19.1	Gordon Marsden MP	63
19.2	Million Plus, 20 May 2016	65
19.3	GuildHE, 25 May 2016	65
19.4	NUS, 19 May 2016	67
19.5	Selected reaction to the White Paper	67
Office for Fair Access (OFFA)		67
Universities UK		68
Russell Group		68
Higher Education Policy Institute (HEPI)		69
Regent's University London		70
Annex 1: Alternative providers		71
Background		71
Regulation of private providers		71
Financial support for students at private providers		71

Annex 2: Teaching quality in higher education and the TEF	73
The Green Paper proposals – the Teaching Excellence Framework (TEF)	73
Business, Innovation and Skills (BIS) Committee Report on the TEF	74
The White Paper proposals	75
Adjusted arrangements for the TEF	75
TEF and financial incentives	76
Cost of the TEF	77
Comment	77
Sector concerns	78
Cost to students	78
Annex 3: Widening participation and social mobility	79
Student Opportunity Fund	80
Annex 4: Research funding system	82
The Dual Support System	82
Funding outside of the dual support system	84
Total research and development expenditure	86

Contributing Authors Sue Hubble, higher education policy.
 Paul Bolton, statistics.
 David Foster, research funding.

Cover page image copyright: Lecture credit Contrapositive by: Engineering at Cambridge. Licensed under CC BY 2.0 / image cropped.

Summary

This paper has been written for the House of Commons Second Reading debate on the [Higher Education and Research Bill 2016](#). The Bill was presented in the House of Commons on 19 May 2016. It seeks to bring forward a range of measures to increase competition and choice in the higher education sector, raise standards and strengthen capabilities in UK research and innovation. The Bill implements the legislative proposals in the Department for Business, Innovation and Skills (BIS) White Paper, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#) and in Sir Paul Nurse's report, [Ensuring a successful UK research endeavour: A Review of the UK Research Councils by Paul Nurse](#), November 2015.

The Bill is in four parts:

- **Part 1** establishes a new body, the **Office for Students (OfS)**; the OfS will act as the regulator and funding body (teaching) for the sector. The Higher Education Funding Council for England will be abolished and its existing regulatory functions will transfer to the OfS. The Office for Fair Access (OFFA) will be merged into the new body. This part also creates a new **single entry system for higher education providers**; this will operate through a new register of higher education providers and by changing criteria on the granting of degree awarding powers and university title (UT).
- **Part 2** contains measures to create new **alternative payments**; these payments will be non-interest bearing student finance. This part also contains provisions on the **deregulation of higher education corporations**.
- **Part 3** makes changes to **research infrastructure** which will enact some of the recommendations in the Nurse Review of the UK research councils. The provisions will create a new body, **UK Research and Innovation (UKRI)**; the seven research councils and Innovate UK will be integrated into UKRI along with a new body, **Research England**.
- **Part 4** contains related general provisions.

This briefing paper provides background on the main provisions of the Bill, contains comment and raises issues. The Paper follows the outline of the Bill but is not intended to be an exhaustive clause-by-clause analysis; the [Explanatory Notes](#) to the Bill, published alongside it, provide explanation of individual clauses. The Bill and accompanying documents are available on the Parliament website at [Higher Education and Research Bill 2016-17](#).

BIS has published the following accompanying documents:

- [Summary Impact Assessment](#), Higher Education and Research Bill, May 2016
- [Detailed Impact Assessments](#), Higher Education and Research Bill, June 2016
- [Equality Analysis](#), Higher Education and Research Bill, May 2016
- [Case for the creation of the Office for Students](#), A new public body in place of the Higher Education Funding Council for England (HEFCE) and the Office for Fair Access (OFFA) June 2016
- [Case for the creation of UK Research and Innovation \(UKRI\)](#), A new public body in place of the seven Research Councils, Innovate UK, and the research and knowledge exchange functions of the Higher Education Funding Council for England, June 2016

6 Higher Education and Research Bill 2016

The provisions in the Bill extend mainly to England and Wales, some apply to England only and Part 3 on research is predominantly UK wide. A detailed table showing the territorial extent of clauses in the Bill is set out in Annex A of the Explanatory Notes on page 57.

Library briefing paper, CBP 7399, [Higher Education Green Paper 2015 Fulfilling Our Potential](#) 10 November 2015, discusses the Green Paper proposals and CBP 7600, [Higher Education White Paper Success as a Knowledge Economy](#), 18 May 2016, discusses the White Paper proposals.

1. Background

1.1 Higher education in England

Higher education in England is a major business and revenue generator. In 2014-15 there were 131 publicly funded higher education institutions (HEIs) in England with 1.8 million students, 170,000 academic staff, 400,000 staff of all types and total income of almost £28 billion. The sector is highly varied. Average income per HEI was £211 million in 2014-15, but 20 generated less than £25 million and four more than £1 billion. Cambridge had the highest income at £1.6 billion. The average size in terms of students was 14,000, which includes undergraduates, postgraduates, full and part-time students. The Open University taught more than 100,000 students. Manchester was the next largest provider at almost 39,000 while 15 had fewer than 1,000 students.¹

Higher education is also delivered by a wide range of alternative providers. These providers receive no direct public funds and they are subject to a different regulatory framework. Research for the Department for Business, Innovation and Skills (BIS) in May 2016 identified 732 different alternative providers in England with 250-300,000 students.² Nearly half of the alternative providers had 100 or fewer students and most were specialist institutions. The majority of alternative providers were based in London and the South East, while around one fifth delivered higher education outside of the UK. Only a minority offered first degrees, focussing instead on postgraduate courses. Those that did offer undergraduate courses were much more likely than publicly funded HEIs to provide Higher National Diplomas/Certificates (HNDs/HNCs). Further information on alternative providers is given in Annex 2 of this briefing.

The higher education sector has expanded significantly and changed in character since the 1990s when much of the existing higher education legislation was put in place. Recent reforms have created a more competitive market and the government now intends to update the regulatory framework and higher education architecture with the aim of levelling the playing field between providers, increasing choice and raising standards.

1.2 Reform of the higher education sector since 2010

Since 2010 the higher education sector has undergone a period of change. In 2010 the Browne Review of higher education recommended removing the cap on higher education tuition fees and in December 2010 legislation was passed to raise the maximum tuition fee level to £9,000 per year for students starting courses in September 2012. This

¹ HESA, *HE finance plus 2014-15*; HESA, *Students in higher education institutions 2014-15*; HESA, *Staff in higher education institutions 2014-15*.

² [Understanding the Market of Alternative Higher Education Providers and their Students in 2014](#), May 2016.

change was accompanied by the removal of the block grant funding for most of the teaching in HEIs.

Following the fee changes a White Paper was published in August 2011 – [Students at the Heart of the System](#), which set out proposals to: improve the student experience, increase social mobility and improve regulation of the sector. A Technical Consultation document [A new, fit-for-purpose regulatory framework for the higher education sector](#) was published alongside the White Paper which set out detailed proposals around increasing competition in the higher education market by opening up the sector to alternative higher education providers.

In the event the White Paper did not lead to a Bill, but many of the proposals in the Paper were introduced using administrative processes, or changes in regulations. The ad hoc nature of the changes to the higher education system and the lack of a coherent regulatory framework was criticised by some higher education organisations and led to calls for a higher education bill.³

Another significant change in the sector has been the removal of student number controls in 2015. Institutions are now free to recruit as many full-time undergraduate students as they can attract. This development will allow successful universities to expand and may introduce further competition into the sector.

Recently, the focus of attention in higher education has fallen on the issue of teaching quality and the value for money. In the [Summer Budget 2015](#), it was announced that institutions offering 'high teaching quality' would be allowed to increase their tuition fees in line with inflation from 2017-18.⁴

These issues and ongoing concerns about marketisation, social mobility and widening access to higher education have shaped recent debate across the sector.

³ Higher Education Policy Institute, [Unfinished Business? Higher education legislation](#), February 2014; Jo Johnson speech, 1 July 2015; Universities UK, [Quality, equity, sustainability: the future of higher education regulation](#), February 2015; and Higher Education Commission, [Regulating Higher Education](#), October 2013.

⁴ HM Treasury, [Summer Budget 2015](#), HC 264, July 2015, p59.

2. The consultation process

2.1 The Higher Education Green Paper 2015

The Higher Education Green Paper, [Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), published on 6 November 2015, covered similar ground to the earlier White Paper and Technical Consultation document in 2011 and brought together many of the 'unfinished' issues in the higher education regulatory system. It made proposals to:

- introduce the **Teaching Excellence Framework** (TEF) which will assess the quality of teaching in HEIs and link this assessment to the ability to charge higher fees;
- introduce a **single route into higher education sector** to 'level the playing field' between public HEIs and private providers. It also proposed changes to the arrangements around **degree awarding powers, university title** (UT) and specific course designation for student support purposes;
- strengthen activities around **widening participation and access** to higher education;
- simplify higher education administration by abolishing the Higher Education Funding Council for England and replacing it with a new arms-length body, the **Office for Students**; this body will incorporate the Office for Fair Access; and
- consult on changes to **research infrastructure**.

Library briefing paper CBP 7399, [Higher Education Green Paper Fulfilling Our Potential](#), 10 November 2015, discusses the details of the Green Paper and contains comment.

2.2 Responses to the Green Paper

The Green Paper consultation closed on 15 January 2016 and received 618 responses from a wide range of stakeholders. A document, [Summary of Consultation Responses](#) was published on 16 May 2016; the document said that 'on the whole there was broad support for the overall policy objectives set out in the Green Paper'.⁵ The report contained an overarching summary of responses:

The focus on teaching excellence, widening participation and putting students at the heart of the system were widely endorsed and there was near universal support for Government's continued commitment to the Haldane principle. There were mixed views on the increased focus on a market led approach and the increasing role of for-profit providers. However, increased student information and choice was welcomed.

In several areas, particularly TEF and research, further detail was called for, and ongoing consultation with stakeholders through the transition to new arrangements was considered important. The interdependence between research and teaching was

⁵ BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016, p5.

highlighted and clarity was requested on how the strategic oversight of these will operate under the new structure.

There was a strong recurring message on the need to retain high standards and ensure the reforms protect the value of the UK degree and the world class reputation and quality of UK higher education and research.

Respondents recognised the policy divergence across the Devolved Administrations in the UK, but the importance of a coherent sector for students, employers and institutions themselves was emphasised. Ongoing discussion between the Devolved Administrations to consider UK wide implications of the proposed reforms was widely advocated.⁶

2.3 The Higher Education White Paper 2016

The government's response to the Green Paper consultation was published on 16 May 2016 as the higher education White Paper, [*Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice*](#).⁷

The White Paper echoed the proposals in the Green Paper and focused on three main areas: creating a competitive market, choice for students and updating the regulatory architecture. The Paper's main proposals were to:

- move to a **risk-based regulatory framework**;
- create a **single entry route into the higher education sector**;
- introduce **the TEF** to raise the quality and status of teaching in higher education institutions
- create a new body the **Office for Students** (OfS); and
- create a new overarching research body, **UK Research and Innovation** (UKRI).

The White Paper proposals are discussed in a Library briefing CBP 7600, [*Higher Education White Paper Success as a Knowledge Economy*](#), 19 May 2016. The paper contains responses to the White Paper and comment.

⁶ *Ibid*, p5.

⁷ BIS, [*Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice*](#), Cm9258, May 2016.

3. The Higher Education and Research Bill 2016

The *Higher Education and Research Bill 2016* was presented in the House of Commons on 19 May 2016. The Bill implements the legislative proposals in the White Paper and seeks to bring forward a range of measures with the aim of increasing competition and choice in the higher education sector, raising standards and strengthening capabilities in UK research and innovation.

The Bill is in **four parts**:

- **Part 1** (clauses 1-77) establishes a new body, the **OfS**; the OfS will act as the regulator and funding body (teaching) for the sector; the Higher Education Funding Council for England will be abolished and the Office For Fair Access will be merged into the new body. This part also creates a new **single entry system for higher education providers**, this will operate through a new register of higher education providers and by changing criteria on the granting of degree awarding powers and UT.
- **Part 2** (clauses 78-82) contains measures to create new **alternative payments**; these payments will be non-interest bearing student finance. This part also contains provisions on the **deregulation of higher education corporations**,
- **Part 3** (clauses 83-102) makes changes to **research infrastructure** which will enact some of the recommendations in the Nurse Review of the UK research councils. The provisions will create a new body, **UK Research and Innovation (UKRI)**; the seven research councils and Innovate UK will be integrated into UKRI along with a new body, **Research England**.
- **Part 4** (clauses 103-113) contains related general provisions

The Bill has 12 schedules which set out details on some of the provisions.

BIS has published an [Impact Assessment](#) of the Bill and an [Equality Analysis](#).

4. Part 1: The Office for Students

Clauses 1-22 of the Bill **establish the OfS, set out the general duties** of the body and give details of the duty to **establish and maintain a register** of higher education providers. The operation of the register will create a **single entry route** into the higher education sector for all providers.

4.1 Background: the HE regulatory framework

The higher education regulatory system has evolved into a complicated framework of organisations and processes. Currently, there are several bodies involved in the regulation and administration of higher education in England: the Higher Education Funding Council for England (HEFCE), the Office for Fair Access (OFFA), the Office of the Independent Adjudicator (OIA), and the Quality Assurance Agency for Higher Education (QAA). Each of these bodies oversee a different aspect of the higher education system, although there is a degree of overlap in roles in some areas. Together these bodies control the financial regularity of HEIs, the standard of courses, access to higher education, value for money and redress of student complaints.⁸

The higher education sector contains a variety of providers and the current regulatory processes are different depending on the type of provider. The main types of provider are publicly funded HEIs and private alternative providers. Some alternative providers may have courses which have been specifically designated for student support purposes, so students studying on these courses may receive publicly funded student support.

A page on the HEFCE website, [Operating the regulatory framework for higher education](#), contains a table which shows the current regulatory scheme for all providers across a range of activities.

Arguably the most important areas of regulation are the awarding of HEFCE funding, designation for student support purposes, the granting of powers to award degrees and the right to use university or university college title. These areas have significant financial and reputational impact.

The creation of the OfS aims to simplify the current system by creating a **single regulator** and having a **single entry route** into the higher education sector for all providers.

The Higher Education Funding Council for England

HEFCE and the other regional funding bodies were established by the [Further and Higher Education Act 1992](#) - the functions of HEFCE are set out in sections 62-70 of the Act. HEFCE was established primarily as a funding body, but it also has a significant role in quality assessment.

⁸ Library briefing paper SN/SP/6631, [Regulation of the higher education sector in England](#), 4 September 2013, gives details of the system.

The 2012 higher education funding reforms changed the balance of higher education funding by reducing the amount of direct public funding paid to HEIs and increasing the amount of funding coming from students via loans administered by the Student Loans Company (SLC). HEFCE's recurrent funding for teaching was £4.6 billion in 2011-12. In 2016-17 it will be just over £1.5 billion; a real-terms reductions of 66%. Over the same period estimated fee income from English students and EU students at English HEIs increased from £2.6 billion to £8.6 billion.⁹ This redistribution of funding has reduced the amount of financial control that HEFCE has over providers.

The shift in funding resulted in BIS announcing proposals for HEFCE to change its role and become the lead regulator for the sector.¹⁰ Since then, several reports have called for a new regulatory framework for higher education.¹¹

In 2010 the influential Browne Review proposed merging HEFCE, OFFA, QAA, and the OIA into the Higher Education Council. Following this, in 2013 the Higher Education Commission suggested the creation of a new body, the Council for Higher Education, to incorporate HEFCE, OFFA, SLC, and a new body to oversee competition and diversity.¹²

Box 1: Register of higher education providers

HEFCE currently operates a [register](#) of higher education providers. This register is a directory of higher education providers that are regulated in England and which have one or more of the following features: receive direct public grants for higher education, have courses which have been specifically designated by the government as eligible for the purposes of English student support funding, are HEIs, or have the right to award one or more types of UK degree.

Inclusion on the register is voluntary – this register is therefore a source of information rather than a regulatory process.

4.2 The White Paper proposals

The White Paper states that new providers offering high quality higher education continue to face significant and disproportionate challenges to establishing themselves in the sector. The Paper states that new providers are beneficial to the sector to drive up teaching standards, increase capacity and improve social mobility.¹³

The Paper proposes creating a “level playing field” for new entrants to the sector by launching a **single entry route** and introducing a **risk-based approach to regulation**.¹⁴

The new system would involve:

⁹ BIS, [Funding for higher education in England for 2016-17: HEFCE grant letter from BIS](#).

¹⁰ BIS, [A new fit-for-purpose regulatory framework for the higher education sector: technical consultation](#), August 2011.

¹¹ Higher Education Commission, [Regulating Higher Education](#) October 2013; Higher Education Policy Institute, [Unfinished Business? Higher Education Legislation](#), February 2014.

¹² Higher Education Commission, [Regulating Higher Education](#), 2013, p42.

¹³ *Ibid*, p9.

¹⁴ *Ibid*, p9.

- replacing the multiple separate higher education regulatory systems with a **single route into the sector** for all providers operated by a new market regulator, the **OfS**;
- moving to **risk-based regulation** which reduces regulatory burdens across the sector except for those providers where additional monitoring is needed;
- allowing all new high quality institutions to compete on equal terms by allowing them **quicker entry and ability to award their own degrees** on a monitored, probationary basis; and
- encouraging providers to follow best practice in validation, and allowing the **OfS to designate a validation service** if incumbents do not do more to promote competition through their own validation arrangements.¹⁵

The White Paper proposes that providers would be able to choose how they participate in the sector depending on the type of support that they want to access. Providers would be categorised into different types (See Box 2 page 15).

4.3 The Bill (clauses 1-22)

Clause 1 contains provisions which will **create a new non-departmental public body, the OfS**. The body will be a corporate body and operate at arm's length from government in line with the existing regulatory regime. When the body is established HEFCE and the office of the Director of Access will cease to exist and OFFA will be merged into the new body.¹⁶

Details of the structure of the OfS including: the make-up of the OfS board, the appointment and removal of members, duty to pay salaries, requirements to maintain accounts and records and produce an annual report, are set out in Schedule 1 of the Bill. The Chair, Chief Executive Officer, Director for Fair Access and Participation and at least seven other members will be appointed by the Secretary of State.¹⁷

Clause 2 sets out the **general duties of the OfS**. Many of the duties set out in this clause are the same as those currently carried out by HEFCE and OFFA, such as the promotion of quality and equality of opportunity with regard to access – however the promotion of access is extended by the Bill to include participation. There are also **new duties to promote opportunities for students and to encourage competition and value for money** in the sector. In performing these duties the OfS must have regard to guidance from the Secretary of State. In issuing guidance the Secretary of State must have regard to protecting academic freedom, in particular the freedom to choose the content, supervision, teaching and assessment of courses and arrangements for the admission of students.¹⁸

¹⁵ *Ibid*, p21.

¹⁶ Clauses 73 and 74.

¹⁷ Schedule 1, para 2.

¹⁸ Subsections 3-5.

Clauses 3 to 22 place the OfS under a duty to **establish and maintain a register of all English higher education providers**. This register will become the **single entry gateway** into the higher education sector. The register may be divided into different parts for different categories of registration and providers will be able to choose their category of registration. Registration will be voluntary, but providers choosing not to register will not be able to access the benefits of registration such as access to student support funding, or grant funding.¹⁹ The register will therefore include all providers with students receiving student support and providers with a Tier 4 licence for international students.²⁰ Other providers delivering accredited higher education may join the register on a voluntary basis if they meet the registration criteria set out in clause 3 (3).

Box 2: Categories of registration - Registered, Approved, Approved (fee cap)

The Higher Education White Paper stated that under the new system all higher education providers will be classed as either **Registered** (basic status), **Approved**, or **Approved (fee cap)**.

Registered providers will cover providers who want to be officially recognised, but do not want access to government funding, or student support. These providers will have to match the standards set out in the Framework for Higher Education Qualifications and they must subscribe to the student complaints body, the OIA.

Approved providers may access government funding, and student support. There will be two types of approved status – both types will require providers to do well in the TEF and they should also demonstrate:

- successful quality assurance (QA), through the QAA until 2017-18 and through the new QA framework from 2018-19;
- sound financial sustainability, management and governance (FSMG) checks;
- meet the Competition and Markets Authority's requirements regarding students' rights as consumers;
- and adhere to the OIAs good practice framework.

Approved status will allow providers to charge fees of up to £6,000 per year.

Approved (fee cap) status will allow providers to charge fees of up to £9,000 per year and receive grant funding from the government and research funding if they have an agreed Access and Participation Agreement in place and meet more stringent FSMG checks.

Under **clause 4** the OfS may determine a **registration procedure** and a **procedure for refusing** an application to register. Providers refused registration must be given reasons for the refusal and are allowed at least 28 days to make representations against the refusal.

Clause 5 states that the OfS must set, **manage and publish the conditions** that different types of providers must meet to become and stay registered. The OfS should consult with stakeholders before revising these conditions. The OfS has the ability to impose, vary and remove tailor-made ongoing registration conditions on a particular institution.²¹

¹⁹ *Explanatory Notes*, p13, para 62.

²⁰ *Ibid*, p7, para 11.

²¹ *Ibid*, p14, para 71.

Clause 7 states that registration conditions must be **proportionate to an assessment of the regulatory risk** posed by an HEI.

Clause 8 states that HEIs must notify the OfS of any changes in their information on the register and HEIs must supply the OfS with any information that the body requires to perform its duties.

Clause 9 contains a **transparency duty**. Providers must supply and publish information that the OfS requests. Information may be requested on application, acceptance and progression rates of students broken down by gender, ethnicity and socio-economic background. The Secretary of State will set out in regulations the prescribed providers to which this transparency duty will apply.

Clauses 10 and 11 set out **mandatory fee limit conditions**. These clauses require the OfS to ensure that the ongoing registration conditions of each prescribed HEI include a fee limit condition. This condition requires the governing body of an HEI to ensure that 'regulated course fees' do not exceed the fee limit as set out in schedule 2 of the Bill. Regulated course fees are the fees paid by students taking 'qualified courses', the meaning of 'qualifying courses' will be set out in regulations.²² Schedule 2 sets out how fee limits will be determined.

Box 3: Schedule 2 : fee limits for home/EU undergraduates

Schedule 2 allows the OfS to set fee limit conditions on registered providers. It also allows for the charging of differential fees under the TEF.

Registered providers with an access and participation plan in place will be able to charge tuition fees up to a "**higher amount**" – this amount will be prescribed in regulations. Providers without an access and participation plan in place will only be able to charge a "**basic amount**". This is the same as under the current system where the higher amount in fees is £9,000 per year and the basic amount is £6,000 per year.

When the TEF is introduced providers with a **high level quality rating** will be allowed to raise their fees by inflation. The cap on fees will therefore rise annually in line with inflation. The Bill also provides for the Secretary of State to set "**sub-level**" fees.

Over time this system could lead to a noticeable differences in tuition fees across providers.

Clause 12 states providers may request an access and participation plan as a condition of registration where a provider is subject to a fee limit condition and wishes to access the higher fee limit.

Clauses 13 and 14 set out other registration conditions such as conditions relating to: quality and standards, a **student protection plan**, the payment of initial and ongoing registration fees, the payment of fees to the OfS and other designated bodies and a public governance condition.

Clauses 15-22 relate to the enforcement of ongoing registration conditions and permit the OfS to impose monetary penalties, suspend registration and de-register providers. Clause 15 states that monetary penalties can be imposed for the breach of an on ongoing registration condition – the amount of monetary penalties will be set out in

²² *Explanatory Notes*, p15, para 90.

regulations. Schedule 3 sets out the process that must be followed by the OfS in the event of a penalty being imposed.

Clauses 16-22 set out the procedures for suspension and deregistration which will include: notifying the HEI and giving reasons for the action, allowing up to 28 days for representations to be made and setting out an appeal process. Clause 17 (8) allows for the immediate suspension of an HEI if there is an urgent need to protect public money. Clause 22 allows for voluntary de-registration.

4.4 Comment

The OfS will have new duties to promote greater choice and opportunities for students in the provision of higher education and to encourage competition across the sector. These duties could allow the OfS to have a greater role in improving outcomes for students.

BIS document [Case for the Creation of the Office for Students](#),²³ gives information on the rationale for the new body, the reason for the chosen governance arrangements and data on funding.

Opening up the sector

The responses to the Green Paper showed that there was broad support for a single route of entry to the higher education sector and recognition that an evidence based system of regulation was preferable to one based on historic approaches.²⁴

The Impact Assessment on the Bill states that overall these measures will make it easier for new providers to enter the system:

measures in the Bill will significantly reduce barriers to entry for new high-quality providers, while creating a level playing field across all institutions and making it easier for high quality providers to thrive and grow.²⁵

The Impact Assessment also states that these measures should increase choice and diversity in the sector, improve value for money and lead to better outcomes for students.²⁶

The new single gateway into the higher education sector could open up the sector to a number of new higher education providers. The Impact Assessment states that BIS expects the number of higher education providers recognised in one of the three registered categories to increase to 580 in 2018-19 and 806 in 2027-28:

A large proportion of providers will become Registered - Basic – which will mean improved oversight of the sector and student protection. It is expected that 62 providers will enter that category in 2018-19; with total number in this category rising to 121 in 2027-28.

²³ BIS, [Case for Creation of the Office for Students. A new public body in place of the Higher Education Funding Council for England \(HEFCE\) and the Office for Fair Access \(OFFA\)](#), June 2016

²⁴ BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016, p29.

²⁵ BIS, [Impact Assessment: Higher Education and Research Bill](#), May 2016, p3.

²⁶ *Ibid*, Table 1, p4.

With the costs, bureaucracy and timescales associated with entering the HE system all reduced, we can expect to see significant entry of alternative providers to the Approved and Approved (Fee Cap) categories with 145 in 2018/19 and 311 in 2027-28. The increase will include both brand new entrants to HE; those who have previously been put off from seeking regulatory approval and designation, and who have hence been outside the system; those seeking student support for postgraduate courses; and those fulfilling the requirements of their Tier 4 trusted sponsor status.

Currently 138 alternative providers have courses designated for student support purposes.²⁷

4.5 Issues

It is intended that the new, simpler, entry system into the higher education sector should increase the number of higher education providers and students – thereby increasing capacity and choice. This could potentially have a number of effects on the system including increased costs and potential reputational risk.

Increased public cost of student support

The Impact Assessment states that opening up the sector could lead to increased costs in the form of increased student loan outlay as more students enter the market to study at new providers and as existing alternative providers become eligible for student support funding.²⁸

In 2013 a quarter of courses which were newly designated for student support purposes at private providers were HNC and HND courses. The cost of support for students on these courses rose rapidly and in November 2013, David Willetts, the then Minister for Universities and Science announced an immediate curb on student numbers at 23 private providers offering HNDs and HNCs.²⁹ The Minister said that the suspension was necessary to allow the government to ‘manage this growth within our budgets’.³⁰ Also at that time, a further problem arose concerning maintenance support for EU students at private providers. Allegations were made that some providers had fraudulently claimed payments. In response to these issues, the Public Accounts Committee and the National Audit Office held inquiries into the alleged misuse of public funding by some for-profit colleges.³¹

Jo Johnson, the Minister for Universities, acknowledged in an article in the *Times Higher Education* that there had been “problems” with alternative providers in the last Parliament – when large amounts of

²⁷ BIS, [Impact Assessment: Higher Education and Research Bill](#), May 2016, Table A1, p23.

²⁸ *Ibid.*

²⁹ [HC Deb 19 November 2013 c43](#).

³⁰ *Ibid.*

³¹ Public Accounts Committee, [Financial support for students at alternative higher education providers](#), 24 February 2015, HC 811; National Audit Office, [Investigation into financial support for students at alternative higher education providers](#), 2 December 2014, HC 861.

public funding was drawn down in student loans – but he argued that “robust steps” had now been taken.³²

The University and Colleges Union (UCU) have consistently argued against allowing high numbers of alternative providers to enter the higher education sector. They have stated that the expansion in student support outlay for alternative providers is ‘now directly eating into the budget for mainstream not for profit universities and colleges’.³³ A paper by the UCU set out the amount of funding going to alternative providers in 2014-15:

In a Parliamentary answer to Liam Byrne, David Willetts indicated that BIS was projecting that outlay on loans alone would rise to £400 million in 2014-15 and £600 million in 2015-16. With grants rising too, the total figure in student support going to private providers is likely to be in excess of £750 million.³⁴

Cost of establishing the OfS

The Impact Assessment also states that there will be costs associated with transition and running costs of the new OfS³⁵ – however some of this might be offset by reductions in duplication of functions.

The Bill will enable the OfS to charge registered HEIs an annual registration fee towards covering its running costs. This will reduce the cost to the public purse but will increase costs for providers as HEFCE was entirely funded by the government.

A BIS document states that transferring the majority of the costs of the regulator from the government to the sector, could create a potential annual saving of £16-33m.³⁶ The Regulatory Impact Assessment estimates the expected operating costs of the OfS to be around £30.9m in 2018/19.³⁷ It is expected that operating costs will increase over time as the number of providers in the regulated sector rises.

Market exit

A higher education sector with a larger number of providers and increased competition could also lead to potential financial difficulties for some providers and may lead to market exit in some cases. The Detailed Impact Assessment states that based on HESA data ‘9% of HEIs and 43% of alternative providers may undergo a significant change in their financial situation over a three year period’.³⁸ The Equality Analysis states that it is expected that institutions which do not provide the highest levels of teaching quality will be amongst those institutions most likely to exit the sector.³⁹

³² “Absolute Beginners: Degree Powers From Day One”, *Times Higher Education*, 19-25 May 2016.

³³ UCU, [The private providers' 'designation' bonanza](#), last updated January 2016.

³⁴ UCU, [The private providers' 'designation' bonanza](#), February 2014

³⁵ BIS, [Impact Assessment: Higher Education and Research Bill](#), May 2016, Table 1, p7.

³⁶ BIS, [Case for Creation of the Office for Students, A new public body in place of the Higher Education Funding Council for England \(HEFCE\) and the Office for Fair Access \(OFFA\)](#), June 2016

³⁷ *Ibid* p21

³⁸ BIS [Detailed Impact Assessments Higher Education and Research Bill](#) June 2016 p143 para 67

³⁹ BIS, [Equality Analysis: Higher Education and Research Bill](#), May 2016, p17.

Under the current system not all providers have plans in place to protect students in the event of a course closure, or a provider exiting the market. The Equality Analysis states that a BIS survey of alternative providers showed that only 47% had a **student protection plan** in place.⁴⁰ The new registration process will make all providers put in place arrangements for students in the event of a market exit; these plans should specify how students will be able to continue their studies if their course or HEI closes. The Detailed Impact Assessments states that the OfS will issue guidance on the broad content of student protection plans, which will follow the current guidance.⁴¹

Making student protection plans a requirement of entry to the higher education sector has been welcomed by commentators.

Reputational risk to UK of new providers

The University and College Union (UCU) has long warned that the expansion of the higher education sector could allow some providers into the sector that could damage the reputation of UK higher education. Their concerns are partly based on examples from the US which has experienced fast growth of for-profit companies owned by private equity firms.⁴²

Concerns have been voiced about quality assurance processes at alternative providers, however BIS research paper no 111 *Privately funded providers of higher education in the UK* June 2013, states that most private providers are currently quality assured by some form of external organisation.⁴³

The Public Accounts Committee report on private providers was highly critical of standards at some private providers and said that 'the Department has failed to protect the interests of legitimate students, the taxpayer and the reputation of those alternative providers who may be performing well.'⁴⁴ The report made the following recommendation:

The Department needs to ensure that it has a much firmer grip on the quality of teaching and the standard the students can expect in private sector higher education colleges. It needs to identify poor performers and take appropriate action to protect students and the sector as a whole.⁴⁵

The Bill aims to address these concerns by making providers on the register meet conditions relating to quality and standards as part of the requirement of initial and ongoing registration.⁴⁶

⁴⁰ *Ibid*, p18.

⁴¹ [Higher Education Courses Changes and Closures: Statement of Good Practice](#)

⁴² UCU, [The private providers' 'designation' bonanza](#), February 2014.

⁴³ BIS research paper no 111, [Privately funded providers of higher education in the UK](#), June 2013, p115.

⁴⁴ Public Accounts Committee, [Financial support for students at alternative higher education providers](#), 24 February 2015, HC 811, p5, para 4.

⁴⁵ *Ibid*.

⁴⁶ Clause 13.

5. Quality and standards

Clauses 23-27 of the Bill give the OfS power to assess or make arrangements for the **assessment of the quality and standards** of English HEIs. These provisions carry across the effect of existing legislative provisions in the *Further and Higher Education Act 1992*, section 70 (1) (a), but extend the remit of the OfS to include standards. These provisions allow OfS to **administer the TEF** and to **designate a body** to perform assessment functions.

5.1 Background: quality assessment procedures

The primary responsibility for academic standards and quality assurance in UK higher education rests with individual universities and colleges themselves. Each higher education institution HEI is responsible for ensuring that appropriate standards are being achieved and a good quality education is being offered.

HEFCE is also legally responsible for the quality of education in the institutions that it funds; HEFCE discharges this duty through the work of an independent body - QAA.

QAA has developed a standards framework called the UK Quality Code for Higher Education - this code is used as a reference point for scrutinising HEIs through a process called Higher Education Review. The aim of Higher Education Review is to inform students and the public whether a provider meets the expectations of the higher education sector for: the setting and/or maintenance of academic standards, the provision of learning opportunities, the provision of information and the enhancement of the quality of students' learning opportunities. Higher Education Review is carried out by peer reviewers - staff and students from other providers - and culminates in the publication of a report containing judgements and other findings. Review [reports](#) are published on the QAA website

Quality assurance in higher education has undergone a period of review and in March 2016 HEFCE published a [revised operating model for quality assessment](#). This framework sets out the operating model for quality assessment as it will be implemented in England and Northern Ireland from 2017-18, and the transition arrangements during 2016-17 to support this implementation.

5.2 The Bill (clauses 23-27)

Clause 23 allows the OfS to **assess or make arrangements for the assessment of the quality and standards** applied by English HEIs. Subsection 2 places a duty on the OfS to assess the quality and standards of HEIs which have applied to be registered to ensure that they meet initial registration conditions and to assess the quality and standards of registered providers to ensure that they meet ongoing conditions of registration.

Clause 24 places the OfS under a **duty to establish the Quality Assessment Committee (QAC)**. The committee will give advice to the OfS on the exercise of its functions - the role of this committee is similar to the committee established by HEFCE known as the Quality Accountability and Regulation Strategic Advisory Committee. When a new designated body is created under schedule 4 to carry out quality assessment on behalf of the OfS (as permitted under clause 23) the QAC will advise the OfS on how this body is exercising its functions.

The clause makes provisions for the membership of the committee. Members must have experience of higher education and the majority of members must not be members of the OfS. Schedule 1 paragraph 8 contains more details about committee membership and allows the committee to establish sub-committees.

Clause 25 allows the OfS to make arrangements to **operate a scheme to rate HEIs on the quality and standard of their provision**. This will allow the OfS to operate and develop the TEF. Subsections 4 to 7 of clause 26 will allow the OfS to require the provision of information by HEIs to support the running of the scheme. Annex 2 of this briefing gives information on the TEF.

Clause 26 will allow the OfS to **designate a body to perform assessment functions**. The body may run the general assessment function in clause 23 or the scheme in clause 25 (the TEF) or both. Details of the designation of a body are set out in schedule 4. Before a body is designated the OfS must consult stakeholders.⁴⁷ Paragraph 4 of schedule 4 sets out the criteria that a body must meet in order to be designated which includes: commanding the confidence of providers and acting independently of providers. The OfS will have oversight of the body⁴⁸ and must inform the Secretary of State of any concerns.⁴⁹ The OfS may also require the body to provide it with information which it holds, if this is necessary for the performance of its functions. The body must prepare an annual report for the OfS and the OfS⁵⁰ must send the Secretary of State a triennial report on the performance of the body.⁵¹

Clause 27 allows the designated body to **charge HEIs fees** for the activities that it undertakes. Fees must not be set at more than it costs the body to carry out these functions. Fees may be charged to providers whether or not they relate to the provider being charged.⁵² The designated body must publish a statement of the fees it charges.

5.3 Comment

The Bill affirms the current principle of co-regulation with the OfS and the new designated body being responsible for quality assessment.

⁴⁷ Schedule 4, para 2.

⁴⁸ *Ibid*, para 7.

⁴⁹ *Ibid*, para 10.

⁵⁰ *Ibid*, para 8.

⁵¹ *Ibid*, para 9.

⁵² *Explanatory Notes*, p20, para 150.

The Bill will give the OfS a wider remit in the area of quality assessment than HEFCE as HEFCE's remit only covers quality and not standards.

HEFCE has been conducting a tendering process for its quality assurance work and it announced on 13 May that the QAA was the preferred bidder for four out of six tenders. The other selected bodies were the Higher Education Academy and the Leadership Foundation for Higher Education.⁵³ An article in the *Times Higher Education* stated that the government's plans could mean that England's quality system runs under HEFCE's process as currently tendered for two years, before talks begin on what will happen when the OfS takes over in 2018.⁵⁴

The responses to the Green Paper around the issue of quality and standards stressed the need to protect the world class reputation and quality of UK higher education, and the importance of retaining high standards and not reducing checks on provider quality.⁵⁵

⁵³ "Quality assessment: document backs QAA and appears to criticise HEFCE", *Times Higher Education*, 19-25 May 2016.

⁵⁴ *Ibid.*

⁵⁵ BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016, p29.

6. Access and participation

Clauses 28-36 of the Bill will merge OFFA into the OfS; these clauses will allow the OfS to take over the role of OFFA in **approving access and participation plans**. These clauses replicate the powers of OFFA with regard to access.

6.1 Background: the Office for Fair Access

The [Higher Education Act 2004](#), which brought in the system of variable deferred tuition fees, also established the role of the Director for Fair Access and OFFA amid fears that trebling fees would deter students from entering higher education. OFFA is an independent non-departmental body with a remit to oversee widening participation in higher education by promoting and safeguarding fair access for students from lower income backgrounds and other under-represented groups. One of the ways OFFA carries out this role is by overseeing university [access agreements](#) – these documents set out the widening participation strategies of HEIs. All HEIs wishing to charge the higher rate of tuition fees must have an access agreement in place which has been approved by OFFA.

6.2 The Bill (clauses 28-36)

Clause 28 gives the OfS **power to approve access and participation plans** and issue guidance on matters to be taken into account when deciding to approve a plan. Furthermore the Secretary of State may issue regulations about the approval procedure.

Clause 29 sets out the **duration of a plan**, the maximum period of a plan will be set out by the Secretary of State in regulations.

Clause 30 states that plans must include **information on fees** and the **fee limits**. HEIs with a high quality rating must not charge fees above the higher amount and HEIs without a high quality rating must charge the sub-level amount.

Clause 31 states that the Secretary of State will make regulations on the **content of access and participation plans** and will require them to include provisions relating to the promotion of equality. General provisions will require HEIs to include the following in their access and participation plans: measures to attract applicants from under-represented groups, provision of financial assistance to students, and information on financial assistance available to students from any source. Regulations may not require access plans to refer to the manner in which courses are taught, supervised or assessed.

Clause 32 states that regulations made by the Secretary of State can allow for plans approved by the OfS to be varied, provided that the variation is approved by the OfS.

Clause 33 ensures that plans can be reviewed before they become final. The clause allows the Secretary of State to appoint a review panel.

Clause 34 allows the OfS to **give advice** to providers on good practice and **clause 35** requires the OfS to have regard to the **duty to protect academic freedom** in the performance of its functions relating to access plans.

Clause 36 states that the Secretary of State may direct the OfS to publish an annual report and a special report on matters relating to equality of opportunity. The special report must be laid before Parliament.

6.3 Comment

These provisions extend current access agreements to include participation. Providers will now be required to state not only their arrangements on access to higher education, but also their schemes to help students progress when in higher education. It is hoped that requiring all providers on the register of higher education providers to have access and participation plans in place should widen participation in the sector and improve outcomes for students.

7. Power to give financial support

Clauses 37-39 of the Bill replicate HEFCE's power to provide financial support to HEIs under s65 of the *Further and Higher Education Act 1992*.

7.1 Background

HEFCE provides some HEIs with funding to carry out their functions. Funding is provided for various purposes including; teaching, research, and widening participation.

In academic year 2016-17 HEFCE plans to distribute a total of £3.7 billion to HEIs in England. This consists of £3.1 billion in recurrent grants (£1.6 billion for research, £1.4 billion for teaching and £0.2 billion for knowledge exchange) plus £0.1 billion for national facilities and initiatives and almost £0.5 billion in capital funding. Around half the teaching element of recurrent funding is for high-costs subjects. The other half covers 'targeted allocations' across a range of different areas including widening participation and more general support for students from disadvantaged backgrounds and those with disabilities.⁵⁶

7.2 The Bill (clauses 37-39)

Clause 37 states that the OfS may make payments to eligible providers to cover the cost of expenditure incurred in the provision of education and the provision of facilities and other activities which are necessary, or desirable for the provision of education. The clause states that the meaning of 'eligible provider' will be set out in regulations by the Secretary of State. **Clause 38** also sets out the types of institutions which are eligible to receive OfS funding.

Clause 39 allows the OfS to apply terms and conditions to payments. This will allow the OfS to: set terms and conditions when allocating funding, require the re-payment of sums if any conditions attached to funding are not met, and require the payment of interest on funds owed to the OfS. Before determining the terms and conditions to be imposed on a grant, loan, or payment the OfS must consult persons it considers appropriate.

7.3 Comment

The funding role of the OfS will simply replicate HEFCE's role in funding, however an article in the *Times Higher Education* states that there could be some concerns from stakeholders about the funding body for the sector also being the sector regulator.⁵⁷

⁵⁶ HEFCE, [Guide to funding 2016-17](#), May 2016.

⁵⁷ "[Higher education bill seeks powerful Office for Students](#)", *Times Higher Education*, 19 May 2016.

8. Power to grant degrees

Clauses 40-45 of the Bill set out the powers of the OfS with regard to the **granting of degrees**. The provisions aim to simplify and speed up the process of granting degree awarding powers (DAPs) to new providers.

8.1 Background

HEIs may apply for the power to award foundation degrees, taught degrees or research degrees. Organisations granted taught degree awarding powers are able to award all types of taught degrees (Foundation, Ordinary, Bachelors and taught Masters) but not doctoral degrees. Only organisations granted research degree awarding powers can award Doctorates.

The legal basis for the power to award degrees is set out in section 76 of the *Further and Higher Education Act 1992*. This empowers the Privy Council to specify providers of higher education as competent to grant awards.

Box 4: Criteria for granting degree awarding powers

In September 2015 HEFCE took over the responsibility for administering DAPs and UT and issued new guidance and criteria.⁵⁸ Under the new criteria providers applying for DAPs must have:

- four years consecutive experience of delivering higher education courses at level 6 on the Framework for Higher Education Qualifications; and
- the majority of students must be enrolled on level 6 courses.

Providers must also demonstrate that they meet good standards of governance, management and quality assurance and show that they have an appropriate regulatory framework.

Further detailed criteria are set out in the BIS guidance in Annex A on page 15.

The application process for DAPs involves providers applying to HEFCE who will then refer the case to the QAA. Scrutiny by QAA determines whether a HEI is fit to exercise the powers being sought. In formulating its advice, QAA considers the application against the individual criteria set out in guidance and takes a view on the way in which the organisation meets the criteria as a whole. A HEI must clearly demonstrate that there can be public confidence, both present and future, in its systems for assuring the academic standards and quality of its degrees. QAA then makes a recommendation to BIS via HEFCE. The award is finally made by the Privy Council.

Currently taught DAPs are granted to publicly funded HEIs on an indefinite basis, alternative providers and further education providers are awarded DAPs on a six-yearly renewable basis.

⁵⁸ BIS, [University Title and University College Title. Guidance for Higher Education Providers: Criteria and Process for applying for University Title and University College Title](#), September 2015; and BIS [Taught and degree awarding powers and research degree powers. Guidance for Higher Education Providers: Criteria and Process for applying for taught degree and research degree awarding powers](#), September 2015.

It has been said the present system for granting DAPs is rather ‘all or nothing’, either a provider is granted DAPs or not.⁵⁹ This lack of flexibility and the different arrangement for different types of providers have led to calls for an improved system.

8.2 White Paper proposals

The White Paper proposed that the new OfS would take over responsibility for granting DAPs and UT for English institutions from the Privy Council. While OfS would be responsible for the granting of DAPs and UT, the criteria and guidance would continue to be owned by BIS, and the government would consult on how the new DAPs and UT process would work before it came into force.

The White Paper proposed speeding up the process for granting DAPs and UT, this can currently take up to nine years.⁶⁰ The Paper states that under the new system a provider would be able to achieve DAPs in three years, and full UT in six years - this is explained on page 29:

In future, any high quality predominantly degree-level provider with approved status and meeting the FSMG requirements will be able to obtain foundation or taught DAPs on a probationary three year time limited basis without first having to first demonstrate a lengthy track record or meet specific and separate DAPs criteria. The experience acquired in this probationary period will count as track record for full DAPs and a provider who can demonstrate they have met the criteria by the end of that period will be able to progress immediately to full DAPs (the 3 year period will incorporate the scrutiny process).

It would also be possible to award DAPs on a **probationary basis** (for three years in the first instance) and the **track record requirement** for DAPs will be shortened (from four years to three) and will be interpreted more widely than at present.⁶¹

8.3 The Bill (clauses 40 – 45)

Clause 40 gives the OfS power to **authorise the granting of DAPs** to registered providers – or a qualifying further education provider in the case of foundation degrees. The clause states the HEIs may only be granted DAPs if they have a **progression statement**, this aims to ensure that students taking foundation degrees can continue to further advanced study. DAPs may be of a specified nature (e.g. single subject degree awarding powers), or they may be time-limited and they may restrict the provider's ability to grant awards to students who are not enrolled at the providers when they complete their courses of study.

Clause 41 allows providers to authorise other institutions to award degrees on their behalf. It also allows providers to award joint degrees and honorary degrees.

⁵⁹ BIS, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#), Cm9258, May 2016 p10

⁶⁰ BIS, [Fulfilling Our Potential: Teaching Excellence, Social Mobility and Student Choice](#), Cm9141, November 2015.

⁶¹ *Ibid*, Box 1.2, p29.

Clauses 42 and 43 set out the powers of the OfS to **vary or revoke** the authorisation to award degrees. This is a new power and will apply to indefinite awards and renewable awards. This power may be used where a provider ceases to be a registered provider. The government will issue guidance and criteria on this provision.⁶²

Clause 44 sets out the **procedure for variation or revocation** of DAPs. The OfS must notify a holder of its intention to vary or revoke; specify its reasons; set out a specified process for representations; have regard to such representations; and notify the provider of its decision. If the decision is to vary, or revoke, a further order must be issued giving a date for coming into effect; the notice must contain information on rights of appeal.

Clause 45 sets out an **appeal process**. Appeals may be made to the First –Tier Tribunal against a decision but only on the grounds that the decision was based on an error of fact, was wrong in law, or that it was unreasonable.

Allowing new higher education providers to award their own degrees from the day they open will add a “**positive competitive dynamic**” to English higher education.

Jo Johnson the Universities Minister (*Times Higher Education* 19 -25 May 2016)

8.4 Comment

There are currently nine alternative providers with DAPs;⁶³ the Impact Assessment states that the number is expected to rise as a result of changes in the Bill:

we expect far more degree-level providers, currently reliant on incumbent providers to validate their degrees, will choose to award their own degrees. The number of APs with DAPs is expected to increase from 9 in 2014-15 to 51 in 2018-19; and to 118 by 2027-28, particularly as existing institutions gain their own DAPs and no longer rely on validation arrangements.⁶⁴

There were a wide range of responses to this issue in the Green Paper. Most stated that entry criteria must remain high and were unsupportive of the proposals for shortening timescales and lowering criteria.⁶⁵ There was, however, less consensus among respondents on the appropriate length for track record. Most respondents also had reservations about the issue of probationary DAPs. In particular, they raised concerns around the reputation of the higher education sector and the currency of degrees awarded in the event of institutional failure.

Spokespersons from the sector have said that allowing new private providers to award degrees as soon as they start up is ‘dangerous for students’.⁶⁶ However, AC Grayling, Master of the New College of the Humanities welcomed the move.

⁶² *Explanatory Notes*, p24, para 184.

⁶³ BIS, [Impact Assessment: Higher Education and Research Bill](#), May 2016, p23.

⁶⁴ *Ibid*, p25.

⁶⁵ BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016, p32.

⁶⁶ “Moves to boost new private providers ‘dangerous for students’, *Times Higher Education*, 19-25 May 2016.

9. Validation arrangements

Clauses 46-50 of the Bill make changes to current arrangements for the **validation of degrees**.

9.1 Background

Validation is the process by which an institution with DAPs grants awards to students at another provider, or authorises another provider to grant awards on its behalf. HEIs without DAPs (usually alternative providers) must have their degrees validated by another body (usually a publicly funded HEI) with DAPs.

Validation has proved to be a barrier to entry to the HE sector for some providers. It is not always easy to find a validation partner and some institutions may be reluctant to enter into validation arrangements; this may be due to the extra work entailed, or the perceived risk to the institution's reputation. A report commissioned by BIS in May 2016 found that 51 per cent of alternative providers were in a validating or franchising arrangement with another provider.⁶⁷

9.2 White Paper proposals

Most alternative providers have their degrees validated by another public HEI, the White Paper proposes making this process easier by giving the OfS the power to act as **validator of last resort**.

9.3 The Bill (clauses 46-50)

Clause 46 allows the **OfS to enter into commissioning arrangements** with authorised registered higher education providers requiring them to offer to validate other registered higher education providers.

Clause 47 gives the Secretary of State power to authorise regulations to allow the **OfS to act as a validator**. This clause will allow the OfS to act as validator for all taught awards and foundation degrees. The regulations may require validation agreements to: conform to prescribed terms and conditions, enable the OfS to authorise registered higher education providers to provide some or all validation arrangements on behalf of the OfS and enables the OfS to deprive a person of an award. The Secretary of State may only exercise this power after having regard to advice from the OfS.⁶⁸

Clause 48 sets out consequential amendments to the *Further and Higher Education Act 1992* as a result of these clauses.

Clauses 49-50 make amendments to sections 214 to 216 and section 232 of the *Education Reform Act 1988*. The amendments do not represent any change of policy but ensure current legislative provisions on **unrecognised degrees** will take account of awards authorised by

⁶⁷ BIS, [Understanding the Market of Alternative Higher Education Providers and their Students in 2014](#), May 2016, p52.

⁶⁸ *Explanatory Notes*, p24, para 192.

the OfS under the new system. Unrecognised degrees are degrees which are awarded by bodies without DAPs and so could be considered as bogus degrees.

9.4 Comment

Responses to the Green Paper showed no consensus on the issue of validation, some felt that the existing system posed a barrier and increased costs for providers, others thought that it should be easier for providers to choose and move between validators.

Most respondents agreed that non-teaching bodies should not have a role in validation.⁶⁹

⁶⁹ BIS, [*Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice*](#), May 2016, p34.

10. University Title

Clauses 51-55 make changes to the processes and criteria for the granting of UT.

10.1 Background

UT is a valuable asset. The criteria and process for obtaining UT and university college title, as set out in BIS guidance,⁷⁰ are therefore 'stringent and rigorous and are designed to protect the interests of students and the wider public by regulating access to UT and university college title and protecting its integrity'.⁷¹

The criteria for UT have changed over time, particularly around the student numbers requirement; the most recent change was in June 2012 when the government lowered the qualifying student number threshold from 4,000 full-time equivalent higher education students to 1,000 students.⁷²

Box 5: Criteria for granting University Title

The current criteria for UT state that providers wanting to apply for UT must have:

- taught DAPs and good governance and:
 - have 1,000 full-time equivalent higher education students and 750 of these must be on degree courses, and:
 - full-time equivalent higher education must exceed 55% of the total full-time equivalent.

The application process is set out in a flowchart in the BIS guidance on page 5.

10.2 White Paper proposals

The White Paper proposed removing the numbers criteria for UT to allow small institutions to be eligible to apply. The new system should create greater flexibility around the processes:

Where the current system is 'all or nothing', in future there will be greater flexibility to suit a wider range of provider operating models. We will retain university college title for those who prefer it. And we will allow providers to obtain foundation or taught DAPs in one or a limited range of subjects that fit with their specialism, rather than having to become accredited for the provision of all degrees – reducing unnecessary bureaucracy and introducing a proportionate approach.⁷³

10.3 The Bill (clauses 51-55)

Clause 51 amends section 77 of the *Further and Higher Education Act 1992* and transfers the responsibility for approving the use of UT in a provider's name from the Privy Council to the OfS. The OfS may only

⁷⁰ BIS, [Taught and degree awarding powers and research degree powers. Guidance for Higher Education Providers: Criteria and Process for applying for taught degree and research degree awarding powers](#), September 2015.

⁷¹ *Ibid*, p6.

⁷² [HC Deb 11 June 2012 1WS](#).

⁷³ BIS, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#), Cm9258, May 2016, p30.

consent to an institution's use of UT if that institution is a registered higher education provider. Existing provisions are retained for Wales.

Clause 52 amends section 39 of the *Teaching and Higher Education Act 1998* for providers in England, and states that a registered provider in England cannot call themselves a university unless the inclusion of that word is authorised by or by virtue of an Act, a Royal Charter or the OfS.

Under this clause the OfS would be able to approve UT for all types of providers including those alternative providers which currently obtain consent via the *Companies Act 2006* route.

Clause 53 allows the OfS to **revoke** any authorisation for the use of UT which has been given by an Act (other than the *Companies Act 2006*) or a Royal Charter to an institution in England – even if the authorisation was given for an indefinite period. In particular the OfS can revoke a title if the provider is not a registered provider or is no longer a registered provider.

Clause 54 sets out the procedure for revocation of UT and **clause 55** sets out an appeal process. The revocation procedure and the appeal process is the same as for the revocation of DAPs (see page 21 clauses 44 and 45).

10.4 Comment

Respondents to the Green Paper expressed a widespread view that universities require a 'critical mass' of students in order to develop and maintain a higher education culture, community and experience commensurate with the university brand.⁷⁴

⁷⁴ BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016, p32.

11. Power of entry and search

Clause 56 makes new provisions about **powers to enter and search premises** in England occupied by registered HEIs. Schedule 5 sets out details of the procedure to be followed. This power is intended to be used in the event of a suspected breach of conditions by providers in receipt of public funding. A court warrant will be required before the power can be exercised.

11.1 The Bill (clause 56)

Clause 56 will allow the Secretary of State to apply to a justice of the peace for a warrant to allow authorised persons to **enter and search** certain registered higher education providers' premises.

Schedule 5 paragraph 3 states that a warrant can only be issued if there are: reasonable grounds for suspecting that there is, or has been a breach of conditions, the breach is sufficiently serious and entry is necessary to determine that a breach has taken place. The schedule also sets out: details of the application process for a search warrant, powers conferred by the warrant, the conduct of a search and powers to inspect, copy, seize and retain items.

11.2 Comment

In 2014 the National Audit Office conducted an inquiry into private higher education providers after concerns were raised relating to support provided to students at some alternative providers.⁷⁵ The report of the inquiry raised the issue of access to private providers to check attendance of students and other matters:

BIS has no rights of access to higher education providers. This affects the extent to which it can investigate when concerns are raised.⁷⁶

The provisions in clause 56 will address some of these concerns.

The Impact Assessment states that this provision will 'deter non-compliant behaviour' and 'reduce reputation risk' to the sector. It should also facilitate the recovery of misused public funds.⁷⁷

⁷⁵ National Audit Office, [Investigation into financial support for students at alternative higher education providers](#), 2 December 2014, HC 861.

⁷⁶ *Ibid*, p13, para 1.15.

⁷⁷ BIS, [Impact Assessment: Higher Education and Research Bill](#), May 2016, p7.

12. Information powers

Clauses 57-61 of the Bill set out provisions around **data collection**, **publication of data** and **information sharing**.

12.1 Background

The [Higher Education Statistics Agency](#) (HESA) collects a range of data every year from higher education providers across the UK. This data is then provided to UK governments and higher education funding bodies to support their work in regulating and funding higher education. Information derived from the data is [published](#) as official statistics. HESA's current data collections include information on: students, courses and qualifications, graduate outcomes⁷⁸ and income and expenditure of HEIs. HESA data is also used to compile the annual performance indicators which provide comparative data on the performance of HEIs in widening participation, student retention, learning and teaching outcomes, research output and employment of graduates.

Since 2014-15 alternative providers applying for specific course designation have been required to subscribe to HESA.

Other bodies such as the [Universities and Colleges Admissions Service](#) (UCAS) and the [SLC](#) also collect data on other aspects of higher education. UCAS collects information on full-time undergraduate applicants and student admissions statistics and the SLC collects information on student support.

Data is also collected via the annual [National Student Survey \(NSS\)](#) in which final year students are asked to provide information on their experience of their course. Over 300,000 final year students completed the survey in 2015.⁷⁹ Students are asked for feedback on various aspects of their courses such as: overall satisfaction with their course, assessment of work, advice and support and performance of teaching staff.

Since September 2012, all UK HEIs have been required to publish a standard set of data on their websites known as the [Key Information Sets](#) (KIS). Every undergraduate course of more than one year's duration – whether full-time, part-time, taught at a university, further education college or private provider – will have a KIS as long as the HEI subscribes to the QAA.

The KIS and other official data is published on the [Unistats](#) website, this national website aims to provide clear, comparable data to allow prospective students to easily compare information on undergraduate courses.

Not all HEIs are subject to the same information requirements. Alternative providers are not included in HESA performance indicators

⁷⁸ [Destination of Leavers from Higher Education \(DLHE\)](#), Unistats.

⁷⁹ HEFCE, National Student Survey.

and most do not take part in the National Student Survey. KIS are available for some alternative providers, although many of the pieces of key information may be unavailable.⁸⁰

A report by *Which?* in November 2014, [A degree of value](#), raised questions about the quality of information and advice which is available to prospective students. Their report recommended that the information requirements should be set out in legislation:

the Government should mandate that all providers are required to provide information in a reformed Key Information Set, with the information that providers must submit set out in legislation.⁸¹

12.2 The Bill (clauses 57-61)

Clause 57 gives the OfS power to **require information from unregistered higher education providers**. Subsection (1) provides the OfS with the power to issue notices to unregistered providers requiring them to provide the OfS with information for the purposes of performing its functions. The clause allows the OfS to state the time and manner in which the information must be supplied. Subsection 3 allows the OfS to take civil proceedings if a provider fails to comply with the request.

Clause 58 allows **information sharing** between the OfS and other bodies to assist with the performance of its functions. The other bodies and functions will be set out in regulations.

Clause 59 sets out requirements around the **publication of information**. The clause states that the OfS, or a designated body, must publish information about higher education courses provided in England by registered higher education providers.

When determining what information should be published the OfS should consider what would be helpful to students, prospective students and providers. The OfS should periodically consult a broad range of stakeholders about the required information – including students, providers and employers. In carrying out this function the OfS should have regard to the desirability of reducing burdens on providers relating to the collection of information.

The information collected must be published at least once a year.

Clause 60 allows the creation of a **new designated body** for the publication of information as set out in clause 59. Schedule 6 of the Bill makes provision for the designation of the body and its oversight by the OfS. Paragraph 4 of schedule 6 sets out the criteria that a body must meet in order to be designated, which includes: commanding the confidence of providers and acting independently of providers. The requirements are the same as the requirements for the establishment of

⁸⁰ University Alliance, [How do we ensure quality in an expanding higher education system?](#), May 2014.

⁸¹ Which?, [A degree of value: Value for money from the student perspective](#), November 2014, p26.

a designated body for quality and standards assessment under clause 26.

The designated body must provide the OfS, UK Research and Innovation (UKRI (see section 16 of this briefing)) and the Secretary of State with any information that they may request, subsection 8 allows these bodies to enforce a request by way of civil proceedings.

Clause 61 allows the designated body to **charge HEIs fees** for the activities that it undertakes. Fees must not be set at more than it costs the body to carry out these functions. Fees may be charged to providers whether or not they relate to the provider being charged. The designated body must publish a statement of the fees it charges. These arrangements are the same as in clause 27 that will apply to the body designated to carry out quality and standards assessments.

12.3 Comment

A report in 2012 by the BIS and the Sutton Trust, identified information barriers as one of the key factors in limiting progress on widening participation within higher education.⁸² A report by HEFCE also suggested that access to relevant information is crucial to help learners who lack social and cultural networks.⁸³

The Equality Analysis to the Bill states that access to reliable information may be a barrier to participation in higher education for some groups:

Evidence suggests that information barriers are particularly faced by those from lower socio-economic groups, women and ethnic minority groups, whilst individuals from disadvantaged backgrounds can lack the family and social networks with the experience and knowledge to help them achieve their aspirations.

[...]

Reforms designed to improve the information available to students when making their decision over whether to go on to higher education, including the Transparency Duty on Universities, will help to ensure they can make better informed choices and create pressure on providers to improve their offer. Reforms to enable the sharing of information by admissions services such as UCAS will lead to the development of more effective policies to support disadvantaged and protected groups. These reforms will drive the Government's goal of improving social mobility, by widening participation in higher education and improving outcomes.⁸⁴

However some respondents to the Green Paper queried whether the evidence was fully supportive of increased information leading to an increase in access to higher education.⁸⁵

⁸² BIS and The Sutton Trust, [Tracking the Decision-making of High Achieving Higher Education Applicants](#), November 2012.

⁸³ HEFCE, [Causes of differences in student outcomes](#), July 2015, p77.

⁸⁴ BIS, [Equality Analysis: Higher Education and Research Bill](#), May 2016, p14.

⁸⁵ *Ibid*, p30.

13. Other functions of the OfS

Clause 62 of the Bill will allow the OfS to carry out **studies to improve the economy, efficiency and effectiveness of registered HEIs**. This clause replicates a power held by HEFCE. The clause also ensures that persons carrying out studies will have access to the information they require.

13.1 Funding of the OfS (clauses 63-66)

The OfS will be funded by government grants in the same way as currently applies to the HEFCE and by the charging of fees.

Clause 63 allows the OfS to **charge providers fees** in accordance with regulations to be made by the Secretary of State. Fees may be charged for initial registration on the register and annual fees for ongoing registration. Regulations may also provide for: different fees for different providers, the charging of portions of fees, dates for payment of fees, recovery of fees and penalties for non-payment or late payment of fees. Fee regulations will require Treasury consent.

Fees set under the regulations may recover costs incurred by the OfS in performing any of its functions and are not limited to the costs of maintaining the register. Fees may include elements of cost that do not relate to the costs incurred by a particular institution paying the fee.⁸⁶

Clause 64 gives the OfS power to charge **other fees** in accordance with regulations to be made by the Secretary of State. These may include charging fees for any activity undertaken, or services provided by the OfS in the performance of its functions. Regulations may make provision about a range of matters, including: who must pay, how much and when, the consequences of not paying, late payment penalties and associated appeals, the charging of interest and the waiving and refunding of fees.

Subsection 3 states that fees charged to an institution for an activity or service under this clause may be calculated on the basis of costs for that same activity or service incurred by other institutions.

Clause 65 sets out the measures that the OfS may take in **recovering costs** related to the imposition of sanctions on providers. Subsection 4 sets out the type of penalties which may be imposed such as: monetary penalties, temporarily suspending the registration of a higher education provider, and removing the provider completely from the register of higher education providers. Further detail of cost recovery including procedures for recovery, the appeal process and interest chargeable is set out in schedule 7.

Clause 66 gives ministers the power to make grants to the OfS. It places limits on the conditions ministers can place on those grants, replicating current arrangements with HEFCE. Subsection 3 requires ministers to protect academic freedom and institutional autonomy when

⁸⁶ *Explanatory Notes*, p30, para, 266.

making conditions of grant and states that providers have freedom over the teaching, supervision and assessment of courses and the admission of students. The Explanatory Notes to the Bill state that this clause would be used primarily to require the OfS to take action against any providers which charge students higher-than-permitted fees.⁸⁷

13.2 Regulatory Framework (clauses 67-68)

Clause 67 states that the OfS must from time to time prepare and publish a **regulatory framework**. The framework will set out a statement of how the OfS intends to perform its functions and guidance for registered higher education providers on the general ongoing conditions for registration. The statement must set out that the OfS intends to operate a risk-based approach to regulation.

The OfS must consult with bodies representing the interests of higher education providers and students before it publishes its regulatory framework.

Clause 68 allows the OfS to carry out other functions relating to higher education as the Secretary of State considers appropriate.

13.3 Directions from the Secretary of State (clause 69)

The government currently issues guidance to HEFCE setting out its policy objectives and priorities. The Secretary of State also has the power to give financial support directions in relation to a specific provider if there appears to be financial mismanagement – this power has never been used. This clause reproduces these arrangements for the OfS.

Clause 69 allows the Secretary of State to **issue regulations giving the OfS general directions** about the performance of its functions. The government may use this power to issue an annual grant letter to OfS, as it does for HEFCE. In giving such directions the Secretary of State must have regard to the need to protect academic freedom. The OfS must comply with any directions given under this clause.

13.4 Powers of the Secretary of State to obtain information (clauses 70-71)

Clauses 70 gives the Secretary of State power to require **information, or advice from the OfS** obtained in the performance of its functions – this power currently exists in relation to HEFCE.

Clause 71 is a new measure and requires the provision of specific information on **application-to-acceptance data**; this data may be used by researchers. **Clause 72** sets out requirements around the use of application-to-acceptance data for research purposes.

⁸⁷ *Explanatory Notes*, p31, para 286.

14. Part 2: Financial support for students – Alternative Payments

Clauses 78 to 80 of the Bill will create a new type of student finance called an **alternative payment**.

14.1 Background

Most students pay for their tuition fees and maintenance costs by taking out student loans. These loans are income-contingent loans and are repaid by graduates when they are earning over a threshold amount. Since 2012 these loans have a real positive rate of interest. Some students feel unable to use interest-bearing loans for religious reasons, particularly some Muslim students, and this may deter some prospective students from participation in higher education.

In April 2014 the government launched a consultation, Sharia-compliant student finance, which ran for 10 weeks.⁸⁸ The consultation received nearly 20,000 responses, 94% of respondents said that there would be demand for an alternative finance product.⁸⁹⁹⁰

In the Green Paper, the government announced its intention to introduce new alternative (Sharia-compliant) finance.⁹¹

14.2 The White Paper proposals

The White Paper stated that the government would create an alternative model of student finance and that 'this will be open to everyone and will not result in any advantage or disadvantage relative to a student loan'.⁹²

14.3 The Bill (clauses 78-80)

Clause 78 amends section 22 of the *Teaching and Higher Education Act 1998* to enable regulations to be laid to make provision for alternative student finance, which will be available alongside grants or loans. This additional type of student finance will be called an "alternative payment". Under this clause alternative payments will not bear any interest.

Section 22 of the *Teaching and Higher Education Act 1998* sets out what regulations may include such as: eligibility criteria for student support, maximum amounts of support, the categories of attendance eligible for support, and the terms and conditions for repayment. The

⁸⁸ BIS, [Sharia-compliant student finance, Consultation on a Sharia-compliant alternative finance product](#), April 2014.

⁸⁹ *Ibid*, p9.

⁹⁰ *Ibid*, p9.

⁹¹ BIS, [Fulfilling Our Potential: Teaching Excellence, Social Mobility and Student Choice](#), Cm9141, November 2015, p41.

⁹² BIS, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#), Cm9258, May 2016, p60.

amendments to this clause ensure that regulations making alternative payments can make the same provision.

The clause also ensures that bankruptcy will not cancel out any liability to make contributions, in the same way that a student loan liability is not cancelled by bankruptcy.

This provision will apply across the UK.

Clauses 79 and 78 make **consequential amendments** to existing legislation to take account of the new category of student support. Section 23 (7) (a) (i) of the *Teaching and Higher Education Act 1998* will be amended to allow for the Secretary of State's functions in relation to alternative payments to be delegated to the Student Loans Company.

14.4 Comment

The Green Paper did not ask a specific question on an alternative finance product, but a number of respondents voiced support for the government's approach, as part of the emphasis on widening participation in higher education.⁹³

Repayments of these alternative payments will be structured so that students do not repay less than students on interest bearing loans.

The Equality Analysis stated that this provision should lead to an increase in participation particularly among Muslim students:

Overall, the policy addresses a potential barrier to entry faced by some potential students, and should lead to an increase in higher education participation. No particular group of students should be worse off as a result of the policy, and the most significant gains will be felt by Muslim students.⁹⁴

The Detailed Impact Assessments states that there is not enough strong evidence to assess the extent of demand for these loans.⁹⁵

⁹³ BIS, [Sharia-compliant student finance, Government response to consultation on Sharia-compliant student finance](#), April 2014, p23.

⁹⁴ BIS, [Equality Analysis: Higher Education and Research Bill](#), May 2016, p36.

⁹⁵ BIS [Detailed Impact Assessments Higher Education and Research Bill](#) June 2016 p210 para 29

15. Other measures

15.1 Power to determine the maximum amount of fees (clause 80)

Section 22 of the *Teaching and Higher Education Act 1998* enables the Secretary of State to offer student loans and grants and to prescribe the maximum amount available to any person, for any prescribed purpose for that year.

Clause 80 of the Bill amends section 22 (2A) of the *Teaching and Higher Education Act 1998* and would enable the Secretary of State when making regulations to have reference to matters determined, or published by the Secretary of State or other persons. This means that the Secretary of State when making regulations on student loans and grants, could refer to matters such as the list of fees published by the OfS under clause 11 and the sub-level amounts determined by the Secretary of State under schedule 2.

15.2 Student complaint regime (clause 81)

A student complaints scheme operated by the OIA was set up under provisions in the *Higher Education Act 2004*.

Clause 81 will amend the definition of 'qualifying institution' under the student complaints scheme and will expand the list of higher education providers which are required to join the higher education complaints handling scheme. Under provisions in this Bill all registered providers will be required to join the scheme.

15.3 Deregulation of higher education corporations (clause 82)

Schedule 8 amends the *Education Reform Act 1988* to deregulate higher education corporations, and bring regulatory requirements more closely into line with other publicly-funded higher education providers.

Clause 82 gives effect to provisions in schedule 8.

16. Part 3: Research

16.1 Background

Public sector funding for UK research comes from a mix of devolved and UK institutions. Under the dual support system, funding is provided through two main routes:

- annual quality-related funding provided to HEIs as a block grant through the higher education funding councils;⁹⁶ and
- funding allocated through the research councils, which covers the whole of the UK.

Funding for the dual support system is provided from the science budget, which also includes funding for the UK Space Agency and national academies like the Royal Society.

Government expenditure on innovation is hard to measure and it includes some science-related research work in government departments. It also includes funding for Innovate UK, the UK's innovation agency.

More background information on the current research and innovation funding system is included in Annex 4.

The combined resource allocation of the research councils in 2016-17 is £2.7 billion. HEFCE's research funding allocation for 2016-17 is £1.7 billion. Innovate UK's core budget for 2016-17 is £561 million.

16.2 The Nurse Review of the research councils

The Coalition Government's December 2014 science and innovation strategy announced that Sir Paul Nurse, President of the Royal Society, would lead a review of how the research councils "can evolve to support research in the most effective ways".⁹⁷

The report of the Nurse Review was published in November 2015. It concluded that, while the research councils deliver their objectives efficiently and "rightly have a prestigious reputation", they are overstretched with day-to-day running and administration, which limits the time available for strategic thinking and broader engagement with government.⁹⁸ The report identified a number of issues that could be addressed through changes to the research councils' governance:

- strengthening strategic thinking about research funding and locating research more at the heart of Government through better engagement between policy makers and the research community;
- developing high level operational policies that share best practice across research activities, establishing effective, optimised, simplified and when appropriate common ways of working, as well as reducing the complexity and increasing the agility of operations;

⁹⁶ In Northern Ireland, the Department for Employment and Learning.

⁹⁷ HM Treasury & BIS, [Our plan for growth: science and innovation](#), Cm 8980, December 2014, p7.

⁹⁸ [Ensuring a successful UK research endeavour: A Review of the UK Research Councils by Paul Nurse](#), November 2015, p11.

- establishing mechanisms to deal with cross-cutting issues such as the support of multi-disciplinary and inter-disciplinary research, grand challenges and the redistribution of resource between Research Councils in response to new developments, advances and priorities in the research endeavour;
- better co-ordination of the different parts of the research landscape, connecting the Research Councils, the research component of HEFCE, Innovate UK, Government department research, and as far as is possible, commercial and philanthropic research;
- strengthening Research Council leadership through better support, reducing bureaucratic interference, and by making their governance structures more effective.⁹⁹

Recommendations

The report recommended that a new body – Research UK (RUK) – should be created that would represent “an evolution of Research Councils UK into a formal organisation with a single Accounting Officer, which can support the whole system to become collectively more than the sum of its parts”.¹⁰⁰

RUK would, among other things, be responsible for:

- establishing best practice in research funding;
- enhancing and expanding the current data management systems;
- supporting cross-cutting activity across the research councils;
- formulating research strategy and generating a common strategic position for government;
- delivering administrative support, through a single Chief Operating Officer, for transactional activities to each Research Council;
- promoting interactions with Innovate UK, HEFCE and government departments; and
- administering a common research fund that would be used to fund activities that cross boundaries between the research councils, or between the research councils and Innovate UK or government departments, and supporting the adjustment of individual research council budgets in response to developments.

The report argued against merging the research councils and recommended that they should retain budgetary control and responsibility for managing the grant decision making process within their own field.¹⁰¹

Regarding further structural changes, the report stated that:

- there was an argument for incorporating HEFCE’s research functions within RUK, but that if this was done its functions and

⁹⁹ [*Ensuring a successful UK research endeavour: A Review of the UK Research Councils by Paul Nurse*](#), November 2015, p26.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, p29.

budget should be separate from the research councils and the dual support system should be preserved;¹⁰² and

- integrating Innovate UK into RUK could help smooth the pathway to applied research, but Innovate UK has a different customer base and delivery mechanisms to the research councils, which the government would have to keep in mind.¹⁰³

The Green Paper and the 2015 Spending Review

The Green Paper, which was published before the Nurse Review reported, proposed that HEFCE should no longer have a role in allocating grant funding for research (or teaching) in England and set out two alternatives:

- dual support could be delivered through separate bodies as at present but with another body performing HEFCE's role; or
- dual support could be delivered through an overarching body that brings together Research Council functions and institutional research funding.¹⁰⁴

In the Spending Review and Autumn Statement 2015, the government announced that it would take forward the recommendations of the Nurse Review and would introduce a new body – Research UK – to work across the seven research councils. The government additionally announced that it would look to integrate Innovate UK into Research UK.¹⁰⁵ Following the announcement, a short [consultation](#) was held in February 2016 regarding the proposed integration of Innovate UK.¹⁰⁶ Responses to this consultation were analysed alongside responses to the Green Paper.¹⁰⁷

The White Paper proposals

The White Paper argues that the current regulatory and funding body landscape “places limitations on the extent to which research and innovation funding bodies can work together to meet the challenges of the future”, which “increasingly require multi- or inter-disciplinary approaches”.¹⁰⁸ It confirms the government's intention to create a new body – to be named UK Research and Innovation (UKRI). The seven research councils and Innovate UK would be integrated into UKRI as autonomous councils, along with a new body, Research England, which would have responsibility for the research functions currently carried out by HEFCE.¹⁰⁹

¹⁰² [Ensuring a successful UK research endeavour: A Review of the UK Research Councils by Paul Nurse](#), November 2015, p31.

¹⁰³ *Ibid*

¹⁰⁴ BIS, [Fulfilling Our Potential: Teaching Excellence, Social Mobility and Student Choice](#), Cm9141, November 2015, p71.

¹⁰⁵ HM Treasury, [Spending Review and Autumn Statement 2015](#), Cm9162, November 2015, p48.

¹⁰⁶ BIS, [Innovate UK's Integration with Research UK](#).

¹⁰⁷ BIS, [Case for the creation of UK Research and Innovation](#), June 2016, p8; BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016.

¹⁰⁸ BIS, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#), Cm9258, May 2016, p68.

¹⁰⁹ *Ibid*, p69.

Under the plans outlined in the White Paper, UKRI's board would be responsible for:

- leading on overall strategic direction;
- cross-cutting decision making;
- providing advice to the Secretary of State on the balance of funding between the research disciplines; and
- managing funds with cross-disciplinary impact and a 'common research fund'.¹¹⁰

The White Paper states that the focus and remit of UKRI's councils would mirror the functions currently set out in the Royal Charters of the Research Councils and Innovate UK, and HEFCE's research functions as set out in section 65 of the *Further and Higher Education Act 1992*. Their budgets would be set in an annual grant letter from the Secretary of State and their responsibilities would include:

- developing strategic delivery plans in the relevant areas of activity, consistent with the overarching strategic plan set by the UKRI Board, and submitting these to the Board for approval;
- taking decisions on the prioritisation of their hypothecated budgets within their delegated remit;
- liaison with their community to develop ideas and disseminate strategic outputs; and
- appointing and setting terms and conditions of academic, specialist and research staff in the relevant Council and any associated institutes, within delegated limits.¹¹¹

The White Paper states that the government's approach is based on the following principles:

- the need to strengthen strategic thinking on overarching and cross cutting priorities and develop a more agile and responsive research and innovation funding system;
- the need to retain the world class strengths of the current system, including the Haldane principle, the dual support system and Innovate UK's distinct business facing focus;
- the importance of subsidiarity, with decisions needing to be taken at the lowest effective level and leaders in particular fields of activity given full responsibility for decisions in their areas; and
- the need to reduce bureaucracy, freeing up research and innovation leaders to focus on strategic decision-making.¹¹²

The Haldane principle is usually interpreted as meaning that researchers and not politicians should decide how research funding is spent.

These principles are further elaborated in the [BIS document on the creation of UKRI](#).

¹¹⁰ BIS, *Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice*, May 2016, p69.

¹¹¹ *Ibid*, p73.

¹¹² *Ibid*, p68.

16.3 The Bill (clauses 83-102)

Establishment of UKRI and its nine councils

The Bill revokes the Royal Charters of the current research councils and Innovate UK (**clause 101**) and provides for the establishment of UKRI as a new non-departmental public body with nine committees (referred to as Councils): the seven research councils, Innovate UK, and Research England (**clauses 83-84**). **Clause 101** transfers the symbolic property of the seven research councils and Innovate UK, including their name, logo and insignia, to UKRI.

The functions of UKRI, which the Bill's Explanatory Notes state reflect the royal charters of the current research councils and Innovate UK, are set out in **clause 85**:

- a) carry out research into science, technology, humanities and new ideas,
- b) facilitate, encourage and support research into science, technology, humanities and new ideas,
- c) facilitate, encourage and support the development and exploitation of science, technology and new ideas,
- d) collect, disseminate and advance knowledge in and in connection with science, technology, humanities and new ideas,
- e) promote awareness and understanding of science, technology, humanities and new ideas,
- f) provide advice on any matter relating to any of its functions, and
- g) promote awareness and understanding of its activities.

Clause 83 also gives effect to **schedule 9** which provides more detail on how UKRI is structured and how it and its councils will operate.

Box 6: The detailed organisation of UKRI and its councils

Schedule 9 sets out the detailed organisation of UKRI. It provides that:

UKRI

- UKRI is to consist of a chair, a Chief Executive Officer, a Chief Finance Officer and 9 to 12 other members, all of which will be appointed by the Secretary of State. In appointing the members of UKRI the Secretary of State must have regard to the desirability of its members between them having a mix of research, business and industry expertise. The Explanatory Notes to the Bill state that this "ensures Innovate UK's business facing role is supported at the highest levels of the organisation".¹¹³
- UKRI may determine its own procedures and those of any committees it establishes. It may also delegate any of its functions to a member of UKRI; an employee; a council or a council sub-committee; or a general committee.
- UKRI must prepare an annual report.

¹¹³ *Explanatory Notes*, p52, para 529.

- The White Paper states that UKRI's board will be supported by a central team of staff who will take on responsibility for administrative and back office functions across the organisation, such as procurement and grant administration.¹¹⁴

Councils

- Each council of UKRI is to consist of an Executive Chair appointed by the Secretary of State and between 5 and 9 ordinary council members. The Secretary of State may appoint one ordinary council member; the remainder would be appointed by UKRI following consultation with the council's executive chair. This is a change from the current position where the Secretary of State appoints every Board member of the bodies that would make up UKRI.
- Each council may determine its own procedures and those of any sub-committees it establishes.

Under **clauses 87-89**, UKRI would be under a duty to arrange for such of its functions as it determines to be carried out by:

- Each research council in the corresponding field of activity – e.g. by the Arts and Humanities Research Council in the arts and humanities field (**clause 87**). This includes the power to appoint employees (**clause 87 (2)**).
- Innovate UK for the purpose of increasing economic growth (**clause 88**). UKRI may not, however, devolve its function of carrying out research into science, technology, humanities and new ideas to Innovate UK (**clause 88 (2)**). In carrying out its functions, Innovate UK would be under a duty to have regard to the desirability of benefiting persons carrying out business in the UK (**clause 88 (3)**).
- Research England for the purpose of giving financial support to the governing bodies of higher education providers for the undertaking of research or for activities associated with research, such as the provision of facilities (**clause 89**).

In addition to these duties, **clause 90** provides for UKRI to arrange for any of its councils to carry out any other of its activities. The Explanatory Notes to the Bill state that this would allow UKRI to enable a council to exercise a function outside of its field of activity, for example, with regards to cross-disciplinary research.¹¹⁵ Clause 90 additionally provides for UKRI to retain the ability to exercise any of its functions that it has also devolved to the councils. The Explanatory Notes state that this will allow UKRI to manage funds for multi-disciplinary research or address a failure by a council to carry out its functions.¹¹⁶

Funding

Clauses 93-94 provide the Secretary of State with the power to make grants to UKRI and:

- to attach terms and conditions to such grants; and
- to give directions to UKRI on the use of grants.

¹¹⁴ BIS, *Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice*, Cm9258, May 2016, p70.

¹¹⁵ *Explanatory Notes*, p39, para 381.

¹¹⁶ *Ibid*, p39, para 382.

Clauses 93 (2) and **94 (2)** impose restrictions on the conditions that the Secretary of State may attach to grants, and the directions they can issue for their use, in respect of functions exercisable by Research England. The restrictions on the terms and conditions that the Secretary of State may impose mirror those provided for by section 68 of the *Further and Higher Education Act 1992* concerning research grants to HEFCE.¹¹⁷

The White Paper states that the Secretary of State's retained power to provide high level direction as to the allocation of funding will include setting hypothecated budgets for UKRI's nine councils. It additionally states that the budgets of the nine councils will be set by the Secretary of State through an annual grant letter, taking advice from UKRI's board on strategic priorities and the balance of funding between research disciplines. The White Paper states that the Secretary of State will also "set out any funding flexibilities he will grant to the Board in respect of the transfer of funding between Councils" and UKRI will not be able to transfer funds unless authorised to do so by the Secretary of State.¹¹⁸

Clause 95 places a duty on the Secretary of State to consider "the balanced funding principle" and any advice from UKRI before making grants, attaching terms and conditions to them, or giving directions as to their use. **Clause 95 (3)** defines the balanced funding principle as the necessity of ensuring a "reasonable balance" is achieved in the allocation of funding between functions exercised by Research England and the seven research councils.

Strategic plans

Clause 91 provides that the Secretary of State may request UKRI to prepare a research and innovation strategy, which the Secretary of State may approve with or without modifications. **Clause 91 (3)** requires that the strategy must specify a period within which each council must submit a strategic delivery plan and **clause 92** provides for the councils to be under a duty to prepare such a strategy within this time. UKRI may approve strategic delivery plans with or without modifications.

General functions

Clauses 96-100 include general provisions regarding the powers and duties of UKRI, including:

- a duty to have regard to guidance issued by the Secretary of State and to provide information to the Secretary of State (**clauses 96-97**);
- a power to carry out studies to "improve economy, efficiency, and effectiveness in carrying out work in respect of which UKRI gives financial support." The Explanatory Notes state that this replicates a power currently held by HEFCE (**clause 98**)¹¹⁹;

¹¹⁷ *Ibid*, p40, para 395; *Further and Higher Education Act 1992*, section 68 (3).

¹¹⁸ BIS, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#), Cm9258, May 2016, p72.

¹¹⁹ *Explanatory Notes*, p41, para 411; *Further and Higher Education Act 1992*, section 83.

- a power to provide research services to anyone inside or outside the UK and to charge for such services (**clause 99**); and
- a duty to represent the UK government overseas if requested to do so (**clause 100**).

16.4 Establishment of UKRI in shadow form

On 17 May 2016, the government announced that it had appointed John Kingman, second permanent secretary to the Treasury, as Chair of UKRI on an interim basis to set up the new organisation in shadow form. The press release stated that as part of the role, Kingman will “provide advice to ministers on the competition to quickly recruit a leading scientist to take the reins as UKRI Chief Executive.”¹²⁰

In an article in *Times Higher Education* Kingman stated that the creation of UKRI represented an “important opportunity” and that he would work with the leaders of the research councils, Innovate UK and HEFCE “to ensure that the transition to UKRI retains the huge strengths and values of these bodies, and the autonomy that they need to serve their communities”. He also set out some points regarding UKRI’s governing philosophy:

- UKRI’s strategic function needs to be lean and focused, with clarity over its precise roles;
- it must be ensured that Innovate UK can continue to perform a business-facing role and is funded to do so; and
- UKRI must attract “outstanding people to lead the individual research councils and Innovate UK”.¹²¹

16.5 Comment

A BIS document [Case for the Creation of UK Research and Innovation](#), gives information on the rationale for the changes to the research funding system and sets out the costs and benefits of the proposals. It states that the creation of UKRI will deliver a number of benefits, including:

- a greater focus on cross-cutting issues that are outside the remit of the current research councils;
- a strengthened, unified voice for the UK’s research and innovation funding system;
- improved collaboration between the research base and the commercialisation of discoveries in the business community, meaning that businesses and innovators can rake forward their ideas more easily;
- improved quality of evidence on the UK’s research and innovation landscape through the pooling of datasets and information sources; and

¹²⁰ BIS, [John Kingman to lead creation of new £6 billion research and innovation body](#), 17 May 2016.

¹²¹ “Strength in numbers”, *Times Higher Education*, 2-8 June 2016.

- the removal of back office functions across multiple bodies, reducing the administrative burdens placed on research and innovation leaders.¹²²

The document estimates that the reforms could result in an economic benefit of around £250 million being accrued on the 10 years of research and innovation spending from 2016-17 to 2025-26 (with the majority of the economic benefits realised over a much longer time period). The estimate is based on modelling that:

- if the integration of the seven research councils and the research functions of HEFCE results in a 1% point increase in the rate of return on 10% of research and development spending from 2020-21 onwards, this would mean an economic benefit of around £230 million being accrued on research spending from 2016-17 to 2025-26; and
- if the integration of Innovate UK and research funding resulted in a 1% point increase in the rate of return on 10% of innovation support from 2020-21 onwards, this would give an economic benefit of around £20 million that would be accrued on innovation spending from 2016-17 to 2025-26.

It should be noted that the model assumes that research and innovation funding allocations will remain at 2016 to 2020 levels until 2025-26 and is also dependent on the reforms increasing the rate of return on research and innovation spending by the assumed amounts. The document states that that the costs and benefits should “be seen as broadly indicative and subject to change following more detailed work on the design of UKRI”.¹²³

In addition, the document states that the reforms have the potential to reduce administrative costs through the removal of duplicate functions such as HR and IT, but will also involve some extra running costs. It estimates the total annual administrative cost of UKRI to be the sum of the administrative costs of the existing nine bodies (£105 million, including only HEFCE’s research funding functions) plus £4 million as the cost of delivering a greater focus on cross-cutting issues. It then estimates the administrative savings to be 5% of this total, giving an estimated administrative cost of UKRI of around £103.5 million from 2018-19 onwards.¹²⁴ The transitional administrative cost of establishing UKRI is estimated to be around £4 million, with the cost falling in 2017-18 and UKRI operational from 2018-19. The document emphasises that the exact size of the costs and benefits are “difficult to quantify” and “depend on the final organisation of UKRI.”¹²⁵

Responses to the proposals have generally welcomed the principle of improved support for multi and inter-disciplinary research, and have welcomed the potential reduction in administrative burdens. However, a number of risks and concerns have also been raised regarding the proposals, which outlined below.

¹²² BIS, [Case for the creation of UK Research and Innovation](#), June 2016, pp4, 12 & 17.

¹²³ *Ibid*, pp22-3.

¹²⁴ *Ibid*, p22.

¹²⁵ *Ibid*, pp21-2.

The dual support system

One of the most frequently raised risks in responses to the Green Paper and the Nurse Review was the potential for the dual support system to be undermined by the proposed reforms, with QR funding put under pressure.¹²⁶

As outlined above, the Bill provides for the Secretary of State to be under a duty to ensure a “reasonable balance” is achieved in the allocation of funding between functions exercised by Research England and functions exercised by the seven research councils. The Russell Group stated that this “legislative protection for the dual support system is extremely welcome”¹²⁷ and HEFCE welcomed the “continuing commitment to dual support.”¹²⁸ However, neither the Bill nor the Explanatory Notes provide a further definition of what constitutes a “reasonable balance”. Chris Hales, Director of Policy at Universities UK, questioned whether this goes far enough and stated that there may be scope to strengthen the Bill in this area:

At face value we will see for the first time dual support enshrined in a legislative arrangement (to date dual support has been largely a matter of convention), but the critical question is does this go far enough? While the Secretary of State may have to consider the balance under this new duty, this provision does not necessarily secure the health and dynamism of dual support. This is one to watch carefully and there may be scope to strengthen this in the Bill.¹²⁹

Research councils

The BIS document on the creation of UKRI states that the reforms will result in a reduction higher education and funding NDPBs from 10 to 2, “whilst preserving the identity and autonomy of UKRI’s constituent parts”.¹³⁰

While responses to the Green Paper and the Nurse Review welcomed the principle of greater inter-disciplinary working, a frequently raised risk was that the autonomy of the research councils could be undermined by the proposals.¹³¹

James Wilsdon, professor of research at the University of Sheffield, stated that the White Paper’s proposed hypothecated budgets went “some way to assuaging” concerns he had earlier raised, but highlighted continuing uncertainty about the relationships between BIS, UKRI and the councils with regards to the budget setting process:

...given that ministers will make high-level funding decisions based on advice from the UKRI board, the way that these relationships between BIS, UKRI’s board and chief executive, and

¹²⁶ BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016, p50.

¹²⁷ Russell Group, [Higher education white paper](#), 16 May 2016.

¹²⁸ HEFCE, [Competition and choice: HEFCE response to higher education White Paper](#), 16 May 2016.

¹²⁹ Universities UK, [The Higher Education White Paper – all you need to know](#), 16 May 2016.

¹³⁰ BIS, [Case for the creation of UK Research and Innovation](#), June 2016, p5.

¹³¹ For example, see James Wilsdon, [Nurse’s watery prescription for research](#), WonkHE, 23 November 2015.

the leadership of the existing councils, will operate in practice – particularly in terms of budget-setting – is still somewhat unclear.¹³²

The Russell Group also stated that allowing the research councils to retain their identity was “a step in the right direction” but urged the government “to proceed with caution” and “be careful about making any substantial changes to a successful system”.¹³³

Speaking during the debate on the Queen’s speech, Nicola Blackwood MP, Chair of the Science and Technology Committee, highlighted the key role that the research councils’ leadership would play, but stated that it was necessary for structures to safeguard the autonomy of the councils:

I also welcome the restatement of the Haldane principle and the Government’s intention to enshrine the dual support system into law, but bringing all funding into UK Research and Innovation—UKRI—will require a separation in practice as well as in principle if we are to preserve the excellence-based allocation on which our world-leading system is founded. The quality of leadership, not just at UKRI level but at research council level, will play a key role in delivering this, but we cannot leave the health of our science and innovation system to the whim of personality. We have to ensure that the structures we set in place safeguard the autonomy and the strong voices of our existing research councils while achieving the stated goal of better interdisciplinary working. With a single accounting officer, I fear that this will be challenging.¹³⁴

Nick Hillman, Director of the Higher Education Policy Institute, raised doubts over whether the re-structuring amounted to a simplification¹³⁵ and questioned whether the government’s desire to reduce the number of arms-length bodies was being “put above the importance of maintaining the independence of our research funding structures.”¹³⁶

Integration of Innovate UK

While respondents to the government’s consultations stated that the proposed integration of Innovate UK into UKRI integration could have benefits, they also raised concerns that it could struggle to retain its business focus when part of a larger research body.¹³⁷ For example, the Royal Academy of Engineering stated that the proposed integration had the potential to offer “a more coherent, better aligned and longer-term set of policies and approaches focused on research and innovation funding”, but also could lead to the voice of innovation becoming weakened:

¹³² James Wilsdon, [UKRI if you want to: how to read the new research landscape](#), WonkHE, 18 May 2016.

¹³³ Russell Group, [Higher education white paper](#), 16 May 2016.

¹³⁴ [HC Deb 25 May 2016 c580](#).

¹³⁵ “[The government's higher education reforms meet old problems and miss new ones](#)”, *New Statesman*, 18 May 2016

¹³⁶ “[HE White Paper is just the beginning of the reform process](#)”, *Times Higher Education*, May 2016.

¹³⁷ BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016, p53.

There is considerable doubt within the engineering community that this business-led focus will be adequately maintained if Innovate UK is to be integrated into RUK.

The Academy is concerned that there is a risk that Innovate UK will struggle to be an effective voice for innovation if it is to be integrated into RUK. It is reasonable to expect greater commonality of interests and concerns between the seven Research Councils than with Innovate UK, thus the voice of innovation could become comparatively weak during discussions at the strategic level. This calls into question how feasible it is for Innovate UK to retain its business focus if it is integrated into RUK, despite government's assurances.¹³⁸

The White Paper emphasised that the government was mindful to protect the "distinctive focus and funding stream" of Innovate UK and that its business facing focus would be enshrined in legislation. As mentioned, the Bill additionally provides that the Secretary of State must consider the desirability of the members of UKRI between them having a mix of research, business and industry expertise.¹³⁹

Nicola Blackwood noted these assurances in her contribution to the Queen's speech debate but said that questions remained:

There has also been concern about merging Innovate UK into UKRI, some of which was based on the fact that Innovate UK's budget is not ring-fenced and some on fears about annexation. Many have welcomed the renaming of Research UK as UKRI as it puts innovation right at the heart of the organisation's agenda and, obviously, innovation funding has been hypothecated. In practice, however, questions still remain. How will Innovate UK retain a clear, separate, business-facing focus and not become research facing? In the new structure, how will we stimulate our innovation sector so that it comes to match our research sector for excellence and efficiency? To achieve that, we need to know where we are going. What is the vision for not only the Higher Education and Research Bill, but this clutch of innovation-driven Bills? How will we ensure that we join them up seamlessly against all the natural impetus of the Whitehall machine?¹⁴⁰

Funding

Responses to the Green Paper stressed that structural reform needed to be accompanied by investment if the proposals were to be successful.¹⁴¹ For example, the Royal Society welcomed the Nurse Review proposals but stated that "changes to the architecture must be matched by ongoing and ambitious investment if they are to strengthen the UK research base."¹⁴² Similarly, Nick Hillman stated that although the Bill can help, it was not sufficient without the necessary funding:

¹³⁸ Royal Academy of Engineering, [Innovate UK's integration with Research UK](#), 19 February 2016, pp2-3.

¹³⁹ BIS, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#), Cm9258, May 2016, p76.

¹⁴⁰ [HC Deb 25 May 2016 c580](#).

¹⁴¹ BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016, p51.

¹⁴² Royal Society, [Royal Society response to the Higher Education Green Paper Fulfilling Our Potential: Teaching Excellence, Social Mobility and Student Choice](#), January 2016.

In fact, given that UKRI will be told to spend money on important new priorities, such as interdisciplinary research, money will be even tighter in the new world than in the one we are currently in. Passing new higher education legislation will help but it cannot, on its own, enhance the standing of UK higher education relative to the rest of the world.¹⁴³

Mixing UK-wide and England only functions

Concerns were raised in the Green Paper responses regarding the proposed inclusion of HEFCE's England-only research functions in a body with UK-wide functions.¹⁴⁴ Similarly, responding to the White Paper, Alastair Smith, Director of Universities Scotland, highlighted the risk that "UKRI will only reflect the interests of one part of the UK; and the specific risk that the consolidation of English quality-related research funding into UKRI will give the new body a disproportionate interest in the English part of its remit."¹⁴⁵

Separation of teaching and research funding

Responses to the Green Paper raised potential benefits of the proposed integration of HEFCE's research functions into UKRI, including reduced complexity and greater oversight of the research sector.¹⁴⁶ But it was also suggested that the proposals could risk driving teaching and research further apart. For example, the British Academy's response stated:

The separation of research and teaching – both in terms of institutions of regulation, and policymaking – risks driving the two further apart, and would make the best quality of teaching, that which is research-led, less likely.¹⁴⁷

The Bill provides for cooperation and information sharing between the OfS and UKRI (see section 17 of this briefing) and the BIS document on the creation of UKRI states that "UKRI will work closely with the OfS to ensure a coordinated and strategic approach to the funding of teaching and research in England".¹⁴⁸

David Sweeney, Director of research, education and knowledge exchange at HEFCE, was quoted as saying that he was "pleased that the White Paper sets out how the Office for Students and UKRI works together".¹⁴⁹ However, Sarah Main, director of the Campaign for Science and Engineering, was quoted as stating:

...how are they going to ensure research and teaching mutually benefit each other?"

¹⁴³ "[The government's higher education reforms meet old problems and miss new ones](#)", *New Statesman*, 18 May 2016.

¹⁴⁴ BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016, p54.

¹⁴⁵ Universities UK, [The Higher Education White Paper: in bed with an elephant](#), 19 May 2016.

¹⁴⁶ BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016, p53.

¹⁴⁷ British Academy, [British Academy responds to the Government's Green Paper for Higher Education](#), 6 November 2015.

¹⁴⁸ BIS, [Case for the creation of UK Research and Innovation](#), June 2016, p4.

¹⁴⁹ "HE White Paper: what it means for research", [Times Higher Education](#), 16 May 2016.

If providers are being driven by competition and choice....what about subjects that are strategically important for research?¹⁵⁰

¹⁵⁰ *Ibid.*

17. Part 4: General

17.1 Cooperation and information sharing (clause 103)

Clause 103 of the Bill sets out the circumstances in which the OfS and UKRI have the power to cooperate and share information. This could relate to information which will aid the Secretary of State in decision making with respect to the matters described in clause 95 (2) (Balanced funding and advice from UKRI).

The OfS and UKRI have a duty to cooperate when instructed to do so by the Secretary of State.

17.2 Transfer schemes (clause 104)

Clause 104 introduces schedule 10, which makes provision about schemes for the transfer of staff and property, rights and liabilities as a result of a body established or dissolved by the Bill.

17.3 Power to make consequential provision (clauses 105-107)

Clause 105 enables the Secretary of State, by regulations, to make provision which is consequential on any provision made by, or under the Bill. This includes power to amend, repeal, revoke or modify primary legislation, secondary legislation or, for specific purposes only, Royal Charters.

Subsection (3) allows the Secretary of State to make amendments to Royal Charters for the purposes of DAPs and UT only.

Clauses 106-113 set out minor and consequential amendments, general interpretations, extent of the Bill and commencement provisions.

Clause 107 lists the **powers in the Bill to make regulations** that are subject to the **affirmative procedure**.

18. Government analysis of the Bill's impact

BIS published an [Impact Assessment](#) and an [Equality Analysis](#) alongside the Bill in May 2016. Both documents look across the wider impacts of the White Paper rather than just the narrower measures which need primary legislation and are set out in the Bill. The Impact Assessment looks at the costs and benefits of these policies on students, higher education providers, the government/taxpayers and other groups. The Equality Analysis focusses on the impact of these policies on protected and disadvantaged groups.

Financial

The Impact Assessment (IA) takes each element of the reforms – competition, choice and architecture – in turn. The material in the assessment is nearly all qualitative. The impact of few, if any, of the policies are explicitly quantified. In short, it asserts that the Bill will help to:

- improve productivity and reduce skills gaps in the economy;
- increase competition, improve choice and encourage innovation in the sector;
- help the sector meet growing demand from home and abroad;
- widen participation among under-represented and disadvantaged groups and help improve social mobility;
- improve value for money for students and the taxpayer;
- drive up teaching standards;
- help make graduates more employable; and
- improve research collaboration with business.¹⁵¹

It quotes evidence of the link between higher numbers of graduates and higher productivity. A 1% increase in the share of the workforce with a degree raises productivity in the long-run by 0.2-0.5%. The IA also cites research that found increasing the number of universities raises GDP per capita. This is used to support the case for opening up the sector to new entrants. It is unclear, however, whether the link found in the research applies only to the 'traditional' model of a university, rather than the smaller-specialist alternative provider.¹⁵²

The IA includes forecasts of the number of alternative providers in different categories of registration. The number recognised as in the system is expected to increase from 207 in 2018-19 to 432 in 2027-28 as more providers move from 'outside the system'. Within this total the number of approved providers (those that can access student support and/or government funding) is forecast to increase from 145 to 311. Within this the number with approved (fee cap) status, that can charge

¹⁵¹ BIS, [Impact Assessment: Higher Education and Research Bill](#), May 2016.

¹⁵² *Ibid*, para 9.

fees of up to £9,000 and receive government funding, is expected to double from 57 to 114 over the same period.¹⁵³

The IA was followed up in mid-June with a compilation of [Detailed Impact Assessments](#) of the Bill. These broadly cover the same areas as the IA but with much more explicit quantification of the costs and benefits and more background information on how these were calculated. In summary **the Bill is expected to result in a net financial benefit to higher education providers of around £1.1billion a year**. This is in very large part due to the higher fees that providers with successful TEF outcomes will be able to charge students. The other direct costs/benefits to 'business' that are quantified are much smaller than this. The next largest is entry to the sector and the single gateway with an annual benefit of around £30million.¹⁵⁴

TEF costs

Much of the analysis and content of the detailed IAs looks at the direct impact of the TEF. It states that benefits linked to successful TEF results are reputational as well as financial. Using an estimated distribution of TEF results alongside projected increases in student numbers (18% increase in full-time students over the decade to 2025-26) gives a total annual increase in fee income of around £3.3billion by 2025-26.¹⁵⁵ This is in cash terms and compared to a baseline where the fee cap remains at £9,000. The annual average additional income in real terms (2016 prices) across the decade to 2025-26 is put at £1.3billion. This is said to be an underestimate as some types of Alternative Providers are excluded from the calculations.¹⁵⁶

This benefit is much greater than the estimated costs to providers of the TEF due to familiarisation with the process and the cost of applications. These are put at an average of £22million per year over the 10 year period or around £53,000 per institution.¹⁵⁷

The impact on other businesses through "increasing the efficiency of the graduate labour market"¹⁵⁸ and possible productivity increases are not quantified.

The additional income that providers receive will come in additional student loan outlays. This presents a cost that will be borne by graduates and the taxpayer,¹⁵⁹ but the split between the two groups is not estimated. The total cost is the same as additional income for providers; £1.3billion in 2016 prices on average per year over the decade to 2025-26. The government does not expect higher fees to deter students as they will not increase in real terms and will be covered

¹⁵³ *Ibid.* Annex A

¹⁵⁴ Department for Business, Innovation and Skills, [Detailed Impact Assessments: Higher Education and Research Bill](#) June 2016

¹⁵⁵ *Ibid.* Table 15

¹⁵⁶ *Ibid.* pp48-49

¹⁵⁷ *Ibid.* para. 89

¹⁵⁸ *Ibid.* para 110

¹⁵⁹ Through the cost of Government of borrowing needed to cover loan write-offs and interest subsidies –the RAB charge

by higher fee loan levels. The potential benefits to students (described in the earlier IA) are not quantified.¹⁶⁰

Other costs to the public sector are the cost of the TEF Assessment Panel (around £10million per year from year seven onwards and Student Loans Company administration (around £1million per year). The government expects the TEF to increase productivity and graduate earnings in the longer term, and hence lead to higher loan repayments and tax revenue, but these are not estimated.

Costs associated with entry to the sector

The other main area of substantial costs/benefits that is quantified is entry into the sector and single entry gateway. Average annual costs of complying with access agreements (financial support to disadvantaged students) and subscriptions to the Office for Independent Adjudicator are put at a combined £27million.¹⁶¹

Benefits to providers include removal of annual re-designation for AP courses and, the largest single element, the creation of “Approved (fee cap)” status which will increase fee income for these providers by around £50million in 2025-26.¹⁶² They will need to sign access agreements to increase fees above £6,000. The Government expects that the benefit to students from underrepresented groups of the greater spread of these agreements will be around £25million in 2025-26.¹⁶³

The Government assumes that its reforms will increase student numbers and widen participation, but have not modelled these changes in the impact assessments. The total net benefit of the reforms connected to entry into the sector and single entry gateway is put at around £58million on average per year.¹⁶⁴

Equalities

The Equality Analysis (EA) looks in more detail at the possible impact of the Bill, and broader policies, on specific groups of students.¹⁶⁵ Overall it states that the impacts will be positive on all students with those from under-represented and disadvantaged groups benefitting particularly:

The reforms, regarding competition, choice and architecture, contained in the White Paper and the Higher Education and Research Bill will benefit all students, by increasing competition and choice in order to drive social mobility, raising teaching standards and value for money, and helping to improve employment outcomes.

These effects will be more pronounced for those groups who currently do not access the higher education system despite having the potential to do so, or whose outcomes lag behind

¹⁶⁰ Department for Business, Innovation and Skills, [Detailed Impact Assessments: Higher Education and Research Bill](#) June 2016. paras. 113-119

¹⁶¹ *Ibid.* p60

¹⁶² *Ibid* Table 10 (p86)

¹⁶³ *Ibid* Table 10 (p87)

¹⁶⁴ *Ibid.* p60

¹⁶⁵ Department for Business, Innovation and Skills, [Equality Analysis of the Higher Education and Research Bill](#), May 2016.

those of their equally able peers. This includes those from disadvantaged groups, some ethnic minority groups, older students and, in the case of outcomes, women, disabled students and students from Black ethnic backgrounds.¹⁶⁶

Much of this positive impact is linked to policies aimed at better informing and improving choice.

The government expects that the increase in the number of (alternative) providers and wider range of courses in the sector will allow students to choose from a wider range of 'high quality institutions'. They also expect this competition to drive up standards overall.

Two particular groups of students who, it is said, could benefit are: i) mature students, if new providers bring in more flexible course options such as distance learning and part-time study, and ii) those from low income backgrounds who could stand to benefit from the wider range of courses that qualify for student support and greater number of institutions that have access agreements. The EA does note that mature students and those from minority ethnic backgrounds are marginally more likely to go to institutions with lower teaching quality. This could make them at risk of 'provider exit' without appropriate safeguards.

The EA states that the benefits of choice to students will come about through the TEF, the OfS role in monitoring access agreement commitments and the measures to increase the amount of information available. In general the financial incentives of achieving a good TEF score¹⁶⁷ will drive up teaching standards. Students will benefit from better employment prospects and higher earnings as they can choose courses based on the quality of teaching and the TEF will include measures on student retention and employability.

The analysis concludes that those groups of students that currently experience the poorest outcomes from higher education (including degree class, employment and earnings) such as those from low income backgrounds and those from minority ethnic groups, will benefit most from the information the TEF provides:

...it is likely that those who are underrepresented most in higher education, young white males from the least advantaged socio-economic and black Caribbean backgrounds, will benefit the most, given the potential focus that widening participation targets can provide.

Furthermore, it is hoped that BME students in general, although especially black students, will see an improvement in achievement, both through the incentivisation of institutions to do more to assist these groups, and through the improvement of information available to students, allowing them to make better informed decisions about where to study, to get the best value.¹⁶⁸

It cites evidence that they face the greatest information barriers at present and do not have access to "the family and social networks with the experience and knowledge to help them achieve their

¹⁶⁶ *Ibid.* paras 48-49.

¹⁶⁷ Institutions can charge higher fees.

¹⁶⁸ Department for Business, Innovation and Skills, [Equality Analysis of the Higher Education and Research Bill](#), May 2016, paras 149-150.

aspirations.”¹⁶⁹ However, it is not clear that access to more information than is currently produced for students will, on its own, substantially reduce these barriers. Potential students do not have an entirely free choice over which university they attend or which subject they study at present. Places are still limited at institutions with the highest reputations despite lifting the cap on student numbers. Similarly there are limits to the size of the most prestigious or financially rewarding courses such as medicine, dentistry and law. The EA mentions that the benefits of better information will be limited for those who are looking to study somewhere close to home. This includes potential students from lower income backgrounds.

There are a range of factors that affect a potential student’s chances of getting into the ‘best’ universities and on the most desirable courses. These include information and social networks, but are primarily to do with their qualifications. The Bill’s reforms, however successful, can therefore only have a limited direct impact on the variations in access to higher education, attendance at the best universities and outcomes (earnings) that the EA highlights.

¹⁶⁹ *Ibid*, para 53.

19. Reaction to the Bill

There has been little reaction to the Bill, this could be due to its presentation a few days after the White Paper was published. Many bodies responded to the White Paper - these comments and a few available comments on the Bill are set out below.

19.1 Gordon Marsden MP

Commenting following the publication of the White Paper, Gordon Marsden MP, Shadow Minister for Universities, Further Education and Skills, stated:

The government's new HE White Paper proclaims its wish to allow "students more choice over the type of education they receive". Brave words, but the safeguards permitting a rapid expansion of what the government calls its "challenger institutions" currently appear to be inadequate. Ministers want new providers to be given degree awarding powers straight away, and then build up a three-year track record on a probationary basis.

Giving providers this option could, potentially, be very dangerous. Students would in effect be taking a gamble on probationary degrees from probationary providers. Who picks up the pieces if it all goes wrong?

It is still unclear what resources the proposed Office for Students will have to police this process. What if the problems weren't picked up until, say, 18 months of students working for their degree? The White Paper chirrup "the possibility of exit is natural part of a healthy market", but students aren't market traders. They don't easily slip a second time into the womb of higher education when let down by that shiny new market.

Another huge question that hangs over the White Paper is the future participation (or lack) of further education colleges. The White Paper consistently talks simply about "universities" and possible "new universities". This, to a significant degree, sidelines the role of further education colleges, and the existing providers who currently deliver at least 10 per cent of all higher education participation.

Even if further education colleges were eventually to get a fair crack of the whip, it may be a problematic one given that the rhetoric of the White Paper is all about new market driven, possibly virtual competitors. Given the cumulative effect of the government's cuts in further education college funding, the scrapping of maintenance grants for the disadvantaged, the alarming failure of take-up of post Level 3 loans by adult further education students, and the disruptive effects of area reviews, what state will many colleges be in to take up degree powers even if they want to?

There are big question marks as to how the new challenger institutions are defined. Will they include online higher education? Will these institutions be for-profit or not-for-profit? Will existing commercial bodies be eligible? And how will challenger institutions be policed if they are based outside the UK?

On the teaching excellence framework

I have long argued for the celebration of teaching quality in higher education. But concern as to the equity of the TEF to carry this through is hugely increased by the government saying it'll be linked to rising fees for higher education students.

Because of strong concerns we and others have voiced, Jo Johnson is now saying it will only apply inflation-based fee rises for successful TEF applications. But even that could come as early as 2017, and there is no guarantee that there wouldn't be a free for all by 2019.

The government has announced a technical consultation on the TEF, ending in July. But they have also said that higher education providers could volunteer to be guinea pigs for the TEF in 2017/18. Surely a huge gamble for the reputations of those participating?

The government still seems to be proceeding on the basis of having only one separate TEF assessment per university. But surely a more delineated TEF assessment, such as by schools of humanities or social sciences within higher education institutions, would be both fairer and more useful for would-be students?

On the Office for Students

The government says that its proposed new Office for Students "will cover, among other areas, access and participation" as they lay out sweeping agendas for its monitoring of their big bang changes, but there is little detail as to what resources this new body will have.

In any case, people are entitled to be sceptical about this government's agenda to widen participation when its sustained funding cuts have shredded and undermined the capacity of both colleges and universities to fulfil them. At the same time, the White Paper remains thin on a specific strategy for expanding the number of adult and part-time students, often including disadvantaged learners, after a huge drop in numbers.

The small incremental improvements already announced, not due until 2018, are inadequate to do this or deliver the social mobility, productivity and economic success to which for adult learning is central. The government is in danger of producing narrow 20th-century solutions to 21st-century challenges.

There is also no reference as to how "DevoMax" will bring a much larger role for combined authorities over skills and higher education strategy in places such as London and Greater Manchester with their clusters of universities. This is another huge omission. It leaves the Department for Business, Innovation and Skills stuck in a goldfish bowl of Whitehall micromanagement at a time when we desperately need to re-engineer the delivery of our productivity and job needs across England.

Finally, the government's White Paper overlooks a vital factor. There is little sense of its knock-on effects for "UK PLC".

Higher education providers across England and the devolved nations of Britain are internationally competitive because of a trusted UK brand. There needs to be a UK-wide strategy in place to safeguard it. Without it, this White Paper could dismantle that brand. Having a three year period of what it calls "dissolving" the Higher Education Funding Council for England and the Office for Fair Access while establishing the Office for Students won't help.

So, it's not surprising that many stakeholders have stated that this White Paper calls for pre-legislative scrutiny rather than any overhasty rush to legislation. And that must include far closer dialogue with all existing providers, with business and with the people who work in our universities and colleges as well as those who study at them.¹⁷⁰

19.2 Million Plus, 20 May 2016

The government's White Paper is significant in that it is seeking to alter structures in the higher education sector in England which have been in place since 1992. The Queen's Speech referred to the Higher Education and Research Bill as providing 'new universities' and the promotion of competition and choice in the higher education sector. In principle these could be regarded as laudable ambitions. However, the White Paper makes clear that Ministers intend to do this by reducing the criteria for degree-awarding powers and university title with a presumption that UK universities should be allowed to fail and exit the market. This new approach in England has the potential to impact adversely on student and taxpayer interests as well as on the global reputation of current universities and the UK's university system.

In many respects the reforms challenge the idea of what a UK university is and divorce the core pillars of teaching, research, knowledge exchange and an underlying commitment to the public good from university title in England.¹⁷¹

19.3 GuildHE, 25 May 2016

Three cheers for Jo Johnson and BIS. Well, let's say two and a half for now. While I have concerns about some of the details, I'd argue that the White Paper and Technical Consultation and the introduction of a Higher Education and Research Bill provide some reasons to be cheerful.

The first and biggest reason is that Parliament is finally being given the opportunity to debate and vote on regulatory reform for Higher Education. New primary legislation has been essential since the fee changes of 2012. The reasons have been extensively rehearsed: the shift from funding teaching through direct grant to tuition fees backed by loans, the growth in alternative providers, the removal of student number controls and increased competition. HEFCE did its best but its powers derived from its role as majority funder – a role that eroded rapidly until it now funds around 15% of teaching costs. It didn't fund alternative providers so BIS had to regulate them separately and treat them differently.

It's a good thing that the regulation of higher education in England is to be given proper Parliamentary scrutiny. And I say that despite the fact there are some Bill clauses that worry me because they suggest BIS are seeking a more directive role for the OfS and the Secretary of State on standards and funding. But it is up to the sector to make the case to MPs and Lords: Higher Education Bills have been improved by Parliament before and no doubt they can be again.

¹⁷⁰ "[Labour Party responds to 'dangerous' HE White Paper](#)", *Times Higher Education*, 17 May 2016

¹⁷¹ Million +, [The Higher Education White Paper and HE and Research Bill](#), 20 May 2016.

The second reason is the policy intent of much of the White Paper's content. It is good to have a focus on the quality of teaching and the student experience. For the TEF itself, the criteria for assessment proposed in the technical consultation are pithy statements of what universities ought to deliver and every student should have a right to expect, particularly when they are taking on debt (or, effectively, a higher rate of tax) to pay for it: – of course teaching should provide "effective stimulation and challenge" and encourage students to engage; of course the learning environment should be "enriched by linkages between teaching and scholarship, research or professional practice." We know that's what students at GuildHE institutions expect – responsive, informed, career relevant higher education. The HEPI 2015 Student Academic Experience Survey showed that GuildHE students were much more likely than students as a whole to rate "having relevant industry or professional experience" as the most important characteristic of teaching staff. Asked about the overall quality of their course, they were much more likely to be "very satisfied" and were also more likely to rate their teaching staff positively for giving feedback and putting a lot of time into commenting on their work.

And it's right that the TEF considers the extent to which institutions achieve positive outcomes for students from disadvantaged groups. As was shown in Excellence in Diversity there is "strong evidence that the smaller universities, regionally focused and specialist institutions do particularly well in adding value – in a variety of ways – to the life chances of individuals from less advantaged backgrounds." Greater transparency on applications and admissions data may not require a new duty imposed through the Bill (I suspect universities would have provided more information voluntarily if asked) but it is still welcome policy.

The link between the TEF and inflation increases in fee and loan caps makes sense too. When the £9000 fee cap was introduced in 2012-13, the BIS spending review assumption was that it would rise by inflation each year. Instead, the price has been held flat for four years. Without an increase to take account of rising teaching costs, the ability of institutions to invest in the quality of the learning experience on offer will, inevitably, decline. When GuildHE responded to the Green Paper consultation, we argued that fees had to rise by inflation at some point and it was fairer for students if those rises were linked to an assessment of quality.

Of course there are still problems with the TEF. The proposals remain proxies for teaching excellence rather than a measure of the thing itself. And the proposal to have a measure of graduates entering highly skilled jobs as one of the core metrics is flawed. BIS are consulting on using employment in Standard Occupational Classification (SOC) groups 1-3 six months after graduation as the measure but it is outdated and hasn't kept pace with the development of a range of graduate careers. It is particularly problematic for careers in the creative industries – a sector where career trajectories are typically longer and one where serial and parallel portfolio careers are the norm.

Another reason for deducting half a cheer is the lack of any detail behind the radical proposal to allow "high quality" new providers to offer their own degrees on a probationary basis. The White Paper says such providers won't have to "demonstrate a lengthy track record or meet specific and separate DAPs criteria" but "will be subject to "strong quality checks and close monitoring".

However, it provides no information about what those checks will be and how they will be conducted. I understand BIS intend to provide more detail during the passage of the Bill. But at the moment, there is simply no basis to judge how, and how well, the potential risks of this policy to the student interest and the international reputation of UK higher education will be managed.¹⁷²

19.4 NUS, 19 May 2016

Our response to the government's Higher Education and Research Bill – the first piece of Higher Education legislation for over a decade.

NUS believes the marketisation of HE [higher education] is a failed experiment and that the government's repeated attempts to turn students into consumers are having a devastating impact, with the huge drops in mature and part time student numbers being just one casualty of this agenda.

We are extremely concerned about how well students will be protected if the government makes it easier for new providers to enter the sector as students risk losing both their time and money if untested providers do not meet strict requirements.

We acknowledge today's positive announcement that the government will finally introduce Sharia-compliant loans, something which NUS has long campaigned for.

NUS will fight any rise in tuition fees and work to ensure students are protected from the dangerous reforms proposed in the white paper and today's Higher Education and Research Bill.

Sorana Vieru, NUS Vice President (Higher Education), said: "NUS is strongly opposed to the marketisation of the higher education sector as a climate of competition will never be in students' best interests. The government's proposals could be hugely damaging to the reputation of our world-renowned higher education sector.

"The so-called Office for Students doesn't even have one reserved place for a student representative, despite the huge impact its decisions will have on students' lives. Further tuition fee rises are totally unacceptable and new providers should be held to extremely high standards, not given degree-awarding powers on day one."¹⁷³

19.5 Selected reaction to the White Paper Office for Fair Access (OFFA)

Professor Les Ebdon, Director of Fair Access to Higher Education, said: - "I welcome the increased emphasis on fair access to higher education in this important White Paper. Making sure that talented people from disadvantaged backgrounds are able to access – and succeed – in higher education is key to increased social mobility.

"There are greater rates of young people from disadvantaged backgrounds in higher education than ever before. I believe that an independent Director of Fair Access, with the profile, authority

¹⁷² Guild HE, [Reasons to be cheerful?](#), 25 May 2016.

¹⁷³ NUS, [NUS responds to the government's Higher Education and Research Bill](#), 19 May 2016.

and tools to challenge universities, is crucial to accelerating future progress. I am pleased that Ministers recognise the importance of this independent role within the new Office for Students, and look forward to working with them, and the whole sector, as we work towards the Prime Minister's fair access goals."¹⁷⁴

Universities UK

Dame Julia Goodfellow, President of Universities UK and Vice-Chancellor of the University of Kent, said:

"We support the government's aim to protect the interests of students, increase fairness and demonstrate the value of a university education.

"The university sector is an international success story in terms of the quality of teaching and research. It is important that any reforms recognise this and build on that strength.

"Established universities are not standing still and are always seeking to improve what they offer to students. Providing a high-quality, world-leading experience for all students is central to what our universities do.

"It is important also that any new higher education providers awarding their own degrees or calling themselves 'university' meet these same, high standards.

"We are pleased that government has listened to the views of universities on their plans for a Teaching Excellence Framework. Universities will work with the government to see how this can best add value to all students, whatever their choice of subject or university.

"The focus on improving access to higher education is to be welcomed. Universities have made considerable progress in recent years to increase the numbers of students from disadvantaged backgrounds going to university. This is ongoing work, and we recognise there is still more to do."¹⁷⁵

Russell Group

Dr Wendy Piatt, Director General of the Russell Group, said:

"We share the Government's desire to strengthen the UK's world-class higher education system. Russell Group universities deliver outstanding research hand in hand with excellent teaching – this is central to the student experience they provide.

"We support the Government's commitment to maintain and build on the world-class research and innovation taking place at our leading universities. Not only are we world-leaders in research but we also punch well above our weight so the Government should be careful about making any substantial changes to a successful system. Allowing the Research Councils and Innovate UK to retain their identities and budgets is a step in the right direction but we urge them to proceed with caution.

On teaching excellence

"A huge amount of time, effort and resources have been devoted to improving the education and student experience at our universities. And this is reflected in feedback from employers and

¹⁷⁴ OFFA, [OFFA comment on higher education White Paper](#), 16 May 2016.

¹⁷⁵ Universities UK, [Universities UK - Response to government higher education white paper](#), 16 May 2016.

our students who year on year express above average levels of overall satisfaction with the quality of their course.

“There is always room for improvement but this is best delivered through a risk-based approach to regulation that protects the institutional autonomy, diversity and competitiveness that our system thrives on. The new Teaching Excellence Framework must add value and assess teaching fairly and accurately without adding to the regulatory burden. We are encouraged to see that the Government have realised the difficulties of introducing a complicated assessment system so quickly. The decision to develop and pilot this new system over a longer period of time is good news.”

On UK Research & Innovation (UKRI)

“The Government’s added legislative protection for the dual support system is extremely welcome. Taking time to establish UKRI in shadow form before full implementation should help ensure a smooth transition, but the scale of change being proposed to the UK’s research funding architecture should not be underestimated.

“We welcome the appointment of John Kingman as interim chair of UKRI. John is a strong advocate of world-class research and innovation in our universities and understands the importance of protecting the many strengths in the current system.”

On transparency and access

“We want talented students from all backgrounds to know that with the right grades in the right subjects a place at our universities is well within their reach. Real progress has already been made with increasing numbers of disadvantaged and BME students coming through our doors, but we are far from complacent. Next year we will spend over £243 million on outreach activities and financial support aimed at the most disadvantaged students in England alone. Universities publish a range of data through UCAS, the Higher Education Statistics Agency and on their own websites to ensure the admissions process is as clear and easy-to-understand as possible.”

On new providers

“We are not opposed to new providers so long as the growth does not increase pressure on the limited funding available from Government. The probationary period for new entrants to the market must also be robust and we urge the Government to consider a longer period of enhanced scrutiny and peer review to help maintain the UK’s reputation and high standards.”¹⁷⁶

Higher Education Policy Institute (HEPI)

In many ways, the biggest shift from the recent past in the new higher education green paper is the redrawing of the research landscape (as I originally noted in a [Times Higher blog](#)).

The white paper says:

‘There are currently ten arms’-length Government bodies operating in the higher education and research space. We will reduce this to two. We will establish a single market regulator, the Office for Students (OfS) and a single research and innovation funding body, UK Research and Innovation (UKRI).’

¹⁷⁶ Russell Group, [Russell Group - Higher education white paper](#), 16 May 2016.

This is bold stuff. Until recently, it was once thought the autonomy of the UK's universities and the history of co-regulation might insulate higher education from the quango cull that has affected vast swathes of government policy in recent years. But it was not to be.

And yet...perhaps the reforms are not quite as radical as originally thought. The white paper simultaneously portrays the changes to the research landscape as a radical piece of simplification and a modest change that retains the identity of, for example, the seven separate research councils.

While HEFCE is to subsume Ofpa, it is also to be split, with its research functions ending up in UKRI. Innovate UK is also to be subsumed into UKRI, as are the seven research councils. So UKRI takes the place of many other bodies and yet it will not be run as one seamless organisation.

The white paper states:

'We will retain and strengthen leadership in specific research discipline areas, innovation and England only research funding by establishing nine Councils within UKRI with delegated autonomy and authority.'

The paper also says the Government will set the budget for each council annually and that 'The names, brands and symbolic properties of the Research Councils and Innovate UK will be retained.'

Perhaps, as Ministers claim, all this will leave the UK research base stronger by making it easier, for example, to support interdisciplinary research. To guarantee this, [a little more money will almost certainly be needed](#) but nonetheless it could happen. As shown in the picture above, it is much less certain whether the change is really any simplification at all.¹⁷⁷

Regent's University London

Aldwyn Cooper, vice-chancellor and chair of the Independent Universities Group:

"The central objectives identified for implementation in the white paper are very positive. The focus on quality to be the key determinant for acquisition of university title, student experience, graduate employment and innovation are of crucial importance to the UK's continuing gold standard position in world Higher Education."¹⁷⁸

Further responses are available in: "[Higher education White Paper: Mixed response emerges from sector's key figures](#)", *Independent*, 16 May 2016 and "[HE White Paper: the higher education sector responds](#)", *Times Higher Education*, 13 May 2016.

¹⁷⁷ HEPI, [HEPI When ten into two doesn't go? - HEPI](#), 18 May 2016

¹⁷⁸ "[HE White Paper: the higher education sector responds](#)", *Times Higher Education*, 13 May 2016.

Annex 1: Alternative providers

Background

There are many private higher education providers in the UK - they offer degree level courses and receive no direct money from public funds. A paper prepared for BIS in May 2016, [Understanding the Market of Alternative Higher Education Providers and their Students in 2014](#), identified 732 privately funded higher education providers operating in the UK in 2014 and the report estimated that up to around 295,000 students were attending these institutions. Most of the providers identified in the report were relatively small in scale – 47% of providers had fewer than 100 students, however 35 providers had over 1,000 students and five of these had over 5,000 students.

The Impact Assessment to the Bill states that the alternative provider market is “fairly established”, with more than three fifths of institutions operating for more than 10 years.¹⁷⁹

Most of these private institutions are colleges that offer programmes of study which are validated by other public HEIs. However since 2010 the number of private providers with their own DAPs and university status has increased rapidly. There are currently nine private higher education providers with degree awarding powers in England and four of these institutions have university status; of these institutions only the University of Buckingham offers a similar range of courses to public universities, the others generally provide a more limited range of courses and tend to specialise in areas such as business and management, arts and religion.

Library briefing paper SN/SP/6961, [Expansion of private higher education provision in England](#), 13 August 2014, discusses the increase in private higher education providers.

Regulation of private providers

The regulation of private higher education provision is complicated and there is little legislation in this area. Most of the regulation of alternative providers has been carried out through guidance and other administrative procedures around the granting of DAPs and UT and specific designation of courses for student support purposes. The criteria which apply to private sector providers in some areas, such as DAPs and university status, are different to those which apply to public providers and this has caused private providers to call for the creation of a ‘level playing field’.

Financial support for students at private providers

Students at private providers with their own DAPs, or studying on specifically designated courses at private providers are eligible to apply for publicly funded student support through the Student Loans Company. In 2015-16 110 alternative providers (including those with DAPs) had courses designated for student support.

¹⁷⁹ BIS, [Impact Assessment: Higher Education and Research Bill](#), May 2016, p20.

In 2013-14 students at alternative providers¹⁸⁰ were paid a total of £236 million in fee loans, £292 million in maintenance loans and £133 million in maintenance grants. This includes students from England and EU students at English institutions. In the same year just under 50,000 of these students received a loan and almost 41,000 a grant. In 2013-14 the average fee loan paid to post-2012 students at these providers was around £5,200. The equivalent for students at public providers in 2014-15 was £7,900.¹⁸¹ The fee cap is £6,000 at alternative and £9,000 at public providers.

The proportion of potentially grant eligible students at alternative providers who received a full grant in 2013-14 was well above that at public providers at 74% compared with 41%. These students are more likely to be independent (not supported by parents) and have lower household incomes.

Support for students at alternative providers was a small fraction of total support across all providers. In 2013-14 it made up 8% of grants and 6% of loans. However, it has grown rapidly. Grant awards to these students in 2013-14 were more than six times their 2011-12 level of £20 million and loan payments were three times their 2011-12 total of £90 million.¹⁸² There is a lag in the data on alternative providers due to later course start dates than at public providers so data for 2014-15 (as at November 2015) does not represent a good indication of any subsequent real change in support.

In 2013-14 there were ten alternative providers where combined fee loan amounts were £5 million or more, four of which received more than £10 million.¹⁸³ The Greenwich School of Management had the highest figure at £21 million.¹⁸⁴

BIS Research Paper No 111, [Privately funded providers of higher education in the UK](#), June 2013 gives further information on private providers.

¹⁸⁰ A provider of higher education courses designated for student support which does not receive funding from HEFCE or equivalent bodies or direct public funding and is not a further education college.

¹⁸¹ SLC, [Student Support for Higher Education in England: academic year 2015-16 \(Provisional\)](#).

¹⁸² *Ibid.*

¹⁸³ St. Patrick's International College, British and Irish Modern Music Institute, British Institute of Technology and e-commerce and the Greenwich School of Management.

¹⁸⁴ SLC, [Student Support for Higher Education in England: academic year 2015-16 \(Provisional\)](#), Supplementary Tables.

Annex 2: Teaching quality in higher education and the TEF

Since the raising of university tuition fees in 2012 debate has increased about the value of higher education. Many of the UK's 'elite' universities are research intensive institutions and concerns have been voiced about the parity of esteem in these HEIs between teaching and research and more generally about standards of teaching across the higher education sector.

A commitment to introduce 'a framework to recognise universities offering the highest teaching quality' was included in the [Conservative 2015 Election Manifesto](#)¹⁸⁵ and re-stated in the [Summer Budget 2015](#) when it was announced that institutions offering 'high teaching quality' would be allowed to increase their tuition fees in line with inflation from 2017-18.¹⁸⁶

The government is planning to introduce a process called the TEF to ensure that all students receive excellent teaching by identifying and rewarding HEIs with the highest quality of teaching. It is hoped that the TEF will drive up standards and help students make more informed choices about higher education.

The Green Paper proposals – the Teaching Excellence Framework (TEF)

The Green Paper proposals on the TEF are given in library briefing paper, CBP 7399, [Higher Education Green Paper 2015 "Fulfilling Our Potential"](#) p 8-10.

The TEF aims to reward 'teaching excellence', however the Green Paper acknowledges that there is 'no one broadly accepted definition of teaching excellence'.¹⁸⁷ The TEF will therefore rely on metrics as a proxy for teaching quality and it will use existing data to inform judgements.

The Green Paper outlined how the TEF will develop overtime. An introductory version of the TEF would operate in the first two years.

In **Year 1** a current satisfactory QAA review would be sufficient for a level 1 TEF award. Using this criteria most HEIs would qualify for a TEF award in the first year and this would create a benchmark of quality. HEIs awarded a level 1 TEF in this first year would be able to raise their fees in line with inflation, up to a maximum fee cap, from the academic year 2017-18.¹⁸⁸ The increased fees would apply only to new students entering higher education from 2017-18.¹⁸⁹ A level 1 award would last for three years.

"We have long accepted the principle that we fund research according to quality and we feel it's appropriate to apply the same principle to teaching"

Jo Johnson the Universities Minister
(*Times Higher Education* 19-25 May 2016)

¹⁸⁵ [Conservative 2015 Election Manifesto](#), p35

¹⁸⁶ HM Treasury, [Summer Budget 2015](#), HC 264, July 2015, p59.

¹⁸⁷ BIS, [Fulfilling Our Potential: Teaching Excellence, Social Mobility and Student Choice](#), Cm9141, November 2015, p21, para 15.

¹⁸⁸ *Ibid*, p23, para 22.

¹⁸⁹ *Ibid*, p24, para 26.

In **Year 2** higher awards would be available and these would be based on metrics and qualitative evaluations submitted by HEIs. The paper proposed four levels of TEF awards. The metrics would be used to make judgements about teaching quality in HEIs. The Green Paper said that initially three common metrics would be used in the TEF: employment/destination data, retention/continuation data, and results from the National Student Satisfaction Survey.

The TEF assessment will additionally take into account qualitative evidence supplied by HEIs on areas such as teaching intensity, contact time, training of staff and diversity of students.¹⁹⁰

TEF assessments will be made by a panel of independent experts and institutions would be expected to bear the cost of the TEF assessment process.¹⁹¹

The TEF will develop over time as criteria evolve and more metrics are integrated, and as improvements are made based on past experience. The Green Paper stated that it hoped that metrics on engagement in study and learning gain will be incorporated.

Business, Innovation and Skills (BIS) Committee Report on the TEF

The BIS report, [The Teaching Excellence Framework: Assessing quality in Higher Education](#), 23 February 2016 analysed the TEF proposals.¹⁹² The report generally welcomed the concept of the TEF, but raised several areas of concern.

The **use of metrics as proxies** for quality was seen as problematic. The report stated that the use of metrics should be based on evidence of their validity as proxies for quality. Using employment destination as a metric was highlighted as not being proven as a good proxy for teaching quality, as graduate destination tends to be more influenced by social and economic factors than by teaching quality. The report was also concerned about unintended consequences of using metrics, such as creating incentives for 'game playing' – this is a particular issue with the National Student Satisfaction Survey. The committee also asked questions about the weighting to be given to metrics compared to the qualitative report. Overall the committee concluded that the use of metrics required further work.

The report also said that **most HEIs were against linking TEF awards to raising fees**. The committee recommended that this should only go ahead if confidence could be placed in the metrics to be used.

The committee also raised concerns about the **timetable for bringing in the TEF**. The first awards are to be announced in April 2016 and TEF 2 in 2017 – the committee felt that this was insufficient time and

¹⁹⁰ BIS, [Fulfilling Our Potential: Teaching Excellence, Social Mobility and Student Choice](#), Cm9141, November 2015, p34.

¹⁹¹ *Ibid*, p28.

¹⁹² Business, Innovation and Skills Committee, [The Teaching Excellence Framework: Assessing quality in Higher Education](#), 23 February 2016, HC 572.

recommended that the government set out how it would collate evidence and the timescale for the development of the TEF.

With regard to whether the TEF should be awarded at subject level or institutional level, the report said that most HEIs were in favour of TEF awards being at subject level as this would be more useful to prospective students but they expressed concerns about increasing their bureaucratic burden.

The White Paper proposals

The White Paper contains significant changes to TEF which have been made in response to feedback to the Green Paper proposals.

Respondents to the Green Paper were supportive of the overall aims of the TEF and the focus on high quality teaching to drive up standards and improve student choice. However concerns were expressed at the speed with which the TEF was being introduced and respondents said that the implementation timetable was 'too ambitious' and that there should be testing and piloting prior to full implementation.¹⁹³

The White Paper acknowledged the concerns voiced by respondents and the recommendations of the BIS committee and said that there would be some changes to the proposals:

In our Green Paper, we proposed a quick timetable towards implementation, with four different TEF ratings and differential fee caps introduced from Year 2. We welcome the feedback from the consultation and the recent report by the Business, Innovation and Skills Select Committee, suggesting that we need to take more time to introduce the TEF. We agree on the need for a robust assessment process for the use of financial incentives. We are therefore taking a measured approach for implementation that is slower overall, and will trial and pilot each change with the sector.¹⁹⁴

Adjusted arrangements for the TEF

In **Year 1** all providers with a satisfactory quality assessment would automatically be awarded a grade of 'Meets Expectations' and allowed to raise their fees in line with inflation. This is the same as the Green Paper proposal.

In **Year 2** the White Paper makes some changes to the Green Paper proposals. The White Paper proposes that Year Two will be a **trial year** to test the framework; providers may take part on a voluntary basis. There will be three TEF levels, not four as proposed in the Green Paper – Meets Expectations, Excellent and Outstanding. Disciplinary pilots will also be carried out. Financial incentives will be the same for all providers. A **lessons learned exercise** will be conducted after Year Two.

Year 3 (2018-19) will, subject to the results of the lessons-learned exercise, be the first full year of assessment at provider level. Other metrics will be introduced once these become available and HEFCE will

¹⁹³ BIS, [Summary of Consultation Responses: Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice](#), May 2016, p8.

¹⁹⁴ BIS, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#), Cm9258, May 2016, p44.

ask HEIs to look into developing methodology to measure contact hours and teaching intensity. The Technical Consultation also seeks sector input on measuring graduate employment. During Year Three a number of pilot assessments at disciplinary level will be carried out.

Year 4 (2019-20) will, subject to the results of the disciplinary pilots, be the first year in which disciplinary level assessments take place. This year is the earliest that taught postgraduate courses may be included.

The Green Paper proposed that only providers with 50% of their students on higher education courses would be eligible for the TEF. Respondents to the Green Paper thought that this was an arbitrary ban and the White Paper proposes that in Year One **all** providers will be eligible. Part-time courses will also now be included as a result of responses to the consultation. Detailed eligibility requirements are set out in Annex A of the White Paper.

A **Technical Consultation** paper on Year Two of the TEF has been published alongside the White Paper – this covers the operational detail of the TEF including the development of future metrics such as learning gain.¹⁹⁵ The Consultation will run until 12 July 2016.

Institutions from the devolved administrations will also be able to take part in the first year of the TEF.

TEF and financial incentives

In **Year One** the White Paper proposes allowing providers awarded Meets Expectations to maintain their fees in line with inflation. In **Year Two** three levels of TEF may be awarded – providers that are successful at any level will keep their award for a maximum of three years and will be allowed to increase their fees in line with inflation on top of Year One increases.¹⁹⁶ There will be no differential fee increases.

From **Year Three** onwards awards at three levels will be made in the same way as Year Two and a differentiated fee cap will be introduced. Providers with an award of Meeting Expectations will be allowed to increase their fees by 50% of the inflationary uplift and providers with higher awards will be allowed 100% of the inflationary uplift. The system will also be ‘history-blind’, meaning that a provider’s fee/loan cap will be solely dependent on their current TEF level – institutions will not be able to ‘bank’ increases gained if they performed better in previous years. This will allow new or improving providers to catch up.¹⁹⁷

The fee changes will apply to all students at a provider – there will be no differential fee caps per cohort, so if fee levels drop one year this will apply to all students at the provider and they will have to lower fees for existing students.¹⁹⁸

¹⁹⁵ BIS, [Teaching Excellence Framework Technical Consultation for Year Two](#), May 2016.

¹⁹⁶ BIS, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#), Cm9258, May 2016, Box 2.5, p50.

¹⁹⁷ *Ibid*, p51.

¹⁹⁸ *Ibid*.

Cost of the TEF

The Detailed Impact Assessments published in June 2016 states that the higher education sector will benefit by £1.3bn as a result of the TEF.¹⁹⁹ The cost of administering the TEF will be met by the government and the Detailed Impact Assessment says that the additional administrative demands could result in potential costs to the Student Loans Company of £1.1m in 2016/17.

The costs associated with assessment procedure will be borne by HEIs.²⁰⁰ An article in the *Times Higher Education* stated that there are 'no clear predictions' of the cost of the TEF:

According to the Department for Business, Innovation and Skills (BIS), an impact assessment with a best-cost estimate for the teaching excellence framework (TEF) has been done but will only be published in the course of the approval process for the new Higher Education and Research Bill.

There are no clear predictions as to how much the TEF will cost in the government's White Paper on higher education, but the government seems keen to distance it from the expense and bureaucracy involved in the REF.²⁰¹

The Detailed Impact Assessments published in June 2016 states that higher education providers will incur costs around the TEF in the form of costs associated with familiarising themselves with the process and application costs. The assessment states that the average annual total cost to institutions over a ten year period will be £22.3m, which is equivalent to £53,000 per institution.²⁰²

Comment

The Green Paper acknowledged that there is '**no one broadly accepted definition of teaching excellence**'.²⁰³ This point was also made in a publication for BIS, [Teaching Quality in Higher Education: Literature Review and Qualitative Research](#), May 2016:

Defining excellence is considered to be a challenge and the literature provides a plethora of definitions of excellence. It is a contested concept, with varied competing interpretations. The situation is complicated by the fact that excellent teaching is not only down to the individual teachers and the learners they work with, but also the supporting resources and systems, which facilitate the learning process.²⁰⁴

The Impact Assessment to the Bill states that 'lack of information on teaching quality weakens the effectiveness of student choice as a driver

¹⁹⁹ BIS [Detailed Impact Assessments Higher Education and Research Bill](#) June 2016 p49 para 105

²⁰⁰ BIS, [Success as a Knowledge Economy: Teaching, Social Mobility and Student Choice](#), Cm9258, May 2016.

²⁰¹ ["How much will the TEF cost institutions and taxpayers?"](#) *Times Higher Education*, 2-8 June 2016

²⁰² BIS [Detailed Impact Assessments Higher Education and Research Bill](#) June 2016 p36

²⁰³ BIS, [Fulfilling Our Potential: Teaching Excellence, Social Mobility and Student Choice](#), Cm9141, November 2015, p21.

²⁰⁴ BIS, [Teaching Quality in Higher Education: Literature Review and Qualitative Research](#), May 2016, p5.

of competition since better providers are not necessarily rewarded through greater applications and recognition.²⁰⁵

However the BIS literature review on teaching quality in higher education found that teaching quality was not viewed as a particularly important to students applying to higher education:

Teaching quality did not feature as a key issue that the students explicitly considered when applying to university. However this is not to say that would have been the case had more information been available- indeed, some students appeared to have used the reputations of universities, departments and academic staff as proxies for teaching quality. Issues students considered included university reputation, reputation of department; research profile of the department; and whether an institution was within commuting distance. Other factors mentioned were course content, the general 'feel' of the university ("can you see yourself living here?"), location, personal experiences and observations at open days and interviews, universities prospectuses online, other websites – such as Which University? – which provided information on universities, league tables which rank universities, employment outcome information on the UCAS website, and social media. For many students, fellow students' comments about their experiences at universities on social media websites such as Facebook and The Student Room were the most useful and trusted sources of information.²⁰⁶

Sector concerns

Spokespersons from the higher education sector have voiced concerns about the reputation of UK higher education under the TEF system. Professor Simon Gaskell, who leads on quality issues for Universities UK, has said that the TEF could be seen as "reflecting an apparent reduction in quality".²⁰⁷ Bill Rammell, vice-chancellor of the University of Bedfordshire, said that the TEF risks the "commoditisation of higher education, where fees go up and down".²⁰⁸

The sector generally has welcomed the phasing in of the system.

Cost to students

The TEF will allow higher education tuition fees to rise annually in line with inflation. The Detailed Impact Assessments states that fees at institutions rated Excellent or above each year, could rise to £11,697 per year by 2025/26.²⁰⁹

²⁰⁵ BIS, [Impact Assessment: Higher Education and Research Bill](#), May 2016, p11.

²⁰⁶ BIS, [Teaching Quality in Higher Education: Literature Review and Qualitative Research](#), May 2016, p6.

²⁰⁷ "[Fees could go down as well as up under TEF](#)", *Times Higher Education*, 19-25 May 2016.

²⁰⁸ *Ibid.*

²⁰⁹ BIS [Detailed Impact Assessments Higher Education and Research Bill](#) June 2016 p40 Table 12

Annex 3: Widening participation and social mobility

The widening participation agenda in higher education aims to address the discrepancies in take-up of higher education across different under-represented groups.

A report by the Independent Review on Social Mobility and Child Poverty made the following statement on the need for widening participation in higher education:

Access to university remains inequitable. There is a strong correlation between social class and the likelihood of going to university in general and to the top universities in particular.²¹⁰

Widening participation in higher education is currently delivered in the following ways:

- by institutions through their widening participation activities and strategies;
- through the work of the OFFA which approves and monitors HEIs' access agreements and disseminates best practice across the sector; and
- through HEFCE's allocation of the Student Opportunity Fund which in 2014-15 distributed £41million to HEIs.

It is hoped that merging OFFA into the OfS will create a more effective oversight of widening participation and improve outcomes for students.

In recent years inequalities in participation in higher education have reduced and improvements have been seen in participation rates of many traditionally under-represented groups.

When tuition fees were raised in 2012 some commentators expected that application rates for students from disadvantaged backgrounds and under-represented groups would fall significantly. In the event entry rates for young people from disadvantaged areas went up in 2013-14 and closed the gap somewhat on applicants from other areas.²¹¹

Entry rates for some groups have seen particularly significant increases. Young people from Black ethnic backgrounds have seen the largest increase in entry rates with an increase of 42% between 2009 and 2015.²¹² Disabled student numbers have also risen. However there has been a marked decline in applications from older students, and young white boys from the lowest socio-economic backgrounds have been identified as having especially low participation.²¹³

²¹⁰ [*University Challenge: How Higher Education Can Advance Social Mobility: A progress report by the Independent Review on Social Mobility and Child Poverty*](#), October 2012, p22.

²¹¹ UCAS, *2013 Application Cycle: End of Cycle Report*.

²¹² BIS, [*Equality Analysis: Higher Education and Research Bill*](#), May 2016, p11.

²¹³ *Ibid*, p37.

The Green Paper also stated that more work needs to be done to increase the number of disadvantaged students gaining access to the most selective HEIs.²¹⁴

In April 2014 BIS published the [National strategy for access and student success in higher education](#). The report showed that there were clear differences in degree attainment and progression to employment, between students from ethnic minority groups and white students, and substantial gaps in the progression of white males from disadvantaged groups. Studies such as this highlight that widening participation needs to go further than just improving access to higher education and needs also to focus on improving outcomes for students and graduates.

The Prime Minister has set a target to double the proportion of students from disadvantaged backgrounds in higher education from 13.6% in 2009, to 28% by 2020 and to increase the number of BME students going into higher education by 20% by 2020. Jo Johnson the Universities Minister said at the Conservative Party conference on 6 October 2015 that 'widening participation and access will be intimately linked to the TEF'.²¹⁵

The widening participation agenda is moved forward by the work of a number of organisations such as the Sutton Trust, and recently Universities UK established a Social Mobility Advisory Group to provide advice to the government and support for universities on improving access and long-term success for under-represented groups in higher education.

The Equality Analysis shows that alternative providers perform well on widening participation measures. It states that students at alternative providers are more likely to be from low income backgrounds (71% of students at alternative providers receive a full maintenance grant compared to 41% at public providers), are older than their counterparts at public providers and more likely to be from BME backgrounds.²¹⁶

Student Opportunity Fund

Student Opportunity allocation is the main way that HEFCE supports widening participation. This funding recognises the additional costs of recruiting and supporting students in three main areas:

- students from disadvantaged backgrounds
- students with disabilities
- work to retain students who may be less likely to continue their studies.

These funds are administered as one of the targeted allocations within HEI teaching funding.

²¹⁴ BIS, [Fulfilling Our Potential: Teaching Excellence, Social Mobility and Student Choice](#), Cm9141, November 2015, p37.

²¹⁵ Quoted in "[Cameron's access goals 'key factor' in Green Paper](#)", *Times Higher Education*, 15 October 2015.

²¹⁶ BIS, [Equality Analysis: Higher Education and Research Bill](#), May 2016, p42.

The government announced in the Spending Review and Autumn Statement 2015 that it intends to reduce the Student Opportunity Allocation:

The government will work with the Director of Fair Access to ensure universities take more responsibility for widening access and social mobility, and ask the Higher Education Funding Council for England to retarget and reduce by up to half the student opportunity fund, focusing funding on institutions with the most effective outcomes.²¹⁷

HEFCE's [response](#) to the Spending Review made the following comment on the change:

The reduction to student opportunity funding will be challenging for providers but HEFCE will work with Government and the sector to retarget and reduce the student opportunity fund in a way that best achieves the Government's aims for social mobility.²¹⁸

²¹⁷ BIS, [Department for Business, Innovation and Skills' settlement at the Spending Review 2015](#), 25 November 2015.

²¹⁸ HEFCE, [HEFCE response to Government Spending Review and Autumn Statement](#), 25 November 2015.

Annex 4: Research funding system

The Dual Support System

Public sector funding for UK research comes from a mix of devolved and UK institutions. Under the dual support system, funding is provided through two main routes:

- annual quality-related funding provided to HEIs as a block grant through the higher education funding councils;²¹⁹ and
- funding allocated through the research councils, which covers the whole of the UK.

Funding for the dual support system (in addition to the UK Space Agency and national academies like the Royal Society) is provided from the science budget, which is allocated annually by BIS. Further information on the science budget is provided in Library briefing paper CBP 7237, [Support for science](#), last updated 29 February 2016.

Box 7: Value of the science budget

The ring-fenced non-capital science budget stood at £4.6 billion per annum during the 2010-2015 Parliament. BIS made a distinction between this science ring-fence (£4.6 billion) and a slightly larger (£4.7 billion) non-capital science budget that includes some recent additions such as funding for quantum technologies. The Spending Review 2015 stated that the government would protect the £4.7 billion budget in real terms over the course of the current Parliament. It additionally stated that this would include a new [Global Challenges fund](#) “to ensure UK science takes the lead in addressing the problems faced by developing countries whilst developing our ability to deliver cutting-edge research”²²⁰ The capital part of the science budget currently stands at £1.1 billion per annum and the government has stated that this will be protected in real terms until 2021.²²¹

Funding council funding

The research funding available to HEFCE to allocate is set out each year in a grant letter from BIS. HEFCE’s 2016-17 research funding allocation is £1.7 billion; its capital funding allocation is £225 million.²²²

HEFCE allocates the majority of this funding on the basis of past research quality (QR funding).²²³ To assess the quality of research HEFCE, along with the other UK funding bodies, run periodic research assessment exercises, the most recent of which was the 2014 Research Excellence Framework (REF) that was used to determine funding for the

²¹⁹ In Northern Ireland, the Department for Employment and Learning.

²²⁰ HM Treasury, [Spending Review and Autumn Statement 2015](#), Cm9162, November 2015, p48.

²²¹ House of Commons Science and Technology Committee inquiry into the Science Budget, written evidence submitted by the Department for Business, Innovation and Skills (TSB0075), September 2015.

²²² BIS, [The Allocation of Science and Research Funding 2016-17 to 2019-20](#), March 2016, p10.

²²³ HEFCE additionally provides around £113 million of [Higher Education Innovation Funding](#) per annum to support knowledge-based interactions between higher education institutions and the wider world. Smaller amounts of QR funding are also allocated on the basis of an institution’s PhD provision, and on the basis of the business and charitable income institutions attract.

2015-16 academic year onwards.²²⁴ Further information on the allocation of QR funding is available on the HEFCE website at: [How we fund research](#).²²⁵

The distribution of HEFCE's research funding between HEIs is not even. For example, in 2014-15 the Universities of Oxford and Cambridge received a combined total of £261 million in recurrent research grant funding, 16.8% of the total distributed in England by HEFCE. The top ten HEIs in England for recurrent research funding received 52.4% of the total distributed by HEFCE.²²⁶

Research councils

Each of the seven UK-wide research councils funds research and training activities in a different field, ranging across the arts and humanities, social sciences, engineering and physical sciences, and the medical and life sciences. The combined resource allocation for the research councils in 2016-17 is £2.7billion; the combined capital allocation is £341 million.²²⁷

The research councils provide funding which is UK-wide. The majority of funding goes to higher education institutions, but smaller amounts of funding is provided for research undertaken in public research institutes, private non-profit organisations and businesses.²²⁸

Box 8: Governance and organisation of the research councils

The research councils are established by Royal Charter and are classed as Non-Departmental Public Bodies (NDPBs) for accounting purposes. The governing body of each research council (its "council"), typically comprising 15-18 members appointed by the Secretary of State for BIS, is responsible for setting policy, strategy and priorities. Each research council also has its own structure of advisory boards and groups.²²⁹

In 2002, Research Councils UK (RCUK) was launched as a strategic partnership of the seven research councils aimed at "optimis[ing] the ways that research councils work together." Its leadership is provided by the research councils' chief executives working together. It is not a legal entity and the existence of RCUK does not alter the governance of the individual research councils.²³⁰

In its November 2015 report, [The science budget](#), the Science and Technology Committee noted that there had been a shift in the balance of research council investment between basic research and applied research from a ratio of 67:32 to 62:36 between 2002 and 2013.²³¹ The committee report stated that it was "in order to consider if the research councils are working as an optimal system" but that "the shift to

²²⁴ HEFCE, [How we fund research](#), last updated 6 May 2016.

²²⁵ HEFCE, [How we fund research](#), last updated 6 May 2016.

²²⁶ HESA, income analysed by higher education provider and source.

²²⁷ BIS, [The Allocation of Science and Research Funding 2016-17 to 2019-20](#), March 2016, p12.

²²⁸ ONS, [UK Gross domestic expenditure on research and development: 2014](#).

²²⁹ RCUK, [Governance](#).

²³⁰ RCUK, [RCUK Aims & Organisation](#).

²³¹ Science and Technology Committee, [The science budget](#), 9 November 2016, HC 340 2015-16, p25.

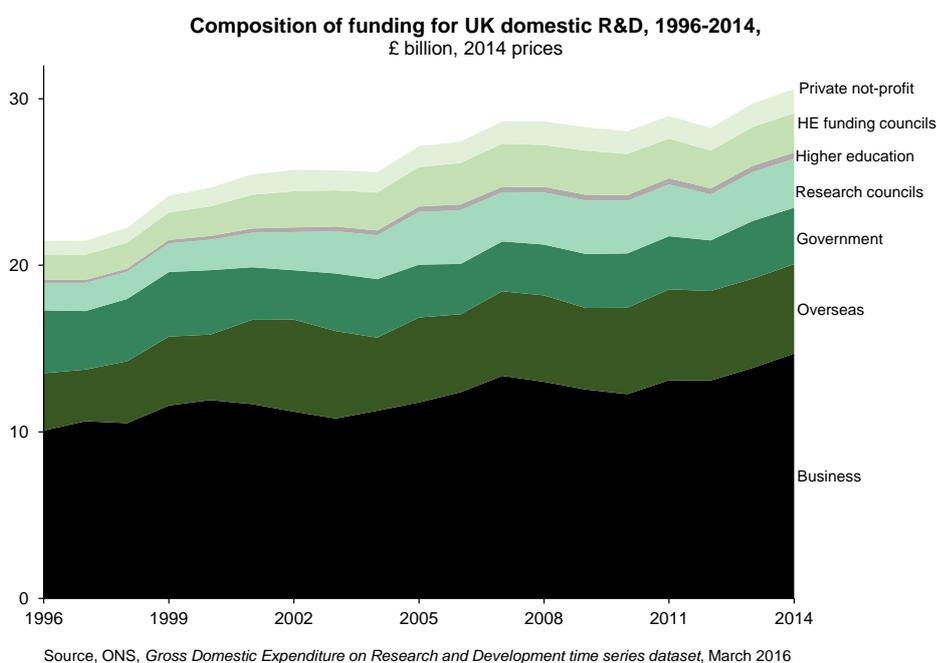
applied research over the last decade and the efficient, competitive and innovative output of the science they fund, imply that research councils are continuing to reflect changing priorities and driving excellence in our science base.” The Committee further concluded that (emphasis in original):

While most witnesses accept there is scope for better interdisciplinary working and strategic oversight between research councils, clear justification will be needed for any significant change in funding allocations, beyond simply seeking further administrative efficiency savings or structural adjustments. Sir Paul Nurse’s review will guide this process, and the Government will no doubt weigh its conclusions carefully. *But we caution against a radical reorganisation of the research councils which could potentially harm the research programme.*²³²

In 2014-15 the seven research councils distributed £1.7 billion of funding to higher education institutions in the UK, 81% of which went to higher education providers in England, 15% to Scotland, 3% to Wales and 1% to Northern Ireland.²³³ As with funding council funding, the distribution of funding between institutions is not even; the top 10 higher education providers in the UK for research council funding received 53.7% of the total funding distributed to higher education providers in the UK by the seven research councils.²³⁴

Funding outside of the dual support system

There are many sources of funding, both public and private, for research and innovation outside of the dual support system and the science budget. In addition to funding via the dual support system, for example, HEIs receive funding from a number of other sources, including charities, industry and overseas funders.²³⁵ Research by government departments (both within and outside higher education institutions) and innovation spending are also significant sources of funding outside of the dual support system



²³² Science and Technology Committee, [The science budget](#), 9 November 2016, HC 340 2015-16, pp25-6.

²³³ HESA, income analysed by higher education provider and source.

²³⁴ *Ibid.*

²³⁵ Uk-irc, [The Dual Funding Structure for Research in the UK: Research Council and Funding Council Allocation Methods and the Pathways to Impact of UK Academics](#), February 2013, p3.

and the science budget.²³⁶

Government funding for domestic research and development (R&D), including higher education funding council and research council funding, increased in real terms from £7.0 billion in 1996 to a peak of £9.1 billion in 2009, before decreasing to £8.7 billion in 2014. Over the same time period, funding for domestic R&D from business increased by 31% to £14.7 billion, and funding from overseas increased by 36% to £5.4 billion.²³⁷

Innovate UK

Government expenditure on innovation as a distinct funding stream is hard to measure; it includes funding for Innovate UK but also includes some science-related research work in government departments.²³⁸

Innovate UK (formerly the Technology Strategy Board) is the UK's innovation agency.²³⁹ Operating at arms-length from the government, it supports a number of programmes aimed at business-led technology innovation.²⁴⁰ This includes the development of a network of catapult centres – a series of physical centres, each specialising in a specific technology, where business can access equipment and expertise as well as conduct their own in-house research and development.²⁴¹

Innovate UK's core budget for 2016-17 is £561 million.²⁴² At the Spending Review 2015 the government stated that it would "maintain Innovate UK support for businesses" in cash terms over the course of the current Parliament.²⁴³

²³⁶ Science and Technology Committee, [The science budget](#), 9 November 2016, HC 340 2015-16, p11.

²³⁷ ONS, [Gross domestic expenditure on research and development time series dataset](#), 18 March 2016.

²³⁸ Science and Technology Committee, [The science budget](#), 9 November 2016, HC 340 2015-16, p12.

²³⁹ *Ibid.*

²⁴⁰ BIS, [2010 to 2015 government policy: research and development](#), updated 8 May 2015.

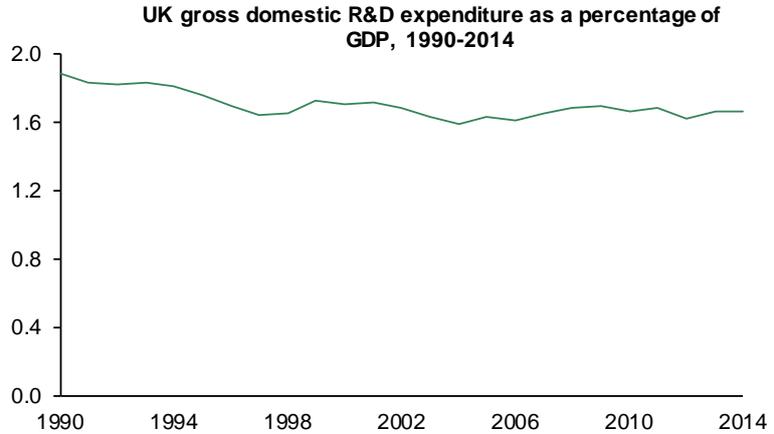
²⁴¹ *Ibid.*

²⁴² Innovate UK, [Delivery Plan: Financial Year 2016-17](#), p5.

²⁴³ HM Treasury, [Spending Review and Autumn Statement 2015](#), Cm9162, November 2015, p92.

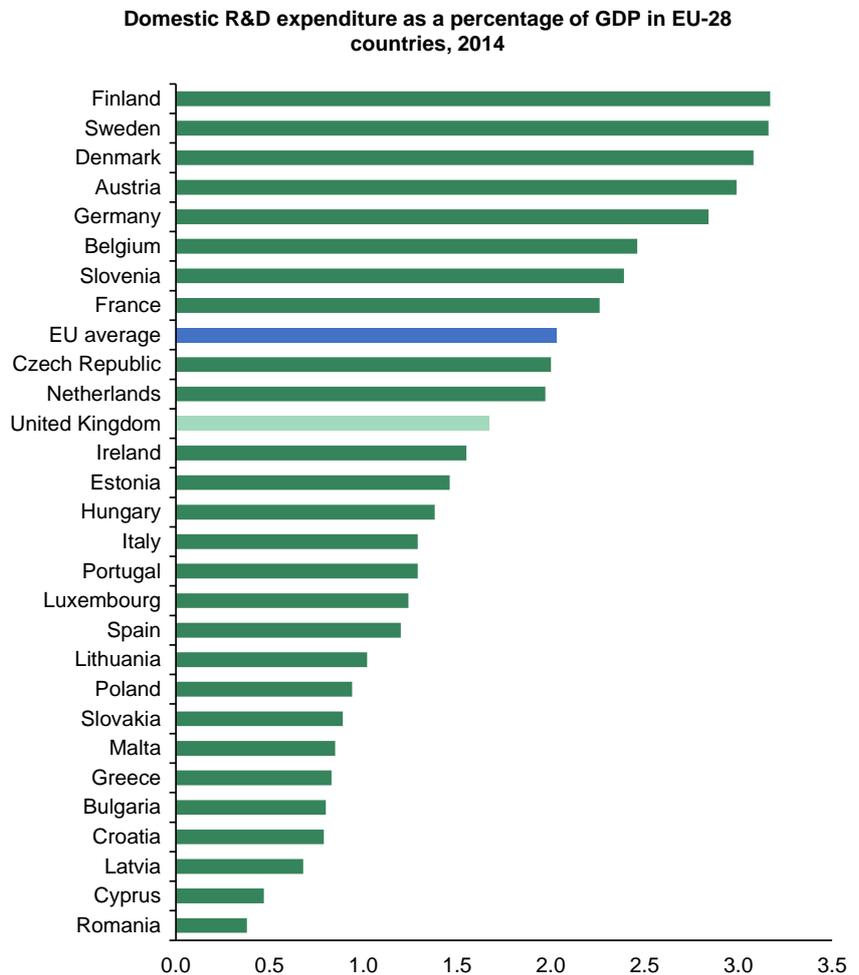
Total research and development expenditure

Between 1990 and 2014 gross domestic expenditure on R&D carried out in the UK (GERD) increased by 45% in real terms from £21.1 billion to £30.6 billion. However, the growth in GERD has not kept pace with growth in the economy overall, meaning that it has fallen as a proportion of GDP from 1.89% in 1990 to 1.67% in 2014.²⁴⁴



Source: ONS, UK gross domestic expenditure on research and development: 2014

The UK's percentage of GERD to GDP in 2014 (1.67%) was the 11th highest of all EU-28 countries, but below the average of 2.03%.²⁴⁵



Source: ONS, UK gross domestic expenditure on research and development, 2014

The proportion of GERD expenditure made up by the different sectors varies substantially between the different regions of the UK. For example, in England the higher education sector accounted for around 24% of total R&D expenditure, where as in Scotland the higher education sector accounted for around 48%.²⁴⁶ It should be noted that these figures refer to the combined expenditure by the units performing the research (in this case HEIs), not the organisations funding it.

²⁴⁴ ONS, [UK Gross domestic expenditure on research and development: 2014](#), 18 March 2016.

²⁴⁵ ONS, [UK Gross domestic expenditure on research and development: 2014](#), 18 March 2016.

²⁴⁶ *Ibid.*

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).