**Higher Education and Research Bill, Second Reading: Briefing note from GuildHE**

**Introduction**

GuildHE is, with Universities UK, one of the two officially recognised representative bodies for UK Higher Education. Our members include universities, university colleges, further education colleges and specialist institutions from both the traditional and private (“for profit” and “not for profit”) sectors.

This note provides high-level briefing for Second Reading. We will provide further, more detailed briefing at Committee stage.

**Summary**

GuildHE welcomes the introduction of the Bill because it provides the opportunity to put higher education regulation on a proper footing and to treat different sorts of providers on an equal and fair basis. But we do have concerns about aspects of the Bill:

* The implications of separating teaching and research;
* The potential risks to the student interest and the international reputation of UK higher education of speeding up the entry of new providers to the higher education market; and
* Additional powers for the Secretary of State to intervene directly in funding decisions.

More detail is provided below.

**Fixing regulatory problems**

New primary legislation has been essential since the fee changes of 2012. The regulatory framework has not been able to keep up with 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. The powers of the current regulator, the Higher Education Funding Council for England (HEFCE) have become inadequate. They derived from its role as majority funder – a role that has eroded until it now funds around 15% of teaching costs at established universities. It doesn’t fund alternative providers so government has to regulate them separately and treat them differently.

It was these regulatory shortcomings that prompted the Public Accounts Committee in 2015 to conclude that “[BIS] pressed ahead with the expansion of the alternative provider sector without a robust legislative framework to protect public money” and that BIS had “failed to protect the interests of legitimate students, the taxpayer and the reputation of those alternative providers who may be performing well.” The Bill allows financial, reputational and student protection risks to be addressed. And it allows all providers of higher education – old or new - to be regulated on a fair and consistent basis.

**Co-regulation**

We also welcome the fact the Bill endorses the principal of co-regulation with the higher education sector.The Bill does this by proposing to designate bodies for quality assurance and data collection. These bodies must “represent a broad range of registered higher education providers” and command their confidence.

**The Teaching Excellence Framework and the link to fees**

As well as the Higher Education and Research Bill, government is introducing a major policy reform with the introduction of the Teaching Excellence Framework (TEF). GuildHE welcomes the policy intention of the TEF to ensure higher education providers offer well designed courses, robust standards, support for students, career readiness and an environment that develops the ‘soft skills’ employers say they need. GuildHE supports the link between success in the TEF and inflation increases in the fee and loan caps. Without them, the ability of institutions to invest in the quality of the learning experience on offer will, inevitably, decline. And it is fairer for students if rises are linked to an assessment of quality.

**The implications of separating teaching and research**

The Bill creates separate regulatory and funding bodies for:

* teaching- the Office for Students (OfS); and
* research - UK Research and Innovation (UKRI).

This risks undermining the positive interaction of teaching, research and innovation activity in universities. That risk is increased by the recent changes in departmental responsibility that place higher education and oversight of the OfS in the Department for Education; and research and oversight of UKRI in the Department for Business, Energy and Industrial Strategy. The Higher Education White Paper promised to address the risk by making the OfS “take a holistic view of the sector and institutions”. But the Bill doesn’t deliver this – it simply allows for the OfS and UKRI to cooperate and share information. The Bill needs to be strengthened to allow OfS to carry out this role. This could be done by:

* Giving OfS the same power to provide advice to Ministers that is being proposed for UKRI; and
* Requiring OfS and UKRI jointly to prepare a strategy for higher education and research.

*Question: how will the Secretary of State ensure the Office for Students is able to take a holistic view of the sector and institutions?*

**Market entry**

Changes in the Bill help deliver the White Paper promise to make it easier for high quality new providers to enter the market. GuildHE supports this intention, provided there are sufficient safeguards to ensure high quality and protect the interests of students. But so far, Ministers haven’t provided details of those safeguards. Government proposes speeding up the process by which new providers could gain the power to award their own degrees.This includes allowing new providers to offer their own degrees on a probationary basis. This proposal would be implemented by a power in the Bill to authorise time-limited Degree Awarding Powers. The White Paper says such providers won’t have to “demonstrate a lengthy track record or meet specific and separate Degree Awarding Powers criteria” but “will be subject to “strong quality checks and close monitoring”. No detail has been provided about those quality checks or the monitoring regime so at the moment, there is 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.

*Question: what quality checks will you apply to providers seeking Degree Awarding Powers on probation? How will you protect the interests of students if such a provider fails probation?*

**Powers of the Secretary of State**

There looks to be a tension between the Government’s desire to create the underpinning framework for a market driven by student choice on the one hand, and the Bill proposing more powers to the Secretary of State to intervene directly in the funding of universities on the other. Partly, this results from powers that enable Ministers to implement the results of the Teaching Excellence Framework (TEF), setting different fee rises, within inflation, for different levels of performance in the TEF. But it also comes from a proposal to reverse the current legal position that prevents Ministers deciding what subjects should or should not be funded. Although most funding for teaching will come from fees backed by student loans, direct funding from OfS remains important – either to meet the additional costs of subjects that are expensive to teach (for example, physics, engineering, art and design) or to support other Government priorities. The Bill would give the Secretary of State a new power to tell the OfS what subjects they could and could not fund – even if that subject cost more to teach than the maximum fee the university was allowed to charge. This goes significantly beyond the current power to give general directions about Ministerial priorities, which the arms length funding body then translates into allocations to universities.

*Question: why does the Secretary of State need a power to tell the Office for Students what courses it can fund, particularly when he has never had this power before?*