



INDEPENDENT  
HIGHER  
EDUCATION

## Briefing for Members of the House of Lords: Higher Education and Research Bill

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### CONTACT

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### About Independent Higher Education

Independent Higher Education (IHE) is the UK's representative body for independent providers of higher education, professional training and pathways. Our members offer quality provision which is tailored to the needs of specific groups of students, including highly specialised courses in disciplines such as the creative and performing arts, as well as integrated foundation programmes which focus additional support on those from widening participation backgrounds. They are known for their innovative course design and delivery, including flexible learning which allows students to experience more than one provider and accelerated courses which have been developed for and in partnership with industries which require job-ready graduates.

### Summary of key points

- i. Higher Education needs a single, effective regulator with responsibility across the sector. In light of increases in student fees, the public/private distinction currently constraining regulation no longer meets the needs of students.
- ii. The Office for Students (OfS) can and should be that regulator but should be led by strong advocates for students, and must reduce regulatory burden for small and specialist providers so not to take funding away from the student experience.
- iii. It is of some concern that the regulation system will be based on metrics developed for a traditional university model, and facilitated by a data service (HESA) owned by and oriented towards large, established universities. **We seek assurances that independent HEIs will not be disadvantaged by a system which has actively excluded them from participation for over a decade.**
- iv. The introduction of a Teaching Excellence Framework (TEF) is a welcome counter-balance to the Research Excellence Framework (REF), providing much-needed additional information on the student experience at a given institution.

- v. The OfS should have responsibility for developing vocational and professional higher education to ensure that students have more choice in these areas.
- vi. Independent HE providers have more students from widening participation backgrounds. 34% of students at independent providers identify as Black and 19% as Asian, compared to 10% Black and 10% Asian at publicly funded universities. 43% are over 30, compared with 6% at publicly funded universities.
- vii. Definitions of activities to promote fair access should be widened to take into account the unique approaches already having success with students from widening participation backgrounds at independent providers.
- viii. Flexible delivery is vital to meeting the needs of the 21st century student. The Bill must not inadvertently restrict a move to more progressive, credit-based student funding by tying funding to traditional academic years.
- ix. We are concerned that Clause 62 appears to require private companies to make commercially sensitive financial information available to a third party. **We seek assurances that independent HEIs will not be required to supply this data outside of a confidential agreement with OfS for regulatory purposes only.**
- x. The bar for probationary and subject-level DAPs must be set high and the process should only be open to those who can show both their capability and longevity within the system. However, both additions to the existing DAPs system are needed to ensure that specialist providers can award their own degrees, and that the UK can take advantage of innovative and exciting new provision from those with experience in higher education through routes other than validation.
- xi. Validation remains a viable option for smaller providers and those who are not ready for degree awarding powers, but the OfS must take a stronger role in protecting students and supporting partnerships for validation in order to protect innovation and student choice.

## **Amendments**

- xii. To better support vocational higher education amend the general duties of the OfS in Part 1 Clause 2 to include the responsibility to **promote the provision of higher education which meets the vocational and professional needs of students**. A further amendment to Schedule One under (2) requiring that **members of the OfS have experience of “providing vocational or professional education or awarding professional accreditations to higher education students”** would support the ongoing activity of promoting student choice in this area.
- xiii. To avoid the HE Bill limiting future changes which would facilitate more flexible models of delivery, we propose that an appropriate wording should be found around “regulated course fees” under clause 10 to amend part (a) so that **fees are payable on the basis of the credit students will achieve within the academic year identified by the provider** in clause (b). Specific attention should also be given to part (2) to ensure that **the fee limit condition has due regard for the amount of credit received within the academic year for which the fee limit applies**.

## Higher Education Regulation in England and Wales

1. The sector is in need of a single, effective regulator, with clear responsibility for all providers in the higher education sector regardless of funding status.
2. Regulation based on a distinction between 'private' and 'public' is no longer relevant to students who pay for their course wherever they study, particularly as some independent providers of higher education offer greater value for money by better matching provision to students' learning needs or by charging less than publicly funded universities for an equivalent course. All students have a right to expect that the same, strong regulator is protecting their interests and assuring the quality of higher education provision no matter where they study.
3. Independent HEIs, known in current regulatory parlance as 'Alternative Providers' (APs), have long been a feature of the UK's higher education sector; some of our member institutions are over 100 years old. This regulation is overdue and is strongly supported by high quality independent providers who want the opportunity to ensure that students can access the unique courses they offer.
4. The Office for Students (OfS) as conceived in this Bill can and should be this regulator, but it is essential that the OfS board includes individuals who will be recognised by students as strong advocates for their interests. Such individuals must also take account of the views of the full spectrum of students, including those at independent HEIs who are not currently organised into formal student unions.
5. Registration conditions must be proportionate to the size of provider to avoid overburdening independent HEIs which are often small and specialist, and must spread the cost of regulation across far fewer students than a large university. A reduced regulatory burden will ensure that more student funding is directed to the student experience. The registration process must be seen as fair, transparent and of real benefit in order for many independent HEIs to engage with it. A considerable amount of work still needs to be undertaken to ensure that this is achieved.
6. We have significant concerns about the heavy reliance of the registration system on metrics developed for a traditional university model, and facilitated by a data service (HESA) owned by and oriented towards large, established universities. **We seek assurances that independent HEIs will not be disadvantaged by a system which has actively excluded them from participation for over a decade.** Alternative providers have been largely excluded from HESA until this past year, with only 63 submitting experimental data to HESA for the 2014/15 cohort of students.

## Teaching Excellence Framework

7. The problems arising from the unavailability of comparable metrics for independent providers will be compounded through the introduction of the Teaching Excellence Framework (TEF). IHE strongly supports the introduction of this counter-weight to the Research Excellence Framework (REF), as it should in time ensure that teaching is valued and celebrated within higher education colleges and universities. However, we feel TEF will not successfully engage with or accurately represent the value of many independent HEIs until they are given the opportunity to engage fully with the data in the same way universities have for over a decade.

## Promoting vocational and professional higher education

8. Independent HEIs are often established in response to student demand for provision which is not widely available at traditional universities. This has in recent years meant a more vocational form of higher education, often highly specialised and preparing students for the cutting edge of a particular profession.
9. In order to empower the OfS in this role, we propose that its general duties in Part 1 Clause 2 be amended to include the responsibility to **promote the provision of higher education which meets the vocational and professional needs of students**. A further amendment to Schedule One under (2) requiring that **members of the OfS have experience of “providing vocational or professional education or awarding professional accreditations to higher education students”** would support the ongoing activity of promoting student choice in this area.

## Facilitating flexible student finance and financial data

10. One of the key innovations which independent HEIs have brought to the system is the ability of a student to choose the start date and completion time of their study. Students at independent HEIs are often able to start degrees when it best suits their circumstances and undertake degrees by flexible delivery including ‘accelerated degree’ models and lower-intensity learning, one module at a time. This flexibility is especially highly sought after by mature students, career changers, more professionally minded students and those with significant extra time commitments.
11. To avoid the HE Bill limiting future changes which would facilitate more flexible models of delivery, we propose that an appropriate wording should be found around “regulated course fees” under clause 10 to amend part (a) so that **fees are payable on the basis of the credit students will achieve within the academic year identified by the provider** in clause (b). Specific attention should also be given to part (2) to ensure that **the fee limit condition has due regard for the amount of credit received within the academic year for which the fee limit applies** and in relevant guidance for those with designation for student finance but not subject to the fee limit condition.
12. We are also concerned that Clause 62 of the Bill appears to require an independent institution to make financial information available to a third party. While we fully support the requirements of a robust Financial and Governance check as part of the registration process, we do not feel it is appropriate for an organisation which is not publicly funded to be required to provide any financial data to an additional third party. Independent higher education institutions provide this data for regulatory purposes only and rely on confidentiality ensured by the regulator due to commercial sensitivities in their wider business activity. **We seek assurances that Clause 62 will not require independent providers to supply this type of data outside of a confidential agreement with OfS for regulatory purposes only.**

## Widening participation and social mobility

13. Independent providers of higher education have more students from widening participation groups than publicly funded universities. Recent evidence from the 2016 statistical release by HESA on the student population across the 63 independent providers who submitted data shows that independent providers had a significant number of BME and mature students when compared to publicly funded universities:

	<b>Students from Black, Minority Ethnic backgrounds</b>	<b>Mature Students (Over 30)</b>	<b>Gender</b>
<b>2014/15 HESA Submission 63 providers*</b>	34% Black 19% Asian	43%	52% men 48% women
<b>Publicly funded Universities</b>	10% Black 10% Asian	6%	56% women 44% Men (2012-13)

14. For our members widening participation (WP) is about achieving social mobility for their students and allowing them to choose the qualifications which help them achieve their goals. Many design their courses around flexible pathways up to and including degree level study, which means they teach across levels traditionally defined as either ‘further’ or ‘higher’ education.
15. Their primary mechanisms for achieving social mobility are integrated in course design, content and student support, and less focused than public universities on financial support or outreach programmes, although there are excellent examples of both in the sector. Our members believe that innovation in higher education can help achieve the higher levels of participation desired by Government. The OfS, as the body responsible for fair access, should focus equally on course design, content and student support, as on outreach and financial incentives in access statements and agreements.
16. We support the Government’s commitment to WP in the Bill, and welcome in particular the emphasis on ongoing support for students. **But we seek assurances that WP statements and agreements which may be applied to independent HEIs through the registration system will take into account the often unique approach already in place and not simply apply the existing template which the Office for Fair Access (OFFA) currently uses for publicly funded universities.**

## Validation

17. The majority of independent colleges have validation arrangements with universities in the UK and will continue to do so regardless of the provisions in the Bill to amend Degree Awarding Powers (DAPs).
18. Validation arrangements currently represent the sole option for providers who are new to the UK sector as well as for established providers who remain too small or specialist for DAPs (as they are currently structured) to be the right choice for their staff or their students. These arrangements vary by cost and quality, and often dissolve when a university takes a different “strategic direction” or when one party launches a course which competes with the other.
19. The removal of student number controls and a greater reliance on student fees have led many universities to shift their focus away from validation towards internal expansion. This

has not only limited the number of universities willing to validate, but has made the validation process more fraught with competition considerations.

20. As there is no national registry of validating universities, or prescribed system for validation, simply finding a partner can be a long and drawn-out process. Colleges with an international brand or intellectual property (IP) as part of their course can find validation difficult as the process involves the validating university taking ownership of the degree and often all of the IP within it. Finally, if a college is seen to be a competitor to a validating university, most will simply decline to validate their programmes.
21. Validation partnerships also need to remain value for money, as students at independent providers pay the full cost of their degree including the cost of its validation. A lack of regulation in this area means that some students are paying more to have their degree validated than others, despite receiving the same degree. Fluctuations and unpredictability in costs and in agreements have a similarly negative impact on students, and many independent colleges feel compelled to pay a higher cost (which is passed on to the student) just to ensure that there is continuity in the student's degree. This area of higher education needs much closer scrutiny along with regulation to ensure that students receive the stability and value for money they should expect from university-college collaborative partnerships.
22. To address these issues and others, IHE, the Open University (OU) and the Quality Assurance Agency for Higher Education (QAA) are engaged in a project to create an exemplar validation model for the sector, develop principles of good practice and make recommendations for an enhanced role for UK regulatory bodies. A broader exploration of the issues and challenges faced by independent colleges operating within the current validation system is provided in our Interim Report available here: <http://independentthe.com/2016/12/01/ihe-qa-ou-validation-interim-report-november-2016/>.
23. The OfS will have an important role to play in promoting the adoption of good validation practice across the sector by assessing validation arrangements against our principles and exemplar model. The Bill empowers the OfS to enter into “commissioning arrangements” with one or more university, which would allow it to designate the “validator(s) of first choice” that we refer to in our Interim Report.
24. The existence of such ‘validators of first choice’ and recognised principles of good practice should lead to the improvement of validation practices amongst institutions which need to maintain a competitive offer. **If, however, no such validator can be found amongst the existing pool of validating institutions, it will become necessary for the OfS to exercise the power reserved in Clause 47 and validate provision directly, under mechanisms which would need to be set out in further regulations.**

## **Degree Awarding Powers (DAPs)**

25. We welcome the decision to create a new model for DAPs which is more suited to the higher education sector of the 21st century. The transfer of this authority to the OfS, a modern regulator with the ability to assure quality before and after degree awarding powers are granted, will be more appropriate for a dynamic and diverse sector which includes industry-led provision and overseas providers bringing their extensive experience to the UK from countries such as the US and Australia.

26. Validation alone can no longer provide the complete solution to the rising demand for choice and innovation. It will not be appropriate for all the most specialist providers, such as those at the cutting edge of a particular industry with IP to protect and whose expertise in a subject area may far exceed that of any validating university. It may also not be appropriate in the case of highly regarded, well-established overseas providers looking to expand into the delivery of courses in the UK.
27. We must, however, maintain the UK's global reputation for academic standards and quality by continuing to set a high bar for the granting of DAPs. The power to award degrees is a great responsibility for which an HEI needs to be fully prepared and to have had its quality and viability confirmed through a rigorous and objective process. The DAPs process must ensure that providers have strong internal governance arrangements which will protect against institutional failure, and we expect the new Probationary DAPs to follow a similar process with the same high bar for quality.
28. The Bill's provisions for Probationary DAPs as well as DAPs which are specific to the subject and level of courses are therefore important and welcome. These specific, limited DAPs offer the opportunity for small and specialist institutions to award degrees in subjects they know best without the need to provide evidence they can award degrees in subjects they have never taught and have no plans to teach.
29. While "Probationary DAPs" should only be open to those who can show both their capability and longevity within the system, the ability to demonstrate this should reflect a broader range of evidence and experience within the sector. The current track record requirements, based solely on validation, are too limited and should be expanded to allow new collaborative projects from experienced partners and enable those with international, personal or institutional track records to use this evidence in their DAPs application. Probationary DAPs provide the opportunity for flexibility in this area, while maintaining appropriate oversight for the first years of a providers' operation in the UK.
30. One area in which the current system needs to change is in the 'peer review' element introduced by the Advisory Committee on Degree Awarding Powers (ACDAP). In the context of a regulatory framework designed to enhance competition and encourage the entry of new providers into the sector, it is not appropriate for the ultimate decision on the award of DAPs to be taken by the representatives of institutions which are the challenged incumbents, and therefore have a vested interest in limiting competition. The DAPs process should be one of extended engagement centred around a transparent set of objective criteria which must be met. It should result in a clear outcome once all the necessary conditions have been satisfied which should not be subject to interpretation, particularly where such interpretation has a tendency to prejudice against innovation.
31. We therefore oppose the proposed amendment by Universities UK which would see "a legislative requirement for formal input from an independent committee into the process of awarding DAPs to an institution", particularly as their suggested model of the current ACDAP exhibits precisely the characteristics mentioned above of comprising individuals with a vested interest in blocking the entry of competitive new providers into the sector.
32. We would, however, support a **formal role for a 'committee of peers' in the sanction of registered providers and in particular the suspension or removal of degree awarding powers**. While such a sanction must always be supported by a substantial evidence trail indicating a significant fall in quality, student outcomes or standards of governance, it may ultimately also require a subjective judgement of whether the continued operation of the provider in question would risk damaging the reputation of English higher education. Given

the new and significant powers which are proposed for the OfS to effectively cancel Royal Charters through the removal of DAPs and University title, it would be appropriate in such cases for it to seek the formal input of a committee in making such a judgement.

## **Further information**

33. IHE has also produced a more extended Position Paper which was submitted to the Public Bill Committee in the House of Commons and can be found here:  
<http://independentthe.com/2016/10/20/independent-he-publish-position-paper-on-the-higher-education-and-research-bill/>