

## **Universities Scotland's response to the invitation for views on the Legislative Consent Memorandum on the Higher Education and Research Bill**

Thank you for the opportunity to comment on the Legislative Consent Memorandum (LCM) as it relates to the Higher Education and Research Bill (the Bill) of the UK Government. We are also grateful for the Committee's consideration of these aspects of the Bill.

This submission covers three things:

- 1. The three specific points as raised in the Scottish Government's Legislative Consent Memorandum.** NB. Our views on the LCM as expressed in this submission are as accurate as we can be at the time of writing. We may need to provide further clarification to Committee in relation to the Bill's provisions on funding of research (as stated in the LCM) following the Bill's progress in the House of Commons on 18 October.
- 2. Our remaining priorities and concerns with the Bill as it leaves the Committee stage.**
- 3. The significance of the HE and Research Bill to Scottish higher education in general terms.**

### **1. Specific points as raised in the Legislative Consent Memorandum**

The memorandum in the name of Mr Swinney MSP, Deputy First Minister for Scotland, relates to three amendments to the Higher Education and Research Bill (two of which had been tabled on 8 September but the third of which had not been tabled at the point at which the memorandum was written).

#### **TEF and the devolved administrations**

We support the policy intent behind the amendments to extend the extent of the Act to include Scottish higher education institutions in so far as Clause 25 of the Bill (as introduced). Clause 25 (as introduced) gives the Office for Students (OfS) the power to make a scheme to give rating to English higher education providers regarding the quality of, and standards applied to, the higher education provided by them. That scheme is intended to be the Teaching Excellence Framework (TEF).

Universities Scotland's position on TEF is that Scotland's higher education institutions should be able to participate in TEF if they choose to. Therefore we support this amendment and the LCM as it applies to clause 25 of the Bill.

We comment further on TEF in section 3 of this submission.

#### **Joint working provisions**

We support the policy intent behind the amendment to ensure joint working provisions between the Scottish Funding Council and the OfS and UK Research and Innovation (UKRI).<sup>1</sup>

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<sup>1</sup> The LCM uses the abbreviation UKRI to refer to Research England. Research England will actually sit within UKRI as will the Research Councils. We make this point only for clarity given that UKRI is a new structure being created by the Bill.

The new body, UKRI, will have significant UK resource for funding and innovation within its remit. This means that UKRI needs to act in a way that benefits each part of the UK.<sup>2</sup> One of our concerns relating to the new architecture is that the location of Research England within UKRI may lead UKRI to an inclination to work most closely with the institutions that, through Research England, it is most familiar.

We want UKRI to have close working relationships with the SFC and to conduct activities jointly with SFC and the higher education funding bodies in the other devolved jurisdictions so that, for instance, the Research Excellence Framework and the Research Partnership Investment Fund are able to operate as jointly-owned activities by the UK and devolved funding bodies.

As mentioned in section 2, we are seeking additional amendments to the Bill to secure further guarantees to ensure UKRI is fully able to discharge its functions on behalf of all parts of the UK.

### **Funding Research**

The background notes in the Scottish Government's memorandum in relation to an amendment on funding research give cause for concern. However, we note that the memorandum was written prior to the relevant amendment being tabled. The extract of the memorandum that concerns us states: *"although the government wishes to fund science, if the recipient makes a profit, the government should be able to get a share of that."*

Universities Scotland would have concerns if an amendment to the Bill looked to give the Secretary of State powers to share in 'profit' generated by the recipients of research funding. We would not support the Legislative Consent Motion with respect to that provision.

Part three of the Bill, as it relates to research, was debated in the Bill Committee on 18 October. As such, we have not had sufficient opportunity to reflect on proceedings in the Bill Committee before making this submission to Education Committee. However, we do not believe that an amendment was tabled to create a power to share in 'profits' from research.

As we understand it, there was an amendment agreed to on 18 October to introduce a new clause 7 to the Bill, now at schedule 104 as amended on 19 October. The text of the new clause 7 is included here as an annex. It does give the Secretary of State powers over the provision of financial support which may include repayment and/or payment of interest if the person to whom funding was given does not comply with the terms on which the funding was agreed. A provision of this nature is consistent with the terms on which the Funding Councils and Research Councils allocate funds for research and is something we are content with. Section (1ZC)(c) of the new Clause 7 clarifies that the 'relevant authority' includes the Scottish Ministers. There is no reference, within the next Clause 7, to profit-sharing from the outputs/outcomes of research funded by the Secretary of State.

If this is the amendment as referred to in the memorandum then we are content with this. We appreciate the difficulty in preparing the memorandum before the amendment is made public.

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<sup>2</sup> We are still seeking amendments to the Bill to further guarantee this through the creation of a duty on UKRI and the Secretary of State to consult the devolved administrations and by ensuring that UKRI and the Research Councils have members with experience of research in Scotland. These amendments were not accepted at Committee stage.

Scotland's universities are registered charities in Scotland. They do not have shareholders for whom a profit is divided. Rather, any surplus on activities is reinvested in the education and research of the university. Furthermore, research and innovation activity is rarely funded at full economic cost, meaning that universities are under-funded for the important research work that they undertake. The recent July 2016 Audit Scotland review of higher education in Scotland found that:

- in 2014/15, grants from the UK Research Councils covered 74.3 per cent of the full economic cost of undertaking the research
- grants from charities and industry covered 65 per cent and 74.5 per cent respectively of the full economic costs of the research.<sup>3</sup>

Knowledge exchange activity between universities and business, industry and the public and third sectors is also carried out largely at a loss to institutions. This function does drive economic growth as well as other benefits but the economic benefit is rarely realised within a higher education institution.

## **2. Remaining priorities and concerns with the Bill as it leaves the Committee stage**

Universities Scotland is seeking amendments to the Bill, largely in part 3 as it relates to research and UKRI. The creation of UKRI is a significant change to the UK's research infrastructure. The importance of the functions that UKRI will have means that it needs to act in a way that benefits each part of the UK. We believe the UK research endeavour is deeply collaborative between UK and devolved-level actors and that this is an asset to the excellence of research in universities and research institutes across the UK. We want to see this maintained in the new structures.

We are looking for amendments to create a duty on both UKRI (clause 85 as introduced) and the Secretary of State (clause 91 and 96 as introduced). In the case of UKRI we want to see an amendment requiring it to discharge its functions for the benefit of Scotland, England, Wales and Northern Ireland. We would like to see an amendment that requires the Secretary of State to consult with the devolved administrations prior to decisions made on UKRI research and innovation strategy and prior to his guidance to UKRI. We would also like to see an amendment in relation to the membership of UKRI and the Research Councils within it (schedule 9 as introduced), to require people with experience of research in England, Wales, Scotland and Northern Ireland.

Finally, we have some concerns about the location of Research England within UKRI as outlined above. The current infrastructure for research in England ensures that two separate bodies (HEFCE and RCUK) have responsibility for the two distinct elements of the dual-support funding mechanism for research (HEFCE for England-only institutions and UKRI for the UK). This is replicated in Scotland where the SFC has responsibility for the Research Excellence Grant. The creation of Research England and its location within UKRI brings these two organisations, and so the two elements of dual-support, much closer. In contrast, the Scottish Funding Council sits organisationally and geographically distinct from UKRI.

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<sup>3</sup> Audit Scotland (2016) Audit of Higher Education in Scottish Universities, pg29

We would like to see an amendment to the Bill to create a statutory 'firewall' between UKRI's UK-wide funding streams and Research England's England-only funding, to prevent diminution of the resources that UK-wide universities can compete for, and to maintain the 'dual support' system which successfully enables universities to compete for research funding.

None of the amendments that were proposed at Committee stage, with a view to securing the interests of Scotland's universities in the legislation, were accepted.

We welcome further scrutiny of the Bill and the issues as they affect Scotland's higher education sector by MPs at the report stage.

### **3. The significance of the HE and Research Bill to Scottish higher education in general terms.**

Legislatively speaking the Bill, as originally introduced to the House of Commons, did only apply to England. However, the Bill looks to make a number of significant changes to the higher education landscape in England. They will have very significant direct and indirect effect on Scottish higher education institutions.

#### **University title and the power to grant degrees**

The power to grant degrees and powers in relation to university title (clauses 40-55 as introduced) do not extend to Scotland but the international reputation of Scottish universities is linked to that of UK universities. The Bill's aim is to including making it easier for providers to have degree-awarding powers and use 'university' title. We welcome competition from high-quality providers where it provides greater choice for learners. However, we have a shared interest, with other UK universities, in making sure that only institutions of proven and sustainable integrity have degree-awarding power or university title. Failure to provide sufficient assurances on this would risk the reputation of Scotland's universities in their partnerships with overseas institutions and recruitment of international students.

#### **Quality and standards**

The Bill does not deal with the detail of the Teaching Excellence Framework (TEF). However, it creates the legislative basis for the introduction of TEF for institutions in England in part 1: Quality and standards (clauses 23-27).

Scotland's universities support the original idea behind the TEF; that high standards in university teaching are essential and that teaching should have equal status with research in higher education. We welcome the amendment to the Bill to allow Scottish institutions to participate if they choose to do so. We believe this is a matter for individual institutions to decide. Our understanding is that some Scottish institutions will participate in the second year of TEF (TEF 2) and it is helpful that those who choose not to participate in TEF2 still have the option of applying to participate in TEF 3 (which would be a subject-level assessment of quality).

Scottish HEIs attract close to 20,000 students from the rest of the UK at undergraduate level (2014/15)<sup>4</sup>, many of whom would rely on the new TEF to inform their decision-making about university. If Scotland's universities do not participate, there is a major risk that they will find themselves at a competitive disadvantage relative to rUK institutions as they will not have the same perceived markers of quality as rUK institutions. Scottish HEIs are inevitably compared with their peers across the UK when it comes to student decision-making. This is a risk not only to the prospective community of rUK applicants but also to the community of prospective international applicants. Similarly, international student choice and 'league table' rating will be affected by whether or not Scottish universities can demonstrate equivalence to the TEF.

However, we have a number of concerns about the development of the TEF and its ability to reflect the different, enhancement-led approach to teaching quality that exists in Scotland and that is valued by students, staff and institutions. We have also had a number of concerns about the metric-driven approach. The metrics are proxies for quality at best and some of those originally proposed do not operate well on a cross-UK basis and so could see Scottish institutions adversely affected in the quality assessment. There have been some adaptations to the metrics during the development of TEF2 (including the use of SIMD to measure access in Scotland rather than POLAR which does not reflect differences in Scotland's geo-demography or post-16 education sector). We appreciate the Department for Education's (DfE) accommodations.

TEF is still very much under development. There is little detail on how the third year (TEF3) which sees a move from institution-level assessment to subject-level assessment will work. We welcome the invitation from the DfE to work with institutions across the UK to co-design subject-level assessment. Scotland's higher education institutions will continue to liaise closely as TEF develops and reserve the right to participate, or not, when there is significantly more detail.

**ENDS**

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<sup>4</sup> 19,365 students in 2014/15, HESA Student record

## Annex A

### New Clause 7 in the Higher Education and Research Bill as amended in Public Bill Committee on 18 October 2016

Amendments to powers to support research

“(1) In section 5 of the Science and Technology Act 1965 (further powers of Secretary of State), after subsection (1) insert—

‘(1ZA) The power to give financial support under subsection (1)(a) includes, in particular, power to make a grant, loan or other payment, on such terms and conditions as the relevant authority considers appropriate.

(1ZB) The terms and conditions may, in particular—

(a) enable the relevant authority to require the repayment, in whole or in part, of sums paid by it if any of the terms and conditions subject to which the sums were paid is not complied with,

(b) require the payment of interest in respect of any period during which a sum due to the relevant authority in accordance with any of the terms and conditions remains unpaid, and

(c) require a person to whom financial support is given to provide the relevant authority with any information it requests for the purpose of the exercise of any of its functions.

(1ZC) In subsections (1ZA) and (1ZB), ‘the relevant authority’ means—

(a) in the case of the power of the Secretary of State to give financial support under subsection (1)(a), the Secretary of State;

(b) in the case of the power of the Welsh Ministers to give financial support under subsection (1)(a), the Welsh Ministers;

(c) in the case of the power of the Scottish Ministers to give financial support under subsection (1)(a), the Scottish Ministers.’

(2) In section 10 of the Higher Education Act 2004 (research in arts and humanities), after subsection (4) insert—

‘(5) The powers under this section to give financial support include, in particular, power to make a grant, loan or other payment, on such terms and conditions as the relevant authority considers appropriate.

(6) The terms and conditions may, in particular—

(a) enable the relevant authority to require the repayment, in whole or in part, of sums paid by it if any of the terms and conditions subject to which the sums were paid is not complied with,

(b) require the payment of interest in respect of any period during which a sum due to the relevant authority in accordance with any of the terms and conditions remains unpaid, and

(c) require a person to whom financial support is given to provide the relevant authority with any information it requests for the purpose of the exercise of any of its functions.

(7) In subsections (5) and (6), ‘the relevant authority’ means—

(a) in the case of the power under subsection (1)(a), the Secretary of State;

(b) in the case of the power under subsection (2)(a), the Welsh Ministers;

(c) in the case of the power under subsection (3)(a), the Scottish Ministers;

(d) in the case of the power under subsection (4)(a), the Northern Ireland Department having responsibility for higher education.’—(Joseph Johnson.)

This new clause, which is for insertion after clause 101, amends section 5 of the Science and Technology Act 1965 and section 10 of the Higher Education Act 2004 to make clear that the powers they contain to provide financial support for research include power to make grants, loans or other payments subject to terms and conditions - including those which may require the recipient of support to repay sums, pay interest and provide information.

Brought up, read the First and Second time, and added to the Bill.