Written evidence submitted by Universities UK (HERB 06)

About us
Universities UK (UUK) is the representative organisation for the UK’s universities. Founded in 1918, its mission is to be the voice for universities in the UK, providing high quality leadership and support to its members to promote a successful and diverse higher education sector. With 133 members and offices in London, Cardiff (Universities Wales) and Edinburgh (Universities Scotland), it promotes the strength and success of UK universities nationally and internationally through UUKi.

Executive summary

- The UK higher education sector is a national asset that has a global reputation for excellence in teaching and research. The sector offers a diverse range of high quality provision that supports over 2.5 million students from the UK and around the world to achieve their educational goals each year, and is internationally renowned for its strong, innovative and exceptionally efficient research base.

- However, the continued success and evolution of the sector has come in spite of an outdated and untidy regulatory structure. Universities UK therefore welcomes the introduction of a bill to reform the regulatory architecture of higher education. The sector is currently regulated via a number of acts, the most significant of which was passed in 1992. Since then, the sector has changed significantly and it is therefore time for wholesale legislative reform.

- The broad outline of the regulatory regime set out in the bill is similar in many ways to the recommendations advocated in Universities UK’s 2015 report on regulation Quality, Equity and Sustainability. In particular, we welcome the establishment of a single ‘gateway’ for degree awarding powers, university title and awarding of grant funding or teaching for all those in the sector.

- We do however have a number of concerns about some of the provisions in the bill, as well as plans in the white paper (which require no specific legislation) to lessen requirements before institutions are awarded degree awarding powers or university title.

- The bill creates a number of new powers to be granted to the secretary of state or the Office for Students (OfS) which are not currently held by the secretary of state or the Higher Education Funding Council for England (HEFCE), which include:
o an ability for the regulator to compete in the market as a validator of degrees, which would clearly be inappropriate and a conflict of interest
o the ability to revoke degree awarding powers and university title
o powers of search and entry

• The bill also unhelpfully elides quality and standards – two separate concepts in higher education policy – in a number of places, and gives the secretary of state powers over the sector at a course level. This approach is directly opposed to the current legal situation, and could represent a significant and harmful incursion by government into the running of independent institutions which make up a world-leading sector.

• While we welcome competition, collaboration and new entrants to the sector, we believe that the bar to entry should be high. Appropriately robust market entry standards serve the interests of students by minimising the risk of early institutional failure or the need for intervention by the OfS.

• We must ensure that new legislation does not damage the dynamism and impact of university research. The bill also enacts changes to the structure of government agencies which fund and support research, bringing together a number of separate research councils, Innovate UK, and a new body to take on the research functions currently carried out by HEFCE, under an umbrella organisation to be called UK Research and Innovation (UKRI). This new organisation must be able to work effectively with the Office for Students, and be able to support universities’ innovation and knowledge-exchange functions as HEFCE currently does.

Introduction

1. The UK university sector is one of the most successful and dynamic in the world, widely admired and copied by other countries. It attracts researchers and students from across the world and receives high reported levels of satisfaction from students. In recent years the sector has adapted and responded to significant changes in funding and student demand, as well as wider global challenges and competition, while maintaining the quality of its provision and maintaining its world-leading reputation for excellence.

2. The Higher Education and Research Bill represents a major reform of the regulatory architecture of higher education, and of the public bodies concerned with promoting research. The last time such a widespread reform was carried out was through the Further and Higher Education Act 1992, which largely still underpins the regulation of higher education today. The bill may provide the legal framework for the regulation of higher education for a number of decades. It is
therefore imperative that the bill is scrutinized in light of the current government’s policy as set out in the White Paper *Success as a Knowledge Economy*, but also in relation to how it may operate and be utilised by future secretaries of state and governments.

3. The sector is made up of autonomous and independent institutions, many of which are among the most enduring institutions in society, and have mature and robust governance arrangements and a high level of internal and public scrutiny. In the UK a co-regulatory approach has generally been taken, which maintains the autonomy of institutions and relies on their own governance arrangements where appropriate. We believe that this approach contributes significantly to the global success of the UK’s university sector; allowing institutions to be flexible and responsive to the needs of their students and employers, to think long term about global challenges, and remain free from direct political interference. We ask that the committee scrutinises the bill with the intention of maintaining this autonomy and co-regulatory approach.

4. The rationalisation and modernisation of the regulatory system set out in the bill is welcomed by Universities UK. A number of the broader policies reflect the conclusions of our 2015 report *Quality, equity, sustainability*. These include the creation of a single register to act as a ‘gateway’ into the higher education sector, with a tiered approach to regulation reflecting the different requirements appropriate to institutions that, for instance, do or do not access direct public grant funding.

5. However, there are a number of reforms set out in the bill which we do not support and which we think could undermine trust in the higher education sector, as well as compromise its integrity. In particular, the intention to significantly relax requirements before institutions are granted the power to award degrees, or are allowed to call themselves universities, may damage the reputation of the sector and increase risks to students.

6. There are also a number of respects in which the bill extends the powers of the secretary of state and/or the principal regulator (the proposed Office for Students), in ways which may undermine the autonomy of higher education institutions.

7. Since the bill was drafted there have been substantial changes to the political and policy environment, including the implications of the vote to leave the EU in this summer’s referendum. More recently the machinery of government changes, with the Department for Education now having responsibility for higher education but with research policy remaining the responsibility of the Department for Business, Energy and Industrial Strategy, need to be better understood. This separation of responsibility across departments and secretaries of state increases the need for
the bodies created by the bill (the Office for Students and UK Research and Innovation) to work together effectively to ensure both have a holistic view of the higher education sector and of individual institutions. This is essential to ensure that the links between research and teaching, and cross-institution work to promote civic, social and economic impact – both distinctive of the university sector – are properly reflected in policy.

**Overall role and remit of the Office for Students (clauses 2 and 70)**

8. Clause 2 of the bill sets out the broad role and remit of the OfS, with a set of ‘general duties’ that the OfS must have regard to in fulfilling its functions. Collectively these set out some guiding principles of the OfS, and so the broad approach that will be taken to regulating the sector.

9. We think that some of these general duties should be amended to ensure that the regulatory approach taken by the OfS is appropriate and best able to ensure that the sector can fulfill its roles in society. In particular, we think that the reference to competition in paragraph 2(1)(b), with no reference to collaboration which can be beneficial to students, is too narrow. We also consider that universities have responsibilities that extend beyond students and employers, and would suggest that some reference to the interests of ‘wider society’ in this paragraph would be helpful in reflecting the broader societal role of universities.

10. The bill gives the OfS the power to decide which institutions can award degrees and which can call themselves universities. The OfS will therefore have an important role in ensuring that students, employers and the wider public (both domestic and international) have confidence in England’s higher education sector, in those institutions which are called ‘universities’, and in the degrees which are awarded by these institutions. However, there is no specific reference in the bill to the OfS having a duty to act so as to maintain and promote such public confidence. We think this is best addressed through an additional general duty in subsection 2(1).

11. The bill also changes the relationship between the secretary of state and the primary regulator (HEFCE(OfS)). In the Further and Higher Education Act 1992 (section 69) HEFCE is able to provide advice to the secretary of state on matters relevant to its remit as it sees fit, but in the Higher Education and Research Bill (clause 70 as currently drafted) the role of the OfS in giving advice is more limited, covering only instances when the secretary of state requires advice to be given.

12. HEFCE currently operates not only as a funding body and regulator, but also as a repository of expertise on higher education policy that is recognised by the government and respected by the sector. The white paper specifically mentions
the desirability of transitioning staff from HEFCE to the OfS to ensure that this expertise is not lost, but the wide-ranging remit and relative independence of HEFCE should also be maintained in the new organisation. The ability to provide advice to government on matters relevant to its remit in a proactive, rather than purely reactive, manner would be beneficial to the development of higher education policy. The secretary of state should be required to have regard to this advice in utilising her powers to give guidance and direction to the OfS and set the terms and conditions of its grant.

13. The general duties of the OfS should be amended. In particular:
   a. paragraph 2(1)(b) should be amended to reflect the potential benefits of collaboration between higher education providers, and the interests of society (beyond students and employers)
   b. a new paragraph should be added to require the OfS to have regard to the need to maintain confidence in university status, the higher education sector and the degrees awarded by them

14. The role of the OfS in providing advice to the government, currently limited to that set out in clause 70, should be extended to allow the OfS to provide advice to the secretary of state on matters relevant to its remit, without specific instruction by the secretary of state to do so. This could be achieved through a new clause after Clause 2. Clauses 2, 66 and 69 should be amended to require the secretary of state to have regard to this advice in the use of her powers permitted by these clauses.

Entry to the market for new higher education providers (clauses 40-55)

Degree Awarding Powers (clauses 40-50)

15. The bill gives the newly-created Office for Students the ability to give institutions degree awarding powers (DAPs). This power currently sits with the Privy Council, which acts on the basis of guidance and criteria set out by the Department for Business, Innovation and Skills (BIS), with advice from the Quality Assurance Agency (QAA). The Department for Education will retain a role in providing guidance to the OfS in its use of these powers.

16. UUK welcomes the opportunity to modernise this process, although we do not think that the OfS should have unlimited powers in this area. It is important there is effective independent scrutiny built into the process of awarding DAPs. This oversight is particularly important given the government’s intention that the criteria for institutions wishing to be granted DAPs will be less restrictive than they are at present.
17. The current criteria involve a minimum requirement for a track record of four years in delivering higher education before they are given the power to award their own degrees. This track record will normally be achieved through a validation arrangement, through which the applicant institution has taught and awarded qualifications which are validated by an established institution.

18. By contrast, the white paper outlines plans for institutions to be given probationary DAPs through which they could award degrees on a probationary basis for a period of three years, with no requirement for a previous track record in delivering higher education. In order to achieve this, the bill grants substantial power to the OfS to both grant and revoke DAPs.

19. UUK welcomes the government’s intention to allow new providers into the system to secure greater choice for students and to ensure appropriate competition in the higher education sector. However, we believe that the current arrangements – such as the track record requirement outlined in paragraph 17 above – represent appropriate requirements for new providers to meet in order to maintain the quality of, and confidence in, the system as a whole.

20. While the government’s proposed reforms may allow providers swifter access to degree awarding powers, it is vital that changes serve the interests of students, not the interests of new entrants. Students, their parents, and employers need assurance of the long-term viability and quality of new providers.

21. In particular, we believe that the current robust track record requirements are important to maintaining the quality and international reputation of the system. We would not want to see a significant departure from current requirements, and we oppose the adoption of probationary DAPs. DAPs should only be awarded to institutions which have sufficiently robust internal governance arrangements, such that the Privy Council/OfS does not foresee a need to revoke them. Awarding DAPs on a probationary basis, with the anticipation that they may be removed in the future, could seriously undermine confidence in the system as a whole.

22. The Quality Assurance Agency recently published a report on its work reviewing ‘alternative providers’ (institutions which do not receive funding council support) which highlighted the importance of new entrants working closely with existing providers. This report shows that while there are some new providers offering innovative and high quality higher education under the current arrangements, newer and smaller institutions are more likely to fail quality assurance reviews than more established and larger providers. The report also notes that those alternative providers who work closely with universities as their degree awarding bodies tend to be higher performing institutions. Both of the alternative providers
who received particular commendations from the QAA in this period have validation arrangements in place with university partners.

23. In the past ten years (years 2006–07 to 2015–16), 36 different institutions in the UK were newly granted taught DAPs and a further seven have ongoing applications with the Quality Assurance Agency. There are currently a total of 162 ‘recognised bodies’ who have taught DAPs, meaning that around 20% of the current providers with this ability have entered the market in the past ten years. We do not believe this suggests that the current system is creating inappropriate or harmful barriers to new providers entering the market.

24. In the context of the government’s stated objective to significantly widen the pool of institutions with degree awarding powers, and the removal of the separation of powers that currently exists through the role of the Privy Council, it is important that there are appropriate checks and balances in place. Such checks and balances could take a number of forms.

25. There should be a legislative requirement for formal input from an independent committee into the process of awarding DAPs to an institution, similar to the current Advisory Committee on Degree Awarding Powers. This would likely require a new clause after clause 40.

26. There should be a legislative requirement that the OfS must have regard to the need to maintain confidence in the higher education sector as a whole, and the degree qualifications awarded by them, in making use of its powers to grant DAPs and university title. This could be included as a new sub-clause within clause 40, or alternatively could be a wider duty governing the OfS inserted as a paragraph within subsection 2(1).

University Title (clauses 50-55)

27. The bill also transfers powers to award the use of university title (i.e. the ability for an institution to call itself a university) to the OfS. The white paper sets out the intention to remove the requirements to teach a minimum of 1,000 full-time equivalent (FTE) students, and reduce the minimum time to be eligible for university title to six years from eight years. This might open the way for small teaching-only institutions, or institutions which may be transient and/or more likely to fail, to call themselves universities. This would undermine the meaning and status of the university title.

28. The use of university title has strong reputational implications. We would therefore want to ensure the criteria for this are sufficiently robust and reflect the important roles of higher education institutions in teaching, research and scholarship, as well as wider civic and social roles.
29. There should be a mechanism to provide independent scrutiny of and advice to the OfS in relation to its power to award university title, legislated for through a new clause after clause 51. This might be provided by the same committee as has a role in relation to DAPs (see paragraph 25 above), in which case only one new clause would be required.

30. The bill should make clear that the criteria for award university title should require that universities:
   a. must provide teaching that is informed by research and scholarship
   b. are institutions that play a wider civic role in their local areas and in society at large

Powers of the Office for Students and the secretary of state

31. The bill proposes extensive new powers for the Office for Students and the secretary of state over a currently successful, autonomous and co-regulated sector. The autonomy of UK universities, in comparison with many of our international competitors, is widely considered to be a factor in determining their success. It seems that a number of these powers are required primarily because of the intention to facilitate the entry of new providers into the sector more quickly than in the past, with fewer checks and tests being applied at the gateway.

32. UUK has concerns about a number of particular new powers that are granted by the bill to the OfS and/or the secretary of state, and the degree of discretion allowed to the OfS in how its powers and sanctions are used.

Discretion as to use of sanctions by the OfS (Clauses 15, 16, 18, and 21)

33. The bill grants the OfS the power to make use of a range of sanctions against institutions, some with no means of independent appeal. The sanctions available to the OfS include fines, removal from the formal register of higher education providers, and revoking or suspension of the ability to award degrees or of university title – including from institutions awarded university title or DAPs through specific royal charters or acts of parliament.

34. The threshold for the OfS to make use of these sanctions is that it ‘appears to’ the OfS that some breach of the conditions which are attached to an institution being registered as a higher education provider. Given that these sanctions include those that could effectively shut down a higher education institution’s activities, with associated impact for students and the reputation of UK higher education as a whole.
35. There should be a higher threshold of evidence required of the OfS before it can take sanctions against an institution – in particular we believe that the OfS ought to be required to ‘have evidence’ that there is a breach of a condition of registration. This would require amendments in a number of clauses relating to sanctions available to the OfS (Clauses 15, 16, 18 and 21).

**Power to ‘frame guidance by reference to particular courses’**

36. The bill allows for the secretary of state to frame the guidance given to the OfS ‘by reference to particular courses’. This is in contrast to the current legislation (the Further and Higher Education Act 1992), in which the secretary of state is specifically forbidden from setting out guidance to the Higher Education Funding Council for England (HEFCE) in this granular manner. The ability of the secretary of state to intervene in a course-level basis is also provided for through provisions relating to the funding granted to the OfS (Clause 66) and the ability to provide direction to the OfS (Clause 69).

37. We recognise that some legislative changes may be necessary to allow for the secretary of state to give guidance to the OfS to ensure that appropriate incentives are in place to support the teaching of subjects which are expensive to teach, or else strategically important, as currently takes place. Where possible, these reasonable policy objectives should be achieved through indirect means such as incentives, rather than by direct intervention, so as to protect institutions’ ability to make genuine decisions about their strategic direction.

38. However, if this is the intention of this change in the law, the same outcome could be achieved with a significantly limited power for the secretary of state. We are particularly concerned that this power potentially allows the secretary of state to set out guidance to the OfS relating to the creation or closure of particular courses. While this guidance cannot relate to particular institutions, it could still require the OfS to act in ways that directly intervene in the decisions of individual institutions as to the courses they offer. This would represent an unprecedented breach of the autonomy of institutions.

39. Universities rightly take into account a variety of factors when deciding on which courses to offer, including ensuring that the needs of society and of regional and national economies are met. However, meeting the demand from students for particular courses is a key consideration. The underlying philosophy of the bill and the white paper furthers the role of informed student choice in shaping the sector. Allowing the secretary of state to provide guidance to the OfS which relates to the creation or closure of particular courses contradicts this underlying philosophy.
40. The secretary of state’s powers in clauses 2(4), 66(2) and 66(3) should be rewritten so as to focus the power on an ability to provide guidance and direction relating to the OfS providing particular support for subjects that are strategically important and/or expensive to deliver.

Quality and standards

41. Clause 13(1) specifies that one of the conditions for an institution to be included on the register of higher education providers would relate to ‘the quality of, or the standards applied to, the higher education provided’.

42. The quality of higher education provided is clearly a key consideration in the regulation of the sector, although at present the bill makes the relevant condition one which may be applied rather than one which is a mandatory condition of any institution seeking to be included on the register of higher education providers. We would welcome clarity as to which categories of institution are likely to be subject, and not subject, to a ‘quality condition’ in relation to their status as a registered provider.

43. The term ‘standards’ has a particular meaning in higher education policy, covering the standards required of students before qualifications are awarded rather than the quality of education provided. This is broadly reflected in the clarification in subsection 13(2). However, the way in which ‘quality’ and ‘standards’ are generally referred to in the bill, as two elements included in one sub-clause, is unhelpful (for instance in clauses 13, 23, 25, 27 and in Schedule 4). It fails to recognise the distinction between the terms in a higher education context, may suggest that the same regulatory approach should be used for both, and would make it more difficult for future regulation and legislation to appropriately differentiate between the two concepts.

44. Applying to standards the approach currently taken towards regulation of quality would be a significant departure from the approach currently taken, in which institutions are responsible for setting the standards required of students, in line with sector-agreed practices and frameworks. Attempts to introduce a centrally mandated set of academic standards would be incompatible with a diverse, autonomous and high-quality higher education sector, and would likely be unworkable. Direct responsibility for standards has been explicitly excluded from quality assessment arrangements in the past to protect higher education from political interference.
45. Clause 13 should be amended to more clearly distinguish between ‘quality’ and ‘standards’ (with consequential amendments elsewhere in the bill), making these two separate conditions – reflecting the distinction between the two terms in the context of higher education policy and the distinct regulatory frameworks that will need to apply to each.

46. The condition relating to standards should be explicitly one of requiring institutions to have appropriate and robust processes in place to ensure appropriate standards, rather than the OfS or government having involvement in the assessment or setting of standards in higher education.

*Powers of search and entry*

47. The bill gives the OfS the power to search and enter the premises of higher education providers registered with it, subject to a court warrant. The considerations the court should take into account are set out in Schedule 5 of the bill.

48. Such court-warranted searches are likely to cause a high degree of distress to staff, and potentially students. We question whether this is a proportionate measure in the regulation of higher education providers.

49. While the intervention of the courts is required, the grounds on which the OfS can apply for a warrant are wide-ranging and could potentially relate to sufficiently ‘serious’ breaches of condition of registration of any type. We cannot foresee the need for the OfS to secure a search warrant in relation to the majority of potential breaches. The government has indicated that warrants might be necessary in some cases of apparent fraud and severe financial mismanagement.

50. The bill should allow such warrants to be granted to investigate only potential cases of fraud and severe financial mismanagement, or other description of relevant breaches, through amending subparagraph 1(3) of Schedule 5.

51. Warrants should only be granted by courts if they are satisfied that there is no other practicable way in which an investigation could be carried out by the OfS. This could be achieved by adding a new subparagraph to paragraph 1 of Schedule 5.

*Power to make validation arrangements and/or become validator*

52. The bill gives the OfS two sets of powers relating to degree validation, which are set out in clauses 46 and 47 of the bill. The first of these powers allows the OfS to make an arrangement with a provider of higher education which would then require that provider to enter into ‘validation arrangements’ with any other
provider which approaches them for these purposes, subject to the conditions and arrangements made between the original provider and the OfS. The provider with which the OfS makes these arrangements would therefore become a general validator of degrees.

53. The second of the powers, set out in clause 47, which could be used only once regulations were made by the Secretary of State to this effect, would allow the OfS to itself enter into validation arrangements with higher education providers. In this case, the OfS would itself become a general validator of degrees.

54. Universities UK has grave concerns about the power set out in clause 47, which would make the OfS both the regulator of a market and a participant in that market. We cannot foresee any circumstances which would justify the creation of such a clear conflict of interest in the position of the OfS, and therefore do not think that the bill should grant the OfS this power regardless of any protections through parliamentary scrutiny or governmental oversight. We recommend that clause 47 is removed from the bill.

Teaching Excellence Framework and tuition fees

55. The bill provides the legislative framework for the government to introduce the Teaching Excellence Framework (TEF) that is outlined in its white paper. The TEF will be an assessment of the quality of institutions’ teaching (with the intention of assessments at course level in the future), which will both be made available for the information of students and have a role in determining the fee cap which applies to the institutions.

56. Some of the messaging used by the government in relation to the TEF has not, we believe, reflected the high levels of satisfaction that students report. Levels of student satisfaction continue to be consistently high, with 86% of students saying they were satisfied with the course in the latest National Student Survey (published August 2016). Universities are also responding to the demands of students by investing in teaching and other facilities to enhance the student experience in spite of cuts to capital grants.

57. We welcome that the government has listened to the views of universities and that the introduction of the TEF will be more phased, with a trial year for some aspects in 2017–18. We hope that there will be an opportunity for a full and robust evaluation after this trial year. This is vital if government wishes this exercise to command the confidence of students, their parents, teachers, employers and the universities which take part.

58. It is important that the process is developed in a way which does not reduce the varied and complex outcomes and benefits of higher education to a few metrics. There are many ways in which an excellent higher education can be delivered,
and this diversity is an important feature of the higher education sector. The TEF process must be able to account for this diversity, and avoid compelling or incentivising the standardisation of teaching methods or practices.

59. The legislation currently describes the TEF as being a ‘scheme to give ratings’ to English higher education providers regarding both the quality of, and standards applied to, the higher education they provide. While it is coherent to compare the quality of provision between providers so as to come to a comparison of levels of excellence, we do not think the same applies to comparisons of standards (see paragraphs 41 to 46 for further information as to the distinction): standards should be consistent and robust across the sector, and while academic standards can meet an appropriate threshold standard they cannot be rated as ‘high quality’ in themselves without undermining diversity and autonomy of provision. We therefore think the TEF should be explicitly focused on the quality of provision and outcomes for students, rather than attempting to also ‘rate’ standards.

60. We welcome the government’s commitment to allow tuition fees to be maintained in real terms (subject to institutions demonstrating high-quality teaching through an effective TEF). Universities will be able to use an effective and meaningful TEF to demonstrate excellent teaching and show their value to students, taxpayers and government. However, a world-class university system can only be maintained through sustained investment. Allowing universities to increase fees in line with inflation, on the condition of being able to demonstrate high-quality teaching through an effective TEF, is a balanced and sustainable response to these two objectives.

61. An effective TEF would be a framework which allows for diversity in the curricula, teaching and learning practices, and methods of assessment of courses, and which avoids creating perverse incentives in either the delivery of courses of the selection of students. Close attention will therefore need to be paid to the metrics, phasing and granularity of the TEF.

62. The higher education sector operates largely as a UK-wide market. The white paper includes a number of policy areas where there may be a desire from the sector to maintain at least the opportunity for a UK-wide approach – such as on the TEF.
63. Reference to standards in clause 25 should be removed, focusing the TEF on the quality of higher education.

64. In order to be effective it is important that TEF judgements are based on appropriate use of metrics and supporting evidence presented by providers. We welcome the government’s commitment to an evaluation exercise taking place following the first of ‘TEF 2’, but such an exercise should extend beyond a mere technical consultation and include an analysis of costs and benefits of the exercise as a whole – and in particular an evaluation of the extent to which it contributes to informed student decision-making.

65. The bill and the frameworks it creates should allow for institutions in devolved nations to opt in, and/or for existing frameworks (such as the Scottish Quality Enhancement Framework) to be recognised.

66. The OfS should also be fully empowered to work with equivalent bodies in the devolved nations, and the funding and charging regime should allow for the possibility of institutions in the devolved nations ‘opting in’ on certain elements.

Social mobility

67. Universities UK fully supports the government’s priority to widen participation in higher education and is pleased to take forward the Social Mobility Advisory Group, which is due to report later this year. The group will provide advice to the government on how universities in England can deliver the last prime minister’s goals on access and participation in higher education: to double the proportion of people from disadvantaged backgrounds entering university in 2020 compared to 2009, and to increase the number of black and minority ethnic students going to university to 20% by 2020.

68. The advisory group is looking at how data can be used to help support social mobility and widening participation objectives. UUK is supportive of greater transparency to support effective decisions and policy making, and therefore of the principles behind clauses 9 and 71 of the bill which will enable the OfS to gather data on rates of application, acceptance, and retention.

69. Clause 9 of the bill specifies a number of ‘cuts’ of the data that would be required from institutions. If this were required on a course-level basis, in particular, it would create a significant bureaucratic burden and create a large amount of data that related to very small samples of students. Much of this data is also to be provided through admissions services such as UCAS through clause 71 of the bill. An institution-wide approach would strike an appropriate balance between administrative burdens and providing useful data.
70. We seek reassurance that clause 9 would not require institutions to provide information on a course-level basis.

Research and innovation agencies

71. The bill reforms the government agencies which fund and support research in the UK. These reforms broadly reflect the recommendations of the Nurse Review published in November 2015. The various existing research councils and Innovate UK will be brought together as ‘autonomous councils’ of one body: UK Research and Innovation (UKRI). These councils will, as presently, operate across the UK as a whole. Also within UKRI will be an autonomous Research England, which will have responsibility for funding research in higher education institutions in England.

72. Innovate UK currently has a very specific focus that is qualitatively distinct from the existing research councils or the research functions of HEFCE. There is a great deal of uncertainty over how the relationship between Innovate UK and other committees within UKRI will operate, and concern that the business-facing role of Innovate UK does not sit comfortably with the university-facing role of the research councils. There is specific concern that Innovate UK may become (whether deliberately or by ‘drift’) a commercialisation arm for research funded by the councils. This would be more limited and less beneficial than its current role.

73. The bill allows the minister to change the list of research councils (with the exception of Innovate UK and Research England, which have additional protections) through regulations. The distinct identities and missions of the research councils play a part in ensuring that the full variety of research in the UK is funded. We agree that there should be a route through secondary legislation to amend the list of research councils, but only after significant engagement with the research sector.

74. The bill should be amended to require consultation with the sector before any such regulations are made to change the name or remit of the autonomous councils of UKRI. A requirement for affirmative resolution of regulations by parliament should not be considered a proxy for this consultation.

The role of Research England

75. The funding distributed by Research England will be broadly similar to that distributed by HEFCE through the quality-related (QR) funding stream. This is funding that is granted on the basis of research excellence, rather than to fund a particular named research project. This type of funding plays an important role in underpinning the sector as a whole, allowing for investment in inter-disciplinary
and experimental research, and for institutions to establish research centres in new areas. QR-funding is complementary to funding delivered through research councils, with the latter covering less than 75% of the total costs of research projects.

76. We welcome the commitment in the bill to maintaining the dual support system of research funding (made up of project based funding and quality-related funding). This commitment is represented by the ‘balanced funding principle’ set out in clause 95, although this principle remains vaguely worded and places no specific outcome requirements on the secretary of state.

77. HEFCE also currently supports universities in their innovation and knowledge-transfer activities through the Higher Education Innovation Fund (HEIF). HEIF is widely regarded as an effective and cost-efficient policy, and is highly valued by universities. This fund, and the wider knowledge exchange functions of HEFCE, should not be lost in the transfer to Research England. We are concerned that the remit of Research England, set out in sub-clause 89(2), might prevent Research England from operating HEIF or similar schemes.

78. The remit of Research England, set out in sub-clause 89(2) should be amended in the bill to explicitly include support for knowledge transfer activities in universities.

79. It may be helpful to strengthen the balanced funding principle through amendment to clause 95 legislating for a requirement that funding be grounded in complementary evaluation and allocation methods, or by amending the remit of Research England in clause 89 so as to specify that the funds it receives must be distributed according to particular methods.

**Role of UKRI in supporting postgraduate training**

80. The royal charters of the research councils include a responsibility for the councils to support postgraduate training in the disciplines for which they have responsibility for. This is not reflected in the overarching responsibilities of UKRI in clause 85, which govern the general responsibilities for the research councils working within UKRI.

81. This is a clear omission from what should be among the key responsibilities of the of UKRI and/or its constituent bodies, and clause 85 should be amended to reflect this.
**UKRI and devolution**

82. UKRI has both UK-wide and England-specific responsibilities, including the awarding of substantial amounts of funding in both cases. It is therefore important that there is appropriate hypothecation of funding from the secretary of state to govern this.

83. As a result of its UK-wide role, the board of UKRI must include members with expertise of the research environments and policy contexts of each of the devolved nations. There must be clarity on the way in which UKRI will be able to work with, and take account of, the priorities of the devolved governments, where appropriate.

**Cross-working between OfS and UKRI**

84. The current primary regulatory body, HEFCE, has a remit which covers the teaching, research and knowledge-exchange functions of universities. The bill would largely separate these responsibilities between OfS and UKRI, presenting an unprecedented division between policy responsibilities for higher education and research and risking a lack of integration between teaching and research. There is provision in the bill to allow the bodies to co-operate, and for them to be required to co-operate when directed by the secretary of state.

85. When the bill was drafted the Department for Business, Innovation and Skills had responsibility for both research and higher education. The separation of responsibility for higher education and for research between the Department for Education and the Department for Business, Energy and Industrial Strategy respectively means that the OfS will report to the secretary of state for education while the UKRI reports to the Secretary of State for Business, Energy and Industrial Strategy. We are concerned that this separation will prevent any person or body from having a holistic overview of universities and their teaching and research functions (as a sector as a whole, or as individual institutions). It is not clear, for instance, which agency will take the lead in monitoring the financial viability of institutions.

86. Clarity will be needed as to which secretary of state can mandate co-operation between the two bodies (etc.), and this might require specific amendments to the bill in a number of places. It also makes it more important for both the legislative underpinnings of co-operation to be present and for a clear strategy of cooperative working to be in operation from the outset.

87. There is a clear need for the two bodies to co-operate in relation to the awarding of research degree awarding powers (the ability to award PhDs and research-based masters degrees), with a formal role for UKRI in this process.
88. The bill should be amended to explicitly require the OfS to consult with UKRI in awarding research degrees, through new sub-clause in clause 40.
Annexe A: Summary of UUK’s proposed amendments

This annex compiles the main amendments UUK will be seeking that are highlighted in this evidence. It is intended to assist committee members in their consideration of the bill, but is not intended to be comprehensive or final: there are a number of less substantive amendments that we will be seeking throughout the bill, and the amendments below will be subject to change as the bill progresses through committee.

<table>
<thead>
<tr>
<th>Clause(s)</th>
<th>Issue related to</th>
<th>Summary of amendment sought</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Broad role and remit of the Office for Students</td>
<td>The OfS should have a duty to have regard to the need to maintain the confidence of students, employers and the public at large in the higher education sector, the degrees they award, and the title ‘university’. Its duty relating to competition among providers should also reference collaboration, and the relevant interests should include wider society as well as students and employers.</td>
</tr>
<tr>
<td>NC 2A</td>
<td>Ability of the OfS to give advice without specific request from the Secretary of State</td>
<td>The OfS should have among its functions the provision of advice to the Secretary of State on the provision of higher education in England, as HEFCE does at present.</td>
</tr>
<tr>
<td>2, 66 and 69</td>
<td>Power of the secretary of state to frame guidance (etc.) to the OfS ‘by reference to' courses</td>
<td>Re-write relevant subsections so as to be focused in particular on financial and other support for subjects that are deemed strategically important and/or expensive to deliver, paying due regard to advice from the OfS</td>
</tr>
<tr>
<td>13 (and potentially consequentially to 23, 27 and Schedule 4)</td>
<td>Registration condition related to 'quality' and 'standards' of education</td>
<td>Separation of 'quality' condition from 'standards' condition; amend ‘standards’ condition to make condition explicitly about ensuring robust internal processes rather than external inspection.</td>
</tr>
<tr>
<td>15, 16, 18, 21</td>
<td>Threshold of evidence required by OfS in order to impose sanction</td>
<td>Change ‘appears to’ in relevant clauses to ‘has evidence that’.</td>
</tr>
<tr>
<td>Page</td>
<td>Change Description</td>
<td>Action/Justification</td>
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<tr>
<td>25</td>
<td>Power to conduct Teaching Excellence Framework assessments</td>
<td>Remove reference to ‘standards’ in this clause.</td>
</tr>
<tr>
<td>40</td>
<td>Power of OfS to authorise research degree awarding powers</td>
<td>A new sub-clause requiring input from UKRI before an institution is granted the power to award research degrees</td>
</tr>
<tr>
<td>NC 40A</td>
<td>Power of OfS to grant degree awarding powers and university title</td>
<td>A new clause legislating for a committee to advise the OfS on its use of powers to authorise degree awarding powers and university title, of a type similar to that created by clause 24 in relation to quality.</td>
</tr>
<tr>
<td>51</td>
<td>Power of OfS to grant university title</td>
<td>A new subsection requiring the OfS to have regard to the wider civic role of universities, and the importance of teaching informed by research and scholarship.</td>
</tr>
<tr>
<td>47</td>
<td>Ability of OfS to enter into validation arrangements with higher education providers</td>
<td>Clause to be deleted.</td>
</tr>
<tr>
<td>27, 63 and 64</td>
<td>Funding of the OfS and body designated for the purpose of assessing quality</td>
<td>Ensure that providers requiring little regulation are not charged fees to cover the higher costs associated with new or riskier provision; and ensure that the OfS can receive funding for any activities it undertakes on behalf of the devolved nations.</td>
</tr>
<tr>
<td>70, 2, 66 and 69</td>
<td>The provision of advice by the OfS</td>
<td>Add a subsection to allow the OfS to provide advice to the secretary of state on matters relevant to its functions, and the provision of higher education in England. The secretary of state should have to have regard to this advice in issuing guidance or direction to the OfS and setting the terms and conditions of its grant.</td>
</tr>
<tr>
<td>84</td>
<td>Power of secretary of state to amend research councils’ names and remits</td>
<td>Include condition that the secretary of state has consulted with the sector before regulations can be made.</td>
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<tr>
<td></td>
<td>Remit of UKRI</td>
<td>Add area of activity to those listed in 85(1), to explicitly include support for postgraduate study and skills</td>
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<tr>
<td>89</td>
<td>Remit of Research England</td>
<td>Add area of activity to those listed in 89(2), to explicitly include support for knowledge transfer activities carried out by universities in England.</td>
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<tr>
<td>Schedule 5</td>
<td>Conditions of a warrant for search and entry powers</td>
<td>Include an additional requirement in sub-paragraph 1(3) that the breach of registration condition be one concerned with fraud, or financial mismanagement. Add a requirement that the court must be satisfied that use of entry and search powers is only practicable way for matter to be investigated.</td>
</tr>
</tbody>
</table>

*August 2016*