

HE & Research Bill: CaSE Briefing

1st December 2016

CaSE is focusing on the research and innovation aspects of the Higher Education and Research Bill (Part 3 and Schedule 9). This briefing outlines the main proposed changes in the Bill, summarises activity and progress to date, and sets out some proposed amendments and areas for clarification in debate.

Main proposed changes in the Bill

The Research Councils, Innovate UK and the research and knowledge exchange functions of the Higher Education Funding Council for England (HEFCE) will become nine constituent Councils of a new non-departmental public body, UK Research and Innovation (UKRI). This will involve removing the Research Councils' Royal Charters. The new legislation also includes cementing the dual support system in England (known in the bill as the 'balanced funding principle') which has been broadly welcomed.

The majority of the bill relates to changes to the regulation of the higher education sector including the creation of the Office for Students (OfS). It includes some contentious proposals including some additional Secretary of State powers, relaxing rules on the entry of new providers to the system, as well as some legislation around university fees. This, along with changed circumstances since the original drafting of the legislation pre-EU referendum and Government reshuffle, is where attention has focussed so far in Commons debates and the Bill Committee.

Sector priorities and activity to date

After the Bill was introduced to Parliament following the Queen's Speech, CaSE convened a workshop for members and partners to gather views from across the sector. There were significant concerns on the research elements of the bill, but the majority view was that they should be addressed by improving the bill rather than scrapping it. Specific areas for amendment or clarification focus on protecting the independence and autonomy Research Councils/UKRI if their Royal Charters are removed, building in links between teaching and research as there will no longer be a single organisation with oversight of both, and ensuring there is appropriate consultation and scrutiny attached to any Secretary of State powers.

A common concern relates to the context in which this Bill is being considered - namely Brexit coupled with new departmental structures splitting this Bill across two departments and two Secretaries of State. Concerns have been raised as to whether now is the right time to be pushing ahead with this legislation and if it is necessary. This wider context has been covered at length in debate on the bill, but the detail of the research and innovation elements have not yet received robust scrutiny. We believe and hope this is something that members of the House of Lords can provide.

Government have stated its resolve to continue with the bill in this Parliamentary session. So CaSE, along with many others, is engaging with the process to ensure the bill is in the best possible shape when it becomes law.

Welcome progress to date

87 Postgraduate skills and training in UKRI functions – Government amendment

We were pleased to see the Government amendment to this clause in Report Stage to include post graduate training provision in the functions of UKRI bringing the legislation in line with the current functions of Research Councils outlined in their Royal Charters.

95/96 Haldane – Government restatement of commitment

The White Paper stated that the Haldane Principle will be retained. There is no specific reference to the principle in the Bill, which would be difficult, but it was the subject of debate during the Commons stage and the Minister restated a commitment to Haldane principle saying “excellence is and must remain the driver of funding decisions, and it is only by funding excellent research that the maximum benefits will be secured for the nation”, asserting this principle is reflected in UKRI design. The statement is recorded in Hansard [here](#), with further details in a government [fact sheet](#).

Schedule 9 UKRI Executive Committee – Government clarification

CaSE proposed an amendment to Schedule 9 detailing that UKRI’s governance arrangements should include an Executive Committee of the Councils’ Executive Chairs, as recommended in the Nurse Review. This structure was not included in the White Paper nor in the Bill. However, in October, the Government published a [briefing](#) which stated, “*Our policy intent is for the Executive Chairs of the Councils – along with the CEO, CFO and other senior directors of UKRI – to sit together on an Executive Committee, to support engagement with the Board and cross-council working.*”

We support this clarification. There could be scope for the Executive Committee structure to be included in the text of the Bill by amending S9 (9) to state that *UKRI must establish an Executive Committee of the Executive Chairs of the Councils, chaired by the UKRI CEO.*

Proposed amendments and clarifications

87 Interdisciplinary role of UKRI - amendment

The intention for UKRI to promote and facilitate interdisciplinary research is not reflected in the legislation, which only outlines the disciplinary responsibilities of its constituent Councils. This should be set out in the functions of UKRI by amending clause 87 to include UKRI may - *promote interdisciplinary research*. If this amendment were accepted there would also need to be an amendment to 87 (3) so that the postgraduate training clause also referred to interdisciplinary research.

93 (1) UKRI strategy – amendment/debate

We propose amending clause 93 to state that UKRI must—(c) *consult with the Executive Chairs of Councils when developing the UKRI strategy*. This is in order to provide a mechanism for including discipline-specific expertise and ensuring cross-Council input, including sufficient recognition of the distinct business facing role of Innovate UK. A debate on developing a research and innovation strategy could provide helpful clarification from the Government on how UKRI strategy will be developed in relation to wider government strategies, such as the industrial strategy.

97 Dual support system - amendment

This clause is a welcome new protection in law of the dual support system, represented in the bill as the ‘balanced funding principle’. However, it does not, as drafted, accurately describe the dual support system and the passage of the bill is an opportunity to include further protection. We propose amending clause 97 to explicitly recognise the nature of the dual support system which is

grounded in a complementary evaluation and allocation mechanism of competitive project based funding and a block grant based on a retrospective evaluation of research excellence.

106 (1) Cooperation and information sharing between UKRI and OfS – Amendment

The Government have published a [statement](#) on OfS and UKRI joint working arrangements providing some clarification of intent. Clause 106 provides the legal basis for cooperation between UKRI and OfS. Concerns were raised by the sector and in Committee Stage that it is not sufficiently strong. The division of teaching and research responsibilities in government departments as well as across UKRI and OfS provides additional structural separation of teaching and research raising the importance of a strong legal underpinning for join up across these interconnected areas. It has been suggested that the ‘may cooperate’ within this clause be amended to ‘*shall cooperate*’.

Other, or additional ways to achieve this essential join up could be through amending the legislation to require the UKRI board consists of at least one member of the OfS Board with at least observer status and vice versa on the OfS board. Further in the practical set-up of both organisations a sub-committee could be created focusing on monitoring, maintaining and improving teaching and research links and cooperation between the two organisations. It was also suggested that this could be addressed by referring to the other organisation in the functions of both (clause 2 (1) for OfS and clause 87 for UKRI).

UKRI Governance

The concerns with governance focus on ensuring that the UKRI board representation, lines of accountability and appointment processes are clear and appropriate. It will be important to give close attention to the chain of authority within UKRI and into BEIS/DfE, ensuring that the appointment processes are appropriate, including who is consulted as part of the process.

S9 (2) 4 Appointment of UKRI CEO and members – amendment

The requirements currently state that the Secretary of State must consult the UKRI Chair when appointing the UKRI CEO and members. This should stand, but in the Royal Charters of Research Councils at present further consultation is outlined for the appointment of Board members. It states that before appointing any member on account of their qualifications in science, the Secretary of State shall consult the President of the relevant National Academy. This process should be maintained through an amendment to this clause.

S9 (3) Appointment of Council members by the Secretary of State - amendment

To support good governance of the Councils and appropriate lines of accountability, the Secretary of State should be required to consult with the Executive Chair of a Council before exercising the right to appoint an ordinary Council member. We propose amending S9 (3) 3 to read - The Secretary of State may appoint one of the ordinary Council members of each Council, *following consultation with the Executive Chair*.

89(5) & 86(2) Power to change or omit Research Councils - amendment

The bill gives the Secretary of State power to add or change or remove a Research Council by regulation. This power is necessary as in time the precise titles and remits of the Research Councils could legitimately need to change, for instance to better reflect new and emerging research areas. However, at present the power does not require public consultation, which we believe would be essential for such a change. We propose amending 86 (2) to state The Secretary of State, *following consultation*, may by regulations amend subsection (1) so as to— (a) add or omit a Council, or (b) change the name of a Council.