

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### HIGHER EDUCATION AND RESEARCH BILL

*Eleventh Sitting*

*Thursday 13 October 2016*

*(Morning)*

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CLAUSE 56 agreed to, with amendments.  
SCHEDULE 5 agreed to, with amendments.  
CLAUSES 57 to 60 agreed to.  
SCHEDULE 6 agreed to.  
CLAUSES 61 to 65 agreed to, one with an amendment.  
SCHEDULE 7 agreed to, with an amendment.  
CLAUSE 66 under consideration when the Committee adjourned till this day at Two o'clock.

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**not later than**

**Monday 17 October 2016**

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**The Committee consisted of the following Members:**

*Chairs:* MR CHRISTOPHER CHOPE, † SIR EDWARD LEIGH, SIR ALAN MEALE, MR DAVID HANSON

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|--|--|
| † Argar, Edward ( <i>Charnwood</i> ) (Con)   | † Milling, Amanda ( <i>Cannock Chase</i> ) (Con)         |
| † Blackman-Woods, Dr Roberta ( <i>City of Durham</i> ) (Lab)                             | † Monaghan, Carol ( <i>Glasgow North West</i> ) (SNP)    |
| † Blomfield, Paul ( <i>Sheffield Central</i> ) (Lab)                                     | † Morton, Wendy ( <i>Aldridge-Brownhills</i> ) (Con)     |
| † Chalk, Alex ( <i>Cheltenham</i> ) (Con)  | Mullin, Roger ( <i>Kirkcaldy and Cowdenbeath</i> ) (SNP) |
| Churchill, Jo ( <i>Bury St Edmunds</i> ) (Con)   | † Pawsey, Mark ( <i>Rugby</i> ) (Con)                    |
| † Evennett, David ( <i>Lord Commissioner of Her Majesty's Treasury</i> )                 | † Rayner, Angela ( <i>Ashton-under-Lyne</i> ) (Lab)      |
| † Howlett, Ben ( <i>Bath</i> ) (Con)   | † Smith, Jeff ( <i>Manchester, Withington</i> ) (Lab)    |
| † Johnson, Joseph ( <i>Minister for Universities, Science, Research and Innovation</i> ) | † Streeting, Wes ( <i>Ilford North</i> ) (Lab)           |
| † Kennedy, Seema ( <i>South Ribble</i> ) (Con)   | Vaz, Valerie ( <i>Walsall South</i> ) (Lab)              |
| † Marsden, Gordon ( <i>Blackpool South</i> ) (Lab)                                       | † Warman, Matt ( <i>Boston and Skegness</i> ) (Con)      |
|  | Katy Stout, Glenn McKee, <i>Committee Clerks</i>         |
|  | † <b>attended the Committee</b>                          |

## Public Bill Committee

Thursday 13 October 2016

(Morning)

[SIR EDWARD LEIGH *in the Chair*]

### Higher Education and Research Bill

#### Clause 56

ENTERING AND SEARCHING PREMISES WITH A WARRANT

11.30 am

**The Minister for Universities, Science, Research and Innovation (Joseph Johnson):** I beg to move amendment 89, in clause 56, page 33, line 31, after “providers” insert “or linked institutions in relation to such providers”.

*See the explanatory statement for amendment 90.*

**The Chair:** With this it will be convenient to discuss Government amendments 90 to 92, 291, and 94 to 101.

**Joseph Johnson:** It is great to have you back in the Chair, Sir Edward.

These amendments will ensure that premises of all institutions that act on behalf of a provider to deliver higher education courses—for example, as part of a franchising or subcontracting arrangement—are within scope of the powers to enter and search set out in clause 56 and schedule 5. The provision is vital to ensure that all students are protected to the same level. Amendment 291 also makes a small change so that the powers to enter and search cease to apply where the breach is of an initial registration condition.

**Gordon Marsden (Blackpool South) (Lab):** May I echo the Minister’s sentiments by saying what a great pleasure it is to have you in the Chair again, Sir Edward?

We welcome the amendments, which put important flesh on the bones and are not simply technical, as some amendments are. They show that the Government have looked at and taken cognisance of the complex structures in which such things can be done and particularly what the National Audit Office said in 2014, when it conducted an inquiry into private higher education providers after concerns were raised relating to support provided to students at some alternative providers.

The provisions in clause 56 address some of those concerns, but the Minister will know—my hon. Friend the Member for Sheffield Central talked about this on Tuesday, when discussing new clause 9—that we have in this arena at the moment some very complex business, corporate and judicial arrangements. This is only talking about companies that operate principally in the United Kingdom. I am not saying that every alternative provider in the UK is good or that every alternative provider from outside the UK is bad. Nevertheless, as my hon.

Friend said, the more complex the structure, the more opportunities there are for difficulty—I put it no stronger than that.

On Tuesday, my hon. Friend said that some companies are

“less concerned than others with the quality of the offer they make... Theirs is a model in which companies offer a product, and students are then attracted by aggressive marketing... are let down by the quality of provision... and face enormous debts to repay.”—[*Official Report, Higher Education and Research Public Bill Committee*, 11 October 2016; c. 383.]

Of course, those are the worst circumstances. Given the Minister’s eagerness to expand the alternative provider sector, I know he is doing his best to assure us all that this will be the exception rather than the rule, but if we look at what has happened in the United States—the Century scandal and various other problems—we see that the common denominator is complex structures of corporate governance that have allowed some of these abuses to flourish. We therefore welcome the strengthening of the provisions by these amendments.

I refer to the Commons Library briefing, which says:

“The Impact Assessment states that this provision will ‘deter noncompliant behaviour’ and ‘reduce reputation risk’ to the sector. It should also facilitate the recovery of misused public funds.”

The impact assessment says that the provision will reduce those risks, not that it will eliminate them. We therefore believe it is right to proceed on the precautionary principle. We welcome the amendments and will wait to see whether they are adequate for the purpose.

**Joseph Johnson:** I thank the hon. Gentleman for his welcome for the amendments. We share the same objectives, but I point out that it is not only newer entrants into the sector who require us to have these powers; there have also been instances in what we may regard as the classic university sector that have made it necessary for the powers to be introduced. I draw to his attention some cases we have seen in that part of the sector, which is by no means immune from the kinds of problems we want to ensure we stamp out.

One high-profile case that the hon. Gentleman may well remember in the sector funded by the Higher Education Funding Council for England was that of London Metropolitan University, which provided inaccurate data returns to HEFCE, resulting in it receiving significantly more funding than was due. The investigation into concerns about the university was hampered by access issues. HEFCE subsequently decided to recover access funding of £36.5 million over the three years up to and including 2007-08. So I would steer the hon. Gentleman away from the black and white picture of “alternative providers bad, classic sector good”, because it is not as simple as that, as he well knows.

The amendments will ensure that the powers of entry and search are effective and proportionate. I commend them to the Committee.

*Amendment 89 agreed to.*

*Amendment made:* 90, in clause 56, page 33, line 39, at end insert—

“(3) A “linked institution” in relation to a supported higher education provider means an institution which acts on behalf of the provider in the provision of a higher education course by the provider.”—(*Joseph Johnson.*)

*This amendment extends the power of entry so that it applies to premises occupied by institutions that are linked to supported higher education providers as defined in the amendment. Amendments 89, 91, 92, 94 and 95 are consequential on this change.*

*Clause 56, as amended, ordered to stand part of the Bill.*

### Schedule 5

#### POWERS OF ENTRY AND SEARCH ETC

*Amendments made:* 91, page 77, line 11, after “provider” insert

“or a linked institution in relation to such a provider”.

*See the explanatory statement for amendment 90.*

*Amendment 92, page 77, line 17, after “provider” insert*

“or a linked institution in relation to such a provider”.—(*Joseph Johnson.*)

*See the explanatory statement for amendment 90.*

**Dr Roberta Blackman-Woods** (City of Durham) (Lab): I beg to move amendment 290, page 77, line 25, at end insert—

“(e) the justice of the peace is satisfied that the use of entry and search powers is the only practicable way for the matter to be investigated.”.

*This amendment would allow search and entry powers to be used only in cases where a justice of the peace is satisfied that there was no other practicable way forward.*

It is a great pleasure to have you back in the Chair, Sir Edward.

I say to the Minister at the outset that amendment 290 is a probing amendment to test whether he thinks sufficient safeguards are in place for universities on powers to search and enter premises of higher education providers. I am sure we all agree that where incidents of fraud, financial mismanagement or other illegal behaviour have or are suspected to have occurred, it is exceptionally important that there is a power to investigate allegations in a timely and efficient way, and in some circumstances the use of search and entry powers will be necessary to carry out those investigations. However, there is some anxiety in the university sector that there might not be sufficient safeguards in the Bill on the court process to approve powers of search and entry. The amendment is simply to ask the Minister whether sufficient safeguards are in place, or whether it would be possible to add an additional safeguard of more court oversight.

**Joseph Johnson:** I thank the hon. Lady for tabling the amendment and for clarifying its probing nature. I reassure her that her intention is already achieved by schedule 5, which states that in order to issue a warrant a justice of the peace must be

“satisfied that...entry to the premises is necessary to determine whether the suspected breach is taking place or has taken place”.

A warrant may be issued only in relation to a suspected breach that is

“sufficiently serious to justify entering the premises”

and where entry to the premises would be refused or requesting entry would

“frustrate or seriously prejudice the purpose of entry.”

That means, in effect, that a warrant will be granted only when necessary and when it is not practical to enter or request the information on a consensual basis.

The hon. Lady asked what further safeguards there are. Further safeguards are built into the powers of entry and search, including that entry must be “at a reasonable hour”,

that the warrant must

“identify, as far as possible, the suspected breach of a registration condition or funding condition”,

and the premises may be searched only

“to the extent that is reasonably required for the purposes of determining whether there is, or has been, a breach”.

Warrants granted under the powers will not allow for individuals to be searched. We are confident that those are strong safeguards that effectively ensure that the powers of entry and search can be used only if necessary and if that is the only practicable way for a matter to be investigated.

I agree that it is vital that proper safeguards are in place to ensure that those powers are always used appropriately. I believe that the strong safeguards set out in schedule 5 as drafted achieve that, and I therefore ask the hon. Lady to withdraw the amendment.

**Dr Blackman-Woods:** I have heard the Minister’s extremely helpful clarification, and I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Amendments made:* 291, in schedule 5, page 77, line 32, leave out paragraph (a).

*This amendment has the effect that the power of entry cannot be exercised in relation to a breach of an initial registration condition.*

*Amendment 94, in schedule 5, page 78, line 7, after “provider” insert “or linked institution”.*

*See the explanatory statement for amendment 90.*

*Amendment 95, in schedule 5, page 78, line 20, after “provider” insert “or linked institution”.*

*See the explanatory statement for amendment 90.*

*Amendment 96, in schedule 5, page 79, line 1, after “the” insert “relevant”.*

*See the explanatory statement for amendment 101.*

*Amendment 97, in schedule 5, page 79, line 2, leave out “occupying the premises”.*

*See the explanatory statement for amendment 101.*

*Amendment 98, in schedule 5, page 79, line 7, after “the” insert “relevant”.*

*See the explanatory statement for amendment 101.*

*Amendment 99, in schedule 5, page 79, line 8, leave out “occupying the premises”.*

*See the explanatory statement for amendment 101.*

*Amendment 100, in schedule 5, page 81, line 36, at end insert—*

““linked institution”, in relation to a supported higher education provider, has the meaning given in section 56(3);”.

*This amendment defines “linked institution” for the purposes of Schedule 5.*

*Amendment 101, in schedule 5, page 81, line 36, at end insert—*

““relevant supported higher education provider” means—

- (a) in the case of premises occupied by a supported higher education provider, that provider, and
- (b) in the case of premises occupied by a linked institution in relation to a supported higher education provider, that provider.”—(*Joseph Johnson.*)

*This amendment defines “relevant supported higher education provider” in order to identify such providers where a linked institution is occupying the premises. Amendments 96, 97, 98 and 99 are consequential on this change.*

*Schedule 5, as amended, agreed to.*

### Clause 57

POWER TO REQUIRE INFORMATION FROM UNREGISTERED PROVIDERS

*Question proposed,* That the clause stand part of the Bill.

**Carol Monaghan** (Glasgow North West) (SNP): On a point of order, Sir Edward. I believe that clauses 56 to 59 have been certified under the English votes for English laws procedure. Are you able to shed any light on that?

**The Chair:** I am told that the EVEL certificate is published on the Bill website. The Clerk’s advice is that it is not a matter for the Committee. I hope that that is satisfactory. I always try to satisfy the hon. Lady if I can.

**Carol Monaghan:** Further to that point of order, Sir Edward. I understand that clauses 56 to 59 have been certified under EVEL, so I think it is best that I remove myself from the room and return later when other clauses are being discussed.

**The Chair:** I am told that the hon. Lady does not need to remove herself, but it is entirely up to her. She is very welcome to stay.

**Hon. Members:** Hear, hear!

*Question put and agreed to.*

*Clause 57 accordingly ordered to stand part of the Bill.*

### Clause 58

COOPERATION AND INFORMATION SHARING BY OFS

*Question proposed,* That the clause stand part of the Bill.

**Gordon Marsden:** I note that subsection (6) of the clause states:

“But nothing in this section authorises the OfS to provide information where doing so contravenes the Data Protection Act 1998.”

Can the Minister say whether that alters any of the Department’s current practices for the provision and commercial use of information?

**Joseph Johnson:** The office for students is subject to the Data Protection Act 1998 and is not authorised to infringe it. There is no derogation from the provisions

of that Act for the OFS, but the OFS is also restricted by the fact that it may share information with another body only if appropriate for the efficient performance of the functions of either the OFS or the other body. As such, the clause allows for close engagement between the OFS and other bodies subject to the Data Protection Act.

11.45 am

**Gordon Marsden:** I am sorry to press the Minister further, but he elaborates on the purpose of what is said, but does not really answer my question as to whether the Bill will change the status quo and make it easier or more difficult for commercial use to be made of the information in question. Perhaps if he finds it difficult to respond on this occasion, he might like to write to the Committee.

**Joseph Johnson:** I thank the hon. Gentleman for that intervention. I am happy to write to the Committee on that point to clarify my answer, if that would be helpful.

*Question put and agreed to.*

*Clause 58 accordingly ordered to stand part of the Bill.*

### Clause 59

DUTY TO PUBLISH ENGLISH HIGHER EDUCATION INFORMATION

**Gordon Marsden:** I beg to move amendment 292, in clause 59, page 35, line 12, leave out “body” and insert “bodies”.

*This amendment would allow for the option of more than one information/data provider in the future.*

**The Chair:** With this it will be convenient to discuss amendment 298, in clause 60, page 36, line 12, leave out “body” and insert “bodies”.

*See explanatory statement for amendment 292.*

**Gordon Marsden:** These two proposed amendments to the clause are part of a series we have tabled at the instigation of organisations who are concerned that the Bill’s framework should allow for the option of more than one information or data provider in the future. As I have said, we want in every way possible to future-proof the Bill and we believe that changing the word “body” to “bodies” in clauses 59 and 60 would give that necessary flexibility.

As I understand it, institutions that substantially deal with part-time students—the Open University would be one example, but this would also affect other universities that have a substantial amount of part-time learning—are not currently covered by UCAS. It might be that organisations other than UCAS are better qualified to be the information or data provider for such institutions and potentially others. The Minister can be reassured that these are probing amendments, but we thought it important to raise the issue, because if we are serious about expanding part-time education and the number of institutions that provide it—I think we are—that may become more significant than it has been up to now.

**Joseph Johnson:** I thank the hon. Gentleman for moving his probing amendment. I am grateful for the chance to clarify our intentions.

The amendments seek to allow for more than one designated information body. A core principle of our reforms is to minimise the regulatory burden on providers. Following the principle of gathering information only once, to avoid duplication, we believe it is best for the sector to have only one body designated to collect the information at any one time. Making a single body responsible for higher education data functions replicates the current co-regulated arrangement, which the sector has stated it is keen to see continue, but I assure Members that the OFS will be able to engage with other bodies and to contract out where appropriate, which could be used to assist in running an information campaign for students and prospective students, for example.

**Gordon Marsden:** I understand that point, and this is one area in which I am not arguing that proliferation or competition would necessarily be a good thing. My only concern is about where that leaves the current arrangements. For example, as I understand it data from the Higher Education Statistics Agency cover the part-time market but UCAS data do not. Where does that leave us regarding which information and data providers such institutions have to engage with?

**Joseph Johnson:** Our intention in the reforms is merely to replicate the current arrangements, which are working well. There has been no call from providers or the sector generally to have a multitude of bodies designated for the purpose of collecting information. The focus of the data body is very much on the statistics process, not on admissions per se. On that basis, I ask the hon. Gentleman to withdraw his amendment.

**Gordon Marsden:** It may be too early in the morning for me because I have still not quite absorbed the full detail of that response, although I am sure it is accurate. However, on the basis of the Minister's assurances, I beg to ask leave to withdraw the amendment. We can always return to the subject in another place, if necessary.

*Amendment, by leave, withdrawn.*

**Gordon Marsden:** I beg to move amendment 293, in clause 59, page 35, line 23, after "when" insert "where".

*This amendment would ensure the OfS must consider where it is publishing information on higher education courses provided in England.*

**The Chair:** With this it will be convenient to discuss the following:

Amendment 294, in clause 59, page 35, line 28, before "people" insert "all".

*See explanatory statement for amendment 295.*

Amendment 295, in clause 59, page 35, line 28, after "people" insert "whatever their age or individual circumstances".

*This amendment would include prospective adult students, as well as those leaving school, in the distribution of information.*

Amendment 296, in clause 59, page 35, line 29, at end insert—

'() existing and potential higher education staff.'

*This amendment would ensure that the duty to publish English higher education information includes information that is useful to existing and potential higher education staff.*

Amendment 297, in clause 59, page 35, line 41, at end insert—

'() a number of persons that, taken together, appear to the OFS to represent, or promote the interests of, higher education staff, and'.

*This amendment would ensure consultation with bodies representing higher education staff.*

**Gordon Marsden:** These amendments also have at their heart the need to reflect and respond to the increasing diversity of higher education students and providers in England. That is why the Open University and one or two other organisations have suggested that it might be helpful to amend clause 59. Their suggestions are embodied in the proposed amendments. We have a lot of sympathy with those organisations' belief that these changes would lead to a more balanced distribution of effort in the communication of higher education information to prospective students.

The Minister and I have crossed swords—no, not crossed swords; we have talked in a collaborative way about the importance of expanding the opportunities that are given to younger people in both the academic and the vocational arenas. The Minister also spoke the other day about the Government valuing adult students. It is therefore important that the structures for determining how information is published should be available to all people, whatever their age or individual circumstances. That is the purpose of amendment 295.

Again, the amendments are probing. We are not arguing that they need to be in the Bill, but it would be helpful if the Minister commented on whether he considers the existing terminology applying to the duty to be entirely adequate to deal with the changes that he envisages and the existing diversity of higher education students and providers. Perhaps he can indicate, by guidance or other comments, to the bodies coming into operation that the needs of adult students as a very diverse group should be reflected in the mechanisms that reach them.

**Joseph Johnson:** I am grateful for the opportunity to discuss the amendments. On amendment 293, I assure hon. Members that I entirely agree that careful consideration of where information is published and on what platforms is an essential part of ensuring the publication of information meets the needs of students and those considering higher education. However, clause 59 already requires the OFS to have regard to what, when and how it publishes information in the way most helpful to students; where information is published is implicit within that duty. We fully expect the OFS to ensure that information is published so that all students, school leavers and adult learners have access to it.

I fully support the issues raised in amendment 294 and 295. It will clearly be incredibly important that the OFS operates in the interests of all students, regardless of age or individual circumstances, and I believe the Bill as drafted already achieves that. The drafting of clause 59(5)(a) and (b) is already sufficiently broad to encompass all prospective students, and clause 2 places a general duty on the OFS to promote equality of opportunity for all students. The legislation clearly sets out our firm

[Joseph Johnson]

intention that the OFS will take into account the needs of students and prospective students from all backgrounds across the full range of its activities, including information dissemination.

As for amendments 296 and 297, we have already included in the Bill measures requiring the OFS, when publishing information, to have regard to what would be helpful for registered higher education providers. The OFS will have the discretion to consult any relevant bodies as part of its consultation process, including staff representative bodies, where it considers this appropriate, but we do not think it is for the OFS to separate the interests of providers and their staff members. In most cases, these will align anyway and the interests of staff and what data they need to provide a high-quality experience for their students will be shared with their institution and therefore represented already, but we recognise that there may be instances where higher education employees want corporate information relating to the accountability of their own institution. In such instances, it is a matter of good governance that providers ensure they offer sufficient transparency to their staff on the information that they require. We do not see it as an appropriate responsibility of the OFS or the designated body to intervene in making available provider data to its employers.

**Gordon Marsden:** I want to press the Minister on the reporting requirements on higher education providers. We have talked about the interests of students, but there is also a key interest in those reporting requirements for the workforce, particularly key workforce data that would assist in ensuring a sustainable sector. This is something that the University and College Union and other organisations representing people employed in the higher education sector are concerned about. Would this, for the sake of argument, include information on insecure contracts and on student and staff ratios?

**Joseph Johnson:** Those are questions that the OFS will consider when setting out guidance on these matters. It is not for me now to prescribe in detail the kinds of information that would be included in the arrangements. What we are clear about is that the OFS will seek the views of institutions; included in those views will be the interests of the employees of those institutions. We do not want to create an artificial distinction now. I therefore ask the hon. Gentleman to withdraw amendment 293.

**Gordon Marsden:** I thank the Minister for that response. It is clearly useful that we have had acknowledged in the debate today the interests of employees in the sector as well as the interests of students. I have heard what he has to say. He can be assured that, as and when the OFS comes into force, we will keep a vigilant eye on it to make sure that it does indeed do what the Minister says he would like it to do, or hopes it will do. On that basis, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 59 ordered to stand part of the Bill.*

*Clause 60 ordered to stand part of the Bill.*

*Schedule 6 agreed to.*

*Clause 61 ordered to stand part of the Bill.*

## Clause 62

### STUDIES FOR IMPROVING ECONOMY, EFFICIENCY AND EFFECTIVENESS

12 noon

*Question proposed,* That the clause stand part of the Bill.

**Gordon Marsden:** I assure the Minister that we have no problem with the clause as such; my understanding is that it replicates an existing power held by HEFCE. The clause is perhaps phrased slightly broadly—economy, efficiency and effectiveness can sometimes be in the eye of the beholder rather than subject to detailed metrics. However, mindful of the Government's wish not to micromanage in this area, I am not going to press the Minister on that.

I am going to ask the Minister this: when replicating a power held by one existing body and assigning it to a new body coming into being—that is going to be a lengthy process, as we know, and we will no doubt discuss it further in Committee—it would be interesting to know what assessment, if any, the Department has made of how effective that power has been prior to now.

**Joseph Johnson:** This is an important clause. Students invest significantly in their higher education experience and Government continue to make a substantial amount of public money available to higher education providers. It is essential for both students and taxpayers that those providers operate as efficiently and effectively as possible, and that is exactly what the clause addresses.

The clause gives the OFS the power to conduct efficiency and effectiveness studies of providers and, as the hon. Gentleman said, it is precisely the same power as HEFCE has under section 62 of the Further and Higher Education Act 1992. In answer to his last point, I should say that HEFCE has done a great job as a funding council. This is one of the powers it has used to enable it to make an assessment of the performance of the sector.

**Gordon Marsden:** No one is here today to pronounce negatively during the funeral rites for HEFCE, but I did ask a very specific question. Before the Department decided to bring forward the clause, which as the Minister rightly says replicates a power held by HEFCE, had it done any assessment as to how effective the power had been in the first place? Do I take it that the answer is no?

**Joseph Johnson:** The hon. Gentleman will understand that we have given careful consideration to all the powers HEFCE has, how it uses them and those that are appropriate to map over to the new body. He can take it as read that the fact we have decided to replicate the provisions that apply to HEFCE to the new body—the OFS—means we have undertaken a thorough assessment that it is a relevant power that has been necessary in the past and we expect to continue to be necessary in the future. It is justified, given the investment students and Governments will continue to make in higher education, and I believe the clause should stand part of the Bill.

**Dr Blackman-Woods:** Does the Minister intend to table regulations or guidance that would make obvious the set of circumstances in which HEFCE might arrange for a study into the efficiency of an organisation? This is not a *carte blanche* power to go in because it decides on a whim to do a study on a particular institution, because there are grounds for concern that would trigger a study being carried out on a particular institution. Alternatively, is his intention that this should be a *carte blanche* power and that the OFS can decide one day that it is not sure an institution is being as efficient as it could be, so it will commission a study to look into it? Where is the trigger information, so that we can better understand the use of this power?

**Joseph Johnson:** We would not expect to set out the precise circumstances governing the use of this power in the Bill, but they will be subject to guidance from the Department to the office for students in the normal manner in due course.

**Gordon Marsden:** The Minister asks me yet again to trust in the sentiment of what his Department has done, but the answer, I fear, is that there was no specific or distinct assessment of the sort for which I have asked. Nevertheless, I have heard what he has to say. We will see how the transfer operates, and on that basis I am content to leave it at that.

*Question put and agreed to.*

*Clause 62 accordingly ordered to stand part of the Bill.*

*Clause 63 ordered to stand part of the Bill.*

#### Clause 64

##### OTHER FEES

**Dr Blackman-Woods:** I beg to move amendment 239, in clause 64, page 38, line 43, at end insert—

“(6) Any fees or costs that arise from the activities of any one institution are only liable to be paid by that institution.”

*This amendment will ensure that where a Higher Education Institution incurs fees or costs only that Institution is liable to meet the obligations incurred.*

**The Chair:** With this it will be convenient to discuss amendment 240, in clause 66, page 39, line 21, leave out from “OFS” to end of line 22 and insert

“for its set up and running costs.”

*This amendment seeks to ensure that students are not meeting the set up costs of the OfS.*

**Dr Blackman-Woods:** Amendment 239 would add another subsection to clause 64 to give higher education institutions a guarantee in the Bill that costs would not be applied to them, through the fee regime, that should not be borne by them. For example, if a problem in one institution meant that the OFS had particularly burdensome costs, it could not in some way average those costs out across other institutions—ones that were not “guilty” of whatever the activity was. It is not absolutely clear in clause 64 that higher education institutions would be protected from that sort of practice, and I am not sure that schedule 7 protects them, either, but perhaps the Minister will enlighten me further about that.

The Minister will know that this concern was raised by the University Alliance. In its written evidence to the Committee, it was clear that it thought that it would be very unfair for well managed and high performing HEIs to pick up costs relating to others that might be in breach of a particular provision. With the amendment, we are asking that it be explicit somewhere in the Bill that only fees relating to the activities of that institution can be applied to it.

Amendment 240 would amend the Bill so that the Government, not universities, were responsible for the set-up and running costs of the OFS. The reason for that is primarily that so much of the income that goes into universities now comes from students themselves. Often when Government Members are talking about universities, there seems to be a belief that there is this huge body. I am not saying that public money does not go into universities. Of course, some public money does, but it is now only a fraction of the running costs of universities.

One reason why the Minister has argued for putting up fees is that universities need more income from fees if they are to be able to run properly. Most of their income comes from fees, so if the OFS is funded by universities, actually students are paying for it or a huge part of it—not only for the set-up costs, but the running costs. If students were asked whether they wanted the costs of the whole regulatory regime for universities and everything else that goes with the OFS to be borne by them, or substantially borne by them, they would not be very happy. I hope that the Minister is open to listening to the case for a much fairer system. Students already have a lot of costs.

Interestingly, according to the screen in the room, the Government are asking universities to put a lot of money into setting up and running grammar schools and all sorts of other schools. Who is paying for that activity? It will be borne predominantly by students. I do not mean the running costs of the schools, but the setting-up cost will be borne largely by students because students are largely funding the sector. It seems totally unfair that the Government have come up with this new regime but do not seem happy to put their hand in their own pocket and pay for it. That is not a reasonable course of action.

The Government are not clear in clause 66 or schedule 7 what the Secretary of State will actually be making grants for. I suggest the Minister tells his right hon. Friend that if the Government are serious about making the system work properly and not putting additional costs on students, who are already carrying a very big burden of paying for university, a very good use of money would be ensuring that grants were made available to the OFS on a regular and timely basis to cover running and set-up costs.

**Joseph Johnson:** The OFS has the power to charge other fees beyond the registration fee, in recognition of the fact that it may deliver specific services and one-off processes that would not apply to the majority of providers. That is a fair approach, meaning that providers that require a particular additional service are those that will be charged for it. As an example, the OFS may look to charge for the process of commissioning a registered higher education provider to validate other HE providers’ taught awards and foundation degrees.

[Joseph Johnson]

Ultimately, the exact detail of what other fees may pay for is to be determined, but we have made clear that fees should be charged only on a cost recovery basis. I would also like to assure Members that any other fees made via the provision would be part of the overall fee regime, on which we will be consulting this autumn. As such, they would require Treasury consent and be included in regulations subject to the negative procedure before they could be brought into force.

On amendment 239, let me start by assuring Members that there is no intention to use the powers under clause 64 to charge other fees for a different service or activity that is not related to the particular service or activity for which the other fee has been charged. However, it is important that we allow the OFS sufficient flexibility in setting charges for each individual additional activity or service that attracts other fees, so that it is either able to set a flat rate where that makes most sense administratively or to vary fees according to the size of a provider, where there are grounds for doing so on the basis of access and affordability.

Subsection (3) enables cross-subsidy between charges relating to the same services or activities. In doing so, it is clear that the clause does not enable cross-subsidy between additional charges for different services or activities. Amendment 239 would prevent the OFS from charging on any basis other than the specific costs incurred by each individual provider and might affect the OFS's ability to build cover into the fee regime for overhead costs relating to the specific activity being charged for. That clearly works against the rationale for enabling a fair element of cross-subsidy within the main registration fee under clause 63.

On the hon. Lady's points about set-up and transition costs, I entirely sympathise with the principle that students should not pay for the set-up costs of the OFS. Let me assure the Committee that we will consider areas where Government may provide supplementary funding to the OFS, including to ensure that students do not incur the additional costs associated with transition to the new regulator. That will form part of our upcoming consultation on registration fees.

It is, however, our intention that once the new system is in place, providers will share the running costs of the new regulator with the Government, which will bring the model into line with that of other established regulators that are co-funded through a combination of fees charged on the sectors they regulate and funding from Government. It will also make the funding of HE regulation more sustainable, reducing the reliance on Government grant, and create an incentive for providers to hold the new regulator to account for its efficiency.

12.15 pm

**Carol Monaghan:** I am trying to keep up, but I am not sure I understood all of that. On the regulation of a new provider that could be higher risk than a more established university or higher education provider, something was mentioned about the matter depending on the size of the institution. Will there be a risk element associated with that in terms of the fees the institution has to pay?

**Joseph Johnson:** These are questions that will be covered extensively in the consultation that the OFS will hold on the fee structure that it will implement in due course. Questions relating to the weighting of the fee according to the size of the provider will certainly be an important part of the consultation.

We recognise the importance of working collaboratively with the sector to shape the final design of the charging structure. That is why we have not set out the detail of the fee regime in the Bill. We intend to consult, as I have said, in the autumn, so this will be developed with HE providers and other interested parties in due course.

**Paul Blomfield (Sheffield Central) (Lab):** I seek clarification. The Minister said in his earlier remarks, if I heard him right, that the Government are seeking to replicate existing arrangements as far as possible. The comparison between HEFCE and the OFS is obvious, and yet there seems to be a new financial arrangement being put in place where universities share the running costs, so the concerns raised by my hon. Friend the Member for City of Durham that we are imposing that as an additional cost on students are valid. Have I misunderstood that? Will the Minister confirm whether that is the case?

**Joseph Johnson:** The hon. Gentleman has got it right. We are asking the sector to share in the running costs of the regulatory structure, as is common in many other regulated sectors of the economy. It is in the students' interest—

**Paul Blomfield:** Will the Minister give way again?

**Joseph Johnson:** No, I am going to answer the hon. Gentleman's question, if I can.

It is in the students' interest that institutions are properly regulated through an efficient and cost-effective system, which is what we are setting out to deliver through these reforms. This is in line, as I have said, with other regulated sectors where consumers indirectly fund the cost of regulation. For example, Ofgem recovers its costs from the licensed companies that it regulates, which pass on costs to consumers through their energy bills. The crucial thing is that we have made it very clear throughout that any fee should be fair and proportionate, not creating disproportionate barriers to entry and not disadvantaging any category of provider.

We will therefore explore options for the use of Government funding to supplement the registration fee income. For example, there may be an argument for the Government to help meet a new provider's regulatory costs in its early years and to cover the transitional cost, as I have already said, of moving to the new regulatory structure. The Government have already committed to fund the teaching excellence framework—the TEF—that the OFS will operate. So it is in the students' interests that providers are properly regulated through an efficient and cost-effective system, which is what we are setting out to deliver.

**Wes Streeting (Ilford North) (Lab):** Given that student fees will be funding the new regulator, and given the Minister said it is in the students' interests, students will

be better assured that the regulator is serving their interests if they are represented on the board of the regulator.

**Joseph Johnson:** The hon. Gentleman returns to one of his favourite themes. We are ensuring that the student interest will be properly represented, and better represented than it ever has been in the system's regulatory structures. Schedule 1, which we have discussed extensively already, makes provision for the Secretary of State to ensure that he has regard to the desirability of people on the OFS board having experience of representing student interest, and they will do that effectively.

**Gordon Marsden:** I intervene to amplify the point made by my hon. Friend the Member for Ilford North. The Minister made reference—off the cuff, I assume—to Ofgem. He said it was entirely reasonable that Ofgem recovered costs from its providers, which is all well and good, but Ofgem does not recover costs from the employees of the providers, which is essentially the principle on which he appears to be operating.

**Joseph Johnson:** I am sorry, but I simply do not follow the hon. Gentleman's logic. Does he want to explain further?

**Gordon Marsden:** I am more than happy to. The Minister said a few moments ago, and prayed in aid, that in his view it was reasonable for students to bear some of the costs on this issue by referring to Ofgem. If I heard him correctly, he said that in other areas Ofgem recovers costs from its providers. The Minister is not making a correct analogy. Ofgem may recover money and costs from its providers, but it does not recover the costs from either the employees of the providers or, for that matter, the consumers of material that the providers provide. The Minister is asking students to chip in to that process. The analogy is flawed.

**Joseph Johnson:** I am not sure it is flawed. I think the hon. Gentleman has not understood the points his colleagues are making; that is the thrust of it. To help him on this, the point his colleagues are making is that providers are being asked to pay a registration fee, and that universities or HEIs draw income from a multitude of sources, one of the most important of which is tuition fees—therefore students, indirectly, will be contributing to the pot of resources that enable providers to pay their registration fees. That is the thrust of the point his colleagues were making. Employees of the higher education institutions are not making any contribution. I think he has misunderstood the point his colleagues were making.

**Gordon Marsden:** May I intervene?

**Joseph Johnson:** I am going to press on.

**Gordon Marsden:** But that is not what I said when I talked about students.

**Joseph Johnson:** The hon. Gentleman was referring to employees.

**Gordon Marsden:** Of Ofgem.

**Joseph Johnson:** Employees of Ofgem, equally, are not making a contribution to the cost of running Ofgem. He is getting completely muddled.

**The Chair:** I think we are at cross-purposes. Why do we not just carry on?

**Joseph Johnson:** The analogy is perfectly reasonable: a regulator is charging a registration fee to the beneficiaries of its regulation. The end users of the service or product are ultimately indirectly contributing towards the cost of the benefits of running the regulator.

**Ben Howlett (Bath) (Con):** I agree with my hon. Friend; now is not the time to be talking about the proportions between who is paying what, when and how. However, will he confirm that, in the consultation, the proportions between what the state will be paying and what the providers will be paying will be decided at that stage?

**Joseph Johnson:** Yes, that is exactly right and I have already given some examples of some of the areas in which the Government will want to be making a contribution towards the overall costs of the regulatory framework.

I assure hon. Members that the power under clause 66 is about enabling the Government to express their funding priorities. This recognises that in a world where we set maximum fees, Government need to ensure that they can direct money to some high-cost courses to ensure it remains viable for providers to teach them. Amendment 240 would prevent this. It would also have a further particularly unwelcome, and I am sure unintended, effect in that it would remove the Secretary of State's ability to make teaching grant to the OFS and replace it with an ability to make grant only for the OFS's set-up and running costs. That would remove the OFS's ability to fund activity such as high-cost science, technology, engineering and maths courses or widening participation.

Amendment 240 would undermine the sustainability of our HE funding system, to the detriment of students. Further, we are taking the opportunity in this legislation to refresh the protections for academic freedom so that they are appropriate for today's circumstances. I ask the hon. Member for City of Durham to withdraw the amendment.

**Dr Blackman-Woods:** If I heard the Minister correctly, he confirmed that I am right to be anxious about what is happening with regard to clause 64. I think he said that there would be overhead charges arising from the activity of all the institutions that would then be borne by each one individually. So there could be additional charges in that overhead fee because it proves extremely difficult to get information from some institutions or the OFS wants to have a lot of specific projects relating to specific institutions. Perhaps that is not what the Minister meant, but it seems that subsection (3) is being used to allow some cross-subsidy—that is the term he used. I am extremely concerned about that, as are a number of institutions.

What is the limit on that cross-subsidy? That is an incredibly unfair and probably, in the long run, unworkable system. I expect that a lot of HEIs will not be happy at

[Dr Blackman-Woods]

all to be charged what they see as a fairly high overhead charge for services or activities that have nothing to do with them as an institution. I am happy for the Minister to correct me, if he wants to.

**Joseph Johnson:** I am happy to try to provide further reassurance on this point, if I did not do so sufficiently the first time round. It is our intention that the registration fee will be fair, proportionate and affordable for providers. With that in mind, we will explore options for Government funding to supplement the fee income that the OFS receives from providers. We have already committed the OFS to fund, for example, the teaching excellence framework.

An element of cross-subsidy can be a sensible means of achieving a balanced approach to cost recovery across the sector and is well established in other charging systems. For example, subscription fees paid to the Quality Assurance Agency for Higher Education currently pay for more than the benefits providers receive and cover other costs, such as running and infrastructure costs and international work conducted by the QAA on behalf of the sector. Having this element of overhead covered by charges is therefore something that the sector is familiar and comfortable with.

**Dr Blackman-Woods:** Yes, but the QAA is about quality assurance; it is not a regulator in that sense. The point I am trying to make with amendment 239 is that institutions need to be protected from bearing costs created by one or a group of other institutions. At this point, the types of activity that will feed into the overhead charge are not clear.

Rather than labour the point, I would like the Minister to take on board these anxieties—which are, after all, not only ours, but have been put in written evidence to the Committee from one of the university mission groups—and see if anything could be added to the Bill or come subsequently in regulations that would give institutions more assurance that they will not have charges levied on them that are created by some other group of institutions or another individual institution. I will beg to ask leave to withdraw amendment 239.

The exact wording of amendment 240 might not be exactly right, but the sentiment behind it is that students should not be paying substantially for the OFS, which is what they will do. The Minister might think it is in students' interests for them to pay for the OFS, but I do not. It is in students' interests that the OFS is there and operates effectively and efficiently, but it is quite a big leap to say that they should therefore pay for it. Student loans are already an onerous charge for our students. They often come out of university with debts in excess of £40,000, and simply putting up the fees in order to pay for more and more of the whole sector is not something we should support.

12.30 pm

**Gordon Marsden:** My hon. Friend is making a powerful point. The Minister is trying to reassure her by saying it will be all right on the night. The truth is that we are looking at something the Minister wants; he keeps telling us we need it. We are looking at having a very large number of new providers. I make no comment on whether that is good, bad or indifferent. The fact is that

we are looking to get a very large number of new providers. Does my hon. Friend not agree that it is probably unreasonable to expect the new providers to bear some of the increased operational costs of the OFS for that? The likelihood is that the amount of operational costs that existing providers will be expected to bear under the process the Minister describes will increase significantly.

**Dr Blackman-Woods:** My hon. Friend makes an excellent point. I want to come back to saying to the Minister that there is acceptance in the sector of the broad direction of activity establishing the OFS. There has been some consultation with them but it is the view of many that, if the Government want to move to this particular regulation and quality assessment and research regime, they must substantially pay for it, and not put the costs on to a group of people who are already having to pay a substantial amount. I accept that it is a loan but they will ultimately have to pay substantially for the whole of the sector, and we have to put a brake on that somewhere. For me, the brake is here. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Question proposed,* That the clause stand part of the Bill.

**The Chair:** With this it will be convenient to consider Government new clause 2.

**Gordon Marsden:** I was not clear whether the Minister would speak to proposed new clause 2 before we had the clause stand part debate. However, since you have asked me to speak, Sir Edward, I will do so.

It seems to me that the Minister has got himself into a complete tangle over the business of fees. He will remember the Micawber principle that the difference between income and expenditure is the difference between happiness and misery. The Minister seems to be in some misery on this matter at the moment because he is unable to declare what amount the happiness will be.

I want to probe a little further on two or three specific points. The document that supports the case for the creation of the OFS, which is subtitled “a new public body in place of the Higher Education Funding Council for England and the Office for Fair Access”, was published in June 2016. That was before the referendum and all the consequences that flow from it. My question to the Minister is a technical one. Has that document been revised in any shape or form since?

Very little information has been given by the Government today. I accept that these matters cannot go in the Bill, but the paucity of information from the Minister when he says, “This will happen or we will have this, that or the other,” on something as crucial as establishing a new financial institution as well as a new non-departmental body, is pretty poor.

The Minister's response to the comments of my hon. Friends about cost-sharing were very vague. I know myself from having spent a number of years in the private sector, working with a number of private institutions, how difficult and corrosive the issues of cost-sharing can sometimes be within companies, let alone between organisations. I really do not think that the Minister has given a satisfactory answer in that area.

I refer the Minister to the comment he made earlier: “We are looking at this and we will produce information in due course.” In fact, the Government did produce information in due course. The information is contained in a document I have, and very revealing it is too. On page 22 of the “Case for creation of the Office for Students”, there are two tables. One talks about the operating costs of the OFS over the period 2018 to 2027. I found it very interesting that in 2018-19, the first year of operation, the operating cost will be £30.9 million. In 2019-20, it will be £32.5 million, and it will be £34.1 million in 2020-21. If my maths does not fail me, that is a fairly modest increase between 2018-19, 2019-20 and 2020-21, whereas in my experience of the private sector—I accept that this is not a private sector body, but it is in a situation of quasi operating as a private sector body—operating costs for the first two or three years of an organisation are always substantially higher in years 2 and 3 than they are in the first year. The Minister might want to elaborate on the basis on which those operating costs were dealt with.

However, perhaps more revealing is the stuff referred to in table 2, which gives the estimated split between the costs covered by the sector and those covered by the Government. In 2018-19, we have a figure of £14.9 million for total Government support, as opposed to £16 million for total registration fees. Then there are separate and much smaller figures: £1.9 million for new provider support and £4.8 million for activities with wider economic or societal benefits. There is also transition funding, to which the Minister referred, of £8.2 million. In that context, depending on how we want to do the maths, the balance between Government support and support from the university sector—as my hon. Friend the Member for City of Durham and others have made clear, substantially that means money coming from students—is 50:50.

When we go to the figures for 2019-20 and 2020-21, we are told that Government support will drop from £14.9 million to £8 million and the total registration fees income will be £24.4 million. I have checked, and that balance is retained during the subsequent years of the Department’s forecast. That means that the Government are bearing a load that is 25% of the operating costs of the office for students and the university sector and the students who fund it are being asked to cough up 75%.

If the Minister wants to say that those figures are inaccurate, he may do so, but he might find it rather embarrassing, given that his own Department produced this document in June. Really and truly, I do not think we have had very good or accurate explanations from the Minister today. If he were before the Select Committee, it might have some interesting questions for him.

**Dr Blackman-Woods:** My hon. Friend is making a powerful case. Does he agree that it is hardly co-funding for the student body to be carrying such a weight of the costs of the OFS and the Government so little, and that that is why we are so exercised about this measure—because it is unduly burdensome on students?

**Gordon Marsden:** I thank my hon. Friend for that intervention. I absolutely agree and I will repeat what I said earlier. This is a double-whammy in terms of the costing structure that the Department is suggesting for the university providers, and by implication. This is the reason why I raise Brexit. In an uncertain world, it will

pile more problems on them in the first two or three years. It is a whammy on the students. It is also a whammy on the new providers, which will be entrepreneurial in many cases and will not be able to bear more than is suggested in the Bill. If the OFS begins to crumble financially because of the incompetence of the costings produced by the Government, where will that leave the ability of the OFS to supervise and protect new providers? It is a dog’s breakfast, and the Minister has done nothing to unscramble it.

**The Chair:** Do you want to have a try, Minister?

**Joseph Johnson:** I will have a go. The hon. Gentleman’s arguments are riddled with internal contradictions, unfortunately. He started by saying that transition costs are high. Indeed, they are £8.2 million in the first year of the operation of the office for students in 2018-19. Inevitably, given that the Government are committing to paying for the transition costs, their share of the OFS’s overall costs will be higher in the initial year than in subsequent years. That is why, as he rightly identified, there is a decline in the Government’s share of the overall tab being picked up. If he did not understand it, that is the reason why—

**Gordon Marsden** *rose*—

**Joseph Johnson:** I am going to press on, because I have a number of other points to make. The hon. Gentleman is also wrong that this cost will necessarily fall on students. As he well knows, the sector has significant income from a variety of sources. Many universities also have scope to make potentially significant efficiency savings in how they operate. The idea that all costs will necessarily be shunted directly on to students is ridiculous.

The hon. Gentleman needs to get this into proportion. He should be aware that the sector’s overall income is in the order of £30 billion a year. We are talking about asking the universities to take some of the burden off the general taxpayer, who will otherwise have to meet this cost, by making a contribution in the order of £15 million in the first year. He needs to get his arguments into some sense of proportion.

**Gordon Marsden:** Will the Minister give way?

**Joseph Johnson:** No, I will keep on going. Creating the office for students is about improving the regulatory system and creating a stable, level playing field for providers. The OFS will operate on a sector-funded model, with co-funding from Government, bringing the funding approach in line with that of other regulators. The Bill will enable that, granting the OFS the powers to charge providers registration fees and other fees to cover the costs of its functions.

**Dr Blackman-Woods:** Will the Minister give way?

**Joseph Johnson:** No, I think we have had enough on this, so I am going to carry on. The OFS’s power to charge other fees under clause 64 will allow it to charge for specific services and one-off processes that would not apply to all providers in a registration category.

**Gordon Marsden:** Will the Minister give way?

**Joseph Johnson:** I have already indicated that I will not give way further.

**Gordon Marsden:** On a point of order, Sir Edward. This is a disgrace. The debate is about significant interpretation of statistics. The Minister is attempting to present his case and is referring to points that my hon. Friends and I have made. It is, at the very least, a lack of courtesy for him not to allow us to question him further on those statistics.

**The Chair:** Unfortunately, I cannot rule on questions of courtesy. If the Minister wants to give way, he can give way. If the hon. Gentleman wants to speak after the Minister, to get his point across, I am happy to facilitate that.

**Joseph Johnson:** Thank you, Sir Edward.

We would not want to specify in primary legislation a full list of the services, but they could include work that the OFS does in future on validation with individual providers or support on specific investment plans that require additional financial brokering and due diligence.

On new clause 2 and the retention of fee-related income, the Bill as drafted provides only that the OFS's income will be paid into the consolidated fund. On reflection, that is too blunt an approach and is not in line with best practice elsewhere. We think it should be possible for the OFS to retain some of these costs, but only in certain cases, where the Secretary of State agrees to it with the explicit consent of the Treasury. The new clause takes a best practice approach, aligning the legislation with standard Treasury guidance.

12.45 pm

**Gordon Marsden:** Thank you, Sir Edward, for allowing me to reply on this matter. It is a matter of much regret that the Minister is so uncertain in his statistics that he is not prepared to take interventions from the floor on these specific issues.

I repeat the points that we have made, and I will address one of them. The Minister talks about the total Government support and the transition figure being taken out. That makes it all the more remarkable, given that the transition funding is being taken out, that the Government are not proposing to increase their share of the pot.

The Minister talks about small amounts of money and trifles, as he regards them, in regard of the university sector. I repeat, in case the Minister did not hear, that the estimate for total Government support—the money that the Government are putting in 2019-20—is only £8 million. The amount of money they expect the sector to put in is £24.4 million, which is a ratio of 3:1. That completely demolishes the Minister's suggestion that this is a fair and equitable process.

In papers such as this document there would normally be some contingency funding element. There is no contingency funding element in there at the moment. We can only take these figures at face value. What they say is that the Government think that the new OFS structure is going to be such a rip-roaring success for universities that by the second year universities will be happy or content, or it will be useful to them, to provide 75% of the costs and the Government only 25%.

There are no contingency figures for problems. There are no contingency figures for success. What if these new providers all get going very quickly as well as the registration facilities and everything else of the OFS? We do not know what the state of Government will be in 2019-20 or beyond. This is a completely unacceptable premise on which to proceed financially and economically, let alone on grounds of justice or the effect on students.

This is a mess. The Minister is welcome to intervene on me if he wishes as he has not responded to my question on whether the figures or any part of the document was revised after the Brexit referendum. He knows as well as I do that the implications of Brexit on the higher education sector will be substantial. Yet he has not said a word about it. He is welcome to intervene and tell me whether this has been revised or not, and if not, why not.

**Joseph Johnson:** I am happy to: no substantial changes.

**Gordon Marsden:** There we are. One of the most significant issues in British politics in recent years, having massive effects on all parts of our economy including higher education, yet his Department sat there and did nothing—absolutely nothing—with this document. We are expected to hear from the Minister that it will be all right on the night. Well, we do not believe it will be all right on the night and nor does the university sector. I and my hon. Friends do not see why students in principle, let alone in practice, should be expected to bear the load for a significant amount of that money. On that basis, we oppose clause 64.

*Question proposed,* That the clause stand part of the Bill.

*The Committee divided: Ayes 10, Noes 6.*

#### Division No. 12]

#### AYES

|                    |                 |
|--------------------|-----------------|
| Argar, Edward      | Kennedy, Seema  |
| Chalk, Alex        | Milling, Amanda |
| Evennett, rh David | Morton, Wendy   |
| Howlett, Ben       | Pawsey, Mark    |
| Johnson, Joseph    | Warman, Matt    |

#### NOES

|                            |                |
|----------------------------|----------------|
| Blackman-Woods, Dr Roberta | Smith, Jeff    |
| Blomfield, Paul            | Streeting, Wes |
| Marsden, Gordon            | Vaz, Valerie   |

*Question accordingly agreed to.*

*Clause 64 ordered to stand part of the Bill.*

#### Clause 65

#### COSTS RECOVERY

*Amendment made:* 102, in clause 65, page 39, line 19, after “interest” insert “, and

(d) the retention of sums received”.—(*Joseph Johnson.*)

*This amendment is consequential on amendment 103.*

*Clause 65, as amended, ordered to stand part of the Bill.*

### Schedule 7

#### COSTS RECOVERY: PROCEDURE, APPEALS AND RECOVERY

*Amendment made:* 103, in schedule 7, page 87, line 5, leave out sub-paragraph (5) and insert—

*“Retention of sums received*

5 (1) The OfS must pay the sums received by it by way of a requirement to pay costs under section 65 to the Secretary of State except to the extent that the Secretary of State, with the consent of the Treasury, directs otherwise.

(2) The OfS must pay the sums received by it by way of interest under paragraph 4 to the Secretary of State.”.—(*Joseph Johnson.*)

*This amendment requires the OfS to pay the costs recovered by it under clause 65 to the Secretary of State except to the extent that the Secretary of State, with the consent of the Treasury, directs otherwise. It also requires the OfS to pay the interest which it receives on unpaid costs to the Secretary of State.*

*Schedule 7, as amended, agreed to.*

### Clause 66

#### GRANTS FROM THE SECRETARY OF STATE

*Amendment proposed:* 240, in clause 66, page 39, line 21, leave out from “OfS” to end of line 22 and insert

“for its set up and running costs.”.—(*Dr Blackman-Woods.*)

*This amendment seeks to ensure that students are not meeting the set up costs of the OfS.*

*Question put, That the amendment be made.*

*The Committee divided: Ayes 6, Noes 10.*

#### Division No. 13]

#### AYES

|                            |                |
|----------------------------|----------------|
| Blackman-Woods, Dr Roberta | Rayner, Angela |
| Blomfield, Paul            | Smith, Jeff    |
| Marsden, Gordon            | Streeting, Wes |

#### NOES

|                    |                 |
|--------------------|-----------------|
| Argar, Edward      | Kennedy, Seema  |
| Chalk, Alex        | Milling, Amanda |
| Evennett, rh David | Morton, Wendy   |
| Howlett, Ben       | Pawsey, Mark    |
| Johnson, Joseph    | Warman, Matt    |

*Question accordingly negated.*

**Gordon Marsden:** I beg to move amendment 299, in clause 66, page 39, line 26, after “have” insert “particular”.

*This amendment would strengthen the regard for academic freedom requirements.*

**The Chair:** With this it will be convenient to discuss the following:

Amendment 301, in clause 69, page 41, line 36, after “have” insert “particular”.

*See explanatory statement for amendment 299.*

Amendment 162, in clause 77, page 46, line 5, at end insert—

“academic freedom’ has the same meaning as is given in section 43 of the Education (No.2) Act 1986”.

*The 1986 Act provides a robust definition which should be referenced in the Bill.*

**Gordon Marsden:** My hon. Friend the Member for City of Durham has done sterling work so far in trying to persuade the Government of the need to say more serious things in the Bill about the nature of academic freedom. The Government included various references to academic freedom in the Bill, but academic freedom is not simply a matter of transporting clauses and regulations from preceding information into the Bill and assuming that that will be adequate for the future. New Bills ought to be an opportunity to reflect on whether the definitions and priorities that Government have previously given have stood the test of time. Our argument, and that of many who have criticised the Bill, is that that is not the case. There have been major changes in these areas since we last had significant legislation of this sort and, therefore, we ought to have more thought and discussion about it. We have already debated retaining or otherwise the right of the Privy Council and university title. The most common institutional form of pre-1992 universities is incorporation by royal charter.

I want to quote the comments on that process from the alternative White Paper entitled, “In Defence of Public Higher Education: Knowledge for a Successful Society”, published by the Convention for Higher Education.

“These have a charter and statutes that cannot be changed except by Privy Council. The White Paper proposes to abolish this protection—a move that will allow increasing managerial influence over academic activity in the name of market flexibility and will significantly undermine academic freedom.”

The definition of academic freedom is an important issue, as it goes on to say:

“Academic freedom is found in two main instruments of these institutions. The first is protection against arbitrary dismissal. If a university researcher publishes evidence that a car manufacturer’s published nitrogen oxide readings are inconsistent with lab testing, then she or he risks losing funding from this manufacturer. The university itself may face retaliatory action.”

That is why that protection is there. That is also why, at an earlier stage, I pressed the Minister on adding a clause in the part on academic freedom, which would refer specifically to academics not being negatively affected by things that they might say about Government or other public institutions.

The document continues:

“Similarly, if a scientist in an advisory position to government reports that government drugs policy is inconsistent with risks of injury to the public, then she or he may lose their position of influence in government circles, but also become persona non grata among funding agencies. In either case, the institution as employer may well consider it expedient to dismiss the unfortunate scientist rather than protect her or him from the consequences of adhering to their scientific duty.”

Academic freedom is a central part of what we should be defending in the Bill, for all sorts of new institutions as well as the existing ones. As the document says:

“Academic freedom protections do not exist to privilege academics but to protect academic and scientific independence and authority.”

The practical effects, if we do not strengthen those procedures in the Bill, will be to accelerate a process that arguably means that we need more and not less protection. The document refers specifically to a process of “corporate intrusion” into academic judgment. It expresses a controversial view that might not be accepted by everybody in the room but should be heard:

[*Gordon Marsden*]

“Academic Boards are dominated by those occupying managerial positions, and carrying budget responsibilities for cost centres, and have only minority representation from the professoriate, from other academic staff, from non-academic staff and from students. Those committees or boards that do remain largely composed of academic members of staff simply receive, ‘for information’, decisions that have been arrived at elsewhere—determined by the senior management groups in conjunction with Boards of Governors.”

The Convention for Higher Education does not consider that a satisfactory situation, and neither do I.

*Ordered*, That the debate be now adjourned.—(*David Evennett.*)

12.59 pm

*Adjourned till this day at Two o'clock.*