

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT HIGHER EDUCATION (TRANSPARENCY
CONDITION AND FINANCIAL SUPPORT)
(ENGLAND) REGULATIONS 2018

Tuesday 23 October 2018

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 27 October 2018

© Parliamentary Copyright House of Commons 2018

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: SIR CHRISTOPHER CHOPE

Ali, Rushanara (*Bethnal Green and Bow*) (Lab)

† Brereton, Jack (*Stoke-on-Trent South*) (Con)

† Charalambous, Bambos (*Enfield, Southgate*) (Lab)

† Clarke, Mr Simon (*Middlesbrough South and East Cleveland*) (Con)

Coffey, Ann (*Stockport*) (Lab)

† Courts, Robert (*Witney*) (Con)

Evans, Chris (*Islwyn*) (Lab/Co-op)

† Fletcher, Colleen (*Coventry North East*) (Lab)

† Grogan, John (*Keighley*) (Lab)

† Gyimah, Mr Sam (*Minister for Universities, Science, Research and Innovation*)

† Jones, Andrew (*Harrogate and Knaresborough*) (Con)

Kendall, Liz (*Leicester West*) (Lab)

† Marsden, Gordon (*Blackpool South*) (Lab)

† Milling, Amanda (*Cannock Chase*) (Con)

† Pawsey, Mark (*Rugby*) (Con)

† Syms, Sir Robert (*Poole*) (Con)

† Whately, Helen (*Faversham and Mid Kent*) (Con)

Laura-Jane Tiley, *Committee Clerk*

† **attended the Committee**

Fifth Delegated Legislation Committee

Tuesday 23 October 2018

[SIR CHRISTOPHER CHOPE *in the Chair*]

Draft Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018

8.55 am

The Minister for Universities, Science, Research and Innovation (Mr Sam Gyimah): I beg to move,

That the Committee has considered the draft Higher Education (Transparency Condition and Financial Support) (England) Regulations 2018.

It is a pleasure to serve under your chairmanship, Sir Christopher. I thank the noble Lords on the Secondary Legislation Scrutiny Committee for their scrutiny of regulations under the Higher Education and Research Act 2017, which were laid in the other place in June and detailed in the Committee's 35th report. I aim to speak today to draft regulations encompassing two elements of the Act that require approval.

Section 9 of the Higher Education and Research Act 2017 relates to the transparency condition. We have made much progress in widening access and success for students from disadvantaged and under-represented groups in higher education. Following the latest data from UCAS, as of the end of clearing, university application acceptance rates for English 18-year-olds to full-time study are at record levels. The proportion of disadvantaged 18-year-olds entering full-time higher education increased from 13.6% in 2009 to 24.4% in 2017—also a record rate for English applicants.

However, we want to go further and strive to ensure that anyone, no matter what their background, who has the talent and potential to benefit from higher education, is able to do so. I particularly want further improvements in the rates of progress for students from disadvantaged backgrounds going to the most selective institutions, and commensurate progress in the outcomes they achieve. For example, I want such students to experience rates of completion and attainment similar to those of other groups of students.

We have charged the new regulator, the Office for Students, to urge higher education providers—particularly the most selective ones—to make greater progress in such matters. The introduction of the transparency duty through section 9 of HERA is a vital measure that will support the OfS in making the further progress that we all want. The duty requires certain higher education providers to publish information on application, offer, acceptance, completion and attainment rates of students, by ethnicity, gender and socioeconomic background.

The duty will apply to all providers registered with the OfS—in both the “approved” and the “approved (fee cap)” parts of the register. It will ensure that data on admissions similar to that released by the University of Oxford and the University of Cambridge in recent months, in anticipation of the duty, will be available from August 2019. That greater transparency will clearly

identify which higher education providers need to do more to widen the access and success of students from disadvantaged and under-represented groups.

The duty also requires the information to be given to the OfS. Crucially, that will help to inform the OfS's assessment of providers' performance on access, student success and progression. To ensure that there is progress, the OfS will have the power to take action if the provider does not comply with its obligations, including those on access for and participation of students from disadvantaged and under-represented groups.

The OfS has a range of interventions and sanctions that it can use to push providers to make improvements. Its powers, should it find it necessary to use them, include putting additional registration conditions on providers, suspending them from the OfS register and imposing monetary penalties. That duty was broadly welcomed by Members in debates on the Higher Education and Research Act 2017.

During the passage of HERA the Government made a commitment to ask the OfS to undertake a consultation in respect of additional information on protected characteristics such as age and disability that should be made available by providers in the future to help to drive equality of opportunity for all students. I am pleased to be able to report that the OfS has undertaken a formal consultation on the matter and held a series of supporting events. The consultation was part of a wider consultation on the OfS's work on access and participation. Its findings will be published later this year. Implementation of the duty through these regulations will be a crucial and effective step in helping to ensure that we make further progress on the access for, and success of, disadvantaged students as well as more broadly supporting informed choice for all.

The second part of these regulations, section 39 of HERA, allows the OfS to provide financial support for higher education. These funding powers broadly replicate the funding powers conferred on the Higher Education Funding Council for England by section 65 of the Further and Higher Education Act of 1992, but have been expanded to enable the OfS to fund any eligible higher education provider.

In the new system, eligible providers are those that are subject to a cap on the fees they can charge, and thus are registered in the approved “fee cap” part of the OfS register. These powers ensure that the OfS can continue to provide funding for those important subjects which cost more to teach than can be met solely from tuition fees, such as the science and medicine courses that are so crucial to the economic and social future of the country.

These powers also make it possible for the OfS to provide funding to incentivise and support providers' work on widening participation, allow indirect funding of qualified schools, colleges or other institutions that are connected to an eligible higher education provider, and meet the unavoidable costs of small and specialist provision, such as performing arts courses. In those aspects, they are the same as the previous HEFCE powers. The new element is that under the new Act, the OfS has the power to financially support a wider range of bodies and delivery models.

In conclusion, the transparency condition and financial support regulations work together to enable the Office for Students to promote access and participation and

student choice across all of higher education, and to support higher education teaching through financial support. Together, they are part of the vital foundations for the new regulatory framework, which will give the Office for Students the tools to deliver sector-wide reform and ensure that higher education delivers for every student. I move that these regulations are approved.

9.2 am

Gordon Marsden (Blackpool South) (Lab): It is a pleasure to serve under your chairmanship, Sir Christopher. May I give my profuse apologies to you and the Minister for being slightly late this morning; I was stuck for 40 minutes on a Network Rail train.

We welcome the Minister's introducing the regulations for discussion today. We largely agree with him on the importance of widening participation and access to our higher education institutions and providers and the part that these transparency conditions can and should play. The devil is in the detail, however, and though there may be consensus on their importance, we disagree about some aspects of what should be included in these conditions, which are not included now. I will therefore try to persuade the Minister to strengthen them as much as possible. Before I do that, I must revisit what I said in 2016, when we discussed this clause and amendments that we tabled for the Minister's predecessor. We said that the transparency duty was to be welcomed, but that there was a serious oversight in restricting the categories that higher education institutions had to publish information on participation. In particular, we said that there was no valid reason why data on students with disabilities, and the age profile of students, should not be included. We then tabled amendments to insert data on students with disabilities and care leavers and on students' age profile.

It is absolutely essential that more work is done to reduce unequal access and success in higher education. Supporting people at all ages, not just at 18, is key. Overall social mobility is down, not up. The total number of English undergraduate entrants from low participation areas fell by 17% between 2011-12 and 2016-17. As a result, 12,600 fewer English undergraduate students from low participation areas started university courses each year than in 2011/12. So adding age and disability, as the Open University, Ruskin, the WEA, Birkbeck and a host of other adult education providers have said, is a way in which we can drive forward social mobility. Including age will encourage HEIs to promote the participation of older students as well as provide a further spotlight on the number of adults participating in HE.

Making it compulsory to publish data about the access, participation and attainment of disabled students will not only improve transparency but encourage HEIs to take greater responsibility to work towards eliminating the disabled student attainment gap. Is that not an important aspect of what the Government are trying to do by addressing the disability employment gap? They need not only to act on the recommendations on learning disability in the Maynard report, which was convened by my constituency neighbour, the hon. Member for Blackpool North and Cleveleys (Paul Maynard), who is also a member of the Government, but to look at the format and implications of the gap.

I know that the OfS has just closed its consultation window on access and participation plans, which included asking whether respondents agreed or disagreed that it should explore requiring providers to submit and publish transparency data by age and disability. To what extent does the Minister agree or disagree that the OfS should do that? His colleague, Viscount Younger, said from the Front Bench in the House of Lords that "a good case" had been made,

"for the inclusion of age as a characteristic and I am sympathetic to his aims. Although I cannot pre-empt the consultation, I am prepared to say from the Dispatch Box that we fully anticipate that age will be part of the information the OfS will ask institutions to publish."—[*Official Report, House of Lords*, 4 April 2017; Vol. 782, c. 1001.]

What is the Minister's reflection on that?

The third issue that we raised was that of care leavers, which has come up as a consistent theme across Government policy over the past few years. Ministers in the Department have been strong on supporting care leavers, and we think that it is important to add that category to the list, even though it is a relatively small and modest group. We also believe that, if the transparency duty is to have any impact, it needs to include as many different dimensions of participation as possible by social background. That view was echoed strongly by the Sutton Trust, which did not believe that the Bill and the regulations went far enough in that area. It said,

"evidence suggests many universities are favouring more privileged candidates even when levels of attainment are taken into account...The Bill should be amended to require universities to publish their contextual admission policies clearly on their websites".

What recent discussions did the Minister have with the Sutton Trust and with the National Education Opportunities Network before the regulations before Parliament today were published on the need to strengthen them further?

The trade union for academics and other university workers, the University and College Union, has also said that mandatory reporting requirements should be extended to cover key workforce data that has the potential to impact on the quality of students' education, such as the use of insecure contracts and student-staff ratios. Will the Minister consider including those in further regulations that might come before the House in relation to transparency and fair access? How often will the conditions be reviewed?

Having read through the explanatory memorandum, I have a few specific observations and questions for the Minister on the regulations we are discussing today. Paragraph 2.1 confirms that the OfS,

"must ensure that the ongoing registration conditions of each registered higher education provider...includes a transparency condition."

Although we too think it is important that all approved institutions are required to have transparency commitments, could the Minister expand on the timeframe for those to be put in place? This is not only relevant to new institutions, but to all of our existing higher education institutions, and therefore the logistics are bound to be challenging. Can the Minister tell us within what timeframe all institutions should meet those expectations, and does he agree with the University and College Union and others that all providers should be required to produce an access and participation plan, not just a statement, as is currently the case for the approved category?

[Gordon Marsden]

I do not wish to be unkind, but paragraphs 3.3 and 3.7 of the explanatory memorandum make me think that the Minister may have in the Department a budding Lewis Carroll. The opening sentence of paragraph 3.3 says:

“The Department notes that this instrument contains reference to a document that does not exist yet but is of the view that it is necessary to refer to it for the following reasons.”

That is not exactly the famous phrase from “Alice’s Adventures in Wonderland”, “Sentence first—verdict afterwards”, but clearly there is an issue in relation to how that will be taken forward. Can the Minister update us on the progress on producing that regime?

Paragraph 3.7 states that

“an institution can only be registered on the OfS register...if it is, or intends to become, an English higher education provider.”

Paragraph 3.9 explains the place of education in the devolved legislation competence of Northern Ireland, Scotland and Wales. That is true in terms of the specifics of the regulation, but the Minister will be aware that tens of thousands of students from Northern Ireland, Scotland and Wales will be at English universities and therefore subject to the provisions. Can the Minister tell us what discussions have been had with his counterparts in the devolved Administrations on that?

Paragraphs 7.1 and 7.2 of the explanatory memorandum state that

“although as of 2017 there are record numbers of 18 year olds entering higher education and the entry rate for the most disadvantaged English 18 year olds (measured by POLAR) has increased to 20.4%, it is considered that there is still more work to be done to reduce unequal access and success in higher education...In this context, the Department is of the view that greater transparency is one of the best tools available to drive social mobility.”

Indeed it is, but it also essential that a broad range of measures on socioeconomic background are looked at. Commenting on today’s statutory instrument, the Sutton Trust said to me:

“It is important that the OfS don’t just consider POLAR, as socio-economic disadvantage is complex and multi-dimensional. We think that the OfS should use a number of different measures, including POLAR, MEM”—

I am awfully sorry, but I have not got my head around that particular acronym—

“and free-school meal eligibility, FSM, so that there isn’t an overreliance on one specific measure.”

I hope that the Minister and his officials will muse upon that.

As I say, financial support is essential for widening participation. With that in mind, and given the clear priority to drive social mobility, do the Government still intend, as was outlined in the 2015 spending review, to cut the widening participation funding of the Higher Education Funding Council for England, as it then was, by up to 50% by the end of the spending review period?

The OfS is set to review all its funding allocations next year after the post-18 review has reported. The Open University has said that the part-time student premium, as part of its widening participation funding, is essential to those higher education institutions that do the heavy lifting in relation to social mobility, so as to deliver on access and student support for widening participation students. Can the Minister confirm that the Government will protect that?

On the consultation outcome, the explanatory memorandum to the regulations says:

“Sufficient input from the sector was received during the above consultations to inform policy development.”

I understand that the consultation took place under a previous Government, and indeed a previous Department—the Department for Business, Innovation and Skills—but, in relation to these regulations and others that will come as a consequence of the 2017 Act, does the Minister consider that the Government have consulted widely enough with the people who use the system? I believe, as many in the sector do, that it is inadequate to consult simply the HEIs. There should also be some input from student organisations, qualification providers and employers.

On access and participation, we should all be concerned about not just the input but the output—how many disadvantaged students complete the course—and the outcome: the jobs and futures they move to. I appreciate that it is difficult for the Government to do any major longitudinal studies at this stage of proceedings, but I would like the Minister to give attention to that in relation to both these regulations and what will come out as a result.

Finally, I turn to the issues touched on in paragraph 12 of the explanatory memorandum on monitoring and review. We are told that the Department will ask the OfS

“to monitor the effectiveness of the condition in delivering the policy aims to widen participation in higher education and identify whether changes should be considered.”

Again, we agree. It is important to monitor the impact of conditions placed on providers, but the big question is what capacity the OfS will have to do that effectively. I say that deliberately, without straying from the narrow terms of the regulations, because at the Higher Education and Research Bill Committee we expressed concerns about the stand-alone nature of the new director for fair access and participation. The Minister will know that previously that director had his own establishment outwith the OfS, whereas now he is essentially in it. I am not commenting on whether he has enough people working for him; essentially he is not in charge of his department and it is up to the OfS to give him the tools to finish the job.

While we are talking about tools, Universities UK has raised concerns with me about the regulations. I do not know whether it made this request directly to the Minister or indirectly through his officials, but from the note I have had it is clear that it wants to see more information on the level of detail that institutions will have to submit for access reports and action plans. We know that the OfS has been given a risk-based approach to intervening on institutions, so can more information be provided on what the methodology for that will be? UUK also asks whether the Government will ensure that the OfS engages with the sector on defining the roles and the self-assessment tool, which will have to cope with a broad range of potential providers, including small and specialist institutions.

In connection with that, I have to say that the Government’s job, the Minister’s job and particularly the OfS’s job would have been greatly strengthened if the previous Government had not taken the inexplicable decision to get rid of the UK Commission for Employment and Skills, which was of major assistance in providing

longitudinal and attitudinal advice. The Government now find themselves having to commission bespoke assessments, which we and many people in the sector believe are an inadequate way of examining the issues. I accept that we are where we are, but that point lends weight to the concerns of UUK and individual HE providers.

With those observations, I will draw my remarks to a conclusion. I repeat that we strongly support the principle of the draft regulations and their direction of travel, but that as they are implemented—I accept that registration is a rolling process—we would like to hear more from the Minister and the Department to satisfy our concerns.

9.20 am

Mr Gyimah: I thank the Opposition spokesperson for his comments. We have had several debates since I was appointed to this job; he always has a fistful of pertinent questions for the Government, and I welcome his contributions to our debate on the draft regulations. Before I make my concluding remarks, let me address some of his questions, in no particular order.

The hon. Gentleman asked about the rates of progression by area. The proportion of 18-year-olds entering higher education from disadvantaged backgrounds is at record levels. We use 18-year-old full-time rates in our calculations because they are the most up-to-date information that we have; we acknowledge that there has been a decline in part-time entrants, but it has been no more pronounced for disadvantaged entrants than for advantaged entrants.

On the subject of part-time students, it is worth mentioning one of the general duties set out in HERA:

“In performing its functions, the OfS must have regard to...the need to promote...greater choice...in the provision of higher education”.

That includes choice over means of provision, including via part-time study or distance learning. The OfS also targets an element of its teaching grant at part-time study, recognising its additional cost; £72 million was made available for that purpose in 2017-18, and the same amount was allocated in 2018-19.

Quite rightly, the hon. Gentleman brought up the subject of care leavers. Our guidance to the OfS asks it to monitor care leavers as a key target group, which it has done. We expect to see providers focusing on that in their access and participation plans. Whether to add age and disability is a decision for the OfS, but I am pleased that it has included that in its consultation, as we asked.

The point about outcomes for students is important. The transparency duty covers not only offers made, but the number of disadvantaged students who complete their courses and attain a particular degree.

Finally, on staff data, HE providers are autonomous, as the hon. Gentleman is aware. Data on HE staff is published by the Higher Education Statistics Agency.

I know that hon. Members have a keen and understandable interest in the implementation of HERA. There is no doubt that today’s scrutiny has played a vital role in ensuring that the reform promised by that Act is achieved. I commend the regulations to the Committee.

Question put and agreed to.

9.24 am

Committee rose.

