

LEGISLATIVE CONSENT MEMORANDUM

HIGHER EDUCATION AND RESEARCH BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister for the Economy, is:

“That this Assembly endorses in principle the extension to Northern Ireland of the provisions of the Higher Education and Research Bill relating to joint working and advisory services, the Teaching Excellence Framework and powers to fund research.”

Background

2. This memorandum has been laid before the Assembly by the Minister for the Economy under Standing Order 42A(2). The Higher Education and Research Bill was introduced in the House of Commons on 19th May 2016. The provisions to which this motion applies were introduced as amendments at Committee Stage in September 2016. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2016-17/highereducationandresearch.html>

Summary of the Bill and its policy objectives

3. The policy intentions underpinned by the Higher Education and Research Bill fall under three broad headings:

- Reforms to the operation of the HE market in England

The Bill will introduce a register for all HE providers, make reforms to the process for institutions receiving degree-awarding powers and university title, and introduce a ‘single gateway’ to the higher education sector for all providers in England. These provisions only apply to England and have no direct implications for Northern Ireland.

- Promotion of transparency and choice, including the introduction of the Teaching Excellence Framework

This area of reform aims to improve the information available to students to support better decision-making when choosing courses of study. The most notable reform is the introduction of the Teaching Excellence Framework (TEF), which aims to drive up the quality of teaching in the HE sector by measuring, benchmarking and reporting data drawn from existing sources.

Implications for NI - While the TEF is designed to assess the teaching quality of English HEIs, with a link to English tuition fee caps, HEIs in Northern Ireland are also interested in applying for a TEF rating, in order to avoid any potential adverse reputational impact if they do not take part. It is widely expected that TEF results will be used to guide choices made by prospective students. Clause 25 of the Bill provides a mechanism for the Office for Students to accept and review TEF submissions from HE providers in Northern Ireland, subject to the approval of the Minister for the Economy. This reflects and formalises the current arrangements, where the HE Funding Council for England may receive applications from eligible Northern Ireland institutions as an advisory service to the Department for the Economy.

- Structural reforms to the organisation of how the sector is regulated

The Bill will create two significant new bodies: the Office for Students (OfS) and UK Research and Innovation (UKRI). The HE Funding

Council for England (HEFCE) and the Office for Fair Access will be closed, and their functions split between the two new bodies.

The OfS will explicitly regulate the higher education market and promote the interests of all HE students in England. It will take over the non-research functions of HEFCE and assume the functions of the Office for Fair Access. The OfS will be funded jointly by government and through subscriptions by regulated organisations, and will allocate teaching grant to publicly funded providers.

UK Research and Innovation will assume the research funding role of HEFCE, and will form an umbrella organisation for the current seven Research Councils, Innovate UK and the research funding element of HEFCE. The dual support system will be specified out in legislation for the first time to protect this critical facet of the UK research infrastructure.

Implications for NI – Clauses 106 and 107 set out the joint working arrangements between the three devolved HE funding bodies, the OfS and UKRI. For Scotland and Wales, these essentially transfer existing arrangements set out in section 82 of the Further and Higher Education Act 1992; for Northern Ireland, the current power for HEFCE to provide advice to DfE and to the Department for Agriculture, the Environment and Rural Affairs on request is replicated from section 69 of the 1992 Act, and a parallel power to underpin future joint working including with DfE and DAERA is also proposed. This effectively reflects the way the system currently works, with HEFCE taking the lead on a number of initiatives as being the most efficient way of proceeding (the Research Excellence Framework and public information policy are two examples).

The power to make grants and loans in respect of the Arts and Humanities extends to Northern Ireland by an amendment to Section 10 of the Higher Education Act 2004 and is a technical change. This is referenced in Clause 103.

Taken together, the implications of the Bill with respect to Northern Ireland are primarily technical and consequential changes which are

required due to the establishment of the two new bodies, the Office for Students and UK Research and Innovation. The addition of joint working powers to the legislation effectively reflects the current working relationship in how higher education is coordinated across the UK.

4. The introduction of the Teaching Excellence Framework is a new element and we recognise the argument put forward by the higher education sector here that there is a risk of a negative reputational impact if they are prevented from taking part, primarily for those institutions that are actively pursuing international students. The Bill allows the Office for Students to receive applications from Northern Ireland, Scotland and Wales, and includes a requirement that the relevant devolved Minister must approve this, which ensures that devolved oversight of the system remains in place.

Provisions which deal with a Devolution Matter

5. The provisions deal with education, which is a transferred matter under Standing Order 42A(2).
6. The other devolved administrations in Scotland and Wales have indicated that they will also endorse the relevant provisions of the Higher Education and Research Bill.

Reasons for making the Provisions

7. These provisions will allow the continuation of the shared elements of the UK higher education system, and support cooperation and collaboration between the relevant funding bodies and government departments. The provisions will also ensure that Northern Ireland HE providers are able to continue to take part on the teaching Excellence Framework.

Reasons for using the Bill rather than an Act of the Assembly

8. The Bill re-establishes a legal basis for joint working relationships across the UK by replicating and, in the case of joint working with the Department for

the Economy, extending provisions for joint working and the provision of advice set out in the Further and Higher Education Act 1992. It is not within the Assembly's legislative competence to make these changes.

Consultation

9. There has been no formal public consultation. However, the relevant HEIs in Northern Ireland were consulted and indicated their desire to be included in the TEF. The Committee for the Economy has also received a briefing paper on the matters covered here.

Human Rights and Equality

10. No convention rights are engaged and therefore there are no differential impacts as regards equality and good relations.

Financial Implications

11. None.

Summary of Regulatory Impact

12. A Regulatory Impact Assessment examines the impact on businesses of any new burden. There are not considered to be any new adverse regulatory impacts on businesses arising from the provisions contained in the Bill.

Engagement to date with the Committee for the Economy

13. Due to the time constraints as a result of these provisions having been introduced at Committee Stage in September 2016, formal engagement with the Committee for the Economy took place via a briefing paper on 13 October 2016.

Conclusion

14. It is the view of the Minister for the Economy that, in the interests of good government and maintaining the reputation of our universities as good quality UK providers, so far as the provisions of the Bill deal with a devolution matter they should extend to Northern Ireland as outlined in this Legislative Consent Memorandum.

Department for the Economy

28 October 2016