

Committee:	Date:
Board of Governors of the Guildhall School of Music and Drama	3 rd July 2017
Subject: Higher Education and Research Act	Public
Report of: Remembrancer	For information
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Summary

This report advises the Board of the enactment of the Higher Education and Research Act and updates the Board on developments during the parliamentary proceedings. These include the obtaining of a ministerial assurance that the constitutional position of the School will not be affected by the introduction of new governance principles on a statutory footing, and a delay to the use of the Teaching Excellence Framework in the setting of tuition fees pending an independent review.

Recommendation

The Board is invited to receive this report, and to note in particular the ministerial assurance about the position of the School with respect to governance principles, explained in paragraphs 2–5 below.

Main Report

1. The Higher Education and Research Bill was reported to the Board at its meeting last November. The Bill passed into law as the Higher Education and Research Act shortly before the dissolution of Parliament in May. The Bill met with significant opposition in the House of Lords and a number of changes were made in order to secure its passage. This report advises the Board of significant developments since the last report, without rehearsing the details set out there.

Constitutional position of the School

2. As noted in the earlier report, the Act will require the new regulator, the Office for Students, to draw up a list of governance principles with which higher education providers will need to comply in order to be registered. The Government has indicated that these principles will be based on those

currently recommended by the Committee of University Chairs in its Higher Education Code of Governance.

3. The Board will recall concerns that the constitutional position of the School as an organ of the City Corporation does not sit easily with the current Code, which is drafted principally to reflect the prevailing model of fully free-standing providers. The voluntary nature of the Code means that a pragmatic view can currently be taken of any resulting tension, with the Corporation seeking to uphold the spirit of the Code in its stewardship of the School so far as the constitutional arrangements permit. This approach satisfied the Quality Assurance Agency when it recommended the conferral of degree-awarding powers in 2014.
4. Officers identified a risk that, once the governance principles were moved onto a statutory footing, this flexibility to take account of the unique constitutional nature of the School might be lost. Accordingly officials were approached and steps were taken to secure the tabling of an amendment by Lord Carrington of Fulham in the House of Lords. Responding to the amendment, the Government Whip, Lord Young of Cookham, offered the following assurance:

“I can reassure my noble friend that we do not anticipate any impact on current higher education institutions being recognised by the [Office for Students] as higher education providers in the future. The intended practical application of the current and future list is to ensure best practice within already existing and recognised higher education providers’ governing documents, and it is not the intention of these principles to prescribe the corporate form of providers. [...] There is nothing in Clause 15 that should concern the Guildhall School of Music, and it should be able to continue doing the valuable work it has been doing for so long.”

[House of Lords Debates, 6th March 2017, col. 1189.]

5. This assurance should ensure that, when the new regulator comes to draw up the governance principles, they do not contain anything which might call into question the current constitutional arrangements of the School. Officers will follow up by engaging in the consultation which will take place on the proposed principles.

Other governance matters

6. Following concern in the House of Lords that the autonomy of higher education providers was not sufficiently recognised in the new system, the Government agreed to incorporate additional safeguards in the Bill. The Office for Students will now be legally obliged to have regard to the need to protect the autonomy of higher education providers in matters such as day-to-day management, determining the structure of courses, selecting students, appointing academics, and putting forward new or controversial viewpoints.
7. The previous report to the Board mentioned confusion around the future of the requirement to obtain the consent of the Privy Council for changes to governing documents. As was clarified orally at November’s meeting, while

the requirement is not expressly repealed by the Bill, it will in practice fall away once the status of 'designated institution' ceases to be of relevance. Therefore, under the new regime, changes to the Articles and Instrument of Government may be made without any formal need for external consent, subject to continued compliance with the governance principles referred to in paragraphs 2–5 above.

Teaching Excellence Framework

8. One of the main points of contention in the House of Lords was the Teaching Excellence Framework, with Peers critical of its reliance on metrics such as student satisfaction surveys, its 'Gold/Silver/Bronze' ranking system, and its proposed use to determine which providers may raise tuition fees in line with inflation. In order to secure the passage of the Bill before the dissolution of Parliament, a compromise was negotiated by the Government. An independent review of the Framework will now take place within a year, and will be laid before Parliament.
9. A further parliamentary vote will be required before the Framework can be used in relation to the setting of fees, and this will not happen until the 2020–21 academic year at the earliest, three years later than initially planned. An institution's current rankings under the non-statutory version of the Framework will only be used at this point if it has chosen not to take part in the revised Framework following the independent review. Until 2020–21, all institutions participating in the Framework will be able to increase fees in line with inflation, irrespective of their ranking.

International students

10. The Government's approach to international students was hotly debated during the passage of the Bill. Despite the insistence of Ministers that the Government had no intention to target, reduce or cap the number of international students, Peers argued that the policy of reducing the total volume of net migration risked sending an unwelcoming message. Accordingly they passed an amendment which would have required students not to be counted as migrants for public policy purposes. The Government, however, refused to give way on this point, save for minor amendments designed to improve the information available to prospective international students. The Lords did not press the matter to the point of jeopardising the Bill.

Electoral registration

11. Peers took the opportunity afforded by the Bill to raise concerns about the relatively low rates of electoral registration among students, passing an amendment which would have enabled students to sign up to the electoral register as part of the process of enrolling at a higher education institution. The Government was not willing to alter the electoral system in this way but, by way of compromise, agreed to a provision which will enable the Office for Students to require higher education providers to co-operate with local electoral offices in order to encourage students to register.

New providers

12. One of the key aims of the Bill was to make it easier for new providers to obtain the 'university' title and degree-awarding powers. Peers voiced scepticism about these proposals, arguing that they threatened the reputation of the sector. In the end, however, the Government succeeded in passing the proposals with only minor procedural modifications, designed to incorporate a greater role for expert advice.

Research

13. The Government's proposals on research, including the merging of the existing research councils into a new body ('UK Research and Innovation'), proved less contentious. The Government did agree to amendments guaranteeing that the charitable sector will be represented (in addition to industry, commerce and professions), and requiring greater transparency about the allocation of funding to particular fields of research.

Next steps

14. The Government's intention is to have the new regulatory system in place for the 2018–19 academic year. Prior to this there will be some further consultation, such as on the governance principles referred to above, and the School will need to apply for inclusion on the new register of higher education providers. Officers will take the necessary steps to prepare for the transition to the new system, engaging with officials and regulators as appropriate to ensure that the interests of the School are looked after.

Background papers

- 14th November 2016, Item 9: Report of the Remembrancer on the Higher Education and Research Bill

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