

INTERNATIONAL HIGHER EDUCATION AND RESEARCH BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the International Higher Education and Research Bill as introduced in the House of Lords on 24 July 2023 (HL Bill 165).

- These Explanatory Notes have been prepared by the Earl of Dundee in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 Higher education and research have changed through both technological progress and globalisation. In order to address this, the focus of the Higher Education and Research Act 2017 (HERA) would be enlarged by this Bill to include an international angle.

Policy background

- 2 HERA was passed when the United Kingdom was a member of the European Union. Therefore, its provisions conformed to, and were supplemented by, EU legislation. In particular, EU students could not be disadvantaged in comparison to UK students; and UK students had the same rights and opportunities as other EU students in another EU country. UK higher education providers and students were able to benefit from EU grants such as the Erasmus programme.
- 3 The United Kingdom is a member of the Council of Europe and a signatory to the European Convention on Human Rights, which protects the right to education under Article 2 of Protocol No 1 to the Convention. The United Kingdom is also member of the European Higher Education Area and the Bologna Process.
- 4 Following the UK's altered circumstances since HERA came into force, this Bill would widen the national focus of the current wording of HERA, in order to provide a broader and international dimension in higher education and research.

Commentary on provisions of Bill

Clause 1: Amendments to the Higher Education and Research Act 2017

- 5 Section 2 of HERA defines the general duties of the Office for Students (OfS).
- 6 Section 2(1)(c) stipulates “the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interest of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers.” Higher education providers established outside the United Kingdom are currently excluded from this wording. Section 1(2) of this Bill inserts into Section 2(1)(c) of HERA a reference to higher education providers outside the United Kingdom. This would require the OfS to encourage competition and collaboration not only between English higher education providers but also with higher education providers outside the United Kingdom.
- 7 Section 2(2)(c) of HERA expands upon the duty on the OfS to provide a choice in the means by which higher education courses should be provided. It lists in brackets examples of different types of courses “(for example, full-time or part-time study, distance learning or accelerated courses)”. Section 1(3) of this Bill would add, “online courses, courses provided in collaboration with the private sector, certified extramural or informal courses and international courses” to the list in subsection 2(2)(c) of HERA. International courses form a large part of modern higher education and research, especially in the context of international collaboration.
- 8 Section 38 of HERA defines the “duty to monitor etc the provision of arrangements for student transfers” of the OfS. Subsections (1)(a) to (c) list three duties whereas subsection (1)(d) is only optional. It says that the OfS “may facilitate, encourage, or promote awareness of, the provision of arrangements by registered higher education providers for student transfers”. To encourage student transfers, subsection 1(4) of this Bill would make section 38(1)(d) of HERA a duty for the OfS, by replacing “may” with “must”.
- 9 Section 38(2)(a) of HERA defines the term student transfers but leaves out international student transfers by stipulating: “for the purposes of this section, “a student transfer” is where ... a student transfers from a higher education course (“course X”) provided by a UK higher education provider (“the transferring provider”) to a different higher education course (“course Y”) provided by the same or a different UK higher education provider (“the receiving provider”)”. However, international student transfers are a considerable part of modern higher education and research. Subsection 1(5) of this Bill would introduce international student transfers into HERA.
- 10 Section 39(1) of HERA covers financial support by the OfS for registered higher education providers in the UK: “the OfS may make grants, loans or other payments to the governing body of an eligible higher education provider in respect of expenditure incurred, or to be incurred, by the provider or a qualifying connected institution”. With changes in funding following the UK’s departure from the EU, subsections 1(6) and (7) of this Bill would add a third option: “the provision of programmes for international student transfers, including through online learning and research”.

Financial implications of the Bill

- 11 The Bill itself does not impose specific additional financial obligations. It simply extends the legislative and regulatory framework to international and related aspects of higher education and research.

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Ordered by the House of Lords to be printed, 25 July 2023

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