

## The TEF and HERB cross the devolved border (Part 2): the paradoxes of jurisdictional pluralism

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As 2016 drew to an end, the Scottish HE sector received warning of a funding cut from the Scottish Government that will protect teaching as much as it can but is, nonetheless, another cut. If you are sitting in England, this might seem a quaint notice, as degree fee-loans, though influenced by legislation, mean that dependence on funded undergraduate programme places are a thing worthy of nostalgia. In Scotland, however, we have a mixed-economy funding system in which domestic (and EU) places are funded by government but capped as well as a fees regime for Rest of the UK and International students. Additionally, we have the joyful position in which: the Scottish Funding Council (directed by Holyrood) demands institutional operating surpluses as proof of robustness at the same time that having the surplus is viewed by Holyrood as a reason why it can cut funding to the sector (and, in a real twist of irony, by students not as surplus demanded by government funders but as evidence of the relentless neoliberal, capitalist march of HE for profit-making).

On top of this, the last six months of 2016 were momentous ones in UK higher education and Scotland was not exempted from the rolling waves of teaching accountability redesign occurring in the hallowed halls of Westminster and Whitehall. Higher Education teaching policy is a devolved matter in Scotland. The Teaching Excellence Framework has amplified the paradoxes created by the jurisdictional plurality that currently exists in the UK [1]. Quality Assurance and Enhancement processes' review in Scotland is undertaken in a manner that aligns with other Scottish government social and cultural policy generation (through players within the HE ecology being involved in what could be summed up as designerly ways of value co-creation). There was very little Scottish consultation in the initial iteration of TEF (it's devolved business, remember). This means engagement in the TEF is about accepting what has been designed in a very different HE teaching accountability policy context [2]. It is clear HEIs have increasingly converged across the UK in terms of mission statements, business planning and approaches, and institutional identity clusters. However, the changes coming are not trivial politically: they include amendments to who 'owns' academic standards, what data-sets are considered by civil servants (rather than academics and students) to align most with Westminster governmental aims, and what method is used for judging institutional (and, in the near future, disciplinary) teaching. TEF is either inadvertently or deliberately, thus, an example of the materialization of political ideology crossing devolved borders (which could possibly be viewed as colonizing in other contexts). Additionally, the TEF was effectively brought in through HEFCE before the Westminster legislation necessary to create the body to manage has been passed. Consequently, the complex relationships between HEFCE and the Scottish Funding Council (SFC) have continued to be part of the 'problem' of a longstanding jurisdictional paradox at the same time as HEFCE and SFC found themselves in the invidious positions of being reviewed if not restructured by their respective governments.

Flip-flopping from being an accountability system to replace the one in England, to an aspiration for it to become UK-wide, engaging with TEF discussions in Scotland is a roller-coaster ride. Given the accountability role TEF plays for Whitehall, its UK-wide scope reflects an uncomfortable political geography. This is accentuated as the Higher Education and Research Bill (at Westminster) establishes the new research funding contours across the UK. To understand how jurisdictional plurality plays out, one needs to consider that Higher Education in Scotland is simultaneously subject to:

- Scottish government higher educational policy, led by the Minister for Further Education, Higher Education and Science, Shirley-Anne Somerville (SNP), and managed through the Scottish Funding Council (or whatever emerges out of the recent decisions from ScotGov regarding Enterprise and Innovation), which in turn aligns with Scottish domestic social, cultural, and economic policies. The main HE teaching policy steers, as suggested by recent legislation and commissions, have been to maintain the assurance and enhancement focus (established in the *Further & Higher Education (Scotland) Act, 2005*) and tighten links between social mobility (*Commission for Widening Access 2015*) and the relationships between the economic value of graduates and skills' development (*Enterprise and Skills Review 2016*).
- Non-devolved Westminster legislation (especially relating to Home Office and immigration matters). In addition to this is the rapidly moving legislative context that governs how higher education *protects* its students and staff for health and safety and social inclusion purposes as well as *preventing* illegal activity (Consumer Protection, Counter-terrorism etc.).
- A UK-wide QA agency with a devolved office (Glasgow) (recently restructured) which has (from 1997 until now) had an agreed role in assuring the UK-wide HEIs' coordinated duty (i.e. owned by the HEIs rather than a statutory body) to assess academic standards. The new QA-TEF mechanism in England changes this duty, removing ownership for standards from HEIs. Scotland has yet to respond to what this means for Scotland's 19 HEIs. This in turn ties into a HEFCE-commissioned project on External Examiners (essential part of any assurance of academic standards), led by HEA, with devolved input.
- An increasingly anachronistic relationship between TDAP/ RDAP and the Privy Council. Scottish institutions looking for either must still (unlike RUK) submit their intention to the Privy Council. If and when the Higher Education and Research Bill (Westminster) is passed and the Office for Students established, only Scotland will have this Privy Council link.
- A UK-wide *reporting of metrics* ecology that includes NSS, DLHE, HESA, and ILR which emerged primarily in design terms for three-year specialist undergraduate degrees, not for four year, major-minor mix degrees in the Scottish context (should you want to see just how much of a misfit this is, it is worth looking back at conversations about Unistats and Key Information Sets in the Scottish context[3]).

Additional to the initial design of the instruments underpinning the metrics data, one could argue that there are significant emerging locational paradoxes regarding metrics. DfE oversees the TEF specification and the policy behind the best-fit metrics for it. During the inception of TEF2 it was clear that Whitehall had poor understanding of the diversity of how higher education teaching metrics work across the UK. The Scottish sector is still informing on the misalignments of the data-set instruments and the metrics generated.

Perhaps more worrying for the devolved administration in Scotland is that the social mobility and employment data sets are non-aligned (Holyrood uses Scottish Index of Multiple Deprivation (SIMD) and Whitehall uses POLAR), but these are still being visualized as comparable in the TEF assessors packs. This records social-economic categories for ScotGov in quite a different way to the POLAR system used by the DfE in Whitehall. For one set of information (associated with widening participation), SIMD has been accommodated.

For the highly skilled employment information, however, POLAR is a universal for all institutions in the UK. There are grave concerns about a potential message suggesting a real terms deficit in Scotland's actually good record on widening access when compared with POLAR based institutions in England. (There are conversations, for example, about Scotland having less expected movement in terms of the percentage accessing higher education and highly skilled jobs because they start from a slightly higher base line percentage-wise. If ScotGov isn't careful, the simple rhetoric that flourishes under these conditions will undermine the evidence-base being used for government decision-making in Holyrood).

There are further amplifiers of the devolved yet not independent paradox, which make uniform approaches to higher education accountability even more difficult and likely to submerge one distinct set of cultural and socio-economic principles (within Scotland) underneath ones which relate primarily to an English higher education undergraduate degree structure. Of particular note are the following areas:

- UK-wide league table influences that rarely remind readers of just how different the Scottish sector is, particularly in terms of faculty entry and four year degrees. This leaves some students unaware that in Scotland they might experience a major-minor system rather than a single subject specialisation system; it has resulted in the current fees anomaly, where RUK students often only pay fees for three years of four degrees, making any above-inflationary rise in fees as proposed in England through TEF, negligible in a Scottish funding context (at least in the foreseeable future), with the commensurate impact that this could have on some league table calculations;
- Influences of the UKPSF as a UK-wide agreed framework overseen by the Higher Education Academy have been implemented across the devolved nations, but the HEA itself has found getting traction alongside Scotland's Enhancement Themes approach to excellence in teaching very difficult. With the recent pronouncements on the HEA's merger with the Equality Challenge Unit and the Leadership Foundation, concerns are already being raised about the historic lack of impact of two of the three agencies in a Scottish context. As this super-agency ties itself to the larger (dominant) model of accountability and excellence, how will they (on what we must assume to be reduced resource) manage a robust and nuanced approach to Scotland's HE landscape?
- An FE sector in Scotland in which individual institutions are not quality assured in their own right, at the same time as HEFCE not owning enough data on them. So, whilst TEF is FE-HE wide in England, it only relates to the 19 HEIs in Scotland (not HE in Scottish FE). Practically, articulations between FE, HE in FE, and HE involve significant relevant numbers of students related to widening participation. This group will potentially be invisible in the TEF, yet this is a central thrust of ScotGov's widening participation agenda.
- In Scotland, we will continue with cyclical institutional level review (ELIR), in England not (at least not in a format that institutional review has tended to follow across European sectors). This places QAA in the position of having an *easy to fit with ENQA* quality assurance and enhancement structure in Scotland, but more difficult negotiation with the new QA England system. To maintain influence in Europe at the same time as demonstrating cognizance of the fact the people of Scotland voted to remain in Europe, will QAA move its head office to Glasgow or should Scotland seek QAA support and leadership from an ENQA based agency and no longer commission QAA UK? Or should the Scottish Parliament pass a bill creating their own QAA and leaving the UK QAA to its future in RUK? (*Just asking*).

- A context in which higher education teaching policy research has been heavily influenced by a Research Excellence Framework (REF) that prioritizes international reach rather than Scottish domestic impact for quality outputs. This has led to a vacuum in domestic HE teaching policy research (except perhaps in the analysis of the different cultural ghosts in the respective Scottish and English HE sectors' recent histories).

There is a gap in domestic (Scottish) higher education teaching policy research and there is no formalized devolved governmental direction for a Scottish approach to the TEF. This leaves Scottish HEIs in the unenviable position of trying, firstly, to reconcile two very different methods for accountability and compliance related to teaching in higher education and, secondly, to assess the relative merits burden of engaging in two systems. The situation is facilitating opportunistic informal policy co-creation across the Scottish institutions themselves. This largely conversational 'governing narrative' (emerging as the sector tries to coordinate responses to DfE consultations) operates like a semi-autonomous social field.

Speculations are controlled and amended as the sector attempts pragmatically to assess what the likely outcomes will be (including assumptions about loan book access, immigration, future developments of metrics' instruments). Within this field, the Scottish HEIs are trying to establish rules which protect all that is good about the Scottish Quality Enhancement Framework from the perversions likely to be effected by the TEF, at the same time as assessing what the cost/benefit ratio of entering the TEF might be. This is all happening while we also try to second-guess new policy developments in the Scottish legislature (particularly relating to the Commission on Widening Access, but also on the future of the SFC and ScotGov's narrative of economic sustainability).

Currently, the sands of devolved higher education policy underneath my feet seem to be in continual motion. My hair is standing on end. Only time will tell what the positive and negative impact of a semi-autonomous (social) informal policy field is within the context of devolution, but hopefully an enthusiastic educational researcher somewhere will come and interview us all.

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[1] For a fuller outline of the scale of differences between Scotland's Quality Enhancement Framework and the Teaching Excellence Framework see: <http://wonkhe.com/blogs/analysis-devolved-yet-not-independent-tef-and-teaching-accountability-in-scotland/>

[2] For more on how this played out, see: <https://srheblog.com/2016/08/10/the-tef-crosses-the-devolved-border-part-1/> (August 10, 2016)

[3] Some of the backstory to concerns regarding Unistats are touched on here: [https://www.hesa.ac.uk/collection/c12061/sfc\\_letter.pdf/](https://www.hesa.ac.uk/collection/c12061/sfc_letter.pdf/)