

PRE-EVIDENCE NOTE

The Tertiary Education and Research (Wales) Bill

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ABOUT THE OU IN WALES

The Open University was established in 1969, with its first students enrolling in 1971. It is a world-leader in providing innovative and flexible distance learning opportunities at higher education level. It is open to people, places, methods and ideas. It promotes educational opportunity and social justice by providing high-quality university education to all who wish to realise their ambitions and fulfil their potential.

Over 14,500 students across Wales are currently studying with the OU. There are OU students in every Senedd constituency and we are the nation's leading provider of undergraduate part-time higher education. Almost three out of four OU students are in employment while they study and with an open admissions policy, no qualifications are necessary to study at degree level. Over a third of our undergraduate students in Wales join us without standard university entry level qualifications.

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1. INTRODUCTION

- 1.1. The Open University (OU) in Wales welcomes the opportunity to submit this initial note to the Children, Young People and Education Committee in advance of our oral evidence session with the committee on 2 December 2021.
- 1.2. As requested, this note outlines our broad opinion on the Tertiary Education and Research (Wales) Bill as published earlier this month. We look forward to expanding on this note in our oral evidence and in our full written submission the committee's inquiry once we have had an opportunity to further consider the bill.
- 1.3. The Open University in Wales remains broadly supportive of the purpose and objective of the bill and believe that it offers an opportunity to change the narrative and culture surrounding flexible, part-time, and lifelong learning.
- 1.4. The committee will note that the OU in Wales is not a legal entity distinct from The Open University. Therefore, as an institution, our business cannot be considered to be "mainly or wholly" carried out in Wales. The bill's provisions therefore do not apply to The Open University's activities in Wales as easily as to other providers.
- 1.5. For the provisions of the bill to apply to the OU in Wales – and for us to continue to be eligible to be in receipt of public funds – the Welsh Ministers would need to exercise their regulatory powers under s. 140 of the bill to designate The Open University as a 'tertiary education provider in Wales'.
- 1.6. This is essential. We have received oral assurances from officials that it is the Welsh Government's policy intention to exercise s. 140 powers in respect of us. We have also received assurances that it is recognised that the Commission's regulatory relationship with The Open University will necessarily be different than with other providers and will take into account The Open University's relationships with regulators across the UK.

2. INITIAL COMMENTS FOR CONSIDERATION

2.1. Strategic framework

- 2.1.1. We very strongly welcome the introduction of the nine new strategic duties of the Commission. We believe these to be both comprehensive and ambitious and are pleased that they reflect the breadth of what the post-16 education system can offer learners.
- 2.1.2. The committee may wish to consider whether the Welsh Ministers' power to amend their strategic priorities at any time could raise the potential for a lack of coherence and long-term certainty in the Commission's own strategic plan.
- 2.1.3. The committee will note that the strategic equality of opportunity duty at s. 3 (1) (b) refers to retaining students to 'the end of courses', without defining that term. Without qualification or specification on the face of the bill, the use of this phrase raises the risk that success for undergraduate study might only be defined by the number of graduates generated from three-year Bachelor's degrees. We believe this to be an outdated view of the variety and purpose of higher education.

- 2.1.4. It is our hope, as we seek to ‘build back fairer’ after the pandemic, that our higher education system will become more flexible and responsive to the needs of learners, employers, and providers alike. If the bill were to define success as reaching the ‘end of courses’, our view is that that would be a barrier to achieving a more flexible and responsive system.
- 2.1.5. Embedding such a traditional view of learning into this bill raises the risk that the system will not be futureproofed against changing patterns of learning. That would represent a missed opportunity to contribute to building a more flexible higher education system.
- 2.1.6. Many students of the OU in Wales do not take up study with the intention of completing a full degree programme. Indeed, many are content to study a module or two. Many may look to this kind of provision to help boost their confidence. They may only need to undertake a shorter package of study to help retrain or upskill. Large number of students may have complex lives with any number of additional responsibilities, including caregiving and being in full-time work, outside their studies.

2.2. Registration model

- 2.2.1. We are broadly supportive of the registration model set out in the bill. While our regulatory relationship with the Commission remains to be determined, we are eager to avoid as far as possible a situation wherein regulation which already applies to The Open University through the Office for Students is duplicated by the Commission.
- 2.2.2. Indeed, we view this as an opportunity to strike an appropriate balance between maximising the potential of harmonised standards across the nations of the UK and minimising an overly onerous regulatory burden on providers.
- 2.2.3. We believe the balance of detail on the face of this bill vs. secondary legislation after Royal Assent to be much more appropriate than was included in the draft bill of 2020. We appreciate that this bill appears to provide a welcome level of greater autonomy to the Commission than under the previous iteration of the bill.
- 2.2.4. That said, the bill leaves the question of the entirety of the OU in Wales’ future funding and regulatory relationship to regulations. While this provides the opportunity to work with officials and the Welsh Ministers to ensure that those regulations are correct and proportionate, it also means that The Open University in Wales currently lacks any certainty as to our future relationship with the Commission.
- 2.2.5. Our objective is to reach a position where The Open University can continue its activities in Wales for the benefit of learners and the economy and deliver on our social justice mission. This will require (a) ongoing eligibility to be in receipt of public funds, in common with other higher education providers, for our learning and teaching and appropriate research and innovation activities, and (b) care to ensure that the associated regulatory requirements (i) are proportionate, (ii) are not subject to duplicative or overly onerous requirements, and (iii) take into account assurances that might be relied upon from other UK regulators. A considerable amount of work will need to be done involving us and officials to ensure that s. 140 regulations are correct and proportionate.

2.3. Fee limits

- 2.3.1. As noted in paragraphs 2.1.4 and 2.1.5., it is our hope that this bill can be used as a mechanism to facilitate a more flexible and responsive higher education system, which is equipped to respond to changing demographics, a changing economy, and changing demand-side requirements.
- 2.3.2. With that in mind, it is our expectation that over the course of the coming years, students will wish to study in different ways and at different times. This will necessarily require a more flexible approach to finance, in which, for example, students are able to draw on appropriate support for smaller packages of study.
- 2.3.3. We are concerned that the provisions at s. 44 in respect of fee limits have the potential to limit the flexibility of any future model. The committee may wish to consider the extent to which these provisions may be overly prescriptive and may not reflect the reality of what the higher education system of the future will require.

2.4. Outcome agreements

- 2.4.1. While establishing the possibility of outcome agreements, the bill does not contain any detail as to what outcome agreements might contain, or be limited to, beyond some mandatory stipulations. It is therefore challenging to offer any firm comments on these provisions for the simple reason that we do not know how they will operate in practice.
- 2.4.2. Our primary concern would be to avoid outcome agreements becoming a device for catch-all quasi-regulation, and to avoid a situation where outcome agreements become overly onerous or unresponsive to the individual nature of the OU in Wales.

2.5. Quality

- 2.5.1. We are content that the Commission will retain the power to publish quality assurance frameworks and to designate another body to perform its quality assurance functions. Again, we are eager to avoid any duplicative quality regulation, particularly given that most of our curriculum is delivered on a pan-UK basis.

2.6. Learner voice

- 2.6.1. We welcome the learner-centred nature of much of what is contained in the bill. We believe this reflects the true purpose of the post-16 sector: to provide opportunities for all people, regardless of background or circumstances, to fulfil their potential through learning.
- 2.6.2. The schedules to the bill provide for the appointment of an associate learner member to the Commission's board. We alert the committee to the fact that the OU, while the largest provider of part-time undergraduate higher education in Wales (and indeed the UK), is not a member of NUS.

We therefore invite the committee to consider the extent to which the proposed composition of the board sufficiently reflects the voice and experience of part-time learners and providers.

2.7. Post-19 funding

- 2.7.1. The bill makes provision for the funding of education and training of eligible persons aged over 19, with particular reference to levels 1, 2, and 3. The Education Minister referred to this funding mechanism during his statement to the Senedd on the introduction of the bill.
- 2.7.2. We invite the committee to consider whether this mechanism sufficiently reflects the breadth of what lifelong learning is, and the extent to which it would facilitate people to progress to higher learning throughout life.
- 2.7.3. The committee may also wish to consider how flexibility can be built into this funding mechanism from the outset, together with consideration of the objectives of promoting learning at lower levels. For our part, we believe that learning at these levels should always be considered as a potential step on a pathway to higher learning.