

National Assembly for Wales

Children, Young People and Education Committee

Higher Education (Wales) Bill

CYPE(4)-17-14 – Paper 2

Response from : The Open University

About The Open University in Wales

1. 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 (HE) 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.
2. Nearly nine thousand students from virtually every community in Wales are currently studying with The Open University, enrolled on over eleven thousand modules. We are the nation's leading provider of part-time higher education. More than three out of four Open University 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
3. In 2013, for the ninth successive year, The Open University was top in Wales for 'overall student satisfaction' in the National Student Survey. As a world leader in education technology, our vast 'open content' portfolio includes free study units on OpenLearn (including many Wales-related materials), substantial content on YouTube and on iTunesU, the latter having recorded nearly 60 million downloads.

Introduction

4. The Open University is a pan-UK provider of higher education and so is subject to regulation in all the UK nations. In order to remove the possibility of duplicate regulation, The Open University is subject to a financial memorandum with the Higher Education Funding Council in England (HEFCE) and related agreements with the Higher Education Funding Council in Wales, the Scottish Funding Council and the Department of Employment and Learning in Northern Ireland. These agreements require HEFCE to undertake the monitoring and assurance in respect of financial and governance matters.

5. The Open University is the largest provider of part-time higher education in Wales. Although the draft Bill and accompanying documents make it clear that the proposals set out within the legislation do not currently apply to part-time it nevertheless anticipates that part-time may come under the scope of the legislation in the future. With that in mind the OU in Wales responded to the technical consultation on the Bill to highlight any concerns, unintended consequences, and issues for consideration that may arise as and when part-time higher education comes under the remit of this legislation. We have since held useful discussions with Welsh Government officials about the unique nature of The Open University with regard to the Bill both in terms of the OU's role as a provider of part-time education only and the fact that the OU is the only University to operate across all four nations of the UK.
6. We welcome the particular provisions that have been made for The Open University within the Bill in respect of the financial memorandum and the mechanism by which the OU will be subject to Quality monitoring via the QAA, insofar as we are able to understand them based on the detail on the face of the Bill and information provided to us by officials. Below we set out our response to the Committee's questions focussing on the areas of the Bill most relevant to us.

Consultation Questions

Is there a need for a Bill for the purposes set out in the Explanatory Memorandum prepared by the Welsh Government?

7. In light of the changes to the public funding of Higher Education (HE) in Wales in 2012/13 which no longer allow the Welsh Government to regulate the activity of HEIs in Wales entirely through their funding mechanisms we understand the Welsh Government's desire to bring forward legislation in this area.

Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer.

8. It is important to note that The Open University in Wales only offers part-time courses and as such would not come under the auspices of the Bill when it is first introduced. We understand that there is an intention to apply the legislation to part-time in due course and we are keen to ensure that appropriate scrutiny of the Bill takes place before its introduction in respect of both full and part-time.
9. Based on the information on the face of the Bill and on details we have received from Welsh Government officials about the OU in Wales' position with regard to the Bill if and when it is applied to part-time study, we are in most regards content with the Bill as drafted.

10. The Explanatory Memorandum to the Bill states that part-time courses delivered by the OU in Wales will fall outside the scope of the Bill as the fees of part-time courses are currently unregulated. The Memorandum states that HEFCW “will be able to maintain quality assessment arrangements at institutions which they fund through relevant terms and conditions of funding. This is because HEFCW will continue to pay some recurrent funding to institutions for part-time courses for the foreseeable future.” We welcome the inclusion of this statement in the explanatory memorandum but sound a note of caution that there is still a great deal of uncertainty about the medium to long term funding of part-time study in Wales. We would welcome a long term sustainable funding system for part-time and believe that this would be advantageous to working through the issues of regulation as they apply to part-time in the future.
11. We are happy with the inclusion of The Open University in Wales as “an institution in Wales” for the purposes of the Bill. We also, however, welcome the fact that the Bill does not make provision for The Open University to be subject to the financial management code in the same way that applies to HE institutions wholly or mainly located in Wales. The OU is subject to a separate financial memorandum with HEFCE and we believe that the intention for HEFCW to continue to secure assurance from HEFCE about the continued financial management of the OU is appropriate.

Are the sections of the Bill as drafted appropriate to bring about the purposes described above? If not, what changes need to be made to the Bill?

12. We believe the Bill to be broadly appropriate in the way in which it is drafted. We do have concerns about the amount of the detail that can be brought forward through regulation as opposed to on the face of the Bill and the resolution procedure used to adopt the regulations, this is set out in more detail in paragraph 17. We also have some concerns that the Bill may compromise the principle of arm’s length funding and regulation of HE, this is set out in more detail in paragraph 15.
13. It is also the case that while the Explanatory Memorandum states that “the revised regulatory framework has been designed to accommodate part-time courses in future, subject to fee regulation being introduced” there has been limited discussion with the part-time sector to date on what fee regulation for part-time courses would look like. We are keen to ensure that this legislation does not result in a diminution of funding for part-time provision and that the important wider discussion about the future of part-time provision in Wales is not limited by this legislation.

How will the Bill change what organisations do currently and what impact will such changes have, if any?

14. The Open University in Wales raised concerns at the technical consultation stage about how this Bill could potentially impact on the OU given its unique position as a 'four nations' University. We believe that the Bill as drafted along with assurances we have received from officials have allayed our fears with regards to any potential for the OU to be subject to multiple regulation. We are pleased to see that this should not be an issue of concern for us as the Bill is currently drafted and we are confident this will continue to be the case when the legislation is extended to cover part-time study.

What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

15. The so-called 'Haldane principle' of arm's length funding and regulation of higher education is well-established and is a key component of the high international performance and reputation of UK higher education. It will be important to ensure that this principle is not breached in implementing the provisions (and any detailed provisions via secondary legislation) of the Bill. It should be borne in mind also that perception plays a part in the securing and maintenance of a high reputation, whether institutionally or at a sector-wide level. It is therefore in the Government's and HE sector's interests to secure clarity that this principle remains in place. There also needs to be further discussion of how far, if at all, the proposed regulatory system should cover those activities of higher education institutions that are not publicly funded neither directly, nor via the publicly supported student loans and grants systems.

Do you have any views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales?

16. We have no reason to believe that the legislation falls outside the legislative competence of the National Assembly for Wales.

What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

17. It seems that a fairly substantial amount of important legislative detail is left off the face of the Bill with provision for it to be brought forward in regulations. It appears that there is only one set of regulations listed for approval by the affirmative resolution procedure of the National Assembly for Wales; the rest can be approved by negative resolution. The OU in Wales believes that given the longstanding principle of 'arm's length' funding, and regulation, of higher education and in the interest of accountability and healthy democracy caution should be exercised in making alterations through regulations using the negative resolution procedure that may affect this principle. Where regulations may affect this principle we believe that

they should be subject to the affirmative procedure within the National Assembly for Wales.

What are your views on the financial implications of the Bill?

18. We have no view on the direct financial implications of the Bill. However, we wish to see a funding system for higher education that is built upon equity for full-time and part-time provision and therefore would not wish to see any consequences flowing from the Bill that makes this difficult to achieve.
19. We are aware that some concerns have been raised that the provisions in the Bill may lead to a de-classification of HEIs (or the whole sector) from the Non Profit Institutions Serving Households (NPISH) status for the purposes of national accounting. It is our view that this would be undesirable for both the HE sector and for the Government.

Are there any other comments you wish to make about specific sections of the Bill?

20. We have no further comments to make on the Bill at this time. We would be happy to expand on any of our points in the oral evidence session.

MM
09 June 2014