

Lifelong Learning (Higher Education Fee Limits) Bill

Public Bill Committee

Written evidence submitted by The Open University (LLB02)

This submission sets out The Open University's position on the Bill and suggests some key questions and proposed amendments for the Public Bill Committee to consider.

Executive summary

- **The Open University supports the Bill's objectives.** It is a necessary step towards introducing the Lifelong Loan Entitlement (LLE) from 2025. Credit-based fee limits would significantly improve flexibility for learners if available across the HE system once the LLE begins in 2025.
- **However, integral features of the new policy framework that are crucial to its impact are being left to secondary legislation.** More needs to be included on the face of the Bill to ensure that it will be effective in achieving the UK Government's stated objectives in introducing the legislation.
- **Our key points on the Bill include:**
 - The credit-based method should be the default way of setting fee limits for both new and continuing students from 2025.
 - There should be unified per-credit fee limits that apply to the whole system and do not vary with mode of study, subject of study or the method used to set fee limits.
 - Proposed new powers to exclude courses in certain subjects from the funding system should only apply to modules. The planned restriction of modular funding to technical qualifications also risks significantly weakening flexibility and watering down of ambitions for the LLE if continued beyond 2027 by creating some subjects which can only be accessed via qualification study.

Key questions

1. Will credit-based fee limits be used for most courses and students in 2025/26?
2. Will per-credit fee limits be the same for every course regardless of mode/subject?
3. Will the LLE be accessible to all in 2025/26 or will it be introduced gradually for different courses, modes of study and/or age cohorts?
4. Is the intention that most courses will ultimately be eligible for modular funding?

Why does the OU support the objectives of the Bill?

There has been a 42% decline in the number of adults in England aged 21 and over accessing undergraduate higher education since 2009/10 with 1.6 million “lost learners” over that period.ⁱ This decline was largely driven by the 2012 student funding reforms in England, which led to a huge increase in the cost of study and abolished the means-tested part-time fee grant which had previously exempted low-income part-time students from paying tuition fees.

The UK Government has acknowledged that it is essential that this decline is reversed. This requires a funding and regulatory system that supports and encourages lifelong learning. As the Department for Education state in the Bill’s [Policy Impact Assessment](#), the ‘*current student finance system does not incentivise or offer a clear route for an adult to study flexibly over their lifetime*’.ⁱⁱ

The LLE *could* be transformative in revitalising flexible higher education and reversing the sharp decline in adult learners. It could also incentivise alternative, flexible pathways that support people to hop on and hop off learning throughout life, delivering on economic needs. However, its detailed design will be key in determining how it will work in practice and whether it will be able to achieve the Government’s ambitions to deliver “*a fundamental and seismic shift*” towards flexible, lifelong learning.ⁱⁱⁱ

Although the Bill only deals with a narrow, yet important, aspect of enabling the LLE, we urge MPs to continuing raising questions around the detail of the design features of the LLE to ensure that it is an opportunity for all and is effective at boosting lifelong learning.

The Lifelong Learning Entitlement: what we know to date

Thanks to MPs’ calling for this in the Second Reading Debate, the UK Government published the [response](#) to the LLE consultation on 7 March.

We welcome the confirmation that the LLE will be equivalent to four years of full-time study, the abolition of current ELQ rules, the retention of additional entitlements in priority subjects, and the provision of an adjusted entitlement for reskilling for adults who have previously accessed some higher education. However, we are concerned about the continued exclusion of distance learners from all maintenance support.

Further clarity is needed about:

- The strategic vision for modular funding within the LLE and whether the intention is for most modules of designated courses to ultimately be eligible for funding.
- Whether all students will be included in the LLE from 2025, with credit-based fee limits in place for most courses and students, or if there will be transitional arrangements put in place as part of the phased implementation.

- Further details about the design of the LLE, including how ELQ rules and residual entitlements for those who already have HE qualifications will work in practice.

Specific comments and proposed amendment on the Bill's clauses

Note: The amendments proposed in this section are probing amendments and may be technically deficient

Clause 1(4), New Paragraph 1(3) of Schedule 2: Determining which method is used to set fee limits [page 2, line 4]

This paragraph provides powers for the Secretary of State to determine whether the credit-based method or the fixed method is to be used to set fee limits for a particular course using regulations.

The Memorandum from the Department for Education to the Delegated Powers and Regulatory Reform Committee states that the fixed method will only be used “for courses which do not easily lend themselves to the credit-based system”. However, the Bill includes no provisions to ensure that this is the case.

Our view

It is critical for flexibility that the ability to access credit-based fee limits is open to all courses as soon as possible and not – for example – restricted to only certain modules and courses.

Fee regulation that is based on a binary distinction between full-time and part-time study no longer reflects how a significant number of students live and study. Around one in five OU students registered on part-time courses are, at any point in time, studying at full-time intensity and many more do so at some point in their studies. This allows students to complete their studies as quickly as possible while retaining the flexibility to easily adjust their study intensity in response to changes in the demands of their work and family lives. Offering this form of study will become financially unsustainable within the part-time fee cap over the next few years. This would substantially reduce students' flexibility over their study intensity and may deter some from accessing higher-level skills.

Key questions

Do Ministers envisage that, in 2025/26, most courses and students will have fee limits calculated using the credit-based method?

What criteria do Ministers intend to use to determine which method of setting the fee limit is used in which circumstances?

Proposed amendments

Substitute for Paragraph 1(3) on page 2, line 4:

- “1(3) Registered higher education providers must specify whether the credit-based method or the fixed method is to be used to determine the applicable fee limit on a particular course except where Paragraph 1(4) applies.
- 1(4) The Secretary of State may determine through regulations that a particular course must use the credit-based method.”

Explanation

This amendment would ensure that the credit-based method is used where providers or the Secretary of State determine that it is the most appropriate way of setting the fee limit for a particular course and that the fixed method is only used for courses which do not easily lend themselves to the credit-based system.

Clause 1(4), New Paragraph 11 of Schedule 2: determination of the per-credit and fixed limits [page 5, line 8]

This paragraph makes provision to allow the existing paragraphs 2 and 3 of Schedule 2 of The Higher Education and Research Act 2017 to be used to set fee limits using the new methods.

Our view

Flexible learning is often the only way for adult learners to undertake their studies as they juggle employment, caring responsibilities, and anything else that everyday life throws at them. Flexible learning must be at the heart of this Bill. A unified per-credit fee cap that applies to all modes of study for all higher education qualifications and approved modules is important to delivering that. This must be the same regardless of how someone chooses to study, whether that be full-time, part-time or on a modular basis or at a face-to-face provider or via distance learning.

It is therefore important that powers to specify different per-credit fee limits under Paragraph 2 and Paragraph 3 of Schedule 2 – including different implied per-credit fee limits via the fixed method – are limited in primary legislation to certain circumstances so as to ensure that this is the case. This will make sure that the Bill delivers on the UK Government’s objective to “ensure that fee limits can be set in a consistent way”.

Key questions

Do Ministers intend to set different per-credit fee limits for different courses? On what basis will this be done? By subject? By mode of study? By type of provider?

Proposed amendments

Paragraph 11(4), page 5, line 19, at end insert –

11(4A) Regulations under paragraph 2 or paragraph 3 may not be used to prescribe different per-credit limits in respect of different modes of study or different subjects of study.

Explanation

This amendment seeks to prevent fees being varied on the basis of mode of study or subject of study.

Clause 2(2)(c), Designation of courses [page 6, line 16]

This clause amends Section 10 of The Higher Education and Research Act 2018 to allow regulations that designate courses for the purposes of setting fee limits to exclude some courses and modules of courses on the basis of the area of study provided that regulations under Section 22 of the Teaching and Higher Education Act 1998 also do so. The Explanatory Notes state that “This is to ensure that fee limits are not required to be set for all modules when only some modules may be designated for the purposes of having student loans made available to them”.

Our view

This clause is consistent with the UK Government’s intention to only provide modular funding from 2025 for modules of Higher Technical Qualifications and modules of some other technical qualifications at Level 4 and 5 that “have a clear line of sight to an occupational standard and evidence of employer support”.

However, limiting modular funding to only a small sub-set of courses will result in a significant reduction in flexibility within the LLE if it continues into the medium-term and threaten the government’s stated policy aims by leaving some subjects where a student must study a full qualification in order to access funding.

We are also concerned that these powers will also apply to qualifications that are already funded within the current system as well as to modules. If it becomes law, this clause could allow public funding to be removed from qualifications in certain subjects via secondary legislation.

Key questions

What criteria will be used to determine which modules are eligible for funding under the Lifelong Loan Entitlement?

What is the medium-term plan for modular funding within the LLE? Is it still the intention for it to eventually apply to all study at Level 4-6? On what timescale?

Why is the government taking powers relating to all courses, including qualifications, rather than only modules of courses?

Proposed amendments

Clause 2(2)(c), page 6, line 18, after “courses” insert “which are defined as modules under section 85”

Explanation

This amendment restricts the powers to not designate courses on the basis of subject of study to only modules of courses.

Clause 2(2)(d), Regulations [page 6, line 20]

We propose that a new sub-clause is inserted into the Bill to support equal treatment of students within the LLE regardless of their mode of study.

Our view

The UK Government’s response to the LLE consultation states that, while maintenance support will be extended to all designated courses and modules that are studied face-to-face in the LLE, “distance learning courses will continue to be out of scope of maintenance support”. There is no further detail to explain the rationale for this decision.

The lack of maintenance support for distance learners is a barrier to participation and an impediment to student success. It means that students who want or need to study via distance learning but require support with their living costs are forced to either undertake a less suitable mode of study in order to access higher-level skills or forgo the opportunity to study. This is becoming an increasing issue due to the current pressures on the cost-of-living.

As the [Impact Assessment](#) for the UK Government’s response to the LLE consultation states, differences in the type and level of support by mode of study “can serve to distort learner and provider behaviour and decisions about what to study and offer and can impede a move to the type of flexible, personalised study track envisaged by the LLE” (page 12) and “act as a significant barrier for prospective flexible learners...(and)... distort the incentives to choose particular levels or modes of learning meaning that some learners are at greater risk of making poorer decisions about their learning needs, choosing options or pathways for which they are not best suited” (page 13).

The UK Government previously announced in the Autumn Statement 2015 that it would extend undergraduate maintenance loans to distance learners, which was confirmed following a Department for Education consultation on the matter. However, this was [abandoned](#) in March 2019 on the basis that demand would not be high enough to make distance learning loans viable. There is little evidence to support this assertion.

Extending maintenance loans to distance learners would promote flexible learning by reducing the financial incentive for students to study face-to-face, promote lifelong learning by providing greater access to financial support to meet living costs for flexible learners, help widen participation, and support student outcomes by allowing students to take unpaid study leave or reduce their hours of work to focus on their studies.

It would also help mitigate the current cost of living pressures facing distance learners which are beginning to impact on mature students, discouraging them from entering study and threatening continuation rates.

Key questions

Why have distance learners been excluded from receiving maintenance support?

What would need to happen to persuade the government to extend maintenance support to distance learners?

Won't excluding distance learners from maintenance support distort student choice and force students who want to study via distance learning but require maintenance support to either choose less suitable modes of study or to not study at all?

Can the government guarantee that maintenance support for students with severe disabilities who are unable to study face-to-face will continue to be available in the LLE?

Proposed amendment

Clause 2(2)(c), page 6, line 20, at end insert –

(d) After subsection (10) insert –

“In making regulations under Section 10 and Schedule 2, the Secretary of State must have regard to the principle that all students should be treated equally irrespective of their mode of study”.

Explanation

This clause would require the Secretary of State to have regard to the principle that all students should be treated equally irrespective of their mode of study.

About The Open University

- The Open University's mission is to be open to people, places, methods and ideas. Since we began in 1969, we have taught more than 2.3 million students worldwide, and in the academic year of 2021/22 we had over 200,000 students based across the UK and internationally.^{iv}
- We are the largest academic institution in the UK, operating across the four nations – in fact, there are OU students in every single local area in the UK and we are among the five biggest providers in nine out of ten Parliamentary constituencies in England.^v
- Our flexible distance learning model enables us to engage harder to reach geographies and communities, as well as supporting people to stay local – five years after graduating more than 90% of OU graduates still live in the postcode area where they lived while they were studying.^{vi}
- The OU is crucial to social mobility. In 2021/22, 25% of our Undergraduates lived in the 25% most economically deprived areas (IMD Q1), and over 37,000 students declared a disability, making us the largest provider of higher education for people with disabilities.^{vii}
- The OU is one of the biggest providers of higher and degree apprenticeships in England. We currently have over 3,000 apprentices on our programmes, partnering with just under 800 large and small employers.
- The Open University will offer three approved Higher Technical Qualifications in 2023/24: a Foundation Degree in Nursing Associate Practice and Diplomas of Higher Education in Network Engineering and in Software Development.

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References

ⁱ HESA Student Record, English undergraduate first-year students, 2009/10 to 2021/22. The statistic on “lost learners” calculates how many more people aged 21 and over in England would have accessed undergraduate higher education between 2010/11 and 2021/22 if numbers had remained constant at 2009/10 levels. The HESA Student Record is Copyright Higher Education Statistics Agency Limited 2021. Neither the Higher Education Statistics Agency Limited nor HESA Services Limited can accept responsibility for any inferences or conclusions derived by third parties from data or other information supplied by the Higher Education Statistics Agency Limited or HESA Services Limited’

ⁱⁱ Department for Education, Lifelong Learning (Higher Education Fee Limits) Bill, [Policy Impact Assessment](#), page 3.

ⁱⁱⁱ Department for Education, [Higher and Further Education Minister speech at Times Higher Education event](#), 24 November 2021

^{iv} The Open University, [Facts and Figures 2021/22 \(open.ac.uk\)](#) – Current student number consists of directly and indirectly registered Undergraduate and Postgraduate students worldwide, including students on non-credit bearing modules.

^v OU analysis of HESA Student Record 2019/20 English-domiciled students, all years. Note, this analysis classifies student domicile on the basis of where someone lived immediately prior to commencing their studies.

^{vi} Internal OU research. Note, the postcode area refers to the first two letters in a postcode.

^{vii} The Open University, [Facts and Figures 2021/22 \(open.ac.uk\)](#)

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