

OPEN UNIVERSITY STUDENTS ASSOCIATION

Central Executive Committee (CEC)

19 – 21 October 2018

INCORPORATION

The CEC is asked to:-

- i) **note** the updated Project Route Map (PRM)
- ii) **comment** on the draft Articles of Association

1. Background

- 1.1 As CEC members are aware, [Conference 2018 authorised](#) the Association's Trustees to transfer the assets and liabilities of the Association to a limited liability entity established for exclusively charitable purposes with the same or similar objects, and to dissolve the Association at any time following the transfer if it is considered appropriate to do so, in line with Clause 6 of the current [Constitution](#).
- 1.2 The target date for completion of the incorporation process was revised by the Association's Trustees to a new target date of August 2019. Our Project Route Map has been revised and updated accordingly and this is attached for information.

2. Progress since last CEC meeting

- 2.1 Tim O'Brien, Project Manager; Rob Avann, Chief Executive and Peter Cowan, VP Administration have continued to work on developing the draft set of Articles of Association, meeting twice to jointly review and revise subsequent drafts to arrive at Version 8 which is presented here for CEC feedback.
- 2.2 Tim and Rob met with the OU Liaison Group on 24 September and agreed a number of actions, including identifying contacts within the University to speak to regarding operational matters (including pensions and payroll transfers) and agreeing a way forward for the draft Articles of Association to be considered by key University colleagues to ensure that their feedback is inputted into the development of the Articles before they enter formal governance. A further liaison group meeting is to be arranged for late November.

2.3 In the 2017/18 financial year, the Association spent £53k on the work necessary to fully investigate and progress incorporation. With the £6k spent in 2016/17, this brings current spending to £59k overall. The Trustees have allocated a budget of up to £90k for the work necessary during the 2018/19 financial year. We do not anticipate necessarily needing the full allocation but there is capacity for contingencies. These figures do not account for the huge amount of time and input that we have received at no cost from a variety of sources to help us move this project forward.

3. Draft Articles of Association

3.1 The latest draft, Version 8, is attached here for CEC and member feedback. All comments and questions on the draft set are welcomed to help us arrive at a final version.

3.2 The route for these Articles of Association is as follows. We have shared this draft set (version 8) for review by the Central Executive Committee (in progress); by the OU liaison group with identification of further key University colleagues to receive and review (in progress); and for review by our legal advisors Stone King (first review completed). Following comments and feedback from the CEC and receipt of any final comments or clarifications from either OU colleagues or the legal advisors, we will prepare a final draft taking on board the feedback and agreed changes. We will present the final draft to the Association's Board of Trustees for approval at their next meeting on 3 December 2018. After this meeting, the approved Articles of Association will be submitted by the OU liaison group to the University's Vice Chancellor's Executive (VCE) for their meeting in January 2019. The Articles of Association will then proceed to the University's Council for final ratification in March 2019.

3.3 Please note that the Articles of Association still need the cross-references to be added and checked, we will be working with the legal advisors Stone King to do this once we have completed all of the edits to the document.

3.4 We would appreciate any comments on any further Definitions and Interpretations which could/should be added to the relevant section at the back of the Articles.

4. Comments received to date

4.1 Our legal advisors Stone King have reviewed the draft and are content with the Articles of Association. They have suggested some minor amendments to strengthen the wording and to ensure that it meets the expectations of the various regulators and identified areas where we may need to address challenges from the Charity Commission should they emerge (to clarify, these are due to sector-wide challenges over the ability of charities to carry out campaigning and understanding of the language used to describe our public benefit as a Student Union, they are not challenges provoked due to any changes created by our incorporation). They have recommended that we try to future-proof the Articles by adding wording into the relevant sections under Objects and Powers that would make the Articles acceptable for registration with not only the Office of the Scottish Charity Regulator (OSCR) but also potentially the new charity regulator in Northern Ireland (with whom

we understand cross-registration is not yet possible, but will be at some stage in the future). We would welcome thoughts on this approach.

- 4.2 The legal advisors have suggested that we may not require Article 6.5 as the detail covered here is also allowed for under the preceding Articles. They have further indicated that Article 6.3.3 needs to have 'the Association' inserted.
- 4.3 Stone King have suggested that Article 9.4 be re-drafted to clarify the meaning, with the suggestion that the current text be replaced with the following insert: "All amendments to the Articles shall require (a) the approval of at least 75% of the Student Members voting at Conference and (b) a Special Resolution under the Companies Acts (comprising at least 75% of the Company Law Members), save as follows: requirement (a) shall be disapplied when an equivalent vote by Student Members has effectively already approved the substance of a proposed amendment to the Articles, for example, when Student Members have approved a change to the Byelaws which requires a consequential amendment of the Articles to be effective".
- 4.4 For Article 10, the legal advisors have suggested prefacing this with 'Subject to Article 10.1.2...' and inserting at the end of 10.1.1 '...who shall enjoy the rights and responsibilities of Student Members as subsequently set out in these Articles'. For 10.1.2, after the words 'Company Law Members' they have recommended the insertion of '...who shall be the sole members of the Association for the purposes of the Companies Acts'.
- 4.5 We feel that all of these insertions detailed above, and other much more minor points, further clarify and support the Articles but would welcome feedback.
- 4.6 The OU Liaison Group have made a few minor suggestions, including ensuring that we define Nations (Article 27.1.2) in the Definitions and Interpretation section to relate to the Nations of the UK and the Republic of Ireland. This seems a sensible inclusion. CEC comments on this would be appreciated.
- 4.7 They have further noted that the text under Article 58 goes further than the current Constitution in providing Student Members with the right to ask the Trustees questions in relation to any of the documents listed. We would appreciate comments on this.

5. Next steps

- 5.1 We will be taking on board feedback received and continuing to work with OU colleagues and the legal advisors to ensure the Articles of Association are complete and fit for purpose, with a view to bringing the final version to the Board of Trustees on 3 December 2018 for approval and subsequent formal submission to the University's Council as outlined above.
- 5.2 One of the key immediate tasks for us will be the briefing of the newly-elected VP Administration who will be known by the time this paper is considered by the CEC. We would like to take this opportunity to formally recognise and thank Peter Cowan for all of his efforts over the last 18 months and particularly in these recent months with the drafting of the Articles of Association.

- 5.3 The OU Liaison Group has identified and progressed for us the chance for the Articles of Association to be reviewed by key units across the University, including Governance and data protection; Equality, Diversity and Inclusion; Student Policy and Regulations; and the three Nations Directors. We are due to receive collated feedback by the end of October.
- 5.4 Incorporation will continue at pace over the coming months. Once the Articles of Association are finalised, we will be turning our attention to the founding and registration of the newly incorporated body and all of the various transfers of pensions, assets, staff and bank accounts. Further updates will continue to come to both the Central Executive Committee and the Board of Trustees at each meeting until completion.

Rob Avann
Chief Executive