

## Higher Education: Freedom of Speech and Academic Freedom

<b>Lead department</b>	Department for Education
<b>Summary of proposal</b>	A proposal to require the Office for Students (OfS) to introduce new registration conditions on freedom of speech and academic freedom, to legislate for a Director for Freedom of Speech and Academic Freedom within the OfS, to introduce a duty on higher education providers (HEPs) to promote freedom of speech on campus, to extend the duties to apply directly to student unions (SUs), to introduce a statutory tort for breach of the duties, and to widen and enhance academic freedom protections.
<b>Submission type</b>	Impact assessment (IA) – 12/04/2021
<b>Legislation type</b>	Primary legislation
<b>Implementation date</b>	May 2021
<b>Policy stage</b>	Final
<b>RPC reference</b>	RPC-DfE-5062(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	11 May 2021

### RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The RPC considers the EANDCB and SaMBA to be sufficient. The evidence supporting the proposed interventions is weak and the IA's consideration of options could be improved.

### Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Qualifying provision	Non-qualifying regulatory provision ( <i>de minimis</i> )
<b>Equivalent annual net direct cost to business (EANDCB)</b>	£4.6 million	£4.6 million (2019 prices, 2020 pv)
<b>Business impact target (BIT) score</b>	£23.0 million	N/A
<b>Business net present value</b>	-£44.9 million	
<b>Overall net present value</b>	-£44.9 million	

<sup>1</sup> The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). The RPC rating is fit for purpose or not fit for purpose.

## RPC summary

Category	Quality	RPC comments
EANDCB	<b>Green</b>	The RPC confirms that the proposal is <i>de minimis</i> and considers the EANDCB to be fit for purpose.
Small and micro business assessment (SaMBA)	<b>Green</b>	The RPC considers the SaMBA to be proportionate. However, the SaMBA should be improved by considering whether small and micro businesses (SMBs) face higher costs and how any disproportionate burdens could be mitigated.
Rationale and options	<b>Weak</b>	The evidence underpinning rationale for intervention is weak. The IA should provide evidence of any current negative impacts on society that need to be addressed. It also does not explain how the chosen option will achieve the policy objectives. The IA states that the voluntary options considered would not achieve the policy objectives but does not provide evidence to demonstrate why that is likely to be the case.
Cost-benefit analysis	<b>Satisfactory</b>	The RPC considers the cost-benefit analysis to be proportionate and the IA provides a good level of detail for the costs of the policy. However, the IA could go further to demonstrate the benefits of the proposal in the narrative. Providing evidence or examples of the benefits of free speech would also support the rationale for government intervention.
Wider impacts	<b>Weak</b>	While the RPC recognises that some potential wider impacts may not be relevant for this policy, the IA could consider any potential negative impacts on individuals and groups offended or insulted by freedom of speech. It could also include details of the equalities impact assessment that is being carried out.
Monitoring and evaluation plan	<b>Weak</b>	The RPC is pleased to see that the IA commits to a review after 2027 but the IA should set out a clear plan for a post-implementation review (PIR). The IA appears to use the lack of a causal link between free speech and impacts on society as a justification for a lighter-touch evaluation. However, the RPC considers evaluation to be even more important in cases where there is a lack of evidence and uncertainty.

## Summary of proposal

The proposal is:

- to require the OfS to introduce new registration conditions on freedom of speech and academic freedom (with the power to impose sanctions for breaches),
- to legislate for a Director for Freedom of Speech and Academic Freedom within the OfS (with a remit to champion freedom of speech, investigate breaches of the freedom of speech registration conditions and recommend redress),
- to introduce a duty on HEPs to promote freedom of speech on campus,
- to extend the duties to apply directly to SUs,
- to introduce a statutory tort for breach of the duties (enabling individuals to seek legal redress for loss they suffer as a result of breach of the duties), and
- to widen and enhance academic freedom protections (including in relation to recruitment and promotion).

## EANDCB

The RPC considers the EANDCB to be fit for purpose and confirms that the proposal is *de minimis*. The direct business impacts fall on HEPs and SUs and include familiarisation costs, staff training costs, the costs of issuing the codes of practice, self-assessment costs and enforcement costs.

## SaMBA

The RPC considers the SaMBA to be proportionate. The SaMBA sets out the number of HEPs that are SMBs and assumes that all SUs are SMBs. The IA justifies why it is not appropriate to exempt SMBs and assumes that costs do not vary by size of institution. While the RPC considers this approach to be satisfactory, the SaMBA should be improved by considering whether SMBs face higher costs (particularly familiarisation costs) and how any disproportionate burdens could be mitigated. The SaMBA should include a thorough consideration of mitigations and if they are found not to be appropriate in this case, the IA should explain why.

## Rationale and options

The evidence underpinning the proposed intervention and its intended effects is not strong. The IA describes the “*chilling effect*” whereby some students and staff feel unable to express themselves without fear of repercussion but provides limited evidence of the impacts of this on either those withholding views or those negatively affected. If clear evidence of the impacts is not available, the Department could present concrete and well-founded examples of the “*chilling effect*” and the consequences in those circumstances.

Further, the IA acknowledges existing legal frameworks in place to protect freedom of speech. It explains that there are currently no legal consequences for a breach but does not provide evidence of the additional benefits that sanctions, and enforcement would bring.

The IA considers three alternatives to legislation including promoting guidance and hosting expert round table discussions. It does not explain how the chosen option *will* achieve the policy objectives. The IA states that the voluntary options considered would not achieve the policy objectives but does not provide evidence to support this assertion. The IA should clearly demonstrate why legislation is preferable to non-regulatory options in terms of achieving the policy objectives.

## Cost-benefit analysis

The RPC considers the cost-benefit analysis to be proportionate and the IA provides a good level of detail for the costs of the policy. We also recognise the difficulty in monetising the potential benefits of the policy. However, the IA could go further to demonstrate the benefits of the proposal in the narrative. The non-monetised benefits section focuses on wider impacts and it is not clear what the immediate tangible benefits of the policy are expected to be. Providing evidence or examples of the benefits of free speech would also support to the rationale for government intervention.

## Wider impacts

The IA could consider any potential negative impacts on individuals and the academic and social environment of HEPs and SUs. For example, the IA does not consider unintended consequences on those that may be affected by the “*hateful*” or “*unpopular*” views. The IA could also consider whether one group’s expression may curtail another group’s ability to express a contrary view or directly infringe rights protected under existing regulation. The IA should discuss how the proposal interacts with other government policies and proposals such as those relating to online harms.

The IA should consider trade impacts such as those arising from university collaborations on training with countries that have different or opposing policies. The IA also mentions that an equalities impact assessment is being carried out. Further details or findings from this could usefully have been presented in the IA.

## Monitoring and evaluation plan

The RPC is pleased to see that the IA commits to a review after 2027; we recognise that proposal is unlikely to have significant impacts on business, so the evaluation should be proportionate. However, the IA should set out a clear plan for a PIR, indicating what evidence will be gathered over the next 5 years. The IA appears to use the lack of a causal link between free speech and impacts on society as justification for a lighter-touch evaluation. However, the RPC considers monitoring

and evaluation to be even more important in cases where there is a lack of evidence and uncertainty.

### **Regulatory Policy Committee**

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