



Government of the United Kingdom
Department for Education

The future of the Higher Education (Freedom of Speech) Act 2023



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Presented to Parliament by the Secretary of State for Education by
Command of His Majesty

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Foreword by the Secretary of State for Education

Our universities are one of this country's greatest strengths. They are engines for growth, expanding horizons and opening doors through their cutting-edge teaching and research. Our higher education sector is transformative in breaking down the barriers to opportunity and success, giving all learners, whatever their background, the skills and knowledge to achieve and thrive.

The higher education sector's strength is underpinned by a robust culture of academic freedom and, more broadly, freedom of speech within the law. Academic freedom and freedom of speech are particularly important in higher education because universities are places to test and develop our knowledge and understanding of the world. Students should expect to experience the very best teaching and learning, which explores controversial and challenging ideas, whilst academics must have the freedom to test, pursue and share new concepts in their teaching and research. This is only possible if all students, staff and visiting speakers have academic freedom and freedom of speech. Through our Plan for Change we will strengthen our universities as centres of innovation, intellectual debate and new ideas.

I am grateful to everyone who shared their views on the Higher Education (Freedom of Speech) Act 2023 during its review in 2024. Whilst I had serious concerns about particular aspects of the act, I also shared the view that not enough had been done to secure and promote a genuine culture of academic freedom and freedom of speech at our universities.

That is why, on 15 January 2025, I announced my plans to commence some parts of the act, and to repeal or amend others. I also committed to set out those plans in more detail in a policy paper, to ensure complete transparency. This paper therefore provides that further detail and the rationale for my decisions on each provision in the act.

I have now made the commencement regulations¹ which bring into force on 1 August 2025 the provisions that impose enhanced duties on higher education providers and the Office for Students. It also remains my intention to return to Parliament at the earliest legislative opportunity to amend or repeal the remaining provisions in the act as set out in this paper.

My proposed changes will ensure that academic freedom and freedom of speech are rigorously and robustly promoted and protected, and that the act will now be genuinely workable. There will be new, stronger duties and a complaints scheme, but unnecessary burden will be removed. This will enable HE providers to concentrate on their core purpose, including creating and sharing knowledge, and preparing the next generation to succeed.

¹ [The Higher Education \(Freedom of Speech\) Act 2023 \(Commencement No. 3\) Regulations 2025](#) (legislation.gov.uk)

Executive summary

This policy paper sets out in more detail the government's plans in relation to the Higher Education (Freedom of Speech) Act 2023 (the act): to protect and strengthen academic freedom and freedom of speech in a way that is proportionate, balanced and workable.

It follows the pause in the implementation of the act in July 2024 in order to consider all options available, and the subsequent announcement of the Secretary of State for Education's plans in Parliament on 15 January 2025. The review was a response to the widespread and serious concerns about the negative impact the act in its current form might have had on the welfare of minority groups. The government was also concerned that the act might impose significant financial and regulatory burdens on the sector and alter the priorities of the Office for Students (OfS).

The Secretary of State, Minister Smith and officials engaged with a broad range of stakeholders during the review. This included academics and others with concerns about constraints on academic freedom and freedom of speech, representatives of the higher education (HE) sector, minority groups and students' and workforce unions. Discussions with stakeholders informed the government's views and decisions.

We considered the effect of the legislation on both the sector and the regulator, as well as examples of both good practice and previous academic freedom and, more broadly, freedom of speech issues. We also undertook a detailed equalities impact assessment (EIA) to evaluate how potential amendments could affect groups with protected characteristics. More information about the EIA can be found at Annex A.

Following the review, we concluded that some provisions of the act are important for securing the future of academic freedom and freedom of speech, and should therefore be retained as originally set out in the act and commenced in their current form. This includes provisions such as: the core duties on providers; the new ban on non-disclosure agreements (NDAs) in higher education for staff, students and external speakers in cases of bullying, harassment and sexual abuse or misconduct; the duty on the OfS to promote the importance of freedom of speech; and the new power for the OfS to identify good practice and give advice to providers about such practice. We also concluded that the role of the OfS's Director for Freedom of Speech and Academic Freedom, a provision which has already been commenced, is critical and should therefore also be retained.

However, our review also led us to conclude that other provisions were not workable and, in some cases, were likely to be counterproductive. The duties on students' unions and the new statutory tort were overly burdensome and could potentially have left HE providers and students' unions diverting resources away from students. They also could have created a chilling effect on campus where fewer external speakers are invited to talk to students, and made HE providers and students' unions vulnerable to disproportionate legal fees which they could ill-afford.

Other provisions, such as those creating a new complaints scheme and a new condition of registration, while important, could be improved. However, to do so they require amendment through primary legislation to remove confusing duplication with the role of the Office of the Independent Adjudicator (OIA) and to give the OfS flexibility in its approach to complaints and regulation: something both the OfS and the HE sector have indicated would be beneficial.

The Secretary of State for Education has therefore made regulations to commence, from 1 August 2025, the following:

- the provisions to strengthen HE providers' duties in relation to freedom of speech and academic freedom, including the ban on NDAs in higher education for staff and students where there is a complaint about bullying, harassment and sexual misconduct
- the duty on HE providers to put in place codes of practice setting out how they will discharge their duties in relation to freedom of speech and academic freedom, HE providers' values in relation to freedom of speech and their procedures in relation to organising meetings and other activities
- the duty on HE providers to promote the importance of freedom of speech and academic freedom
- the duty on the OfS to promote the importance of freedom of speech and academic freedom, and a power to give advice and guidance and to share best practice

We have also committed to seek a legislative vehicle at the earliest opportunity to:

- repeal the tort and the direct duties of students' unions in the act
- amend the provisions in relation to the OfS's free speech complaints scheme to give the OfS a power, rather than a duty, to consider complaints. We will also ensure that while the OfS will be able to consider complaints from staff, external speakers and non-student members at HE providers, the OIA will continue to consider complaints related to freedom of speech from higher education students
- amend the requirement of the OfS to put in place a condition of registration relating to freedom of speech so that the OfS has a power, rather than a duty, to implement a condition

We will also maintain the role of Director for Freedom of Speech and Academic Freedom and its functions in the act. This will enable Dr Arif Ahmed to build upon his excellent and important work to protect and promote academic freedom and freedom of speech across the HE sector.

Regarding the overseas funding provisions in section 9 of the act, this government is committed to ensuring that our world leading HE providers are protected from foreign interference, which can undermine their autonomy and limit academic freedom and freedom of speech. We are clear that foreign interference is unacceptable and, wherever it is identified, the government and the OfS can and will act, using a range of existing and upcoming requirements. This includes transparency provided through the Foreign Influence Registration Scheme (FIRS), as well as existing regulatory expectations around management and governance, academic freedom, freedom of speech, and charity law.

As the Secretary of State set out in her January announcement, if we are to introduce additional reporting requirements, we must ensure they will add value without being overly burdensome. We currently assess that there are alternative, more direct ways to set clear expectations on risk management for international partnerships. We will look to enhance approaches and accountability by issuing guidance to the OfS asking that they consider an explicit regulatory expectation on international due diligence, the promotion and development of a code of practice for international risk management, and the development of practitioner expertise in foreign interference risk. We are also conscious that the sector will, from 1 July, be implementing FIRS, which will provide greater visibility of foreign state influence in the UK, deter harmful covert state threat activity and increase the opportunity for earlier disruptions.

This is an important and complex issue, and it is crucial we support HE providers to maximise the opportunities of international partnerships whilst appropriately and proportionately mitigating risk. Therefore, we intend to keep the overseas funding provisions under review if, during the implementation of our alternatives and FIRS, evidence indicates further transparency reporting is necessary.

This paper takes each section of the act in turn and sets out our decision and the rationale for that decision. An overview of the key existing provisions of the act to which that decision relates is also set out for each section.

The act is a piece of amending legislation, primarily amending the Higher Education and Research Act (2017) (the 2017 act) but also the Counter-Terrorism and Security Act 2015, the Higher Education Act 2004 and the Education (No. 2) Act 1986 (the 1986 act). In the policy proposals section, we refer both to the section numbers in the act itself and also the section numbers of the new provisions which will be inserted into the 2017 act.

Where we refer to 'HE providers' in this paper, we are referring to HE providers that are registered with the OfS. Where we set out that we intend to amend or repeal a particular provision through primary legislation, this is always subject to securing a legislative vehicle and to its Parliamentary process.

Section 1: Duties of registered HE providers

Decision

The regulations to commence the duties on HE providers set out in section 1 of the act were made on 28 April 2025 for commencement on 1 August 2025.

We will, subject to securing an appropriate legislative vehicle and to its Parliamentary process, amend the act to reinstate and put beyond doubt some HE provider duties in relation to students' unions (see the rationale section on page 8).

Decisions on HE provider duties in relation to students' unions

Duties in relation to non-HE provider premises occupied by students' unions

We propose to amend the act so that governing bodies of HE providers will be required to take reasonably practicable steps to ensure that their students' unions follow their code of practice on both provider and non-provider premises occupied by those students' unions. Whilst most students' union activity takes place on provider premises, we will extend the meaning of HE provider premises in the main free speech duties in the act to ensure that their activity on non-provider premises is also covered. This is consistent with the approach currently in section 43 of the 1986 act that we are removing in relation to England from 1 August 2025, when the main duties in the act will come into force.

In the meantime, HE providers can, and in our view should, voluntarily continue to take reasonably practicable steps to ensure that their students' unions fulfil their obligations under codes of practice in relation to events and meetings on non-provider premises.

Duties in relation to affiliation of societies by students' unions

Where student clubs or societies wish to be recognised by and receive support from their students' union (for example training, insurance, use of facilities etc), they must apply to their students' union for affiliation. We intend to put beyond doubt through legislation:

- that HE providers are required to set out in their code of practice how their students' union should secure that affiliation is not denied to any student society on the grounds of its lawful policy or objectives, or the lawful ideas or opinions of its members
- that there is a duty on HE providers to take reasonably practicable steps to secure compliance by their students' union with that provision in the code of practice
- that complaints about whether an HE provider has fulfilled its duty to take reasonably practicable steps to secure compliance by staff, students and students' unions with its code of practice (including on affiliation) will be in scope of the OfS's free speech complaints scheme

Rationale

It is clear that the complex and often contested nature of issues relating to academic freedom and freedom of speech have created a difficult landscape for HE providers to navigate. While we recognise these challenges, we do not believe that the importance of academic freedom and freedom of speech has always been prioritised or taken seriously across the HE sector. That is why we have made regulations to commence, from 1 August 2025, section 1 of the act, which inserts new sections A1 to A3 into the 2017 act. This includes the provisions set out in the 'Overview of existing key provisions' section on pages 9 and 10.

We have also retained the expanded definition of academic freedom in the act, which protects academic staff from suffering adverse consequences related to their employment or future prospects solely based on their opinions or ideas. We believe this expanded definition is needed to protect academic staff fully.

We remain of the view that legislation is needed in order to prevent HE providers from using NDAs with staff, students, members and external speakers because of the prevalence of their use by HE providers in the past, as highlighted by the 'Can't Buy My Silence' campaign. These legislative provisions are important because they go further than the OfS's registration condition E6 on harassment and sexual misconduct. That condition bans NDAs for students only, and only in instances of harassment and sexual misconduct, not bullying. There is a clear need to extend this ban to staff, external speakers and members so that all members of the higher education community are protected from pressure to stay silent about their experiences of harassment, bullying or sexual misconduct. We also believe that this provision is an important protection for many students, who are often living away from home and family support for the first time.

Duties in new sections A2 and A3, including the requirements on governing bodies to maintain a code of practice and to promote the importance of freedom of speech within the law and academic freedom, are crucial in driving the culture change needed in the higher education sector. The code of practice provisions will ensure that the HE provider's values in relation to freedom of speech, and how those values uphold freedom of speech, are clear and visible.

These duties are further enhanced by the duty on the OfS to promote freedom of speech and academic freedom (as set out in section 5 of the act): this duty enables the OfS to embed culture change by promoting the importance of free speech to HE providers and their constituent institutions. The OfS has also been given a power to identify and share good practice on how to support freedom of speech and academic freedom, and to give advice about such practice to HE providers and their constituent institutions. This will enable it to support providers to protect academic freedom and freedom of speech, and to set out examples of actions and behaviours likely to be a breach of duties and potentially subject to regulatory action in future so that they can be avoided.

Overview of existing key provisions

Section 1 inserts sections A1, A2 and A3 of the act into the 2017 act. These provisions set out the specific freedom of speech and academic freedom duties that apply to the governing body of an HE provider. Section 1 will come into force on 1 August 2025. We do not intend to make further changes to this section of the act, other than to the duties on HE providers in relation their students' unions set out on page 7.

Section A1(1) to (10): Duty to take steps to secure freedom of speech

This duty replaces and extends the duties in section 43 of the 1986 act, including the main duty in that act to 'take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers'.

Instead, under Section A1(1) to (10), the HE provider's governing body must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to achieve the objective of securing freedom of speech within the law for HE providers' staff, members and students, as well as visiting speakers. This objective includes securing:

- that the use of an HE provider's premises is not denied to any individual based on their lawful ideas or opinions, or any body based on its lawful policy, objectives or its members' ideas or opinions
- academic freedom for HE providers' academic staff, i.e., freedom within the law to question received wisdom and or put forward new or controversial ideas and opinions without being placed at risk of losing their jobs or privileges at the HE provider, or being adversely affected in securing promotion or different jobs at the HE provider
- that where a person applies to become a member of academic staff at an HE provider, their application is not adversely affected by having exercised their academic freedom within the law

In order to secure freedom of speech within the law, the governing body must also ensure that any individual or body (for example an external speaker or a student society) is not required to bear the costs of security for the use of the HE provider's premises, unless there are exceptional circumstances. This is to prevent an HE provider from requiring a controversial speaker to cover their own security costs with a view to causing them to cancel their own event and avoid the provider being seen to restrict freedom of speech.

Section A1(11) and (12): Duty not to enter into non-disclosure agreements

In order to achieve the objective of securing freedom of speech within the law, the governing body must also secure that the HE provider does not enter into NDAs with staff, members, students or visiting speakers of the HE provider in relation to complaints of sexual abuse, harassment or misconduct, or other bullying or harassment. If such an NDA is entered into, it is void: this means that is not enforceable and neither party has any legal obligations under it.

Section A2: Duty to maintain a code of practice

This duty replaces and extends the code of practice duty in section 43 of the 1986 act. The governing body of the HE provider must maintain a code of practice setting out:

- the HE provider's values relating to freedom of speech, and how these values uphold freedom of speech
- procedures to be followed by staff and students and any students' unions when organising meetings and other activities held on an HE provider's premises and the required conduct of persons related to these meetings or activities
- the criteria used by the HE provider in deciding whether to allow use of its premises and on what terms, including criteria to determine if exceptional circumstances apply in requiring individuals or bodies to bear security costs when using the premises

The governing body must also:

- take reasonably practicable steps, including where appropriate initiating disciplinary measures, to secure compliance with its code of practice
- bring the duties on HE providers, as set out in section A1 of the 2017 act, and its code of practice to the attention of all of its students at least once a year

Section A3: Duty to promote the importance of freedom of speech and academic freedom

The governing body must promote the importance of freedom of speech within the law, and academic freedom for academic staff of HE providers and their constituent institutions (e.g., colleges at Oxford and Cambridge universities) in the provision of higher education.

Section 2: Duties of constituent institutions

Decision

The regulations to commence section 2 of the act, which creates duties in relation to freedom of speech and academic freedom on constituent institutions of registered HE providers, were made on 28 April 2025 for commencement on 1 August 2025.

Rationale

In the context of academic freedom and freedom of speech, it is particularly important to be clear that the duties in the act fall not only on the governing bodies of HE providers, but also on their constituent institutions.

We have therefore made regulations to commence this provision from 1 August 2025, to put beyond doubt that constituent institutions are subject to the same duties and routes of redress regarding freedom of speech and academic freedom as HE providers.

Further information

The duties of the governing body of a constituent institution of an HE provider under these sections of the act do not affect the application of registration conditions imposed on the HE provider under the 2017 act.

Overview of existing key provisions

Section 2 inserts section A4 of the act into the 2017 act, which provides that the following duties apply to the governing body of a provider's constituent institutions (e.g., a college, school or hall within an HE provider), in the same way as they apply to the governing body of the HE provider:

- Section 1, A1: Duties to take steps to secure freedom of speech
- Section 1, A2: Code of practice
- Section 1, A3: Duty to promote the importance of freedom of speech and academic freedom

Sections 3 and 7: Duties of students' unions and regulation of duties of students' unions

Decision

Sections 3 and 7 of the act, which impose direct duties in relation to freedom of speech on students' unions of HE providers eligible for financial support, and on the OfS in relation to those students' unions, will, subject to securing an appropriate legislative vehicle and to its Parliamentary process, be repealed in their entirety. This section is not currently in force.

There is one exception: the definition of 'students' union' in section A5(6), will be commenced on 1 August 2025. This is because students' unions are referred to in the code of practice provisions in section 1 of the act which will be commenced on 1 August 2025, and the term therefore needs to be defined in the legislation.

Rationale

We believe that students' unions are not equipped to deal with the financial, regulatory and legal implications of the provisions in the act, in terms of funding, resources or expertise. Most students' unions' primary source of funding is HE provider block grant funding, which is often used to fund staffing costs. A monetary penalty or award of damages could have a significant impact on the services and support for its students that a students' union provides.

In addition, the vast majority of students' unions in England and Wales are already regulated as charities by the Charity Commission. One of the Charity Commission's statutory objectives is to promote compliance by charity trustees with their legal duties. In the case of students' unions, these duties include furthering their educational charitable purposes for the public benefit. The Charity Commission recognises that freedom of speech within the law is an important element in furthering educational charitable purposes by enabling discussion and debate.

Some stakeholders shared the view that students' unions could operate in a new and complex regulatory and legal environment because they already operate in such a regulatory environment. However, we disagree with this assessment: making students' unions separately and additionally subject to OfS monitoring, regulation and monetary penalties would be a very significant additional burden.

We have also heard the argument that what constitutes reasonably practicable steps to secure freedom of speech would be adjusted to reflect the resources available to a students' union and that the burden on them would therefore be proportionate to their resources and expertise. However, we do not agree that this sufficiently reduces the issues that the new duties would cause for students' unions.

The implications for students' unions of the new statutory tort in the act would also be serious. Students' unions would be required to act based on their assessment of what constitutes reasonably practicable steps and what is lawful and unlawful speech on issues that are sometimes finely balanced, with the risk of claims for damages.

We believe that students' unions can be much better and more appropriately incentivised and supported to protect freedom of speech through duties on HE providers, which have levers to secure compliance, including often through control of their funding and the premises available to them. We expect HE providers to work very closely with their students' unions to secure freedom of speech.

We will be taking the steps outlined on page 7 to strengthen and clarify the duties on HE providers in the act, including the duty to take reasonably practicable steps to ensure that their students' unions follow their codes of practice.

The OfS already has powers to require HE providers to give it the information it needs for the exercise of its functions under its condition of registration F3 (Provision of information to the OfS). Therefore, we will remove the duty on the OfS in new section 8A(3) of the 2017 act, inserted by section 6 of the act, to put in place a condition of registration that HE providers must keep the OfS informed of its students' unions. In our view there is no need to duplicate an existing OfS power.

The OfS's guidance on HE provider duties, which has been published ahead of the main provisions coming into force on 1 August 2025, includes material on how HE providers should fulfil their duties in relation to students' unions, including those set out in new section A2 of the 2017 act concerning codes of practice.

Overview of existing key provisions

Section 3 (Duties of students' unions), inserting sections A5 and A6 into the 2017 act, and section 7 (Regulation of duties of students' unions) inserting section 69B into the 2017 act, set out the specific freedom of speech duties that would apply to students' unions at an HE provider that is eligible for financial support under section 39 of the 2017 act. They also set out how the OfS would monitor and regulate students' unions' compliance with those duties.

Section A5: Duty to take steps to secure freedom of speech

A students' union at an HE provider that is eligible for financial support must take steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take to secure freedom of speech within the law for:

- members of the students' union
- students of the HE provider,
- staff of the students' union
- staff and members of the HE provider and its constituent institutions
- visiting speakers

This includes securing that the use of any premises occupied by the students' union, the terms on which such premises are provided, or affiliation to the students' union, is not denied on the grounds of:

- for an individual, their lawful ideas or opinions
- for a society or other body, its lawful policy or objectives or its members' ideas or opinions

Students' unions must also secure that, apart from in exceptional circumstances, the use of premises occupied by students' unions by an individual or body is not provided on terms requiring them to bear some or all of the security costs.

Section A6: Code of practice

A students' union at an HE provider that is eligible for financial support must maintain a code of practice in relation to freedom of speech. The requirements are similar to those on an HE provider in relation to their code of practice in new section A1 of the 2017 act which is inserted by section 1 of the act. The students' union must bring the code to the attention of all of its members who are students of the HE provider at least once a year.

Section 69B: Functions of the OfS in relation to students' unions, including:

- the OfS must monitor whether students' unions are complying with their duties
- the OfS may impose a monetary penalty on a students' union if it appears to the OfS that it is failing or has failed to comply with any of its duties
- the Secretary of State may make regulations about matters to which the OfS must, or must not, have regard to in imposing monetary penalties
- the OfS must maintain a list of students' unions to which the duties set out in A5 and A6 apply, and make that list publicly available
- students' unions to which A5 and A6 apply must provide the OfS with such information for the purposes of the OfS performing its functions

In addition, section A7, Civil claims for breach of duty, sets out that staff, students, members or external speakers may bring a civil claim for damages against a students' union where it has failed to fulfil its duties under sections A5 and A6 of the act. Further information can be found in Section 4: Civil claims on pages 15 and 16.

Section 4: Civil claims

Decision

Section 4, which creates a new route for staff, students and external speakers to bring a civil claim against HE providers, constituent institutions or students' unions for a breach of their duties under new sections A1 and A5 of the 2017 act, will, subject to securing an appropriate legislative vehicle and to its Parliamentary process, be repealed in its entirety. This section is not currently in force.

Rationale

We believe that the new statutory tort would have negative impacts on the HE sector, which should be focussing on improving quality, protecting public money, supporting disadvantaged students and financial sustainability. The implementation of the tort might create a chilling effect on freedom of speech on campus, with HE providers becoming more risk-averse in inviting challenging or controversial speakers on campus for fear they could end up in court.

The potential impact of legal proceedings and the financial consequences for HE providers (and their constituent institutions and students' unions) of breaching their duties under the act might lead some to prioritise protecting speech that is hateful or degrading unduly over the interests of those who feel harassed or intimidated, where these issues are finely balanced.

Finally, there are other avenues of redress already available, including judicial review, employment tribunal and the OIA complaints scheme for students. Once changes have been made to the OfS complaints scheme and it has been implemented, it will also offer a route of redress for staff, non-student members and external speakers.

Further information

Some stakeholders have questioned whether the financial impact on the HE sector of the tort would be significant enough to justify its repeal, because the impact assessment published under the previous government in 2022 showed a relatively low additional cost to the sector of the act. However, as set out in the rationale section, the financial impact of the tort is not the only reason for seeking to repeal it.

The impact assessment focussed on the cost of complying with the new duties under the act, but in line with the Better Regulation Framework guidance, the assessment assumed all HE providers would be compliant with their new duties under the act, and therefore did not include any estimate of the potential costs of civil claims or compensation awarded under the tort.

However, there are cost implications in relation to potential claims even if HE providers are subsequently found by a court not to have breached their duties under the act. Stakeholders told us that in many cases they would need to instruct lawyers when any complaint was raised, before any associated claim arose, to advise them on the implications of that complaint. These costs would not always be recoverable, even if the HE provider was subsequently successful in court. In addition, if an HE provider loses a claim, the costs would be considerable, and the potential compensation could be significant.

Overview of existing key provisions

Section 4 amends the 2017 act to insert new section A7, which creates a statutory tort for breaches of specified freedom of speech duties. This would enable civil proceedings to be brought against an HE provider, constituent institution or students' union of an HE provider that is eligible for financial support under section 39 of the 2017 act, where a breach of its freedom of speech duties causes the claimant to suffer loss (either monetary or non-monetary).

Section A7(3) specifies a claim may only be brought if the claimant has already brought this matter to a relevant complaints scheme (operated by the OfS or the OIA), and a decision has been made as to the extent to which that complaint was justified. Where a person only seeks an injunction without also seeking damages, they do not need to have brought their complaint to a relevant scheme beforehand.

Section 5: Functions of the Office for Students

Decision

The regulations to commence section 5 of the act, which creates new duties and powers of the OfS, were made on 28 April 2025 for commencement on 1 August 2025.

Rationale

As set out in section 1 of this paper, the complex and often contested nature of free speech issues have created a difficult landscape for HE providers to navigate. Whilst we recognise these challenges, we do not believe that the importance of academic freedom, and freedom of speech more generally, have been prioritised or taken seriously in the way that they should have been at all HE providers: some have fallen short of their longstanding duties.

In our view, therefore, the HE sector would benefit from the oversight of a regulator that not only has a statutory duty to promote freedom of speech and academic freedom, but also has the power under the act to identify and disseminate best practice in responding to and resolving free speech issues. This enables HE providers to understand fully the importance of free speech and academic freedom and to learn from one another.

Overview of existing key provisions

Section 5 of the act amends the OfS's general duties in section 2 of the 2017 act to include a requirement that it must have regard to the need to:

- promote the importance of freedom of speech within the law
- protect the academic freedom of academic staff

in the provision of HE.

It also gives the OfS new powers and duties in relation to freedom of speech and academic freedom, including:

- a duty to promote the importance of freedom of speech within the law and academic freedom in the provision of HE
- a power to identify good practice about how to support freedom of speech and academic freedom and give advice about such practice to HE providers and their constituent institutions

The act also gives the Secretary of State for Education a power, by direction, to require the OfS to report on matters relating to freedom of speech and academic freedom.

Section 6: Regulation of duties of registered HE providers

Decision

Section 6 of the act, subject to securing an appropriate legislative vehicle and to its Parliamentary process, will be amended to give the OfS a power, rather than a duty, to put in place initial and ongoing conditions of registration on providers requiring all or any of the following:

- that HE providers' governing documents are consistent with compliance by the governing body of the provider with its duties under new sections A1 to A3 of the 2017 act
- that HE providers have in place adequate and effective management and governance arrangements to secure compliance by the governing body with those duties
- that HE providers comply with their duties under new sections A1 to A3 of the 2017 act

We also intend to repeal the requirement on the OfS in the act to put in place a condition of registration requiring that the governing bodies of HE providers who receive financial support to keep the OfS informed of the associations or bodies that are students' unions at the provider.

This section is not currently in force.

Rationale

Changing this provision in the act from a duty to a power for the OfS to impose either an initial or ongoing condition of registration in relation to freedom of speech and academic freedom will give the OfS flexibility in how it will apply these conditions to different categories of HE provider. The OfS and the HE sector have shared the view that a non-mandatory condition of registration leaves scope for proportionate application to a diverse sector and may avoid disproportionate or unnecessary burden.

Some stakeholders expressed concerns about whether the OfS will put in place a condition of registration if it is not required to do so: however, we fully expect the OfS to do so.

Overview of existing key provisions

Section 6 amends the 2017 act to insert new section 8A, which places a new requirement on the OfS to include in its initial and ongoing conditions of registration the requirements as set out in the Decision section.

Section 8: Complaints scheme

Decision

Section 8 of the act, which creates a new free speech complaints scheme run by the OfS, will, subject to securing an appropriate legislative vehicle and to its Parliamentary process, be amended so that:

- the OfS will have a power, rather than a duty, to consider complaints under its scheme. This will enable it to prioritise, for example, the most serious complaints or complaints on issues affecting the whole sector. We expect that the OfS and Dr Ahmed will be transparent, independent and neutral in how they prioritise consideration of those complaints.
- the OfS will not consider complaints from students (including if they are members of an HE provider solely by virtue of being or having been students of that HE provider) and will only consider complaints from staff, external speakers and non-student members. The OIA will continue to consider complaints related to free speech from HE students. This will remove duplication of complaints schemes for HE students in relation to free speech, leaving a single clear route through which they can raise concerns
- as we will seek to repeal the freedom of speech duties on students' unions, the OfS will not consider complaints about students' unions
- if an external speaker, member of staff or non-student member believes that they have suffered adverse consequences due to an HE provider not fulfilling its duty to take reasonably practicable steps to secure compliance with its code of practice (as required by new section A2(4) of the 2017 act), then it is our intention that they will be able to bring a free speech complaint to the OfS complaints scheme. We intend to put that beyond doubt through an appropriate legislative vehicle

The OfS will still be required under the act to provide a scheme under which it is to review and determine free speech complaints relating to the duties of HE providers and their constituent institutions under the act. The OfS will also still consider complaints from staff, external speakers and non-student members who claim to have suffered adverse consequences as a result of an HE provider or constituent institution breaching its duties under section A1 of the act.

This section is not currently in force.

Rationale

We want to ensure that there is a clear route of redress to a complaints scheme for individuals who believe they have suffered adverse consequences due to the governing body of a provider or constituent institution breaching their duties under new section A1 of the 2017 act.

We therefore intend to maintain the requirement of the OfS in the act to run a free speech complaints scheme. However, we are concerned that the complaints scheme in its original form may be overly burdensome and time-consuming for the OfS. It is unlikely that it would have the capacity to accept and review the anticipated number of complaints. That is why we are proposing the OfS be given a power, rather than a duty, to consider complaints under its scheme: so that it can prioritise and review complaints effectively and avoid being overwhelmed by complaints on minor issues.

We also want to remove duplication of complaints schemes for students created by the act. We believe the OIA, not the OfS, should oversee all student complaints where they relate to HE providers' duties under the act. The OIA already reviews HE students' freedom of speech related complaints, and the scheme is a well-established route that is recognised and understood by students and HE providers. The OIA notes that many of the student complaints it receives often span multiple areas of students' experiences. We therefore believe the OIA is best placed to continue overseeing complaints related to free speech from HE students, along with all other complaints from HE students. This will enable it to consider the full picture of any complaint, taking into account relevant guidance on free speech to the sector, including from the OfS.

There is also a strong record of HE providers complying with the OIA's recommendations. Keeping one route for all HE student complaints, including on free speech, is therefore a more sensible approach than having two different complaints schemes for students.

Further information

It is possible that a single incident at an HE provider could lead to separate complaints from staff to the OfS and from students to the OIA. It will therefore be very important that there is sufficient co-operation and information sharing between the OIA and the OfS to achieve a consistent approach. The 2017 act provides in section 63 that the OfS may co-operate with others where appropriate, and we will consider in detail whether this needs strengthening.

It is our intention that the OfS will not consider complaints from students once the scheme is amended, and we therefore intend to amend the definition of eligible persons within the act so that those who are members solely because they are, or were a student, are not eligible to access the OfS complaints scheme.

Some stakeholders expressed concerns that the OfS and the OIA may take different approaches to their respective free speech complaints. However, we have considered the legislative powers of the OIA and OfS and their approach to complaints, and we do not believe that the different powers or approaches of the two organisations will create significant divergence, but we will keep this under review as proposals on the scheme are developed further. The OIA will also take into account relevant guidance in the sector, including any guidance issued by the OfS on freedom of speech and academic freedom.

We will also ask the OfS to consider and then set out in requirements or guidance what fit for purpose internal complaints processes for academic freedom look like.

Overview of existing key provisions

Section 8 inserts section 69C and Schedule 6A into the 2017 act, which make provision for the OfS's free speech complaints scheme. The OfS is required to consider complaints from students, members, staff and external speakers where they believe they have suffered adverse consequences as the result of the action or inaction of the governing body of the HE provider, and it gives rise to a question as to whether the action or inaction was a breach of the duty under new section A1 of the 2017 act.

The scheme must provide that every free speech complaint that meets the criteria as set out in the act is eligible to be referred under the scheme, but the scheme may include provision that:

- complaints referred under the scheme are subject to a specific time limit
- a free speech complaint is not referred until the complainant has exhausted internal complaints procedures of the HE provider, constituent institution or students' union first

The scheme must require the OfS to:

- decide the extent to which a complaint referred under the scheme is justified
- make that decision as soon as reasonably practicable

Where the OfS deems a complaint to be vexatious or frivolous, it can dismiss it without consideration of their merits.

The scheme must provide that, where the OfS considers a complaint to be justified, it may make a recommendation, but the scheme cannot authorise the OfS to require a provider to follow its recommendation. The scheme will be free at point of use.

Section 9: Overseas funding

Decision

We are continuing to keep section 9 of the act, which introduces new functions of the OfS in relation to the monitoring of overseas funding to HE providers, under review. This is whilst we introduce alternative mitigations to support HE providers to improve international due diligence, alongside evaluating the implementation of the Foreign Influence Registration Scheme (FIRS) for the sector from 1 July. This section is not currently in force.

However, this government has decided to remove all of the direct duties in the act on students' unions, and the OfS duties in relation to students' unions, and that includes in relation to overseas funding.

Rationale

This government is committed to ensuring that our world leading HE providers are protected from undue foreign interference, which can undermine their autonomy and work to limit free speech and academic freedom. International partnerships make a significantly positive impact on the sector, our economy and society as a whole. Therefore, whilst we welcome international collaborations, we are clear they must be conducted in a way that safeguards our national security, interests and values.

HE providers may be targeted by foreign states to advance their own objectives, be they authoritarian, military or commercial. This includes concerns that students and academics are subject to intimidation, coercion or censorship when researching or studying certain international issues, as well as efforts to obtain sensitive intellectual property. There is a further risk that foreign states may seek to undermine the independence of HE providers through developing conflicts of interest and financial dependencies.

We are clear that foreign interference is unacceptable and wherever it is identified the government and the OfS can and will act. Responsibility for providers to identify and mitigate against these risks are not new, and there are a range of existing and upcoming requirements on providers to ensure that they are addressed, set out in the further information section on pages 24 to 26. This includes FIRS, which will require registration of foreign-directed activity involving specific governments and entities where it is necessary to protect the safety and interests of the UK. The scheme will provide greater visibility of foreign state influence in the UK, deter harmful covert state threat activity and increase the opportunity for earlier disruptions. For example, FIRS regulations enable the disclosure of information registered with the scheme to the wider agencies (including the DfE and OfS) where it will 'protect the safety or interests of the UK'. Where there are certain patterns, for example multiple registrations by an organisation indicating significant engagement with a specified foreign power, then this could be shared to prompt proactive engagement with an HE provider to ensure that risk management and governance is effective.

As we set out in the Secretary of State's announcement on 15 January 2025, if we are to introduce the new reporting requirements on overseas funding for HE providers in the act, we must ensure they will add value to these existing and upcoming protections, without being overly burdensome. We have engaged closely with the sector and the OfS whilst we have kept these provisions under review.

We have now concluded that more should be done to support HE providers to maximise the opportunities of international partnerships whilst appropriately and proportionately mitigating risk. However, we assess this should be done in a way that seeks to enhance due diligence arrangements more directly, whilst minimising diversion of resources away from teaching and research.

We currently assess that the overseas funding provisions may duplicate existing information gathering powers and create an unnecessary reporting and assessment burden, without setting clearer expectations of HE providers or incentivising holistic risk management arrangements for international partnerships. To achieve these aims more directly, we will:

- issue statutory guidance to the OfS to consider the value of an explicit regulatory expectation around due diligence on international partnerships, with the aim of holding HE providers accountable for ensuring effective governance in practice
- identify and promote effective codes of practice for the sector to adopt
- work to enhance practitioner expertise within the sector to understand the risks from foreign interference and share good practice

We will be commencing this work now, with a view to establishing these by the end of the financial year. However, we remain conscious that as FIRS is implemented, it may demonstrate that further reporting on financial or other international arrangements would be beneficial to improve the identification and mitigation of these risks. As a result, we will keep the overseas funding provisions in the act under review in the event that, during FIRS implementation, evidence indicates further transparency reporting is necessary.

Further information

Existing expectations and upcoming protections in relation to foreign interference in the HE sector include:

Protection or expectation	Further information on protections
To protect international research collaboration	<ul style="list-style-type: none"> • The Academic Technology Approvals Scheme² certifies certain foreign students and researchers who want to study or conduct research in specific sensitive technology-related fields • Export Controls³ apply to academics or those doing postgraduate research in fields where there is a high risk it could be used for military purposes • The National Security and Investment Act 2021⁴ grants the government powers to scrutinise and intervene in certain acquisitions made by anyone, including academic institutions, that could harm the UK's security • The Research Collaboration Advice team (RCAT), based in the Department for Science, Innovation and Technology, directly supports research institutions, through tailored advice, to identify, manage and mitigate the risks in international collaboration and embed effective practice
To protect free speech and academic freedom	The wider provisions of the act, including the requirement on governing bodies of HE providers to maintain a code of practice and, subject to legislation, the new complaints scheme and condition of registration, will further strengthen safeguarding against overseas interference in academic freedom and freedom of speech within wider responsibilities, and offer new opportunities for concerns to be escalated. Further guidance from the OfS will cover how the duties apply to international partnerships and arrangements
To help to ensure that registered providers are not overly dependent on overseas funding sources	Under registration condition D, ⁵ the OfS monitors HE providers' financial viability and sustainability, including requesting annual financial data. Where HE providers are particularly exposed to overseas funding sources, the OfS engages with them to ensure contingency plans are in place

² [Academic Technology Approval Scheme \(ATAS\)](#) (gov.uk)

³ [Export controls applying to academic research](#) (gov.uk)

⁴ [National Security and Investment Act: guidance for higher education and research-intensive sectors](#) (gov.uk)

⁵ [Condition D: Financial viability and sustainability](#) (officeforstudents.org.uk)

Protection or expectation	Further information
To tackle concerns regarding harassment, including as per the Protection from Harassment Act 1997	The OfS are introducing a new condition of registration from 1 August 2025 which will set requirements of HE providers in relation to protecting students from harassment, and addressing and investigating incidents of harassment of all kinds
To provide greater transparency on activity in the UK directed by foreign governments	From 1 July 2025, the government is implementing FIRS, which will provide greater visibility of foreign state influence in the UK, deter harmful covert state threat activity and increase the opportunity for earlier disruptions. HE providers, academics, student societies and unions could be in scope where they are in registerable arrangements with foreign states. ⁶ This provides transparency, regulatory intelligence and a disruption tool for law enforcement where arrangements are not transparent
To protect the independence and autonomy of the decision making of HE providers	<p>HE providers registered with the OfS are required under ongoing condition E2⁷ to have adequate and effective management and governance arrangements and must ensure that decisions are taken without direction, coercion, or covert influence. This will include in relation to international partnerships</p> <p>Most HE providers and students' unions are charities, and therefore also subject to legal obligations under charity law and principles. These include responsibilities to act in the best interests of the charity, manage any conflicts of interest and ensure accountability. There are also rules regarding what type of political activity they may participate in. The OfS is the principal regulator for those HE providers that are exempt charities, rather than the Charity Commission</p>

As noted on page 13, under its existing condition of registration F3,⁸ the OfS can request any information from HE providers to support its regulatory functions. This includes information pertaining to overseas funding, where it assists them to perform its functions. The OfS also maintains a public notifications system and if students, staff or members of the public believe that an HE provider is not meeting the OfS's requirements, they can notify the OfS directly. The OfS

⁶ [Sector-specific guidance on the Foreign Influence Registration Scheme \(FIRS\): academia and research sector](#) (gov.uk)

⁷ [Condition E2: Management and governance](#) (officeforstudents.org.uk)

⁸ [Condition F3: Provision of information to the OfS](#) (officeforstudents.org.uk)

carefully considers notifications to determine whether it is necessary to intervene and use its regulatory powers.

With regard to students' unions, many are registered with the Charity Commission directly. Where they meet certain financial thresholds, students' unions registered with the Charity Commission are required to submit a full annual return, providing insights into income including from overseas sources.

Overview of existing key provisions

Section 9 inserts section 69D and section 69E into the 2017 act. These sections require the OfS to monitor the overseas funding of HE providers, constituent institutions and students' unions, with a view to assessing the extent to which overseas funding presents a risk to freedom of speech and, for HE providers and constituent institutions, academic freedom. This duty on the OfS includes a duty to consider, where the OfS has found a breach by an HE provider or constituent institution of the duties in A1 of the act, whether overseas funding was relevant to the breach.

It also includes a duty on HE providers and students' unions to provide information to the OfS on their overseas funding above a threshold set by the Secretary of State.

Section 10: Director for Freedom of Speech and Academic Freedom

Decision

Section 10 of the act, which created the role of Director for Freedom of Speech and Academic Freedom on the OfS board, has been in force since August 2023.

Rationale

We believe that maintaining the role of the Director is crucial not only to signal the importance of this policy area in higher education, but also to ensure that there is a dedicated champion for free speech and academic freedom, with the profile and powers to bring about change. This role is critical to embedding a strong culture of academic freedom and, more broadly, freedom of speech across the HE sector.

Retaining the role of the Director for Freedom of Speech and Academic Freedom ensures the OfS's successful delivery of this work.

Overview of existing key provisions

The role of the OfS Director for Freedom of Speech and Academic Freedom is set out in section 10 (that amends Schedule 1 to the 2017 act). The Director is responsible for:

- overseeing the performance of the OfS's free speech functions
- performing any of those functions, or any other OfS functions delegated to the Director
- reporting to the OfS board on the OfS's performance of the free speech functions

Next steps

As set out in the Executive Summary, regulations were made by the Secretary of State on 28 April 2025 commencing sections 1, 2 and 5 of the act, adding in new sections A1, A2, A3, A4 and 69A to the 2017 act from 1 August 2025.

The Office for Students has published guidance to help HE providers to meet their new duties coming into force from 1 August 2025. The OfS has also published a summary of the responses to its consultation of 26 March 2024 alongside its finalised guidance.

We will start the activities set out on pages 24 and 25 in relation to overseas funding and keep the commencement of the overseas funding provisions in the act under review throughout implementation of FIRS.

Regarding the other provisions set out in this policy paper that the Secretary of State does not intend to commence pending their repeal or amendment through primary legislation, the intention is to keep these decisions under review whilst we seek a suitable legislative vehicle and until the Parliamentary process is complete.

In the meantime, we will finalise the precise details and aims of the amendments and repeals needed to achieve the policy decisions and aims set out in this paper.

Annex A – Equality impact assessment

The Public Sector Equality Duty (PSED), as set out in section 149 of the Equality Act 2010, requires public authorities to consider how the decisions they make might affect people with different protected characteristics, and requires them to have due regard to three aims:

- eliminate unlawful discrimination, harassment, victimisation and any other unlawful conduct prohibited by the act
- advance equality of opportunity between people who share and people who do not share a relevant protected characteristic
- foster good relations between people who share and people who do not share a relevant protected characteristic

A detailed EIA was undertaken to consider how those with protected characteristics might be affected by any of the options that were considered for the future of the act from August to December 2024. We have continued to keep the PSED under review since producing the detailed EIA and will continue to do so as the proposals outlined in this paper are developed and implemented.

The EIA drew upon available evidence of how freedom of speech and academic freedom are experienced by those with protected characteristics. It also considered anecdotal evidence from stakeholders with protected characteristics compiled during the stakeholder engagement exercise in relation to the act, including in relation to sex, gender reassignment, religion and race.

It also drew upon analysis undertaken at the time of the introduction of the Higher Education (Freedom of Speech) Bill (the bill) in May 2021, and subsequent research, including HEPI's Student Academic Experience Surveys for 2022, 2023 and 2024, and student characteristic data collected as part of the OfS's 2024 National Student Survey.

The EIA considered the impact on those with specific protected characteristics if the act was to be implemented in its original form; if the act was repealed; and if the act was partially commenced with the remaining elements either amended, repealed or kept under review. The impact of these three options were assessed for each of the following protected characteristics:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity

- race
- religion or belief
- sex
- sexual orientation

The EIA considered the potential impacts, both positive and negative, on all protected characteristics, of undertaking certain actions. For example, commencing the provisions that would expand free speech duties might advance equality of opportunity for those with protected characteristics who do not currently feel able to share their views. They might also foster good relations between those with protected characteristics and those without by ensuring all groups are aware of other groups' rights to share their views. Conversely, expanding these duties may lead to more open expression of views which could have a negative impact on those who currently face elevated levels of lawful but offensive comments related to their protected characteristics. They could also potentially lead to increased unlawful harassment against groups with specific protected characteristics.

Conclusion

The EIA's overall conclusion was that the impacts of different options are finely balanced, which is broadly the same as the conclusion of the EIA conducted at the time the bill was introduced in Parliament in May 2021. Some form of tension will always exist in the context of free speech and academic freedom in higher education between carefully balancing different groups' free speech and the impact on groups with protected characteristics. However, implementing some expanded duties and routes of redress would overall be positive for many groups with protected characteristics and for equality of opportunity.

Arrangements will be in place to monitor the ongoing equalities impacts of provisions in the act on those with protected characteristics and beliefs once implemented. Monitoring will be via a range of data sources. These sources include research conducted by mission groups and universities, the National Student Survey, any complaints data from the Office for the Independent Adjudicator and the OfS (once the OfS complaints scheme is implemented), data from the EHRC Regulation Hub and any issues and trends identified via departmental correspondence and stakeholder engagement.

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