



Higher Education (Freedom of Speech) Bill

HL Bill 30 of 2022–23

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On 28 June 2022, the second reading of the [Higher Education \(Freedom of Speech\) Bill](#) is scheduled to take place in the House of Lords.

Freedom of speech in higher education refers to the ability of staff, students and visiting speakers to express any lawful views. Academic freedom is the ability to put forward new ideas and controversial or unpopular opinions.

Reported breaches of freedom of speech take a number of forms, including ‘no platforming’ and ‘safe spaces’. The Joint Committee on Human Rights said that such breaches were “not pervasive”. However, the government and others have argued that collectively they create a “chilling effect” that has reduced students’ confidence to exercise freedom of speech.

A range of existing legislation and regulation governs freedom of speech in higher education. The government has argued that this is overly complex and contains gaps, such as that victims of breaches cannot obtain redress. In February 2021, the government issued a white paper containing proposed remedial measures. The bill largely reflects the paper through:

- requiring higher education providers (HEPs) and students’ unions to maintain a code of practice on freedom of speech
- a new category of tort, to allow a person to bring a civil case against an HEP or students’ union for a breach of its duties
- new powers and duties for the Office for Students (OfS), the regulator for HEPs in England, including a complaints scheme and a director for freedom of speech and academic freedom

The Labour Party opposed the bill in the House of Commons, arguing that there had been only a small number of incidents where free speech was threatened and that these could be dealt with through existing legislation. It was concerned the new tort could lead to vexatious claims against HEPs.

Several government amendments were made during the bill's Commons stages. These included: bringing the colleges of Oxford, Cambridge and Durham Universities within the scope of the bill; requiring the OfS to monitor whether overseas funding presents risks to freedom of speech; and providing that HEPs should oversee the activities of their students' unions.

No opposition amendments were made. Those defeated on division included steps that were intended to limit the extent to which the director for freedom of speech and academic freedom could be a political appointment.

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1. Purpose of the bill

1.1 Government's aims

The May 2022 Queen's Speech said that the government would bring forward legislation to "strengthen academic freedom and free speech in universities in England".¹ The 2019 Conservative Party general election manifesto also promised measures in these areas.²

The Queen's Speech background briefing said the bill would contribute to "a culture of open and robust intellectual debate".³ It proposed that:

- students' unions should be required to secure lawful freedom of speech for their members and others, including visiting speakers
- academic staff should "feel safe to question and test received wisdom and put forward new ideas and controversial or unpopular opinions"
- staff, students and visiting speakers should be able to seek redress if they suffer a loss as a result of institutions breaching their duties to secure freedom of speech and academic freedom

1.2 Government's definitions of academic freedom and freedom of speech

A 2021 white paper on free speech in higher education (discussed further in section 4) said that the two concepts of freedom of speech and academic freedom were "related but distinct".⁴ It defined freedom of speech, or free expression, as the right to "lawfully express views". In a higher education context, the paper said this includes the rights of students and staff to

¹ Prime Minister's Office, '[Queen's Speech 2022: Background briefing notes](#)', 10 May 2022, p 131.

² Conservative Party, '[Conservative Party manifesto 2019](#)', November 2019, p 37.

³ Prime Minister's Office, '[Queen's Speech 2022: Background briefing notes](#)', 10 May 2022, p 131.

⁴ Department for Education, '[Higher education: Free speech and academic freedom](#)', 16 February 2021, CP 394, p 10.

express their political views without fear of censorship.

The white paper then defined academic freedom as:

[...] primarily concerned with the ability of academics to question and test perceived wisdom and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs or privileges they may have at the higher education provider.⁵

The government added that academic freedom extended to higher education institutions as well as individuals; for example, to enable them to resist external pressures to influence curricula.

The government has emphasised that free speech and academic freedoms are not absolute but are freedoms “within the law”.⁶ In other words, these freedoms are restricted by other laws. Unlawful speech might include speech that provokes violence, amounts to discrimination or harassment, or which might draw people into terrorism.⁷ However, the law does not prohibit speech which others may find upsetting or offensive.⁸

1.3 Why does the government believe free speech in higher education should be protected?

The white paper defended the concept of free speech and its importance in higher education providers (HEPs):

Free speech is fundamental to liberty and underpins our liberal,

⁵ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 10.

⁶ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 10.

⁷ House of Commons Library, ‘[Higher Education \(Freedom of Speech\) Bill: Progress of the bill](#)’, 28 April 2022, p 7.

⁸ Joint Committee on Human Rights, ‘[Freedom of speech in universities](#)’, 27 March 2018, HL Paper 111 of session 2017–19, p 3.

democratic society. Our universities have a long and proud history of being a space where views may be freely expressed and debated. Historically, they have been a crucible where ideas, tested and explored, have fuelled the progress of freedom and emancipation. All staff and students should feel safe to challenge conventional wisdom by putting forward and discussing ideas that may be controversial, unpalatable, or even deeply offensive.⁹

Thus, the government argued that “any activities at HEPs that seek to limit lawful free speech and academic expression are unacceptable in all but a limited number of circumstances”.¹⁰

2. Reported breaches of freedom of speech and academic freedom

In the background briefing for the 2022 Queen’s Speech, the government said that the bill was responding to examples of freedom of speech and academic freedom being curtailed in the higher education sector.¹¹ Similarly, the 2021 white paper said there was “a growing body of evidence” that suggested some staff and students “may feel unable to express their cultural, religious or political views without fear of repercussion”.¹²

Reported breaches of freedom of speech take a number of forms, which are summarised in this section.

2.1 No platforming

Formally, ‘no platforming’ is a policy introduced by the National Union of Students (NUS) to prevent individuals or groups with known racist or fascist

⁹ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 7.

¹⁰ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 7.

¹¹ Prime Minister’s Office, ‘[Queen’s Speech 2022: Background briefing notes](#)’, 10 May 2022, p 132.

¹² Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 9.

views from speaking at NUS events.¹³ The NUS currently lists six “extremist” organisations in its no platform policy.¹⁴

However, the phrase is now used more generally to mean, as academic Claudia Hyde described, “a form of activism on university campuses that typically involves a student group denying a platform to a controversial speaker”.¹⁵ She cited an example of former Home Secretary Amber Rudd being disinvited from the Oxford Union shortly before she was due to appear.¹⁶ Other examples include protestors shutting down a talk by “controversial” speakers Carl Benjamin and Yaron Brook.¹⁷

A 2018 report by the Joint Committee on Human Rights (JCHR) on freedom of speech in universities noted “incidents of unacceptable intimidatory behaviour by protestors intent on preventing free speech and debate”.¹⁸ It stated that no platforming could also occur if excess bureaucracy in relation to organising events, such as a requirement to submit speeches in advance, prevents them from going ahead.¹⁹ However, the committee was encouraged that many universities were willing to fund security to enable events to go ahead, if necessary.²⁰

The NUS has argued that preventing students from staging protests, such as those involved in incidents of no platforming, could harm freedom of speech for those students and potential endanger them.²¹

¹³ House of Commons Library, [‘Free speech in universities: What are the issues?’](#), 19 March 2021.

¹⁴ National Union of Students, [‘Articles and rules’](#), accessed 22 June 2022.

¹⁵ Claudia Hyde, [‘Do “no platform” policies violate freedom of expression?’](#), London School of Economics, 18 May 2021.

¹⁶ BBC News, [‘Amber Rudd “no platformed” by Oxford University society’](#), 6 March 2020.

¹⁷ King’s College London Students’ Union, [‘Libertarian Society event’](#), 6 March 2018.

¹⁸ Joint Committee on Human Rights, [‘Freedom of speech in universities’](#), 27 March 2018, HL Paper III of session 2017–19, p 3.

¹⁹ Joint Committee on Human Rights, [‘Freedom of speech in universities’](#), 27 March 2018, HL Paper III of session 2017–19, p 44.

²⁰ Joint Committee on Human Rights, [‘Freedom of speech in universities’](#), 27 March 2018, HL Paper III of session 2017–19, p 40.

²¹ National Union of Students, [‘Academic freedom must mean freedom to protest’](#), 7 March 2022.

Research conducted by the higher education policy organisation Wonkhe indicated that no platforming was not a widespread problem.²² It found that in the 2019–20 academic year, six events out of almost 10,000 involving an external speaker were cancelled, four of which were due to paperwork not being completed on time.

2.2 Safe spaces

The JCHR said that ‘safe space’ policies are:

Guidelines produced by student unions that aim to encourage an environment on campus free from harassment and fear. They seek to restrict the expression of certain views or words that can make some groups feel unsafe.²³

The JCHR said that safe spaces have proved “problematic”, often “marginalising the views of minority groups”.²⁴ In particular, it received evidence that such policies can restrict the expression of groups with unpopular but legal views. However, the University of Cambridge has said that safe spaces play “an important role in aiding the retention and supporting the progression of under-represented groups, for example by combatting potential isolation and loneliness”.²⁵

2.3 Trigger warnings

Trigger warnings provide notice about possibly upsetting subject matter,

²² Patrick O’Donnell et al, ‘[Taking the debate forward: A new code to secure and champion freedom of speech and political diversity on campus](#)’, Wonkhe, 1 February 2021, p 8.

²³ Joint Committee on Human Rights, ‘[Freedom of speech in universities](#)’, 27 March 2018, HL Paper 111 of session 2017–19, p 27.

²⁴ Joint Committee on Human Rights, ‘[Freedom of speech in universities](#)’, 27 March 2018, HL Paper 111 of session 2017–19, pp 28–9.

²⁵ University of Cambridge, ‘[Written evidence from the University of Cambridge \(FSU0059\)](#)’, 18 December 2017.

such as the nature of views being expressed.²⁶ Again, it has been argued that they may act to limit free speech and the free exchange of ideas.²⁷ However, guidance issued by the Equality and Human Rights Commission in February 2019 stated that trigger warnings “may help to facilitate free speech by enabling balanced debate to take place without causing harassment”.²⁸ The commission said that trigger warnings allow people who might find the views offensive or distressing can make an informed decision to stay or leave.

2.4 Prevent duty

HEPs are required to abide by the provisions of the ‘prevent strategy’ that aims to prevent individuals being drawn into terrorism. This is known as the ‘prevent duty’.²⁹ It derives from the Counter-Terrorism and Security Act 2015.

A director of the human rights organisation Liberty has stated that the prevent duty was the “biggest threat to free speech on campus”.³⁰ For example, she quoted a study that found the duty “produced wariness among Muslim and non-Muslim students about participating in research on religion, freedom of speech and campus life”.³¹

The JCHR report also suggested that there was “fear and confusion” over what the prevent duty entails, possibly inhibiting free speech.³²

²⁶ Kevin Rawlinson, [‘Trigger warnings OK but no platforming may be illegal, universities warned’](#), Guardian, 2 February 2019.

²⁷ Index of Censorship, [‘Battle over free speech: Are trigger warnings, safe spaces and no platforming harming young minds?’](#), 19 November 2018.

²⁸ Equality and Human Rights Commission, [‘Freedom of expression: A guide for higher education providers and students’ unions in England and Wales’](#), 2 February 2019, p 43.

²⁹ Home Office, [‘Prevent duty guidance: For higher education institutions in England and Wales’](#), 1 April 2021.

³⁰ Corey Stoughton, [‘Free speech and censorship on campus’](#), Higher Education Policy Institute, June 2019, p 36.

³¹ Corey Stoughton, [‘Free speech and censorship on campus’](#), Higher Education Policy Institute, June 2019, p 23.

³² Joint Committee on Human Rights, [‘Freedom of speech in universities’](#), 27 March 2018, HL Paper 111 of session 2017–19, p 3.

However, in its report on the prevent duty from the 2017–18 academic year, the Office for Students (OfS) said that it had “not seen any evidence that has caused us concern that providers are not appropriately balancing their free speech obligations with the prevent duty”.³³

2.5 Campaigns against individual academics

Some academics have been the subject of campaigns against their expressed views. For example, Professor Kathleen Stock of the University of Sussex resigned from her role following protests against her views on gender identity.³⁴ Professor Nigel Biggar of Oxford University attracted what was described as “online mobbing” for a research project on colonisation.³⁵ Professor Biggar was reported as saying that “the probability is I would not hold a public meeting” about his work because he believed it was likely to be disrupted by hostile students.³⁶ A group of fellow Oxford academics who criticised Professor Biggar stated that they supported the principle of free speech, and felt they had been “vilified” for arguing “from evidence against the national-populist mood”.³⁷

2.6 “Chilling effect”

The 2018 JCHR report found that examples of threats to free speech, such as those described above, were “not a pervasive problem” but consisted of a “small number of incidents which have been widely reported”.³⁸ However, the JCHR also said that those incidents that do occur were “serious” and

³³ Office for Students, [‘Prevent monitoring accountability and data returns 2017/18: Frequently asked questions’](#), accessed 21 June 2022, p 2.

³⁴ Eleanor Lawrie, [‘Free speech row prof Kathleen Stock: Protests like anxiety dream’](#), BBC News, 3 November 2021.

³⁵ Dominic Kennedy, [‘Academics accused of “stirring up mob” against Nigel Biggar in free speech row’](#), Times (£), 28 December 2017.

³⁶ Damian Whitworth, [‘Bloody new battle of British Empire as 60 dons write open letter to Nigel Biggar’](#), Times (£), 23 December 2017.

³⁷ James McDougall, [‘The history of empire isn’t about pride—or guilt’](#), Guardian, 3 January 2018.

³⁸ Joint Committee on Human Rights, [‘Freedom of speech in universities’](#), 27 March 2018, HL Paper 111 of session 2017–19, p 20.

“unacceptable”. It said they, and the reporting of them, could have a wider “chilling effect” in restricting students’ confidence to exercise freedom of speech.

The government also cited the chilling effect as part of its case for legislation in its 2021 white paper. It said the evidence that “a significant proportion of students are self-censoring in relation to lawful views” was the most concerning of the issues around free speech in higher education.³⁹

The JCHR said the chilling effect was “hard to measure”.⁴⁰ However, a study by King’s College London found “a clear chilling effect at play”, with one in four students scared to express their views openly.⁴¹

3. Existing legal framework around free speech

The existing legal and regulatory framework relating to freedom of speech and academic freedom in higher education derives from a range of legislation, regulations and guidance.⁴²

3.1 Education (No 2) Act 1986

Section 43 of the Education (No 2) Act 1986 is the main element of the existing legal framework for protecting free speech at HEPs.⁴³ It requires HEPs to take steps to ensure that freedom of speech within the law is secured for members, students, employees and visiting speakers.⁴⁴ The law

³⁹ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 20.

⁴⁰ Joint Committee on Human Rights, ‘[Freedom of speech in universities](#)’, 27 March 2018, HL Paper 111 of session 2017–19, p 20.

⁴¹ Jonathan Grant et al, ‘[Freedom of expression in UK universities](#)’, Policy Institute at King’s College London, December 2019, p 14.

⁴² Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, pp 12–16.

⁴³ [Education \(No 2\) Act 1986](#), s 43.

⁴⁴ [Explanatory notes](#), p 6.

specifically provides that academic staff should be free to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without risking their jobs or privileges.

Other provisions of the 1986 act include that HEPs must:⁴⁵

- Maintain a code of practice that promotes freedom of speech. The code must contain certain other elements, such as the procedures to be followed by students and staff when organising meetings and activities taking place on an HEP's premises, including in students' unions.
- Take reasonable steps, including through disciplinary measures, to secure compliance with the code of practice.
- Ensure that use of the HEP's premises is not denied to any individual or body because of their beliefs, views, policy or objectives.

3.2 Office for Students

The Office for Students (OfS) is the regulator for HEPs in England.⁴⁶ It received its formal powers in January 2018 as a result of the passing of the Higher Education and Research Act 2017.⁴⁷

All HEPs wishing to access public funding for further education must be on a register maintained by the OfS and must comply with the OfS's registration conditions.⁴⁸ These include the need to abide by various 'public interest governance principles', including two that seek to protect academic freedom

⁴⁵ Department for Education, '[Higher education: Free speech and academic freedom](#)', 16 February 2021, CP 394, p 12.

⁴⁶ House of Commons Library, '[Higher Education \(Freedom of Speech\) Bill 2021 \[Bill No 12 of 2021-22\]](#)', 18 May 2021, p 4.

⁴⁷ Department for Education and Office for Students, '[New universities regulator comes into force](#)', 8 January 2018.

⁴⁸ Office for Students, '[Registration with the OfS: Frequently asked questions](#)', accessed 21 June 2022, p 2.

and freedom of speech.⁴⁹ The OfS said that the registration conditions ensure that all registered HEPs have “adequate and effective management and governance arrangements” around free speech.⁵⁰

The OfS may intervene where it considers that a provider has breached, or is at risk of breaching, its conditions. The office has sanctions available to it, including fines and, ultimately, de-registering the HEP.⁵¹

3.3 Other aspects of legal and regulatory framework

Students’ unions are established as charities and therefore must abide by **charity law**.⁵² The government has said that there are likely to be steps that the Charity Commission could take where a students’ union is blocking free speech. However, the government stated that to date there has been “little regulatory intervention in this area”.

The government has stated that **employment law** is also relevant to academic freedom.⁵³ It said this is because a majority of academic staff have a term in their employment contracts protecting their right to such freedom.

The European Convention on Human Rights, incorporated into UK law in the **Human Rights Act 1998**, also contains relevant provisions.⁵⁴ These include rights to freedom of thought and conscience, freedom of expression and freedom of assembly and association.

⁴⁹ Office for Students, ‘[Public interest governance principles](#)’, 3 February 2022.

⁵⁰ Joint Committee on Human Rights, ‘[Freedom of speech in universities: Responses](#)’, 13 July 2018, HL paper 162 of session 2017–19, p 22.

⁵¹ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 13.

⁵² Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 15.

⁵³ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 14.

⁵⁴ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 14.

The government has said that certain requirements in the **Education Act 1994** make HEPs responsible for some activities relating to students' unions.⁵⁵ For example, HEPs are required to bring the provisions of the Education (No 2) Act 1986 to the attention of students' unions. HEPs must also ensure that students' unions are run in a "fair and democratic manner".

The **Education Reform Act 1988** states that HEPs should ensure that academic staff have the freedom to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges that they may have at their institutions.⁵⁶

HEPs are also required to abide by the **prevent duty**, described in section 2.4 above.⁵⁷ Requirements include having procedures in place to manage events on the organisation's premises and ensuring that platforms are not provided for those who encourage terrorism or invite support for proscribed terrorist organisations. The prevent duty is imposed and governed by the Counter-Terrorism and Security Act 2015.

The **Office of the Independent Adjudicator for Higher Education (OIA)** administers an existing complaints system for students.⁵⁸

4. Why does the government want to change the framework?

In the February 2021 white paper, the government set out a number of issues that it believed were restricting free speech in HEPs in England.

⁵⁵ Department for Education, '[Higher education: Free speech and academic freedom](#)', 16 February 2021, CP 394, p 14.

⁵⁶ House of Commons Library, '[Higher Education \(Freedom of Speech\) Bill 2021 \[Bill No 12 of 2021-22\]](#)', 18 May 2021, p 6.

⁵⁷ Home Office, '[Prevent duty guidance: For higher education institutions in England and Wales](#)', 1 April 2021.

⁵⁸ Office of the Independent Adjudicator, '[About us](#)', accessed 21 June 2022.

4.1 Clarity of framework and lack of redress

The white paper quoted the 2018 Joint Committee on Human Rights (JCHR) report on freedom of speech in universities, which stated that the regulatory regime around freedom of speech was “overly complex”.⁵⁹ The government also argued that little regulatory action had been taken by the OfS under the current regime, despite a “significant number of concerning incidents”.⁶⁰

In addition, the government said there were gaps in the current framework, particularly the lack of a clear means of enforcement of breaches of the 1986 act. The government reported that, at present, action could only be brought through a judicial review of an HEP’s decision, but that this allowed only discretionary remedies and no scope for damages claims.⁶¹

The government said the proposals in the white paper and the bill were intended to strengthen and bring clarity to the legal framework by ensuring that:

HEPs, students’ unions, students, staff and visiting speakers are completely clear on their rights and responsibilities and individuals are able to seek redress where they believe their rights have been unlawfully breached.⁶²

⁵⁹ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 7. Section 5.1 contains a summary of the LCHR’s recommendations.

⁶⁰ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, pp 13–14.

⁶¹ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, pp 12 and 16. The government noted that damages may be awarded if the action also infringes other rights, for example under the Human Rights Act 1998.

⁶² Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 8.

4.2 Limited regulation of students' unions

The government stated that the 1986 act does not apply to students' unions. Further, it said the OfS has no power to regulate or sanction students' unions, other than indirectly through their HEP.⁶³ The government argued that, in practice, HEPs have little influence over students' unions.

As described in section 3.3 above, students' unions must abide by charity law. However, the JCHR said that Charity Commission guidance was “unduly complicated and cautious”.⁶⁴ The committee found that this may deter speech that is lawful and “does not take adequate account of the importance of debate in a university setting”.

The committee noted that the Charity Commission had promised to review its approach.⁶⁵ Subsequently, in November 2018, the commission published updated guidance.⁶⁶ The commission stated its position had not changed but that the “tone” of the guidance had been amended so that it “stresses what charities can do”. For example, the guidance said that students' unions would need to show that any event on their premises was for the benefit of their members and contributed to their purposes. The guidance stated that this would include ensuring that speakers and ideas are open to challenge.

4.3 Staff contracts and recruitment processes

While most academic staff have employment contracts that contain protections for academic freedom, the government stated these were

⁶³ Department for Education, '[Higher education: Free speech and academic freedom](#)', 16 February 2021, CP 394, pp 12 and 17.

⁶⁴ Joint Committee on Human Rights, '[Freedom of speech in universities](#)', 27 March 2018, HL Paper 111 of session 2017–19, p 3.

⁶⁵ Joint Committee on Human Rights, '[Freedom of speech in universities](#)', 27 March 2018, HL Paper 111 of session 2017–19, p 37.

⁶⁶ Aarti Thakor, '[Freedom of speech helps charity, and society thrive—but it's not an absolute right](#)', Charity Commission, 19 November 2018.

inconsistent and did not apply to all staff.⁶⁷ In particular, they may not cover staff who are not directly employed, for example visiting fellows. In addition, the government said there was insufficient protection around staff being able to exercise academic freedom without affecting their recruitment and promotion prospects.

4.4 Influence of overseas organisations

The 2021 white paper stated that one possible source of restrictions on free speech was “financial pressure from overseas states or partners”.⁶⁸ The paper described “documented examples of foreign interference in our universities, and related attempts to undermine academic freedom and freedom of speech”.⁶⁹

5. Policy reports

The February 2021 white paper quoted reports by the Joint Committee on Human Rights (JCHR), King’s College London and the thinktank Policy Exchange in support of its policy proposals.

5.1 Joint Committee on Human Rights

Committee report

The JCHR’s 2018 report welcomed the OfS’s “strong support” of free speech.⁷⁰ However, it recommended that the office should set up an accessible way for students to report incidents of issues relating to free

⁶⁷ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 30.

⁶⁸ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 22.

⁶⁹ Department for Education, ‘[Higher education: Free speech and academic freedom](#)’, 16 February 2021, CP 394, p 8.

⁷⁰ Joint Committee on Human Rights, ‘[Freedom of speech in universities](#)’, 27 March 2018, HL Paper 111 of session 2017–19, p 5.

speech.⁷¹ The committee also proposed that the OfS should report annually on free speech at HEPs, including naming institutions that were non-compliant.

The JCHR asked the government to consider whether the OfS, rather than the Charity Commission, should regulate students' unions.⁷²

The committee recommended an independent review of the prevent duty and particularly its impact on free speech for Muslim students.⁷³

The JCHR welcomed government plans to hold a summit on free speech in higher education settings. It said that the government should ensure all relevant bodies were involved and that it resulted in “coherent, consistent and accessible” guidance being issued by January 2019.⁷⁴

The JCHR said it did not propose or support any significant legislative changes.⁷⁵

As an annex to the report, the committee published detailed guidance for HEPs and students organising events.⁷⁶ It said this was based around the following five principles:

- Everyone has the right to free speech within the law.

⁷¹ Joint Committee on Human Rights, '[Freedom of speech in universities](#)', 27 March 2018, HL Paper III of session 2017–19, p 41.

⁷² Joint Committee on Human Rights, '[Freedom of speech in universities](#)', 27 March 2018, HL Paper III of session 2017–19, p 47.

⁷³ Joint Committee on Human Rights, '[Freedom of speech in universities](#)', 27 March 2018, HL paper III of session 2017–19, p 5.

⁷⁴ Joint Committee on Human Rights, '[Freedom of speech in universities](#)', 27 March 2018, HL paper III of session 2017–19, p 42.

⁷⁵ Joint Committee on Human Rights, '[Letter to Gavin Williamson MP, secretary of state for education, ref Higher Education \(Freedom of Speech\) Bill](#)', 24 June 2021, p 2.

⁷⁶ Joint Committee on Human Rights, '[Free speech: Guidance for universities and students organising events](#)', 27 March 2018, Annex to HL Paper III of session 2017–19.

- Universities should seek to expose their members and students to the widest possible range of views, as long as they remain within the law.
- Where the organisers of an event at which a speaker breaks the law might reasonably have suspected that this could happen, the organisers might themselves have broken the law.
- Protest is a legitimate expression of free speech but must not shut down debate.
- Students should not be deterred from organising events by overly bureaucratic procedures.

Government's response

The government's response welcomed the committee's recognition of the importance of freedom of speech in universities.⁷⁷ It noted that the then universities minister, Sam Gyimah, had chaired a "free speech summit" on 3 May 2018.⁷⁸ At the summit, relevant bodies had agreed to produce, by autumn 2018, "a shared piece of guidance to ensure there is a clear and common understanding of the legal responsibilities, rules and regulations around free speech". This guidance was published in February 2019.⁷⁹

The government said the committee did not consider the "culture" in universities.⁸⁰ In particular, the government said there was a "deeply concerning tendency" in some places to "reject any viewpoints which do not conform to what is 'fashionable' or 'socially acceptable'". The government said this threatened diversity of thought, and therefore also the "free and frank exchange of ideas" at HEPs.

⁷⁷ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 7.

⁷⁸ A list of attendees at the event can be found at: Department for Education, '[Sam Gyimah hosts free speech summit](#)', 3 May 2018.

⁷⁹ Equality and Human Rights Commission, '[Free speech to be protected at university](#)', 2 February 2019.

⁸⁰ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 8.

In relation to the committee's call for an independent review of the prevent duty, the government said that it had set up a wider independent review through the Commission for Countering Extremism. The commission reported in February 2021.⁸¹ It found that the UK's laws have "simply failed to keep pace with the evolving threat of hateful extremism", citing new threats such as the growth of the 'incel' subculture and far-right extremism.⁸² Accordingly, it recommended that government should commission work to devise a new legal framework to counter extremist activity.⁸³

In response to the committee's call to consider moving the regulation of students' unions from the Charity Commission to the OfS, the government said it remained appropriate that students' unions were treated as charities and regulated by the commission.⁸⁴ However, the government said it supported the commission and the OfS working closely together on issues related to free speech.

Office for Students' response

In its response, the OfS said it was concerned by evidence that students were being dissuaded from putting on events that other groups might wish to contest.⁸⁵ The OfS said it would "champion" free speech.

The OfS argued that annual reports provided by HEPs on their duties under

⁸¹ Commission for Countering Extremism, '[Commission for Countering Extremism publishes legal review](#)', 24 February 2021.

⁸² Commission for Countering Extremism, '[Operating with impunity: Hateful extremism: The need for a legal framework](#)', 24 February 2021, p 14. 'Incel' stands for "involuntary celibate" and has been used to refer to "deeply misogynistic" men who often hold extreme views and may use physical violence: Eleanor Halls, '[Who are the "incels"? The involuntary celibates who want women punished](#)', GQ Magazine, 25 April 2018.

⁸³ Commission for Countering Extremism, '[Operating with impunity: Hateful extremism: The need for a legal framework](#)', 24 February 2021, p 90.

⁸⁴ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 18.

⁸⁵ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 21.

the prevent scheme should not be published, because this could lead to the OfS's ability to monitor the prevent duty being compromised.⁸⁶ However, the office said it would publish a sector-level summary of the reports.

In relation to wider reporting on free speech issues at universities, the OfS again disagreed that it should provide an annual summary, as it said developments were unlikely to warrant reporting so frequently.⁸⁷ However, it said that it might report on the subject "from time to time". The OfS also stated that it was not planning to "name and shame" HEPs where free speech was being suppressed, but that it would publish any incidents where it had taken regulatory action.

The OfS said that HEPs should retain the option to ask for an advance copy of a speech from a speaker as a possible means of reducing risk in some instances.⁸⁸ These might include if the speaker had not given an assurance that the speech would be lawful.

In response to the recommendation that students should have an accessible means to provide feedback on free speech issues, the OfS stated that there were already a number of options available to students.⁸⁹ It said these included feedback channels at individual institutions, the National Union of Students and, ultimately, the Office of the Independent Adjudicator.

The OfS supported the government's view that the Charity Commission was the appropriate body to regulate students' unions.⁹⁰

⁸⁶ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 22.

⁸⁷ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 24.

⁸⁸ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 10.

⁸⁹ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 24.

⁹⁰ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 25.

Charity Commission's response

The Charity Commission's response stated that HEPs and students' unions in England and Wales are subject to charity law.⁹¹ It said such law, and the commission's jurisdiction, does not include a duty to promote or protect free speech. Nevertheless, it reported that it was reviewing aspects of its guidance to ensure it reflected aspects of charity law that touch on freedom of speech. The commission said it works closely with the OfS, including in delivering joint training sessions to universities and students' unions.⁹²

The commission said that its guidance did provide clarity for charities' trustees.⁹³ However, it noted that it did not produce specific guidance for charities in particular sectors, such as higher education, because it was responsible for regulating charities in many sectors. Nevertheless, the commission said it would "bear the committee's comments in mind when we review our guidance". It also noted that it carried out "outreach" activities specifically for students' unions, aimed at improving unions' understanding of their legal duties and responsibilities.

The commission said it was not for it to provide a view on whether students' unions were regulated by it or by another body. However, it stated that if students' unions remained charities, they would need to continue to comply with charity law, regardless of the body that was overseeing them.⁹⁴

⁹¹ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 26.

⁹² Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 28.

⁹³ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 30.

⁹⁴ Joint Committee on Human Rights, '[Freedom of speech in universities: Responses](#)', 13 July 2018, HL paper 162 of session 2017–19, p 33.

5.2 King's College London

In December 2019, the Policy Institute at King's College London published a study of students' views on freedom of expression.⁹⁵ The study found that only a minority of students were aware of incidents where freedoms had been restricted in their institutions. It also said that most students were "broadly supportive" of how their university supports freedom of expression. Respondents were also more concerned about freedom of speech in wider society, including on social media, than at their HEP.

However, the study found some evidence of a chilling effect, as a quarter of students said they were reluctant to express their views for fear of repercussions. The report said that those with right-leaning political views were more likely to feel this way than those with left-wing opinions.

5.3 Policy Exchange

In November 2019, the thinktank Policy Exchange published a survey of UK undergraduates.⁹⁶ It found that between 30% and 50% of students were "consistently supportive of academic freedom".⁹⁷ It also said there was evidence of a chilling effect; for example, that only 39% of students who supported Brexit said that they would be comfortable espousing that view in class.

In August 2020, Policy Exchange published a survey of UK-based academics.⁹⁸ The survey found that UK academics are "significantly more left-leaning" politically than previously. The authors suggested this was

⁹⁵ Jonathan Grant et al, '[Freedom of expression in UK universities](#)', Policy Institute at King's College London, December 2019.

⁹⁶ Tom Simpson and Eric Kaufmann, '[Academic freedom in the UK](#)', Policy Exchange, 11 November 2019.

⁹⁷ Tom Simpson and Eric Kaufmann, '[Academic freedom in the UK](#)', Policy Exchange, 11 November 2019, p 5.

⁹⁸ Remi Adekoya et al, '[Academic freedom in the UK: Protecting viewpoint diversity](#)', Policy Exchange, 3 August 2020.

leading to a “structural discriminatory effect” against those who identify as right-wing. Again, Policy Exchange said this led to a chilling effect whereby right-wing academics were led to “conceal their views and narrow their research questions to conform to prevailing norms”.

In other areas, the survey found that free speech had stronger support. For example, it said that campaigns to have academics dismissed for expressing dissenting views were “highly unrepresentative” of the views of academia as a whole.⁹⁹

Recommendations from the two Policy Exchange reports included actions for government, universities, the OfS and “civil society organisations”.¹⁰⁰ For government, Policy Exchange recommended that it introduce legislation in the area, with measures such as:

- establishing a position of director for academic freedom within the senior team of the OfS
- setting out that HEPs have a direct duty to protect academic freedom
- making HEPs liable in tort for breaches of freedom of speech or academic freedom
- extending the statutory duty to protect freedom of speech to students’ unions

For universities, the thinktank suggested they should adopt a statement committing themselves to academic freedom, similar to the ‘Chicago principles’.¹⁰¹ It also proposed that each HEP should appoint an ‘academic freedom champion’.

⁹⁹ Remi Adekoya et al, ‘[Academic freedom in the UK: Protecting viewpoint diversity](#)’, Policy Exchange, 3 August 2020, p 8.

¹⁰⁰ Tom Simpson and Eric Kaufmann, ‘[Academic freedom in the UK](#)’, Policy Exchange, 11 November 2019, p 6; and Remi Adekoya et al, ‘[Academic freedom in the UK: Protecting viewpoint diversity](#)’, Policy Exchange, 3 August 2020, pp 13–14.

¹⁰¹ The Chicago principles can be found at: University of Chicago, ‘[Report of the committee on freedom of expression](#)’, accessed 15 June 2022.

For the OfS, recommendations included that it should appoint a “national academic freedom champion” with the power to investigate cases and develop sanctions where appropriate.

Finally, for civil society, Policy Exchange said that academic freedom should be included as a criterion in the international rankings of universities. It also argued that there should be an “academic freedom charter organisation”, set up as an independent charity, to award ‘kitemarks’ to HEPs that demonstrate a “commitment to political anti-discrimination and viewpoint diversity”.¹⁰²

6. Provisions of the bill

The provisions of the bill largely reflect the concerns and remedies discussed in the February 2021 white paper. Certain amendments, discussed in section 7, were made during the bill’s progress through the Commons.

This section provides a summary of the provisions of the bill.¹⁰³

6.1 Clauses 1 to 3: Duties to protect freedom of speech

These clauses propose new duties on HEPs, their constituent institutions and students’ unions to uphold freedom of speech and academic freedom.

Clause 1 would amend the Higher Education and Research Act 2017 to specify that the governing body of a registered HEP should take steps to secure freedom of speech within the law for staff, students, members and visiting speakers. It would specify that use of an HEPs premises could not be denied on the grounds of a person’s ideas, beliefs or views. HEP providers

¹⁰² Remi Adekoya et al, ‘[Academic freedom in the UK: Protecting viewpoint diversity](#)’, Policy Exchange, 3 August 2020, p 14.

¹⁰³ Further details can be found in the House of Commons Library’s briefings for the bill: House of Commons Library, ‘[Higher Education \(Freedom of Speech\) Bill 2021](#)’, 18 May 2021; and House of Commons Library, ‘[Higher Education \(Freedom of Speech\) Bill: Progress of the bill](#)’, 28 April 2022.

would also not be able to require individuals or groups to pay for security for events on its premises.

Clause 1 would also specify that an HEP's governing body must secure the academic freedom of their staff. For example, it would need to ensure that staff could question received wisdom and put forward controversial or unpopular opinions without repercussions for their jobs or their promotion prospects at the HEP. Similarly, people applying to be members of staff should not have their applications adversely affected by having put forward such views.

The government has stated that the duties described in the previous two paragraphs are similar to those currently contained in the Education (No 2) Act 1986.¹⁰⁴

The bill would require each HEP to prepare a code of practice setting out how it will meet the duties contained in this clause. The bill sets out certain requirements for the code. These include that it must contain a statement of the HEP's values in relation to free speech. It also specifies certain details that the code must contain; for example, the procedures to be followed when organising events and meetings that may have implications for freedom of speech. The bill states that HEPs should take steps to ensure compliance with the code, including disciplinary procedures if necessary.

Finally, clause 1 would impose a duty on HEPs to promote the importance of freedom of speech and academic freedom.

Clause 2 would ensure that the provisions of clause 1 apply to “constituent institutions” of HEPs. This would ensure that, for example, the colleges of Oxford, Cambridge and Durham Universities were within the scope of the bill.

Clause 3 would impose similar requirements on students' unions as

¹⁰⁴ [Explanatory notes](#), p 8.

clause 1 would impose on HEPs. These include maintaining a code of practice setting out how the students' union would comply with its duties under the act and putting in place measures to secure compliance with the code.

6.2 Clause 4: Redress: A new category of tort

Clause 4 would specify that a person may bring civil proceedings against an HEP, a constituent institution or a students' union for a breach of its duties under clauses 1 to 3. This clause is designed to create a new statutory tort for breaches of freedom of speech and to enable individuals to seek redress for losses suffered as a result of those breaches.¹⁰⁵

6.3 Clauses 5 to 10: Functions of the Office for Students

These clauses would revise and increase the functions of the OfS in relation to free speech.

Clause 5 would provide the OfS with a general duty to uphold and promote freedom of speech and academic freedom. The OfS would also be empowered to identify examples of, and give advice on, good practice in the area. The clause would provide the government with the power to direct the OfS to report on matters related to free speech either in its annual report or in a special report.

Clause 6 would require the OfS to ensure that registered institutions have put in place the measures set out in clause 1 and that they have governance arrangements to ensure compliance with those duties.

Clause 7 would bring students' unions within the regulatory remit of the OfS in relation to their free speech duties. For example, the OfS would be required to monitor whether students' unions were complying with the

¹⁰⁵ [Explanatory notes](#), p 10.

duties under clause 3 and impose monetary penalties if not. It would provide the government with powers to set the applicable fines and to specify matters that the OfS must, or must not, have regard to in imposing them. Clause 7 would also require students' unions to provide information to the OfS to enable it to perform its duties under the clause.

Clause 8 would require the OfS to set up a complaints scheme to investigate claims of breaches of the duties of HEPs, constituent institutions or students' unions as set out in clauses 1 to 3. The clause describes various details of the operation of the scheme; for example, that it must be free for complainants. The clause also describes the remedies that the OfS could recommend if it upheld a complaint; for example, monetary compensation or reinstating the complainant's job.

Clause 9 would require the OfS to monitor whether overseas funding of HEPs and their constituent institutions presents risks to freedom of speech or academic freedom. In this context, funding may include endowments, gifts, research grants or commercial partnerships. The bill states that "overseas funding" could be support provided by other governments; a body incorporated or registered overseas; or an individual who is a politically exposed person in relation to an overseas country.¹⁰⁶ The government would be permitted to make regulations to set a threshold above which overseas funding should be declared to the OfS.

Clause 9 would also require the OfS to monitor whether overseas funding of students' unions presented risks to free speech. Again, students' unions would be required to provide information to OfS about overseas funding above a specified level, to be set by government through regulations.

At report stage in the House of Commons, the government said that the threshold for reporting overseas funding would be £75,000.¹⁰⁷

¹⁰⁶ Politically exposed persons are people that have been appointed by a community institution, an international body or a state to a high-profile position within the last 12 months: Law Society, '[Politically exposed persons](#)', 19 December 2019.

¹⁰⁷ [HC Hansard, 13 June 2022, col 73.](#)

Clause 10 would require the OfS to establish a “director for freedom of speech and academic freedom”. The postholder would be responsible for overseeing OfS’s duties under this bill.

In a July 2021 letter to the JCHR, the then secretary of state for education, Gavin Williamson, said that following royal assent the OfS will consult on and issue detailed guidance on changes to the regulatory framework for HEPs and on the new duties of students’ unions.¹⁰⁸

6.4 Clauses 11 to 13: General provisions

Clause 11 would introduce a schedule that sets out “minor and consequential amendments” to other legislation that would arise because of the bill.

Clause 12 describes the bill’s territorial extent. The various acts that include provisions covering freedom of speech in higher education—such as those summarised in section 3—extend and apply to different areas of the UK.¹⁰⁹ However, the government has stated that the substantive provisions of the bill apply only to England.¹¹⁰ Education is a devolved policy area.¹¹¹

Clause 13 contains the bill’s commencement provisions and its short title. The main provisions would be brought into force by regulations made by the secretary of state.

Clause 14 contains the bill’s short title.

¹⁰⁸ Department for Education, ‘[Letter to Harriet Harman MP, chair of the Joint Committee on Human Rights, ref Higher Education \(Freedom of Speech\) Bill](#)’, 7 July 2021.

¹⁰⁹ [Explanatory notes](#), p 7.

¹¹⁰ [Explanatory notes](#), p 7.

¹¹¹ Department for Levelling Up, Housing and Communities et al, ‘[Guidance on devolution](#)’, 28 September 2020.

7. Commons stages

7.1 Second reading

Second reading in the House of Commons took place on 12 July 2021.¹¹²

Opening the debate, the then secretary of state for education, Gavin Williamson, said that it would strengthen the legal duties protecting lawful free speech and would ensure that robust action would be taken if they were breached.¹¹³

He argued that there were “too many instances where people feel as if they cannot speak as freely as they wish”, but also that the bill was about defending the “principles” of free speech and academic freedom. He said the main reasons the bill was needed were that existing legislation provided no clear means of enforcement and that individuals had no specific right to compensation for breaches of freedom of speech.¹¹⁴

Speaking for the opposition, the shadow secretary of state for education, Kate Green, said that there had been only a small number of incidents where free speech was threatened and that these could be dealt with through existing legislation.¹¹⁵ Therefore, she said she could not understand why the government thought the bill was necessary. Further, she suggested that, rather than simplifying the legal and regulatory framework in the area, the bill could create further complexity by duplicating legal duties and operating in parallel with existing processes.

Ms Green also argued the bill could make universities liable for damages if they prevented, for example, holocaust deniers or anti-vaccination campaigners from speaking at their institutions. As such, she said the bill

¹¹² [HC Hansard, 12 July 2021, cols 46–126.](#)

¹¹³ [HC Hansard, 12 July 2021, col 49.](#)

¹¹⁴ [HC Hansard, 12 July 2021, col 49.](#)

¹¹⁵ [HC Hansard, 12 July 2021, cols 54 and 56.](#)

would “enshrine legal protections for harmful and divisive speech”.¹¹⁶

Other Labour MPs suggested that the bill was part of a government “culture war”.¹¹⁷

A Labour amendment to prevent the bill’s passage was defeated by 367 votes to 216.¹¹⁸

The House of Commons Library’s updated briefing on the bill contains further commentary on second reading and committee stages in the Commons:

- House of Commons Library, [‘Higher Education \(Freedom of Speech\) Bill: Progress of the bill’](#), 28 April 2022, pp 11–28

Some of the major themes discussed across these debates were:¹¹⁹

- **Evidence of free speech issues:** the extent to which there was an issue that needed to be solved by the bill.
- Whether the bill adequately covered **online as well as in-person events**. The government said it expected this to be covered by guidance, but it would keep the issue under consideration.
- Whether the provisions around **academic freedom applied only in an academic’s “field of expertise”**, or more generally.
- Whether the requirements on students’ unions should extend to **students’ unions of constituent institutions**. The government said the bill’s provisions do not cover such bodies because they were overseen by their constituent institution and so it would be “unnecessary and overly bureaucratic” to include them. Opposition

¹¹⁶ [HC Hansard, 12 July 2021, col 57.](#)

¹¹⁷ [HC Hansard, 12 July 2021, cols 105–115.](#)

¹¹⁸ [HC Hansard, 12 July 2021, cols 122–5.](#)

¹¹⁹ House of Commons Library, [‘Higher Education \(Freedom of Speech\) Bill: Progress of the bill’](#), 28 April 2022, pp 11–28.

MPs argued that this “differing treatment” of these student bodies was unfair to the rest of the higher education sector.

- Whether the **new statutory tort would give rise to vexatious claims** against universities, which Labour argued might restrict freedom of speech if HEPs became more risk-averse when inviting speakers.

7.2 Committee stage

Committee stage took place between 7 September 2021 and 21 September 2021. Twenty-six amendments and one new clause, all put forward by the government, were added to the bill. These amendments had the effect of including ‘constituent institutions’ of higher education providers, including the colleges of Oxford, Cambridge and Durham Universities (but not their students’ unions) within the scope of the bill.¹²⁰

7.3 Carry-over motion

A carry-over motion was passed without division on 25 April 2022, allowing proceedings on the bill to resume in the 2022–23 session.¹²¹

During the debate on the motion, the shadow minister for further education and universities, Matt Western, said the amount of time that had passed since the bill was first introduced to the Commons suggested it was “not that important after all”.

In response, the minister for higher and further education, Michelle Donelan, said the Government remained committed to delivering on its manifesto pledge to strengthen freedom of speech in higher education.

¹²⁰ [HC Hansard, 13 June 2022, col 71.](#)

¹²¹ [HC Hansard, 25 April 2022, cols 549–50.](#)

7.4 Report stage

Report stage took place in the House of Commons on 3 June 2022.¹²²

Amendments made

One new clause, put forward by the government, was added to the bill without division.¹²³ This is the current clause 9, which would require the OfS to monitor whether overseas funding of HEPs, their constituent institutions and students' unions presents risks to freedom of speech or academic freedom. Ms Donelan said that while the government welcomed foreign investment and donations to higher education, the amendments would “increase the transparency of overseas income”.¹²⁴ As mentioned in section 6.3, Ms Donelan stated the government would set the threshold for reporting of overseas funding at £75,000.

Other government amendments, also made without division, included:¹²⁵

- Removing the restriction that academic freedom only applied in an academic's field of expertise.
- Specifying that HEPs, colleges and student unions could not pass on security costs for events unless in exceptional circumstances. Ms Donelan said this would prevent “no-platforming by the back door”. An HEP's code of practice would be required to set out what exceptional circumstances would apply.
- Providing that the duties on HEPs and colleges extend to overseeing the activities of their students' unions, including junior and middle common rooms of colleges.

¹²² [HC Hansard, 13 June 2022, cols 64–114.](#)

¹²³ House of Commons, '[Votes and proceedings](#)', 13 June 2022, p 1.

¹²⁴ [HC Hansard, 13 June 2022, col 73.](#)

¹²⁵ House of Commons, '[Higher Education \(Freedom of Speech\) Bill \(report stage decisions\)](#)', 13 June 2022.

- Setting out further details of how the complaints scheme would operate; for example, that the OfS would not be required to make a decision on a complaint that was withdrawn.

Amendments not made

Two amendments moved by Labour were defeated on division. The first would have set certain restrictions and procedures around the appointment of the OfS's director for freedom of speech and academic freedom; for example, that they could not have made a political donation in the previous three years and that their appointment should be made by an independent advisory panel. This amendment was defeated by 282 votes to 150.¹²⁶

The second would have added additional detail to the definition of 'academic freedom' within the bill. For example, it would have explicitly included the freedom to conduct research, criticise any institution and be a member of a trade union. This amendment was defeated by 284 votes to 152.¹²⁷

Other amendments not called included one that would have added a sunset clause to the bill.

7.5 Third reading

Third reading was taken immediately after report stage on 13 June 2022 and was passed without division.¹²⁸

8. Estimated costs associated with the bill

The government has said that the costs of the additional duties imposed on the OfS would be met through HEPs' registration fees or "other fees

¹²⁶ [HC Hansard, 13 June 2022, cols 105–8.](#)

¹²⁷ [HC Hansard, 13 June 2022, cols 109–11.](#)

¹²⁸ [HC Hansard, 13 June 2022, cols 114–20.](#)

imposed by the OfS in accordance with regulations to be made by the secretary of state”.¹²⁹ It also said the OfS could recover the costs of an investigation from an HEP or students’ union if the complaint is found to be justified.

The government estimated that the additional costs for HEPs, constituent institutions and students’ unions as a result of the measures in the bill could be around £5.2mn per year. ¹³⁰ At report stage in the Commons, the Labour Party argued that this excluded the costs associated with legal actions brought under the new tort, which it said could be costly.¹³¹

9. External comments on the bill and its policy proposals

Universities UK, a body that speaks collectively for UK universities, welcomed “the bill’s shift from protecting free speech and academic freedom to more active and visible promotion within the sector”.¹³² It called for clarification in three areas of the bill:

- how it will interact with existing legislation and duties in the area and with proposals to reform the Human Rights Act 1998¹³³
- what safeguards would be available to ensure the new statutory tort does not lead to universities having to defend themselves against vexatious or frivolous claims
- the role of the new OfS complaints scheme and its director for freedom of speech and academic freedom, in relation to the Office of the Independent Adjudicator (OIA)

¹²⁹ [Explanatory notes](#), p 15.

¹³⁰ [Explanatory notes](#), p 15. Further details on the cost estimates can be found at: Department for Education, ‘[Higher Education \(Freedom of Speech\) Bill: Updated impact assessment](#)’, 14 June 2022.

¹³¹ [HC Hansard, 13 June 2022, col 118](#).

¹³² Universities UK, ‘[Higher Education \(Freedom of Speech\) Bill: Universities UK parliamentary briefing—report stage and third reading](#)’, June 2022.

¹³³ A [Bill of Rights Bill](#), intended to repeal and replace the 1998 act, was laid before Parliament on 22 June 2022.

The OIA has expressed concern that creating a new complaints system for freedom of speech grievances, alongside that already offered by the office, would cause confusion.¹³⁴

Alison Scott-Baumann, an academic and co-author of a 2021 book on the subject, argued that the two key issues stifling free speech in universities were the Charity Commission’s approach to monitoring students’ unions’ activities and the prevent strategy.¹³⁵ She suggested that rather than a free speech champion, the sector required principles that set out an “etiquette of argument” in designated spaces where difficult issues were being discussed.

The thinktank the Higher Education Policy Institute (HEPI) recently published the results of a survey that suggested students have become more in favour of restrictions on free speech since 2016.¹³⁶ For example, the institute found that amongst students in 2022:

- 61% said that “when in doubt” their own university “should ensure all students are protected from discrimination rather than allow unlimited free speech”, an increase from 3% in 2016.
- When presented with a list of 15 political parties, including the English Defence League, the Communist Party and the mainstream parties, only 13% said none of the parties should be banned from speaking at events on campus, a fall from 28% in 2016.
- 20% said they should be able to stop an event they don’t like from happening, an increase from 8% in 2016.
- 86% supported trigger warnings and 62% supported safe space policies, both increases from 2016.

¹³⁴ Office of the Independent Adjudicator, ‘[OIA response to Higher Education \(Freedom of Speech\) Bill](#)’, 12 May 2021.

¹³⁵ Alison Scott-Baumann, ‘[A new “free speech champion” may end up doing the opposite](#)’, Guardian, 17 February 2021. Ms Scott-Baumann’s book is: Alison Scott-Baumann and Simon Perfect, ‘Freedom of Speech in Universities: Islam, Charities and Counter-terrorism’, 2021.

¹³⁶ Nick Hillman, ‘[“You can’t say that!”—new polling shows students want more controls on free expression](#)’, Higher Education Policy Institute, 23 June 2022.

- 36% thought academics should be sacked if they “teach material that heavily offends some students”, a rise from 15% in 2016.
- 48% of students support the proposal to establish a ‘free speech champion’ in HEPs; 23% disagreed and 29% were uncertain.

HEPI questioned “whether it is healthy to stifle free debate to the degree many students seem to want”. However, it argued that the issue was “challenging to tackle” because of the inherent complexities in the debate about free speech. Because of these, the institute suggested that new regulation might have the opposite effect to that intended, by exacerbating the “culture war”. Instead, it recommended that HEPs should “beef up” existing procedures; for example, by reviewing existing codes of practice; providing students with more information during welcome weeks; and ensuring events featured a balance of speakers.

The Friedrich-Alexander-Universität in Germany produces a rating of academic freedom for countries around the world.¹³⁷ In its latest update, it argued that academic freedom in the UK had shown a “substantial, statistically significant” fall in academic freedom between 2011 and 2021. The report did not provide further details on why this was the case.

10. Read more

- Office for Students, ‘Freedom of speech’, accessed 17 June 2022
- Robert Van der Noort, ‘From the vice-chancellor: Use your hard-won freedoms’, University of Reading, 5 May 2022
- Emma Yeomans, ‘Cambridge dons balk at giving “mutual respect”’, Times (£), 15 June 2022
- Charles Moore, ‘[The HR machine is undermining free speech](#)’, Telegraph (£), 21 June 2022
- Nicola Woolcock, ‘China research ties “damaged by vague security guidelines”, say UK academics’, Times (£), 22 June 2022

¹³⁷ Friedrich-Alexander-Universität Institute of Political Science, ‘[Academic freedom index: Update 2022](#)’, March 2022.

- Bahram Bekhradnia, '[The white paper on free speech is intellectually flimsy](#)', Higher Education Policy Institute, 17 March 2021

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