

SCHEDULE

Section 11

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

HIGHER EDUCATION AND RESEARCH ACT 2017

- 1 The Higher Education and Research Act 2017 is amended as follows.
- 2 (1) Section 2 (general duties of the OfS) is amended as follows.
- (2) In subsection (4), after “providers” insert “and the academic freedom of academic staff at such providers”.
- (3) After subsection (7) insert—
- “(7A) Guidance given by the Secretary of State to the OfS which relates to students’ unions must apply to students’ unions generally or to a description of them.”
- (4) In subsection (8)—
- (a) at the end of paragraph (a) insert “and”;
- (b) in paragraph (b), omit the final “and”;
- (c) omit paragraph (c).
- 3 In section 14 (public interest governance condition), omit subsection (7).
- 4 (1) Section 36 (duty to protect academic freedom) is amended as follows.
- (2) In the heading, for “academic freedom” substitute “institutional autonomy”.
- (3) In subsection (1), for “academic freedom” substitute “institutional autonomy”.
- (4) In subsection (2), for “freedoms mentioned in subsection (8)(b) and (c)” substitute “freedom mentioned in subsection (8)(b)”.
- 5 (1) Section 67B (publication of decision to conduct or terminate investigation) is amended as follows.
- (2) In subsection (3), for “Section 67C does not apply” substitute “Neither section 67C nor paragraph 13 of Schedule 6A applies”.
- (3) After subsection (3) insert—
- “(3A) In the application of this section to publication of a decision under the scheme provided by virtue of Schedule 6A (free speech complaints scheme)
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- (a) references to an investigation (however expressed) are to a review of a free speech complaint under the scheme;
- (b) for the purposes of subsection (2)(a), the OfS terminates an investigation without making a finding if it—
- (i) does not make a decision as to whether a free speech complaint is justified because the complaint is withdrawn, or
- (ii) dismisses a free speech complaint without considering its merits;

Status: This is the original version (as it was originally enacted).

- (c) for the purposes of subsection (2)(b), the findings of an investigation do not result in the OfS taking any further action only where—
- (i) the OfS decide that a complaint is wholly not justified, or
 - (ii) the OfS decide that a complaint is justified (wholly or partly) but do not make any recommendations about the person about which the complaint is made.”
- 6 In section 67C (protection for defamation claims) after subsection (2) insert—
- “(3) This section does not apply to the publication of—
- (a) a decision or recommendation made by the OfS under the scheme provided by virtue of Schedule 6A, or
 - (b) a report under paragraph 12(1)(b) of that Schedule.
- (See instead paragraph 13 of Schedule 6A.)”
- 7 (1) Section 73 (costs recovery) is amended as follows.
- (2) In subsection (1), for “a provider” substitute “a registered higher education provider, or a students’ union,”.
- (3) After that subsection insert—
- “(1A) The OfS may, by notice, require the governing body of a registered higher education provider or of a constituent institution of such a provider, or a students’ union, in relation to which the OfS has decided under provision made by virtue of paragraph 6 of Schedule 6A that a free speech complaint is justified (wholly or partly), to pay the costs incurred by the OfS in relation to making the decision up to the date of notification.”
- (4) In subsection (2)(a), after “section 15” insert “or 69B”.
- (5) In subsection (4)—
- (a) for ““The”” substitute “In subsection (1), “the””;
 - (b) after “provider” insert “or students’ union”;
 - (c) in paragraph (a), after “penalty” insert “under section 15 or 69B”.
- (6) After that subsection insert—
- “(4A) In subsection (1A), “the date of notification” means the date on which the OfS notified the provider, constituent institution or students’ union of its decision under provision made by virtue of paragraph 8 of Schedule 6A.”
- 8 In section 74 (grants from Secretary of State), in subsection (3), after “providers” insert “and the academic freedom of academic staff at such providers”.
- 9 (1) Section 75 (regulatory framework) is amended as follows.
- (2) In subsection (3)—
- (a) in paragraph (a), omit the final “and”;
 - (b) after paragraph (b) insert “, and
 - (c) guidance for students’ unions to which sections A5 and A6 apply on their duties under those sections.”
- (3) In subsection (7), after “The guidance” insert “under subsection (3)(b)”.
- (4) After subsection (7) insert—

Status: This is the original version (as it was originally enacted).

“(7A) Guidance under subsection (3)(c) must include guidance for the purpose of helping to determine whether or not students’ unions are complying with their duties under sections A5 and A6.

(7B) The guidance under subsection (3)(c) may in particular specify—

- (a) what the OfS considers students’ unions need to do to comply with their duties under sections A5 and A6;
- (b) factors which the OfS will take into account in determining, for the purposes of section 69B, whether or not a students’ union is complying with its duties under those sections.”

(5) In subsection (8)—

- (a) in paragraph (b), omit the final “and”;
- (b) after paragraph (b) insert—
 - “(ba) in relation to guidance under subsection (3)(c), such bodies appearing to the OfS to represent the interests of students’ unions as the OfS considers appropriate, and”.

10 In section 77 (Secretary of State directions), in subsection (2), after “providers” insert “and the academic freedom of academic staff at such providers”.

11 (1) Section 85 (other definitions) is amended as follows.

(2) In subsection (1)—

- (a) before the definition of “an access and participation plan condition” insert—
““academic freedom” has the meaning given by subsection (6);”;
- (b) after the definition of “a fee limit condition” insert—
““constituent institution”, in relation to a registered higher education provider, has the same meaning as in Part A1 (see section A4(4));”;
- (c) after the definition of “foundation degree only authorisation” insert—
“references to freedom of speech have the same meaning as in Part A1 (see section A1(13));”;
- (d) after the definition of “the institutional autonomy of English higher education providers” insert—
““member”, in relation to a registered higher education provider or a constituent institution of such a provider, has the same meaning as in Part A1 (see sections A1(13) and A4(4));
“member”, in relation to a students’ union which is a representative body and not an association (see section 20(1)(b) of the Education Act 1994), means those whom it is the purpose of the union to represent, excluding any student who has signified that they do not wish to be represented by it;”;
- (e) after the definition of “registered higher education provider” insert—
““registered higher education provider that is eligible for financial support” means a registered higher education provider that is an eligible higher education provider for the purposes of section 39;”;
- (f) after the definition of “sector-recognised standards” insert—
““students’ union”, in relation to any institution, has the same meaning as it has in Part 2 of the Education Act 1994 in relation to establishments to which that Part applies (see section 20 of that Act);”.

Status: This is the original version (as it was originally enacted).

- (3) After subsection (5) insert—
- “(6) In this Part, “academic freedom”, in relation to academic staff at an institution, means their freedom within the law—
- (a) to question and test received wisdom, and
- (b) to put forward new ideas and controversial or unpopular opinions, without placing themselves at risk of being adversely affected in any of the ways described in subsection (7).
- (7) Those ways are—
- (a) loss of their jobs or privileges at the institution;
- (b) the likelihood of their securing promotion or different jobs at the institution being reduced.”
- 12 (1) Schedule 1 (the Office for Students) is amended as follows.
- (2) In paragraph 2 (membership), in sub-paragraph (1)—
- (a) in paragraph (c), omit the final “and”;
- (b) after paragraph (c) insert—
- “(ca) the Director for Freedom of Speech and Academic Freedom, and”.
- (3) In paragraph 3 (Director for Fair Access and Participation)—
- (a) in sub-paragraph (1), in the opening words, for “(“the Director”)” substitute “(“the Access and Participation Director”)”;
- (b) in sub-paragraphs (1)(b) and (2), for “Director” substitute “Access and Participation Director”;
- (c) in sub-paragraph (3), in paragraph (d), for “academic freedom” substitute “institutional autonomy”.
- (4) In paragraph 11 (delegation), in sub-paragraph (2), for “Director” substitute “Access and Participation Director”.
- (5) In paragraph 13 (annual report), in sub-paragraph (4), for “Director”, in both places, substitute “Access and Participation Director”.
- 13 (1) Schedule 7 (costs recovery etc) is amended as follows.
- (2) In paragraph 1, for the words from “in relation” to the end substitute “where under section 73 the OfS imposes a requirement to pay costs on—
- (a) the governing body of a registered higher education provider,
- (b) the governing body of a constituent institution of a registered higher education provider, or
- (c) a students’ union.”
- (3) In paragraph 2—
- (a) in sub-paragraph (1)—
- (i) after “governing body” insert “or students’ union”;
- (ii) for “73(1)” substitute “73”;
- (b) in sub-paragraphs (3) and (5), after “governing body” insert “or students’ union”.
- (4) In paragraph 3(1), for “of a provider” substitute “or students’ union”.

Status: This is the original version (as it was originally enacted).

(5) In paragraph 4(1) and (4), after “governing body” insert “or students’ union”.

(6) In paragraph 4, after sub-paragraph (4) insert—

“(5) In a case relating to non-payment by a students’ union, the OfS may also direct an officer of the students’ union appearing to the OfS to have access to the funds of the students’ union to pay from those funds the unpaid amount of the costs and any unpaid interest by the date specified in the direction.”

PART 2

COUNTER-TERRORISM AND SECURITY ACT 2015

14 The Counter-Terrorism and Security Act 2015 is amended as follows.

15 (1) Section 31 (freedom of expression in universities etc) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (b), omit the final “or”;

(b) after paragraph (b) insert—

“(ba) a constituent college, school or hall or other institution in England or Wales of an institution within paragraph (b), or”.

(3) In subsection (2), for paragraph (a) substitute—

“(a) must have particular regard to the duty—

(i) to take steps to secure freedom of speech imposed by section 43(1) of the Education (No. 2) Act 1986, if it is subject to that duty;

(ii) to take steps to secure freedom of speech imposed by section A1(1) of the Higher Education and Research Act 2017, if it is subject to that duty;”.

(4) In subsection (3), for paragraph (a) substitute—

“(a) must have particular regard to the duty—

(i) to take steps to secure freedom of speech imposed by section 43(1) of the Education (No. 2) Act 1986, in the case of authorities that are subject to that duty;

(ii) to take steps to secure freedom of speech imposed by section A1(1) of the Higher Education and Research Act 2017, in the case of authorities that are subject to that duty;”.

(5) In subsection (4), for paragraph (a) substitute—

“(a) must have particular regard to the duty—

(i) to take steps to secure freedom of speech imposed by section 43(1) of the Education (No. 2) Act 1986, in the case of an authority that is subject to that duty;

(ii) to take steps to secure freedom of speech imposed by section A1(1) of the Higher Education and Research Act 2017, in the case of an authority that is subject to that duty;”.

(6) In subsection (5)—

Status: This is the original version (as it was originally enacted).

- (a) omit the definition of “the duty to ensure freedom of speech”;
 - (b) for the definition of “academic freedom” substitute—
 - ““academic freedom”—
 - (a) in relation to a registered higher education provider or a constituent institution of such a provider has the meaning given by section 85(6) of the Higher Education and Research Act 2017;
 - (b) in relation to an institution in Wales or an institution in Scotland means the freedom referred to in section 202(2)(a) of the Education Reform Act 1988;”;
 - (c) after the definition of “academic freedom” (inserted by paragraph (b)) insert—
 - ““constituent institution”, in relation to a registered higher education provider, has the same meaning as in Part A1 of the Higher Education and Research Act 2017 (see section A4(4) of that Act);
 - “institution in Scotland” means an institution whose activities are carried on, or principally carried on, in Scotland;
 - “institution in Wales” means an institution whose activities are carried on, or principally carried on, in Wales;”;
 - (d) for the definition of “qualifying institution” substitute—
 - ““qualifying institution” means any of the following—
 - (a) a registered higher education provider,
 - (b) a constituent institution of such a provider, and
 - (c) an institution in Wales or an institution in Scotland which is a qualifying institution for the purposes of section 202 of the Education Reform Act 1988;”;
 - (e) after the definition of “qualifying institution” (inserted by paragraph (d)) insert—
 - ““registered higher education provider” has the meaning given by section 3(10)(a) of the Higher Education and Research Act 2017.”
- 16 In section 32 (monitoring of performance: further and higher education bodies), in subsection (1)—
- (a) in paragraph (b) of the definition of “relevant further education body”, after “students” insert “, excluding students undertaking distance learning courses;”;
 - (b) in paragraph (b) of the definition of “relevant higher education body”, after “students” insert “, excluding students undertaking distance learning courses;”.
- 17 In Schedule 6 (list of authorities subject to the duty to have due regard to the need to prevent people from being drawn into terrorism), in Part 1 (England and Wales), under the heading “Education, child care etc”, in the entry beginning “The governing body of a qualifying institution”, after “2004” insert “, disregarding paragraphs (da) and (ea) of that section and the definition of “institution” in section 21(1) of that Act”.

PART 3

OTHER ACTS

- 18 In section 43 of the Education (No. 2) Act 1986 (freedom of speech in universities, etc)—
- (a) omit subsection (4A)(a);
 - (b) in subsection (6) omit—
 - (i) paragraph (a) of the definition of “governing body”;
 - (ii) the definition of “registered higher education provider”.
- 19 In Schedule 2 to the Higher Education Act 2004 (conditions to be met by student complaints scheme), after paragraph 3(2)(c) insert—
- “(d) provision that a qualifying complaint is not to be referred under the scheme if a complaint brought by the complainant and relating to the same subject-matter is being, or has been, dealt with by the Office for Students under the scheme provided by virtue of Schedule 6A to the Higher Education and Research Act 2017.”