



Higher Education (Freedom of Speech) Act 2023

2023 CHAPTER 16

Duties to protect freedom of speech

1 Duties of registered higher education providers

In the Higher Education and Research Act 2017, before Part 1 insert—

“PART A1

PROTECTION OF FREEDOM OF SPEECH

Duties of registered higher education providers

A1 Duty to take steps to secure freedom of speech

- (1) The governing body of a registered higher education provider 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 in subsection (2).
- (2) That objective is securing freedom of speech within the law for—
 - (a) staff of the provider,
 - (b) members of the provider,
 - (c) students of the provider, and
 - (d) visiting speakers.
- (3) The objective in subsection (2) includes securing that—
 - (a) the use of any premises of the provider is not denied to any individual or body on grounds specified in subsection (4), and

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- (b) the terms on which such premises are provided are not to any extent based on such grounds.
- (4) The grounds referred to in subsection (3)(a) and (b) are—
- (a) in relation to an individual, their ideas or opinions;
 - (b) in relation to a body, its policy or objectives or the ideas or opinions of any of its members.
- (5) The objective in subsection (2), so far as relating to academic staff, includes securing their academic freedom.
- (6) In this Part, “academic freedom”, in relation to academic staff at a registered higher education provider, 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 provider;
 - (b) the likelihood of their securing promotion or different jobs at the provider being reduced.
- (8) The governing body of a registered higher education provider 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 in subsection (9).
- (9) That objective is securing that, where a person applies to become a member of academic staff of the provider, the person is not adversely affected in relation to the application because they have exercised their freedom within the law to do the things referred to in subsection (6)(a) and (b).
- (10) In order to achieve the objective in subsection (2), the governing body of a registered higher education provider must secure that, apart from in exceptional circumstances, use of its premises by any individual or body is not on terms that require the individual or body to bear some or all of the costs of security relating to their use of the premises.
- (11) In order to achieve the objective in subsection (2), the governing body of a registered higher education provider must secure that the provider does not enter into a non-disclosure agreement with a person referred to in that subsection in relation to a relevant complaint made to the provider by the person (and if such a non-disclosure agreement is entered into it is void).
- (12) In subsection (11)—
- “non-disclosure agreement” means an agreement which purports to any extent to preclude the person from—
 - (a) publishing information about the relevant complaint, or
 - (b) disclosing information about the relevant complaint to any one or more other persons;
 - “relevant complaint” means a complaint relating to misconduct or alleged misconduct by any person;
 - “misconduct” means—

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- (a) sexual abuse, sexual harassment or sexual misconduct, and
- (b) bullying or harassment not falling within paragraph (a).

(13) In this Part—

references to freedom of speech are to the freedom to impart ideas, opinions or information (referred to in Article 10(1) of the Convention as it has effect for the purposes of the Human Rights Act 1998) by means of speech, writing or images (including in electronic form);

“the Convention” has the meaning given by section 21(1) of the Human Rights Act 1998;

“member”, in relation to a registered higher education provider, does not include a person who is a member of the provider solely because of having been a student of the provider;

“registered higher education provider” and “governing body”, in relation to such a provider, have the same meanings as in Part 1 of this Act.

A2 Code of practice

- (1) The governing body of a registered higher education provider must, with a view to facilitating the discharge of the duties in section A1(1) and (10), maintain a code of practice setting out the matters referred to in subsection (2).
- (2) Those matters are—
 - (a) the provider’s values relating to freedom of speech and an explanation of how those values uphold freedom of speech,
 - (b) the procedures to be followed by staff and students of the provider and any students’ union for students at the provider in connection with the organisation of—
 - (i) meetings which are to be held on the provider’s premises and which fall within any class of meeting specified in the code, and
 - (ii) other activities which are to take place on those premises and which fall within any class of activity so specified,
 - (c) the conduct required of such persons in connection with any such meeting or activity, and
 - (d) the criteria to be used by the provider in making decisions about whether to allow the use of premises and on what terms (which must include its criteria for determining whether there are exceptional circumstances for the purposes of section A1(10)).
- (3) The code of practice may deal with such other matters as the governing body considers appropriate.
- (4) The governing body of a registered higher education provider must take the steps that are reasonably practicable for it to take (including where appropriate the initiation of disciplinary measures) in order to secure compliance with its code of practice.
- (5) The governing body of a registered higher education provider must, at least once a year, bring—
 - (a) the provisions of section A1, and

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(b) its code of practice under this section,
to the attention of all of its students.

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

The governing body of a registered higher education provider must promote the importance of—

- (a) freedom of speech within the law, and
- (b) academic freedom for academic staff of registered higher education providers and their constituent institutions,
in the provision of higher education.”

2 Duties of constituent institutions

After section A3 of the Higher Education and Research Act 2017 (inserted by section 1) insert—

“Duties of constituent institutions

A4 Duties of constituent institutions

- (1) Sections A1 to A3 apply in relation to the governing body of a constituent institution of a registered higher education provider as they apply in relation to the governing body of the provider.
- (2) Accordingly, in the application of those sections by virtue of subsection (1), references to “the provider” are to be read as references to the constituent institution.
- (3) The duties of the governing body of a constituent institution of a registered higher education provider under sections A1 to A3 do not affect the application of any initial or ongoing registration conditions imposed on the provider under Part 1 of this Act.
- (4) In this Part—
 - “constituent institution”, in relation to a registered higher education provider, means any constituent college, school, hall or other institution of the provider;
 - “governing body”, in relation to a constituent institution of a registered higher education provider, has the same meaning as in Part 1 of this Act;
 - “member”, in relation to a constituent institution of a registered higher education provider, does not include a person who is a member of the institution solely because of having been a student of the institution.”

3 Duties of students’ unions

After section A4 of the Higher Education and Research Act 2017 (inserted by section 2) insert—

“Duties of students’ unions

A5 Duty to take steps to secure freedom of speech

- (1) A students’ union for students at a registered higher education provider that is eligible for financial support 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 in subsection (2).
- (2) That objective is securing freedom of speech within the law for—
 - (a) members of the students’ union,
 - (b) students of the provider,
 - (c) staff of the students’ union,
 - (d) staff and members of the provider and of its constituent institutions, and
 - (e) visiting speakers.
- (3) The objective in subsection (2) includes securing that—
 - (a) the use of any premises occupied by the students’ union is not denied to any individual or body on grounds specified in subsection (4),
 - (b) the terms on which such premises are provided are not to any extent based on such grounds, and
 - (c) affiliation to the students’ union is not denied to any student society on grounds specified in subsection (4)(b).
- (4) The grounds referred to in subsection (3) are—
 - (a) in relation to an individual, their ideas or opinions;
 - (b) in relation to a society or other body, its policy or objectives or the ideas or opinions of any of its members.
- (5) In order to achieve the objective in subsection (2), a students’ union for students at a registered higher education provider that is eligible for financial support must secure that, apart from in exceptional circumstances, use by any individual or body of premises occupied by the students’ union is not on terms that require the individual or body to bear some or all of the costs of security relating to their use of the premises.
- (6) In this Part—

“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;

“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;

“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).

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- (7) In this Part, references to a students' union for students at a registered higher education provider that is eligible for financial support do not include a students' union for students at a constituent institution of such a provider.

A6 Code of practice

- (1) A students' union to which section A5 applies must, with a view to facilitating the discharge of its duties under that section, maintain a code of practice setting out the matters referred to in subsection (2).
- (2) Those matters are—
- (a) the students' union's values relating to freedom of speech and an explanation of how those values uphold freedom of speech,
 - (b) the procedures to be followed by its staff and its members who are students of the registered higher education provider referred to in section A5(1) in connection with the organisation of—
 - (i) meetings which are to be held on the premises occupied by the students' union and which fall within any class of meeting specified in the code, and
 - (ii) other activities which are to take place on those premises and which fall within any class of activity so specified,
 - (c) the conduct required of such persons in connection with any such meeting or activity, and
 - (d) the criteria to be used by the students' union in making decisions about—
 - (i) the union's support and funding for events and activities to which the duties in section A5 are relevant, and
 - (ii) whether to allow the use of premises and on what terms (which must include its criteria for determining whether there are exceptional circumstances for the purposes of section A5(5)).
- (3) The code of practice may deal with such other matters as the students' union considers appropriate.
- (4) A students' union to which section A5 applies must take the steps that are reasonably practicable for it to take (including where appropriate the initiation of disciplinary measures) in order to secure compliance with its code of practice.
- (5) A students' union to which section A5 applies must, at least once a year, bring—
- (a) the provisions of section A5, and
 - (b) its code of practice under this section,
- to the attention of all of its members who are students of the provider.”

4 Civil claims

After section A6 of the Higher Education and Research Act 2017 (inserted by section 3) insert—

“Civil proceedings

A7 Civil claims for breach of duty

- (1) A person may bring civil proceedings against—
 - (a) a registered higher education provider, in respect of a breach by the governing body of the provider of any of its duties under section A1 that causes the person to sustain loss,
 - (b) a constituent institution of a registered higher education provider, in respect of a breach by the governing body of the institution of any of its duties under section A1 that causes the person to sustain loss, or
 - (c) a students’ union, in respect of a breach by it of any of its duties under section A5 that causes the person to sustain loss.
- (2) In subsection (1), “loss” means loss of any kind (pecuniary or non-pecuniary).
- (3) A person may bring proceedings under subsection (1) only if—
 - (a) the person has brought a complaint relating to the same subject-matter as the proceedings under a relevant complaints scheme, and
 - (b) a decision has been made under that scheme as to the extent to which the complaint was justified.
- (4) Each of the following is a “relevant complaints scheme”—
 - (a) the scheme provided by virtue of Schedule 6A (the free speech complaints scheme), and
 - (b) the scheme for the review of qualifying complaints (within the meaning of section 12 of the Higher Education Act 2004) that is provided by the designated operator (within the meaning of section 13(5)(b) of that Act).
- (5) Subsection (3) does not apply where the civil proceedings under subsection (1) are for an injunction only.”