



# Higher Education (Freedom of Speech) Act 2023

## 2023 CHAPTER 16

### *Functions of the Office for Students*

#### **5 General functions**

- (1) In section 2 of the Higher Education and Research Act 2017 (general duties of the Office for Students), in subsection (1), after paragraph (a) insert—
- “(aa) the need to promote the importance of freedom of speech within the law in the provision of higher education by English higher education providers,
  - (ab) the need to protect the academic freedom of academic staff at English higher education providers.”.
- (2) After section 69 of that Act insert—

#### *“Freedom of speech*

#### **69A General functions relating to freedom of speech and academic freedom**

- (1) The OfS 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 by registered higher education providers and their constituent institutions.
- (2) The OfS may—
- (a) identify good practice relating to how to support freedom of speech and academic freedom, and

- (b) give advice about such practice to registered higher education providers and their constituent institutions.
- (3) The Secretary of State may, by direction, require the OfS to report to the Secretary of State—
  - (a) in its annual report under paragraph 13 of Schedule 1, or
  - (b) in a special report,
 on such matters relating to freedom of speech and academic freedom as may be specified in the direction.
- (4) Where the Secretary of State is provided with a special report, the Secretary of State must lay it before Parliament.
- (5) See paragraph 13 of Schedule 1 for the laying of the OfS’s annual reports.”

## 6 Regulation of duties of registered higher education providers

After section 8 of the Higher Education and Research Act 2017 insert—

### “8A Mandatory conditions relating to freedom of speech

- (1) The OfS must ensure that the initial registration conditions applicable to an institution and its ongoing registration conditions include a condition requiring that—
  - (a) the institution’s governing documents are consistent with compliance by the governing body of the institution with its duties under sections A1 to A3, and
  - (b) the institution has in place adequate and effective management and governance arrangements to secure compliance by the governing body of the institution with those duties.
- (2) The OfS must ensure that the ongoing registration conditions of each registered higher education provider include a condition requiring that the governing body of the provider complies with its duties under sections A1 to A3.
- (3) The OfS must ensure that the ongoing registration conditions of each registered higher education provider that is eligible for financial support include a condition requiring that the governing body of the provider keeps the OfS informed of the associations or bodies which are students’ unions for students at that provider.”

## 7 Regulation of duties of students’ unions

- (1) After section 69A of the Higher Education and Research Act 2017 (inserted by section 5) insert—

### “69B Functions of the OfS in relation to students’ unions

- (1) The OfS must monitor whether students’ unions to which sections [A5](#) and [A6](#) apply are complying with their duties under those sections.

- (2) The OfS may impose a monetary penalty on a students' union if it appears to the OfS that it is failing or has failed to comply with any of its duties under those sections.
  - (3) A "monetary penalty" is a requirement to pay the OfS a penalty of an amount determined by the OfS in accordance with regulations made by the Secretary of State.
  - (4) The Secretary of State may by regulations make provision about matters to which the OfS must, or must not, have regard in exercising its power under subsection (2).
  - (5) Schedule 3 (monetary penalties: procedure etc) applies in relation to the imposition of a penalty on a students' union under subsection (2), but as if—
    - (a) references to a registered higher education provider or the governing body of such a provider were references to the students' union, and
    - (b) references to section 15 were references to subsection (2).
  - (6) The OfS must maintain a list of the students' unions to which, according to the information held by the OfS, sections A5 and A6 apply.
  - (7) The OfS must make the list maintained under subsection (6) publicly available by such means as it considers appropriate.
  - (8) A students' union to which sections A5 and A6 apply must provide the OfS, or a person nominated by the OfS, with such information for the purposes of the performance of the OfS's functions under this section as the OfS may require it to provide.
  - (9) If a students' union fails to comply with a requirement under subsection (8) and does not satisfy the OfS that it is unable to provide the information, the OfS may enforce the duty to comply with the requirement in civil proceedings for an injunction."
- (2) In section 119 of that Act (regulations), in subsection (2)(b), after "15(2)" insert "or 69B(3)".

## **8 Complaints scheme**

- (1) After section 69B of the Higher Education and Research Act 2017 (inserted by section 7) insert—

### **"69C Free speech complaints scheme**

Schedule 6A contains provision for a scheme for the making and investigation of complaints relating to the duties of registered higher education providers, their constituent institutions and students' unions in respect of freedom of speech and academic freedom."

- (2) After Schedule 6 to that Act insert—

## “SCHEDULE 6A

### FREE SPEECH COMPLAINTS SCHEME

#### Introductory

- 1
  - (1) The OfS must provide a scheme under which the OfS is to review and determine free speech complaints (in this Schedule called “the scheme”).
  - (2) In this Schedule “free speech complaint” means—
    - (a) a HEP free speech complaint (see paragraph 2), or
    - (b) a students’ union free speech complaint (see paragraph 3).
- 2
  - (1) A HEP free speech complaint is a complaint made by an eligible person to the OfS which—
    - (a) claims that the person has suffered adverse consequences as a result of action or inaction of the governing body of a registered higher education provider or of a constituent institution of such a provider, and
    - (b) claims that, or gives rise to a question as to whether, the action or inaction was a breach of a duty of the governing body under section A1.
  - (2) In sub-paragraph (1), “eligible person” means—
    - (a) a person who is or was a student, member or member of staff of the provider or constituent institution (as the case may be),
    - (b) a person who has applied to become a member of academic staff of the provider or constituent institution (as the case may be), or
    - (c) a person who was, or was at any time invited to be, a visiting speaker.
  - (3) A HEP free speech complaint may include claims other than those described in sub-paragraph (1).
- 3
  - (1) A students’ union free speech complaint is a complaint made by an eligible person to the OfS which—
    - (a) claims that the person has suffered adverse consequences as a result of action or inaction of a students’ union for students at a registered higher education provider that is eligible for financial support, and
    - (b) claims that, or gives rise to a question as to whether, the action or inaction was a breach of a duty of the students’ union under section A5.
  - (2) In sub-paragraph (1), “eligible person” means—
    - (a) a person who is or was—
      - (i) a member or member of staff of the students’ union,
      - (ii) a student of the provider, or
      - (iii) a member or member of staff of the provider or of any of its constituent institutions, or
    - (b) a person who was, or was at any time invited to be, a visiting speaker.

- (3) A students' union free speech complaint may include claims other than those described in sub-paragraph (1).
- 4        In this Schedule, references to the "parties" to a free speech complaint are to—
- (a) the person making the complaint ("the complainant"), and
  - (b) the governing body of a registered higher education provider or constituent institution or students' union about which the complaint is made.

### **Scope of scheme**

- 5        (1) The scheme must provide that every free speech complaint is capable of being referred under the scheme.
- (2) But the scheme may include provision that—
- (a) free speech complaints must be referred under the scheme within a time limit specified in, or determined in accordance with, the scheme;
  - (b) a free speech complaint is not to be referred under the scheme until the complainant has exhausted any internal procedure for the review of complaints which is provided by the registered higher education provider, constituent institution or students' union about which the complaint is made;
  - (c) a free speech complaint is not to be referred under the scheme if proceedings relating to the subject-matter of the complaint, to which the complainant is or was a party, are being, or have been, dealt with by a court or tribunal;
  - (d) a free speech 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 under the student complaints scheme.
- (3) In sub-paragraph (2)(d), the "student complaints scheme" means 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).

### **Decisions and recommendations**

- 6        (1) The scheme must require the OfS—
- (a) to make a decision as to the extent to which a free speech complaint which is referred under the scheme and not withdrawn is justified, and
  - (b) to make that decision as soon as reasonably practicable.
- (2) But the scheme may allow the OfS to dismiss a free speech complaint without consideration of the merits of it if the OfS considers the complaint to be frivolous or vexatious.
- 7        (1) The scheme must provide that, where the OfS considers a free speech complaint to be justified (wholly or partly), it may make a

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recommendation to the governing body or students' union about which the complaint is made.

- (2) A complaint may be partly justified if, for example, the OfS considers that the governing body or students' union has breached a duty under section A1 or A5 but the complainant did not suffer adverse consequences as a result of the breach.
  - (3) A recommendation for which the scheme may provide is a recommendation—
    - (a) to do anything specified in the recommendation (which may include the payment of sums specified in the recommendation), or
    - (b) to refrain from doing anything specified in the recommendation.
  - (4) But the scheme may not provide for recommendations arising from claims included in a free speech complaint which are not claims described in paragraphs 2(1) and 3(1).
  - (5) The scheme may not authorise the OfS to require anyone to do or not do anything.
  - (6) The powers of the OfS to make recommendations under the scheme do not affect any of its other powers.
- 8 The scheme must require the OfS to notify the parties to a free speech complaint in writing of—
- (a) its decision and its reasons for making it, and
  - (b) any recommendation it has made and its reasons for making it.

### **Fees**

- 9 The scheme may not require complainants to pay any fees in connection with the operation of the scheme.

### **Publication**

- 10 The OfS must publish the latest version of the scheme in such manner as it thinks fit.

### **Duty to comply**

- 11 (1) The OfS, a registered higher education provider, a constituent institution of such a provider and a students' union must comply with any requirements that the scheme imposes on it.
- (2) If a registered higher education provider, a constituent institution or a students' union fails to comply with a requirement imposed by the scheme, and does not satisfy the OfS that it is unable to comply, the OfS may enforce the requirement in civil proceedings for an injunction.

### **Review**

- 12 (1) This paragraph applies if the Secretary of State requests the OfS to—

- (a) conduct a review of the scheme or its operation (or any aspect of either of those matters), and
  - (b) report the results of the review to the Secretary of State.
- (2) The OfS must comply with the request within such time as may be specified by the Secretary of State.
- (3) In conducting the review, the OfS must comply with any particular requirements imposed by the Secretary of State.

### **Defamation**

- 13 For the purposes of the law of defamation, absolute privilege attaches to the publication under section 67A of—
- (a) any decision or recommendation made by the OfS under the scheme, and
  - (b) any report under paragraph 12(1)(b).”

## **9 Overseas funding**

- (1) The Higher Education and Research Act 2017 is amended as follows.
- (2) After section 69C (inserted by section 8) insert—

### **“69D Overseas funding: registered higher education providers**

- (1) The OfS must monitor the overseas funding of registered higher education providers and their constituent institutions with a view to assessing the extent to which the funding presents a risk to the matters in subsection (2).
- (2) The matters are—
- (a) freedom of speech within the law, and
  - (b) the academic freedom of academic staff of registered higher education providers and their constituent institutions,
- in the provision of higher education by registered higher education providers and their constituent institutions.
- (3) The duty in subsection (1) includes a duty to consider, in a case where the OfS has found that a registered higher education provider or any constituent institution of a registered higher education provider is in breach of its duty under section A1, whether overseas funding was relevant to the breach.
- (4) The information which the governing body of a registered higher education provider may be required to provide under the condition under section 8(1)(b), in relation to the function of the OfS under subsection (1), is—
- (a) information as to relevant funding from a relevant overseas person, where the funding from that person exceeds the threshold in any period of 12 months specified by the OfS, and
  - (b) if the OfS considers it appropriate in any circumstances, such other information as the OfS may reasonably require.

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- (5) In this section “relevant funding” from a relevant overseas person, in relation to a registered higher education provider, means amounts which are received by the provider or a connected person—
- (a) by way of endowment, gift or donation from the relevant overseas person,
  - (b) by way of research grant from the relevant overseas person,
  - (c) pursuant to a research contract with the relevant overseas person, or
  - (d) pursuant to an educational or commercial partnership with the relevant overseas person.
- (6) In subsection (5) “connected person”, in relation to a registered higher education provider, means—
- (a) the governing body of the provider,
  - (b) a constituent institution of the provider, or
  - (c) a member or member of staff of the provider or of a constituent institution, in their capacity as such.
- (7) For the purposes of subsection (5), treat receipt of anything that is not money as receipt of an amount equal to the value of the thing to the recipient at the time of receipt.
- (8) In this section “relevant overseas person” means—
- (a) the government of an overseas country, other than a prescribed country,
  - (b) a body which is incorporated or registered in, or has its headquarters in, an overseas country other than a prescribed country, or
  - (c) an individual who is a politically exposed person in relation to an overseas country other than a prescribed country.
- (9) In this section—
- “overseas country” means any country or territory outside the United Kingdom, but not including the Channel Islands, the Isle of Man and any British overseas territory;
- “politically exposed person” has the meaning given by regulation 35 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ([S.I. 2017/692](#));
- “prescribed country” means a country or territory specified in regulations made by the Secretary of State.
- (10) For the purposes of subsection (4)(a), “the threshold” means an amount specified in regulations made by the Secretary of State.
- (11) Regulations under subsection (10) may include provision—
- (a) as to how the amount specified is to be calculated;
  - (b) to treat amounts received from a person other than a relevant overseas person as received from the relevant overseas person.



### **69E Overseas funding: students' unions**

- (1) The OfS must monitor the overseas funding of students' unions at registered higher education providers that are eligible for financial support with a view to assessing the extent to which the funding presents a risk to the matter in subsection (2).
  - (2) The matter is freedom of speech within the law for—
    - (a) members of the students' unions,
    - (b) students of the providers,
    - (c) staff of the students' unions,
    - (d) staff and members of the providers and of their constituent institutions, and
    - (e) visiting speakers.
  - (3) The duty in subsection (1) includes a duty to consider, in a case where the OfS has found that a students' union is in breach of its duty under section A5, whether overseas funding was relevant to the breach.
  - (4) For the purpose of the function of the OfS under subsection (1), a students' union referred to in that subsection must provide to the OfS at such times, and in respect of such periods, as the OfS may reasonably request—
    - (a) information as to any amounts received from a relevant overseas person, where the amounts exceed the threshold in any period of 12 months specified by the OfS, and
    - (b) if the OfS considers it appropriate in any circumstances, such other information as the OfS may reasonably require.
  - (5) If a students' union fails to comply with its duty under subsection (4), the OfS may enforce the duty in civil proceedings for an injunction.
  - (6) The following provisions of section 69D apply for the purposes of this section—
    - (a) subsection (7) (things other than money);
    - (b) subsections (8) and (9) (meaning of “relevant overseas person”);
    - (c) subsections (10) and (11) (meaning of “threshold”).”
- (3) In Schedule 1, in paragraph 13 (annual report), after sub-paragraph (3) insert—
- “(3A) The report must include—
- (a) a summary of information received by the OfS pursuant to sections 69D and 69E for that year, and
  - (b) a summary of conclusions drawn by the OfS for that year, from its monitoring under sections 69D(1) and 69E(1), regarding relevant patterns, trends or other matters which it has identified and which are of concern to the OfS.”

## **10 Director for Freedom of Speech and Academic Freedom**

In Schedule 1 to the Higher Education and Research Act 2017 (the Office for Students), after paragraph 3 insert—

*“The Director for Freedom of Speech and Academic Freedom*

- 3A (1) The Director for Freedom of Speech and Academic Freedom (“the Free Speech Director”) is responsible for—
- (a) overseeing the performance of the OfS’s free speech functions,
  - (b) performing, in accordance with paragraph 11, any of those functions, or other functions, of the OfS which are delegated to the Free Speech Director under that paragraph, and
  - (c) reporting to the other members of the OfS on the performance of the OfS’s free speech functions.
- (2) For the purposes of this Schedule, the OfS’s “free speech functions” are—
- (a) its functions relating to monitoring and enforcing the registration conditions of registered higher education providers under section 8A, and
  - (b) its functions under sections 69A to 69E and Schedule 6A.”