



# Higher Education (Freedom of Speech) Act 2023

CHAPTER 16

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Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

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# Higher Education (Freedom of Speech) Act 2023

## CHAPTER 16

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# Higher Education (Freedom of Speech) Act 2023

## 2023 CHAPTER 16

An Act to make provision in relation to freedom of speech and academic freedom in higher education institutions and in students' unions; and for connected purposes. [11th May 2023]

**B**E IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *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
  - (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 –

- (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
  - (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).

- (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.”

### *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 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.
- (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.”

### *General*

## **11 Minor and consequential amendments**

The Schedule to this Act contains minor and consequential amendments.

## **12 Extent**

- (1) This Act extends to England and Wales only, subject to subsections (2) and (3).
- (2) This section and sections 13 and 14 extend to England and Wales and Scotland.
- (3) An amendment or repeal has the same extent as the provision amended or repealed.

## **13 Commencement**

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
  - (a) section 7, so far as is necessary for enabling the exercise on or after the day on which this Act is passed of the powers to make regulations conferred by section 69B(3) and (4) of the Higher Education and Research Act 2017 (inserted by section 7);
  - (b) section 9, so far as is necessary for enabling the exercise on or after the day on which this Act is passed of the powers to make regulations conferred by section 69D of the Higher Education and Research Act 2017 (inserted by section 9);
  - (c) section 12;
  - (d) this section;
  - (e) section 14;
  - (f) paragraph 11 of the Schedule.

- (2) Paragraph 9 of the Schedule comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.
- (4) Different days may be appointed for different purposes.
- (5) Regulations under subsection (3) may include transitional provision and savings.

**14 Short title**

This Act may be cited as the Higher Education (Freedom of Speech) Act 2023.

## 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)—
      - (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;
    - (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 –
- “(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);”.
- (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”.
- (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) –
- (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.”



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