

<b>Title:</b> Higher Education: Freedom of Speech and Academic Freedom <b>IA No:</b> DfE 126 <b>RPC Reference No:</b> <b>Lead department or agency:</b> Department for Education <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 01/04/2021			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Contact for enquiries:</b>				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option (in 2019 prices, 2020 present value)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
£44.9m	£44.9m	£4.6m	

**What is the problem under consideration? Why is government action or intervention necessary?**

There is growing concern within the Government that freedom of speech and academic freedom within some higher education providers (HEPs) is being improperly restricted. Evidence shows that some students and staff feel unable to exercise their right to freedom of speech without repercussion. The Government therefore considers it necessary to take steps to strengthen freedom of speech and academic freedom in higher education. Without action to counter attempts to discourage or even silence unpopular views, intellectual life on campus for both staff and students may be unfairly narrowed and diminished. It was a manifesto commitment to strengthen academic freedom and free speech in universities in England.

**What are the policy objectives of the action or intervention and the intended effects?**

The policy objective is to embed principles that enable students, staff and visiting speakers to feel actively encouraged to express, debate and expand their views on campus and online, within the law; ensure students and staff are not disadvantaged (or reasonably feel that they might be) if they do not align with a certain viewpoint; that academic staff are able to exercise freedom to question and test received wisdom and put forward new ideas and controversial or unpopular opinions without fear of detrimental treatment in terms of recruitment and promotion, in addition to dismissal; and to provide clear routes to make complaints and have access to redress.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Option 0:** Do nothing. The existing regulatory framework is maintained.-=

**Option 1:** a) legislate to require the Office for Students (OfS) to introduce new registration conditions on freedom of speech and academic freedom, with the power to impose sanctions for breaches; b) legislate for a Director for Freedom of Speech and Academic Freedom within the OfS with a remit to champion freedom of speech and academic freedom on campus, and responsibility for investigations of infringements of freedom of speech duties in higher education which may result in sanctions or individual redress via a new complaints scheme; c) strengthen the freedom of speech duties to include a duty on HEPs to promote lawful freedom of speech and academic freedom in higher education; d) extend the duties to apply directly to student unions (SUs); e) introduce a statutory tort for breach of the duties, enabling individuals to seek legal redress for loss they suffer as a result of breach of the duties; f) widen and enhance academic freedom protections, including in relation to recruitment and promotion.

**Option 2:** Non-legislative options considered: a) promoting Equality and Human Rights Commission (EHRC) guidance on freedom of expression; b) government-led discussions – for example, hosting an experts’ roundtable discussion on freedom of speech/a freedom of speech conference. c) OfS-led review/guidance on freedom of speech and academic freedom, including in relation to registration conditions.

<b>Will the policy be reviewed? It will be reviewed. If applicable, set review date: After 2027</b>						
Does implementation go beyond minimum EU requirements?			N/A			
Is this measure likely to impact on international trade and investment?			No			
Are any of these organisations in scope?			<b>Micro Yes</b>	<b>Small Yes</b>	<b>Medium Yes</b>	<b>Large Yes</b>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

Description:

## FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -52.6	High: -43.7	Best Estimate: -48.1

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	3.5	4.7	43.7
High	6.2	5.5	52.6
Best Estimate	4.9	5.1	48.1

Description and scale of key monetised costs by 'main affected groups'

HEPs and SUs are the main affected groups that we expect to incur costs including: familiarisation costs; compliance costs: the direct costs of complying with the regulation and enforcement including the new registration conditions for all registered HEPs; and administrative burden – the costs associated with the paperwork burdens on the administrative structures of HEPs and SUs as a result of regulation - e.g. updating codes of practices, and introducing codes of practice for SUs. There are also costs to the OfS relating to the new Director for Freedom of Speech and Academic Freedom and the creation of an OfS complaints scheme.

**Other key non-monetised costs by 'main affected groups'**

n/a

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

n/a

**Other key non-monetised benefits by 'main affected groups'**

Freedom of speech in higher education can also lead to a variety of other benefits for society through the development of a culture of critical thinking, challenge and debate in which ideas can be confronted. There is a wider impact on dissemination of new knowledge and thinking which could lead to the development and implementation of new, more effective solutions which address the current challenges facing science, the economy, the environment and society as a whole.

**Key assumptions/sensitivities/risks**

**Discount rate (%)**

3.5

The distribution of HEPs in the sector already compliant with the existing freedom of speech duties is unknown, therefore it is difficult to say where the burden would fall amongst all HEPs. It is unclear how many staff would be required to support the OfS Director for Freedom of Speech and Academic Freedom and their remuneration package. There remains some uncertainty around how many HEPs will join the OfS register over the appraisal period.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 4.9	Benefits: 0	Net: 4.9	
			23.0 (2019 prices, 2020 present value)

# Evidence Base

## Problem under consideration

1. Government is clear that the restriction of lawful speech and academic freedom in most situations goes against the fundamental principles of the English higher education sector. Staff and students should feel safe to discuss issues and academic staff in particular should feel safe to question and test received wisdom, and put forward new ideas and controversial or unpopular opinions, without the risk of losing their jobs, privileges or promotion.<sup>1</sup>

### *The chilling effect*

2. There is growing concern within government that freedom of speech and academic freedom on some university campuses is being affected by increasing intolerance of ideas that challenge conventional wisdom leading to a 'chilling effect' whereby some students and staff may feel unable to express themselves without fear of repercussion.<sup>2</sup>
3. A number of studies, surveys and reports highlight instances where freedom of speech and academic freedom is being curtailed in the higher education sector. The most notable are studies by Kings College London, Policy Exchange, University and College Union and the Joint Committee on Human Rights. Some of the key findings are set out below.
  - The King's report indicates that 26% of students think that violence can be justified as a way to prevent someone espousing hateful views.<sup>3</sup> The same report showed that a similar proportion of students reported not feeling free to express their views at university for fear of disagreeing with their peers.
  - This chilling effect appears to increase when political views are expressed. For example, the think tank Policy Exchange found that 4 out of 10 Leave supporting students felt uncomfortable expressing that in class, though the report was not clear as to the specific reasons that this might be the case.<sup>4</sup> The King's report found a similar problem, with 59% of Conservative-supporting students saying that those with Conservative views are reluctant to express them at their university. However, this is not simply an issue of Conservative, or more right-leaning, opinions being prevented from being openly aired. In the King's study, 34% of conservative supporters as well as 24% of Labour supporters, 22% of Liberal Democrat supporters and 20% of Green supporters reported that they felt unable to express their views for fear of disagreeing with their peers.
  - Policy Exchange polling shows that a number of current and retired academics choose to self-censor.<sup>5</sup> The survey shows that 32% of those who identify as 'fairly

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<sup>1</sup> See also Universities UK (2011) *Freedom of speech: rights and responsibilities in UK universities* for a useful commentary on the importance of freedom of speech in higher education. <https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2011/freedom-of-speech-on-campus.pdf>

<sup>2</sup> Policy Exchange (2020); Policy Exchange (2019); KCL Policy institute (2019); UCU (2017); Hillman (2016)

<sup>3</sup> Freedom of expression in UK universities, King's College London, 2019. The sample includes 2,153 online survey responses from a representative sample of students enrolled in UK higher education institutions.

<sup>4</sup> Academic freedom in the UK, Policy Exchange, 2019. The report used a sample of 505 UK university undergraduate students, aged 18-25. Note: The number of leave supporters in the sample was 64.

<sup>5</sup> Academic freedom in the UK, Policy Exchange, 2020. Based on a survey of UK academics administered on 27 March 2020 by YouGov. The sample consists of 820 respondents (484 currently employed and 336 retired).

right' or 'right' have refrained from airing views in teaching and research, with 15% of those identifying as 'centre' or 'left' also self-censoring.

- This effect is more pronounced for certain individuals, in that they can experience more censorship than others. Data from a survey of 2,153 UK students undertaken by the Policy Institute at King's College London in 2019 shows that male, BAME and mature students are more likely to feel unable to express their views for fear of disagreeing with their peers.<sup>6</sup> However, the reasons behind this are unclear. In addition, the 2017 UCU report which surveyed 2,330 UCU members found that older members, those with a disability and ethnic minorities suffer greater encroachment upon their academic freedom than their peers.<sup>7</sup>
- Although, the JCHR 2018 report did not find evidence of widespread censorship of debate in universities<sup>8</sup>, they did find that the fear of being reported for organising or attending an event, combined with the increased levels of bureaucracy following the introduction of the Prevent Duty, was reported to be having a chilling effect on freedom of speech.

4. This all suggests that the fundamental principles of freedom of speech and academic freedom at some universities are not being sufficiently promoted and protected.

## Rationale for intervention

5. There is already a legal framework in place to protect and preserve freedom of speech in the higher education sector. The duty under section 43 of the Education (No. 2) Act 1986 places an obligation on those concerned in the governance of all HEPs registered with the OfS (as well as establishments of higher or further education (FE) maintained by a local authority and other institutions within the FE sector and certain institutions in Wales) to take all reasonably practicable steps to ensure that freedom of speech within the law is secured for their members, students and employees, and for visiting speakers.

6. There is no direct sanction provided for in legislation if a HEP breaches the section 43 duty. A person affected by a HEP's failure to comply with this duty can seek to bring a claim for judicial review of the relevant decision. Accordingly, there are specific gaps within the current framework, such as the lack of a clear means of enforcement. The Government believes that, if the duty is to have the status and level of compliance it deserves, as a measure designed to protect the fundamental principle of freedom of speech, then there must be clear consequences for any breach. In addition, there is a gap in that the duty does not apply directly to SUs.

7. Government intervention is therefore needed on the grounds that there is apparent regulatory failure. This is because the existing legal framework for protecting and preserving freedom of speech is insufficiently effective, to the detriment of students, staff and visiting speakers. This effect is more pronounced for certain individuals, hence there are also equality considerations which are being considered as part of the Public Sector Equality Duty analysis.

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<sup>6</sup> <https://www.kcl.ac.uk/policy-institute/assets/freedom-of-expression-in-uk-universities.pdf>

<sup>7</sup> Karran, T., Mallinson, L., (2016) Protection for Academic Freedom in the U.K., Legal and Normative Protection in a Comparative Context, Report for the University and College Union: Appendix Tables (London: UCU, mimeo)

<sup>8</sup> Freedom of Speech in Universities, JCHR, 2018.

8. There is also a need to intervene on the grounds that spill-over benefits are being curtailed, for example, through knowledge exchange. Without a welcoming environment in which participants can debate, bring forward ideas and criticise those of others without fear or risk of censorship, rebuke or reprisal, the exchange and dissemination of new ideas and knowledge may be greatly stifled. When individuals are not able to exercise their right to freedom of speech within the law, either through incorrect implementation of policy or through self-censorship, there is a wider impact on dissemination of new knowledge and thinking may be stifled. This hampers the development and implementation of new, more effective solutions which address the current challenges facing science, the economy, the environment and society as a whole.

## **Policy objective**

9. Changes to legislation regulating freedom of speech at HEPs are intended to ensure that individuals feel more able and supported to freely express their views. However, HEPs must acknowledge the myriad pressures on students and staff seeking to express their views - including any inclination towards self-censorship - and should keep under review how their internal policies and processes can best promote a culture of lively intellectual debate and academic discovery.

10. Therefore, the proposals are based on these principles:

- a) that students with a diverse range of views feel comfortable, and are actively encouraged, to express, debate and expand their views on campus and online, within the law;
- b) that students are not disadvantaged (or reasonably feel that they might be) if they choose not to align with a certain viewpoint;
- c) that academics within HEPs are able to exercise freedom to question and test received wisdom and put forward new ideas and controversial or unpopular opinions without fear of detrimental treatment in terms of recruitment and promotion, in addition to dismissal.
- d) that those who feel their speech has been unlawfully restricted in the context of higher education have clearer routes to make complaints and have access to redress.

11. The intended effect of this policy is to ensure freedom of speech is protected, promoted and enforced across the whole higher education sector in England and to the wider benefit of society and the economy.

## **Description of options considered**

### **Option 0 (“Do nothing”)**

12. Under this option, the existing regulatory framework is maintained. As the growing body of evidence has found a chilling effect on freedom of speech<sup>9</sup> and the existing legal framework for protecting and preserving freedom of speech is insufficiently effective to the detriment of students, staff and visiting speakers, under the current framework, it is likely

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<sup>9</sup> Policy Exchange (2019); KCL Policy institute (2019); JCHR (2018); Hillman (2016)

that the fundamental principles of freedom of speech and academic freedom at some HEPs would continue to not be sufficiently promoted and protected.

### **Option 1 (Preferred)**

13. In light of the limitations identified in the existing legal framework, the preferred option aims not only to ensure that the gaps in the existing framework are closed but also that HEPs, academics, other staff, members, students and visiting speakers - as well as the domestic and international organisations they partner with - are all aware of the importance of preserving the fundamental values of freedom of speech and academic freedom.
14. This policy will apply to all HEPs registered with the OfS and will also extend to SUs at approved (fee cap) providers (a category of registered HEPs). The legislative proposals are:
  - I. Legislate to require the OfS to introduce new registration conditions on freedom of speech and academic freedom, with the power to impose sanctions for breaches
  - II. Legislate for a Director for Freedom of Speech and Academic Freedom within the OfS with a remit to champion freedom of speech and academic freedom on campus, and responsibility for investigations of infringements of freedom of speech duties in higher education which may result in sanctions or individual redress via a new complaints scheme
  - III. Strengthen the freedom of speech duties to include a duty on HEPs to promote lawful freedom of speech and academic freedom in higher education
  - IV. Extend the freedom of speech duties to apply directly to SUs at approved (fee cap) providers
  - V. Extend the remit of OfS to regulate SUs in relation to their freedom of speech duties
  - VI. Introduce a statutory tort for breach of the duties, enabling individuals to seek legal redress for loss they suffer as a result of breach of specified freedom of speech duties
  - VII. Widen and enhance academic freedom protections, including extending protections so that recruitment and promotion are also covered and making clear that it covers speech within an academic's field of expertise

### **Option 2 (non-legislative options)**

*Option 2a; Promoting the Equalities and Human Rights Commission guide on freedom of expression for HEPs and SUs in England and Wales*

15. The EHRC guide<sup>10</sup> on freedom of expression in higher education sought to address barriers to freedom of expression in higher education. Published in February 2019, it was backed by HEPs, student bodies, Government and the Charity Commission. The then Secretary of State asked the OfS to promote the implementation of this guidance.
16. Since the publication of this guidance, research has continued to find evidence of a “chilling effect” on campuses and high-profile incidents of individuals having their freedom

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<sup>10</sup> [Freedom of expression: a guide for higher education providers and students' unions in England and Wales \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/our-work/our-guidance/freedom-expression)

of speech or academic freedom suppressed have continued to be reported in the media. The guidance itself is not sufficient to solve the problems identified, particularly in regards to enforcement routes and redress.

*Option 2b: Government-led discussions – for example, hosting an experts’ roundtable discussion on freedom of speech/a freedom of speech conference.*

17. In May 2018, the then Universities Minister, Sam Gyimah, called a summit for university and student leaders to discuss concerns that universities had become hostile places for freedom of expression. They agreed that the sector should support the EHRC in developing new guidance on this topic.
18. Further events were not seen in themselves as sufficient to plug existing gaps in the legislation, particularly in regard to enforcement routes and redress.

*Option 2c: OfS-led review/guidance on freedom of speech and academic freedom, including in relation to registration conditions*

19. The Secretary of State highlighted that freedom of speech and academic freedom should be OfS priorities in his guidance to the OfS of 8 February 2021. The OfS is continuing to pursue further work in this area, however non-legislative work in this area is not sufficient to solve the problems identified.
20. The legislation will give the OfS increased ability to deal with freedom of speech and academic freedom related complaints, as well as introducing new registration conditions in relation to freedom of speech and academic freedom, enabling the OfS to regulate these issues more effectively.
21. Non-legislative proposals have been discounted because a voluntary approach would not have desired effect. Government is clear that the restriction of lawful speech and/or academic freedom in most situations goes against the fundamental principles of the English higher education sector. Staff and students should feel safe to discuss issues and academic staff in particular should feel safe to question and test received wisdom, and put forward new ideas and controversial or unpopular opinions, without the risk of losing their jobs, privileges or promotion.<sup>11</sup> The Government believes that new legislation will provide the necessary framework to preserve freedom of speech and academic freedom, and to give clear routes of redress in cases of non-compliance.

## **Summary and preferred option with description of implementation plan**

22. Option 1 as set out above is the preferred option. Primary legislation is set to be introduced in May 2021 and will most likely come into force in Autumn 2022 at the earliest. The legislation will lead to the achievement of the policy objectives by creating a regulatory environment that better protects freedom of speech and academic freedom in English higher education. The OfS, as the regulator, will be responsible for implementing certain elements of the legislation which will require changes to their regulatory framework and to their operational structures. They will consult on the changes to the regulatory framework before implementation. Enforcement of the new arrangements will be through regulatory intervention (the OfS has a range of sanctions at its disposal) and, in the case of the statutory tort, through the courts. The OfS will also create a complaints scheme in relation

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<sup>11</sup> See also Universities UK (2011) *Freedom of speech: rights and responsibilities in UK universities* for a useful commentary on the importance of freedom of speech in higher education. <https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2011/freedom-of-speech-on-campus.pdf>

to breach of the freedom of speech duties to allow those who have suffered adverse consequences as a result of a breach to seek redress.

## **Analysis of options**

### **Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)**

23. The DfE has carried out previous impact assessments around freedom of speech. In 2017, it published an impact assessment on the freedom of speech duty.<sup>12</sup> This detailed impact assessment was published alongside additional measures under the Higher Education and Research Act 2017 (HERA). This analysis estimated the annual cost to HEPs of introducing the freedom of speech duty, including the costs of familiarisation with the duty; the costs of writing, signing off and updating a code of practice on freedom of speech; and the costs of enforcing the duty. For each HEP, this was estimated to cost £4,714 in the initial year and £2,151 onwards. This estimated an overall equivalent annual net direct cost to business of £1.0m in 2014 prices.
24. The DfE also produced an impact assessment on the regulatory framework in 2018 on the regulatory framework, including conditions E1 and E2 which relate to governance (including around freedom of speech and academic freedom).<sup>13</sup> This analysis estimated the costs to HEPs of producing a self-assessment of how their governing documents uphold the public interest governance principles. This was estimated to be £0.9m overall in 2018/19 prices.
25. This impact assessment builds on this earlier analysis, refining the assumptions and cost-benefit where appropriate to estimate the expected additional costs and benefits of amending the legal framework as set out in the preferred option.

### **Option 0 (“Do nothing”)**

26. Under this option, the existing regulatory framework is maintained.
27. The costs and benefits are as set out in the previous impact assessments on the freedom of speech duty and the regulatory framework.

### **Option 1 (Preferred Option)**

28. In light of the limitations identified in the existing legal framework, the preferred option aims not only at ensuring that the gaps in the existing framework are closed, including by providing clear mechanisms for enforcement which are currently lacking and extending provisions to cover SUs, but also that HEPs, academics, other staff, members, students and visiting speakers - as well as the domestic and international organisations they partner with - are all aware of the importance of preserving the fundamental values of freedom of speech and academic freedom.
29. This policy will apply to all HEPs registered with the OfS and extend to SUs of approved (fee cap) providers. As of 27 April 2021, there were 420 HEPs on the OfS register.

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<sup>12</sup> [Higher Education and Research Act 2017: detailed impact assessments \(legislation.gov.uk\)](#), p.185.

<sup>13</sup> [Securing student success: Regulatory framework for higher education in England - impact assessment \(publishing.service.gov.uk\)](#), p.37.

30. These proposals will impact on a variety of different groups including:

- a) **HEPs:** HEPs will be required to strengthen their codes of practice and promote lawful freedom of speech and academic freedom on campus.
- b) **SUs:** SUs will be directly accountable under the new duties and will be required to draft new codes of practice.
- c) **Students:** Students will experience an environment that encourages them to challenge the current thinking and debate unpopular ideas, without fear of repercussion.
- d) **Student societies:** Student societies affiliated with SUs will be required to conform to the codes of practice.
- e) **Staff:** Staff (including academic staff) will experience an environment that encourages them to challenge the current thinking and debate unpopular ideas, without fear of repercussion.
- f) **Visiting Speakers:** Visiting speakers will be ensured a platform for their legally expressed views, however controversial, within certain constraints.
- g) **Applicants:** HEPs must take reasonably practicable steps to protect external applicants for academic roles from adverse consequences because they have questioned and tested received wisdom or put forward new ideas and controversial or unpopular opinions.
- h) **Government:** The Government will have delivered its manifesto commitment to strengthen academic freedom and free speech in universities in England.
- i) **OfS:** The OfS will have an enhanced role to champion and enforce freedom of speech and academic freedom duties in universities, including through the imposition of penalties and other sanctions.
- j) **OIA:** The Office of the Independent Adjudicator for Higher Education (OIA) currently handles student complaints against HEPs; those complaints with elements of freedom of speech in them could now go for consideration to the complaints scheme at the OfS.
- k) **Charity Commission:** The Charity Commission currently regulates SUs which are registered charities as regards compliance with charity law and will continue to do so. It will need to work closely with the OfS which will regulate SUs on freedom of speech.
- l) **Wider sector:** HEPs promoting freedom of speech and open debate will have wider cultural benefits for higher education.
- m) **Wider society:** HEPs promoting freedom of speech and open debate will have wider cultural benefits for society.

31. This policy will impact HEPs as they will be required to strengthen their codes of practice and promote lawful freedom of speech and academic freedom on campus; and SUs as they will be directly accountable under the new strengthened freedom of speech duties.

There will be a greater impact on SUs than on HEPs, as they will be subject to additional direct regulation. It is assumed that a large proportion of HEPs are deemed to already be meeting existing requirements around freedom of speech, and indeed some will be operating above and beyond this minimum and in line with the raised expectations contained in the Government's reforms. This intervention is about addressing those particular areas of the higher education sector where freedom of speech is either currently being restricted, or where they could be doing more to promote it.

32. In line with Better Regulation Guidance, compliance with measures is assumed, thus any financial costs of possible compensation for claims are excluded from cost estimates as this would be considered a 'sanction'.
33. It is worth noting that there are uncertainties and sensitivities around this estimate, as it largely depends on how HEPs and SUs react to these requirements. Full calculations, sources and assumptions used can be found at Annex A.

**Proposal 1:** legislate to require the OfS to introduce new registration conditions on freedom of speech and academic freedom, with the power to impose sanctions for breaches.

### Costs

#### *HEPs*

34. There would be additional administration costs involved in demonstrating that the HEP meets the new registration conditions. Both new HEPs and current registered HEPs would need to demonstrate they meet these conditions.
35. HEPs will need to submit a self-assessment of how their governing documents meet the new registration conditions. This requires HEPs to either publish or submit short documents to the OfS. This would apply to approved and approved (fee cap) providers and is estimated to cost £0.8m in the first year, and then between £0.2m to £0.3m each year of the appraisal period.

#### *OfS*

36. There would also be administration costs to the OfS involved in monitoring and enforcing the freedom of speech duties. This is assumed to be covered by income from registration or other fees in the same way as the rest of the OfS's administrative budget.

### Benefits

37. There will be benefits arising from greater clarity and status in relation to HEPs' duties on freedom of speech. This is a non-monetised benefit. The evidence of self-censorship in relation to freedom of speech and academic freedom, combined with the lack of OfS intervention in relation to freedom of speech or academic freedom concerns to date, suggests that the current registration conditions are not by themselves enough to allow the OfS to take effective action. Stakeholder engagement has also revealed concerns that existing codes of practices in relation to freedom of speech are inconsistent between HEPs. It is disproportionate to collect further information before implementation because we already have information that suggests that there is a lack of clarity in this area but DfE will monitor the impact of the new condition on regulatory intervention by the OfS post-introduction.

**Proposal 2:** legislate for a Director for Freedom of Speech and Academic Freedom within the OfS, with a remit to champion freedom of speech and academic freedom on campus, and responsibility for investigations of infringements of freedom of speech duties in higher education which may result in sanctions or individual redress via a new complaints scheme

#### Costs to OfS

38. There would be administration costs to the OfS involved in recruiting and employing a Director for Freedom of Speech and Academic Freedom, as well as a supporting team to administer the new complaints scheme. Ahead of detailed design of the role, the scheme that will be operated, and decisions on appropriate remuneration package, it is assumed this ranges between £0.5 to £0.8m.

#### Costs to Students/Staff

39. Students/staff may be confused about the complaints process as freedom of speech complaints often touch on other areas (e.g. harassment). Students/staff may be unsure when to go to the OfS complaints scheme and when to go the OIA/employment tribunal. However, the Government will work with HEPs, the OIA and the OfS to ensure that this process is clearly signposted. This is a non-monetisable cost.

#### Benefits

40. Students, staff and visiting speakers will have a clear route for making complaints and seek redress where they believe their freedom of speech or academic freedom has been unlawfully restricted on campus. This means clearer enforcement on freedom of speech and academic freedom, with monitoring and consequences for any breaches. It is difficult to quantify the benefits at this stage. We recognise the need to track impacts after implementation and have outlined a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these 'gaps' in the evidence base (more details in the 'Monitoring and Evaluation section below.)

**Proposal 3:** strengthen the freedom of speech duties, including a duty on HEPs to promote lawful freedom of speech and academic freedom on campus

41. Under the preferred option, all OfS registered HEPs would be required to comply with the strengthened freedom of speech duties. For a number of HEPs, whose current code of practice would fail to meet this updated standard, this would involve updating their code of practice to meet the new statutory requirements. These compliance costs (i.e. the direct costs of complying with the requirements) can be broken down into the following:

- a) Familiarisation costs: This captures the costs, among other things, of any staff training that a HEP decides to conduct for their staff regarding the strengthened duties.
- b) Costs of updating their code of practice: This captures the costs of updating the code of practice, alongside the costs of re-training staff regarding the updated code of practice. We assume that the majority of HEPs will not have to make significant changes to current procedures/codes of practice. This will only occur in the first year, as any recurring updates to codes of practice fall under the previous estimates in the HERA impact assessment.

- c) Costs of signing off their updated code of practice: This captures the costs of a senior manager signing off the updated code of practice. This will only occur in the first year, as any recurring updated to codes of practices fall under the previous estimates in the HERA impact assessment.
  - d) Costs of issuing the updated code of practice: This captures the cost of any relevant staff time and any costs associated with publishing it on their institution's website and intranet. This will only occur in the first year, as any recurring updated to codes of practices fall under the previous estimates in the HERA impact assessment.
  - e) Enforcement costs: This captures the costs of internal monitoring and enforcement of the code of practice.
42. As all HEPs registered with the OfS are already required to have a code of practice and comply with/enforce the freedom of speech duty as it stands, the additional costs to institutions of compliance and enforcement are likely to be minimal.
43. The estimated costs for the initial year is £1.8m, and for subsequent years this is £1.2 to £1.8m.
44. There are some additional costs to HEPs associated with promoting lawful freedom of speech and academic freedom in higher education. The following non-exhaustive list of what this could look like includes HEPs taking steps to:
- a) ensure that students with a range of views are represented in student engagement work;
  - b) train staff and educate students on the importance of debate;
  - c) demonstrate how democracy works by actively promoting democratic processes in HEPs and holding Democracy Days (as some HEPs currently do);
  - d) affirm frequently and publicly the importance of freedom of speech, particularly where individual staff and students have faced criticism for expressing lawful views;
  - e) ensure that there is a process in place for staff and students to report actions/behaviours that they see, not just to make complaints about where they consider their own freedom of speech has been unlawfully infringed.
45. This is a non-prescriptive duty, so HEPs are not expected to necessarily do all of the actions set out as examples above and they may find cost-effective ways of fulfilling the duty. There is therefore a high degree of uncertainty around what additional costs HEPs which need to raise their standards might incur. To illustrate, if we assume 5% of OfS registered HEPs run a one-hour staff training session, this is estimated to cost between £1.7 to £1.9m annually over the appraisal period.
46. This measure will set out that academic freedom is part of freedom of speech and that individuals applying as external candidates for academic roles at a HEP will have similar protections to those already in roles around academic freedom. This is based also on the assumption that many HEPs may already be meeting (or exceeding) existing requirements around freedom of speech.

**Proposal 4:** extend the freedom of speech duties to directly apply to SUs

Costs to SUs:

47. Under the current framework, the freedom of speech duty applies to the use of SU premises but action can only be taken against a HEP for non-compliance. However, under the preferred option, all SUs associated with an approved (fee cap) provider would be directly required to comply with new freedom of speech duties. If we assume 1 official/affiliated SU per HEP, given that there are 350 approved (fee cap) providers registered with the OfS (as of 27 April 2021), this policy would apply to 350 SUs.

48. There would be compliance costs (i.e. the direct costs of complying with the duties) for the SU. These can be broken down into the following:

a) Familiarisation costs: This captures the costs, among other things, of any staff training that an SU decides to conduct for their staff regarding the strengthened freedom of speech duties. This occurs only in the initial year.

49. For the 350 SUs in scope, this is estimated to cost £0.3m-£0.8m (£0.6m best estimate) for the first year.

b) Costs of writing their code of practice: This captures the costs of writing the code of practice. This occurs only in the initial year.

c) Costs of signing off their code of practice: This captures the costs of a senior manager signing off the code of practice. This occurs only in the initial year.

d) Costs of issuing the code of practice: This captures the cost of any relevant staff time and any costs associated with publishing it on their SU website. This occurs only in the initial year.

50. For the 350 SUs in scope, costs b) to d) are estimated to cost £0.5m-£0.9m (£0.7m best estimate) for the first year.

51. For subsequent years, it is assumed that the SU updates, signs off and distributes the code of practice every year. For the 350 SUs in scope, this is estimated to cost £0.8m (best estimate) every year.

52. Enforcement costs: This captures the costs of internal monitoring and enforcement of the code of practice. This is assumed to occur annually and are estimated to be £0.4m per year.

a) There would be additional administrative costs associated with the freedom of speech duties applying directly to SUs. The non-extensive list of costs associated with SUs meeting the requirements of the duties includes ensuring the safety of students and speakers at controversial events e.g. by hiring security. The duty to promote freedom of speech does not apply to SUs.

These additional costs are likely to be negligible.

53. SUs meeting the requirements of the duties may result in an increase in the number of events held by the SU and its affiliated societies. However, these additional costs incurred by the SU to host/finance these additional events is likely to be marginal as in practice HEPs currently often already work with SUs to ensure that the duties are being met via SUs.

54. In the case of breaches in the duties, SUs could incur penalties imposed by the OfS or legal costs and potentially compensation in the case of individuals seeking redress for loss suffered as a result of breach of the duties. Impact would be zero assuming compliance.

### Benefits

55. The extension of the freedom of speech duties to SUs is likely to lead to a greater strengthening of freedom of speech, which will be of benefit to students who gain from exposure to a range of viewpoints, and to visiting speakers whose freedom of speech is better protected.

56. It is inherently difficult to monetise this benefit to students and visiting speakers as it is difficult to attribute these solely to the measure proposed. We recognise the need to track impacts after implementation and suggest a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these 'gaps' in the evidence base (more details in the 'Monitoring and Evaluation section below.)

57. There may also be additional benefits if SUs have greater confidence that they will not face negative consequences for securing freedom of speech.

**Proposal 5:** extend the remit of the OfS to regulate SUs on their freedom of speech duties

### Cost to SUs

58. There are likely to be familiarisation costs for the SU to understand the new regulatory environment in which it operates. We have assumed the cost is the same as familiarisation costs estimated for the impact of legislation to extend the freedom of speech duties to SUs, thus £0.6m in the first year. This is likely to be an over-estimate because the cost of familiarisation was based on the cost for a HEP and SUs tend to be smaller organisations with less senior staff members.

### Cost to OfS

59. The OfS would incur costs of familiarisation to understand their responsibilities around regulating SUs. For simplicity, we assume these equal those of an HEP.

**Proposal 6:** introduce a statutory tort for breach of specified freedom of speech duties, enabling individuals to seek legal redress for loss they suffer as a result of breaches

60. In line with Better Regulation Guidance, compliance with measures is assumed, thus any financial costs of possible compensation for claims are excluded from cost estimates as this would be considered a 'sanction'. We assume costs associated with complaints are excluded on the basis that these would not arise if there was full compliance by HEPs and SUs.

61. No direct impact on HEPs/SUs.

### Benefits

62. The statutory tort would allow students, staff, external applicants and visiting speakers to seek recompense for loss caused by breaches of specified freedom of speech duties. This compensation for individuals for the loss incurred by breaches of their freedom of speech

or academic freedom are a transfer from HEPs and/or SUs to individuals. Impacts should be zero if HEPs and SUs comply.

**Proposal 7:** widen and enhance academic freedom protections, including extending protections so that recruitment and promotion are also covered, and making clear that it covers speech that is within an academic's field of expertise

63. Reflecting the element of proposal 3 about protections for individuals applying externally for academic roles, this measure confers these protections on internal applicants for academic roles so they should not be disadvantaged during the recruitment process due to their lawful speech. Beyond initial familiarisation costs, HEPs that comply with this and conduct fair and open recruitment processes will not incur significant additional costs due to this measure. This measure applies to OfS registered HEPs, not SUs.

#### Benefits for Staff

64. Strengthening protections on academic freedom gives staff improved employment security. This gives staff confidence to challenge the current thinking without fear of consequences to their employment status or progression; and promotes an environment where open debate can lead to new ideas and solutions which address the current challenges facing society.

65. It is inherently difficult to monetise the direct and wider benefits of enhanced academic freedom protections, particularly in relation to those applying for academic roles as it is challenging to identify this population. We recognise the need to track impacts after implementation and suggest a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these 'gaps' in the evidence base (more details in the 'Monitoring and Evaluation section below.)

## Monetised and non-monetised costs and benefits of each option (including administrative burden)

Table 1: Summary table of the expected costs of the proposed approach

	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32
<b>OfS Director for Freedom of Speech and Academic Freedom</b>	<b>0.7</b>									
Director staff costs	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Supporting team staff costs	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4
<b>New Registration Conditions</b>	<b>0.8</b>	<b>0.2</b>	<b>0.3</b>	<b>0.2</b>	<b>0.2</b>	<b>0.2</b>	<b>0.2</b>	<b>0.2</b>	<b>0.3</b>	<b>0.3</b>
Demonstrate meet conditions	0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Ongoing requirements	0.0	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
<b>Strengthening duties – promote</b>	<b>1.7</b>	<b>1.7</b>	<b>1.8</b>	<b>1.8</b>	<b>1.8</b>	<b>1.8</b>	<b>1.9</b>	<b>1.9</b>	<b>1.9</b>	<b>1.9</b>
<b>Strengthening duties – codes of practices for HEPs</b>	<b>1.8</b>	<b>1.2</b>	<b>1.2</b>	<b>1.2</b>	<b>1.2</b>	<b>1.2</b>	<b>1.8</b>	<b>1.8</b>	<b>1.8</b>	<b>1.8</b>
Familiarisation	0.75	0.03	0.02	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Update, sign-off and issue code of practice initial	1.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Update, sign-off and issue code of practice annual	0.0	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.3
Enforcement	n/a	n/a	n/a	n/a	n/a	n/a	0.6	0.6	0.6	0.6
<b>Directly apply duties to SUs</b>	<b>1.7</b>	<b>1.2</b>								
Familiarisation	0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Write, sign-off and issue code of practice	0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Update, sign-off and issue code of practice	0.0	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
Enforcement costs	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4
<b>OfS directly regulate SUs</b>	<b>0.6</b>	<b>0.0</b>								
Familiarisation SU	0.56	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Familiarisation OfS	0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

<b>Statutory tort</b>	<b>0.0</b>									
<b>Academic contractual protections</b>	<b>0.0</b>									
<b>Total</b>	<b>7.2</b>	<b>5.0</b>	<b>5.1</b>	<b>5.1</b>	<b>5.1</b>	<b>5.1</b>	<b>5.8</b>	<b>5.8</b>	<b>5.8</b>	<b>5.8</b>

**Monetised benefits**

66. It is difficult to establish the causal relationship between freedom of speech/ academic freedom and wider impacts on society and the economy. It is not possible to monetise the benefits due to a lack of evidence enabling us to quantify the impact of the legislation. It is disproportionate to collect evidence before implementation because undertaking a wholesale analysis of the relationship between the values of freedom of speech and wider economic impacts would be a substantial undertaking and the primary policy objective is the non-monetised benefit of protecting freedom of speech and academic freedom as fundamental values in themselves.
67. We recognise the need to track impacts after implementation and suggest a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these 'gaps' in the evidence base (more details in the 'Monitoring and Evaluation section below.)

**Non-monetised benefits**

68. Freedom of speech is a fundamental principle in higher education which promotes a culture where students learn the skills of critical thinking, challenge and debate. It helps to expose individuals to ideas or subjects they would otherwise not have known about, which allows students to understand a wider range of issues and develop frameworks for thinking about and debating these issues effectively.
69. It also supports a wider public interest because academic, political and wider civic debate helps improve outcomes for the economy and society. Debates in higher education are often at the forefront of new ideas or constructive challenges to conventional thinking which, in turn, can enable citizens, communities and government to make better decisions about the key issues they face. Freedom of speech in higher education can also lead to a variety of other benefits for society such as the robust confrontation of harmful ideas or by enabling a better understanding of cultural diversity.
70. Informal consultation since the publication of the policy paper has indicated support across the sector for freedom of speech and academic freedom as central principles of higher education. The evidence cited earlier, of increasing intolerance of ideas that challenge conventional wisdom, has led to concern about a chilling effect on freedom of speech and robust debate; these changes seek to have a positive impact to turn that trend around.
71. There is a wider impact on dissemination of new knowledge and thinking which could lead to the development and implementation of new, more effective solutions which address the current challenges facing science, the economy, the environment and society as a whole.
72. There is research on the wider benefits to society of freedom of expression, most often through the lens of freedom of the press. For example, a 2008 UNESCO report into press freedom and development<sup>1</sup> showed the correlations between freedom of the press and the different dimensions of development, poverty, governance and peace. It found that, whilst a causal link between freedom of press and other variables cannot be reached, free press was found to have a positive influence on poverty, governance and on violence and

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<sup>1</sup> [Press freedom and development: an analysis of correlations between freedom of the press and the different dimensions of development, poverty, governance and peace - UNESCO Digital Library](#). This study is the outcome of a research project implemented by the Centre for Peace and Human Security (CPHS) at Sciences Po University with support by UNESCO.

conflict issues. A 2013 paper on the role of press freedom in economic development<sup>2</sup> estimated the relationship between press freedom and economic growth, and foreign direct investment. It found the bi-directional relationship between press freedom and economic growth “*indicates that press freedom plays a vital role in economic development and the reverse relationship points out that an economically growing country implements additional press freedom.*”

## Direct costs and benefits to business calculations

73. This policy will apply to all HEPs registered with the OfS and extend to SUs at approved (fee cap) providers. As of 27 April 2021, there were 420 HEPs on the OfS register. The costs are largely administrative and include:

- a) Familiarisation costs: This captures the costs, among other things, of any training required to get up to speed with the new requirements.
- b) Compliance costs – the direct costs of complying with the regulation and enforcement: new registration conditions for all registered HEPs.
- c) Administrative burden – the costs associated with the paperwork burdens on the administrative structures of HEPs and SUs as a result of regulation - e.g. updating codes of practices, and introducing codes of practice for SUs.

74. In line with Better Regulation Guidance, indirect costs to HEPs, such as an increase in fees (to cover the increase in OfS’s operating costs), are not counted in the EANDCB as these are considered to be indirect costs and fee increases are out of scope of the better regulation framework under a statutory exclusion.

75. The EANDCB is estimated to be -£4.9m per year, with a range of between -£4.6m and -£5.3m. There are uncertainties and sensitivities around this estimate, as it largely depends on how HEPs and SUs react.

## Risks and assumptions

76. It is unclear how many staff would be required to support the OfS Director for Freedom of Speech and Academic Freedom and how much they would be paid. Therefore, a range has been given of between 5 and 10 staff, but this is uncertain.

77. HEP forecasts: Due to the nature of forecast data, there remains some uncertainty around how many HEPs will join the OfS register over the appraisal period. Forecast numbers of the next two years have been informed by new sector intelligence that has become available which we have utilised to improve our estimates.

78. To model the cost to HEPs of meeting the ongoing registration conditions, we make assumptions around the time taken for a HEP to demonstrate this. The policy itself is not prescriptive on how HEPs should do this.

79. Survey responses from the HERA impact assessment<sup>3</sup> have been used and updated by inflation and the cost estimates in this IA follow a similar methodology. The questions focused on the actual and estimated costs to HEPs of familiarising themselves with the duty; drafting, issuing and updating the required code of practice; and then enforcing it. At that time, a total of 30 HEPs were contacted and responses were received from six, representing a 20 per cent response rate. The majority of these respondents were

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<sup>2</sup> Abdullah Alam & Syed Zulfiqar Ali Shah (2013): The Role of Press Freedom in Economic Development: A Global Perspective, *Journal of Media Economics*, 26:1, 4-20. <http://dx.doi.org/10.1080/08997764.2012.755986>. This study used a panel dataset of 115 countries<sup>1</sup> over the time period 2002–2010.

<sup>3</sup> [https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia\\_20170182\\_en.pdf](https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf)

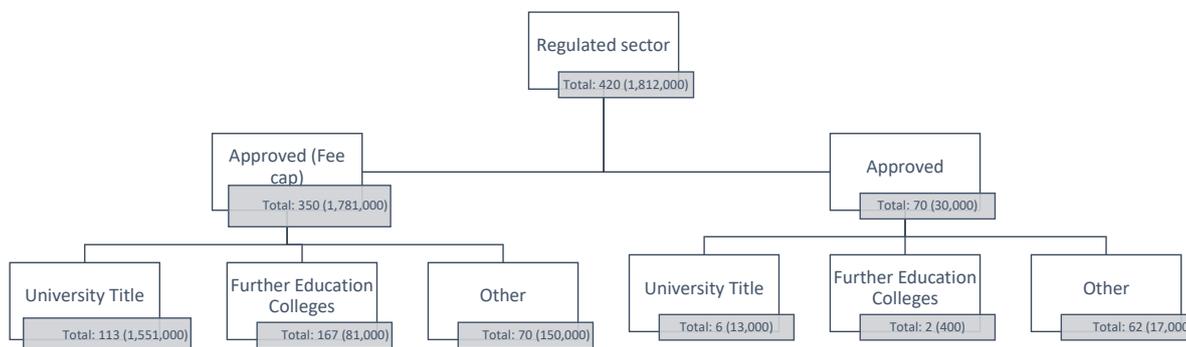
Alternative Providers, a group which made up the majority of the HEPs which would be newly subject to the duty at that time. Four of the six HEPs already voluntarily produced a code of practice, meaning they could provide accurate cost estimates for producing, updating and enforcing a code of practice. However, it is worth noting that the sample size is not representative of the rest of the higher education sector which includes HEPs with university title, and FE colleges. This approach is also applied to SUs, which tend to be smaller organisations compared with HEPs, and thus may not be an accurate reflection of the cost.

- 80. For SU costs, if we assume 1 SU per HEP, given that there are 350 approved (fee cap) providers registered with the OfS<sup>4</sup>, this policy would apply to 350 SUs. This does not include estimates for new HEPs that may join the OfS register in the approved (fee cap) category over the ten-year appraisal period. This is because of the uncertainty related to the category in which a HEP would register, and thus the number of SUs affected as this policy affects approved (fee cap) providers only. It is also important to note that over 150 HEPs in this category are FE colleges, which will have smaller SUs, thus costs may differ for these HEPs.
- 81. As the OfS would have SU regulation under its remit, we have assumed costs of familiarisation to understand their responsibilities around regulating SUs are equal to those of a HEP on the basis that it is a large organisation that has to understand new requirements. As there is insufficient detail on the exact requirements of what OfS would need to do, it is not possible to develop the cost estimate at this time.
- 82. The distribution of HEPs in the sector already compliant with the freedom of speech duty is unknown, therefore it is difficult to say where the burden would fall amongst all HEPs, particularly in relation to the new promote requirement. We have taken an assumption that 5% of HEPs will be required to promote freedom of speech through a one-hour training session.

**Impact on small and micro businesses**

83. The measures apply to all OfS registered HEPs. As of 27 April 2021, there were 420 HEPs registered with the OfS. The figure below segments the market by registration category and HEP type.

**Figure 1: Structure of the higher education sector in England: number of HEPs (Student FTE shown in brackets) as at 27 April 2021.**



Notes: FE colleges identified through the College accounts academic year 2018 to 2019 data. The student numbers (FTE) available from the OfS was last updated on 14 April 2021. Figures presented have been rounded to the nearest thousand. There was only student number data for 413 providers. Additionally, 19 providers had zero number of students in the data.

<sup>4</sup> As of 27 April 2021.

Table 2 below shows the distribution of HEPs in England by the number of staff employed.

Type of HEP	Number <sup>5</sup>
Micro HEPs (1 to 9 FTE)	1
Small HEPs (10 to 49 FTE)	19
Large HEPs (50+ FTE)	143
<b>Total</b>	<b>163</b>

Notes: HESA Staff records 2019/20 data was available for 165 HEPs in England however staff numbers were unavailable for 2 HEPs which have been excluded from the table. Data coverage varies by HEP, some do not have non-academic staff numbers available - from 2019/20, it is not mandatory for HEPs in England and Northern Ireland to return information about non-academic staff.

84. There is no official data available which covers staff at SUs. Given these tend to be smaller organisations, we assume they would fall in either the small or micro business category.
85. Some of the small and micro businesses will be HEPs which are also FE institutions (FE colleges, sixth form colleges and designated institutions). We have chosen not to carve these out from the scope of the legislation for a number of reasons:
- a) There are no other registration conditions which do not apply to FE institutions.
  - b) It would make regulation for the OfS much more complicated going forward, as they would have different rules to apply to FE and HE institutions in each category. There would need to be different consideration for each type of institution and different guidance in the regulatory framework, for example. The decision to allow FE institutions with higher education provision to register with the OfS was taken in HERA, and the changes now proposed simply follow that approach.
  - c) As it stands, all FE institutions already have to meet the current duties for all students, not only those studying on higher education courses, and those registered with the OfS must meet the registration conditions on the Public Interest Governance Principles which include protecting freedom of speech and academic freedom, so it should not be a disproportionate burden for them to comply with the strengthened duties.
86. For the purposes of our cost estimates, we have assumed the cost of the proposals will not vary by type of institution e.g small/micro-organisation. Although this is simplistic and in reality, it is likely that the impact depending on the size of HEP, we have taken a proportionate approach to the calculation of cost estimates.

**Wider impacts (consider the impacts of your proposals)**

87. The wider impacts are outlined above, including in the section on non-monetised benefits. There are no significant environmental, business, innovation, market or competition impacts. An equalities impact assessment is also being carried out.

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<sup>5</sup> Table 1 - HE staff by HEP and activity standard occupational classification 2014/15 to 2019/20 | HESA Staff numbers are full-person equivalent. This means that a staff member with more than one contract or activity is divided between those activities in the data tables. For example someone who works 3 days a week as a professor and 1 day a week as a gardener will be counted as 0.75 professors and 0.25 gardeners.

## **A summary of the potential trade implications of measure**

88. This policy has no trade implications.

## **Monitoring and Evaluation**

89. As the purpose of the policy intervention is to ensure that all staff and students should feel safe to discuss issues, and academic staff should be able to question and test received wisdom, and put forward new ideas and controversial or unpopular opinions, without the risk of losing their jobs, privileges or promotion, one of the key indicators of whether this objective has been met will be that the levels of self-censorship that are currently reported are reduced.
90. It is difficult to establish the causal relationship between free speech, academic freedom and wider impacts on society and the economy. We therefore suggest a proportionate approach of monitoring the impacts of the proposals.
91. The OfS monitors compliance with its registration conditions and currently monitors for systemic issues across the sector, including in relation to freedom of speech and academic freedom. The Government will continue to work with the OfS to ensure that progress is being made in this area. The new role of the Director for Freedom of Speech and Academic Freedom and the OfS complaints scheme is likely to lead to a higher number of cases being brought to the attention of the OfS which will allow this monitoring function to be carried out more effectively.
92. In addition, the Government will carry out qualitative research of its own (for example, a survey regarding levels of self-censorship) to establish whether the problem has been reduced.
93. More generally, the Government will consider a range of other factors that may indicate a wider change in culture on campus. For example, looking at the number of instances in which a HEP is taking proactive steps to promote the values of lawful freedom of speech and academic freedom in higher education and taking a lead that goes beyond the minimum requirements of the legislation.
94. In respect to redress and enforcement, the Government will work with the OfS to analyse the nature and volume of complaints being made to the OfS complaints scheme. Initially we expect that a larger number of complaints would suggest that the legislation is having a positive impact as it would indicate that the new complaints route was being utilised, but over time we would see a decline in those complaints as a positive sign that these issues are being effectively dealt with by HEPs and SUs.

## Annex A: detailed cost breakdowns

**Proposal 1:** Legislate to require the OfS to introduce new registration conditions on freedom of speech and academic freedom, with the power to impose sanctions for breaches

### Costs to HEPs – Initial cost existing registered HEPs and for new HEPs joining the OfS register.

1. There would be additional administration costs involved in demonstrating that the HEP meets these new registration conditions. Both new HEPs and current registered HEPs would need to demonstrate they meet these conditions.
2. It is likely that HEPs will need to submit a self-assessment of how their governing documents uphold the freedom of speech duties. This requires HEPs to either publish or submit short documents to the OfS. This cost would fall on existing OfS registered HEPs, and any subsequent new HEPs registering with the OfS.

A breakdown of the estimate of cost per HEP are shown below.

**Table A1: Cost breakdowns of meeting registration condition.**

Activity	Cost
Produce documents, mid-level HE staff (24 hours x £18.1 <sup>6</sup> )	£430
+ Review documents, senior management (4 hours * £39.5 <sup>7</sup> )	£160
+ Clearing documents, executive board time (2 hours x 10 staff members x £53.73 <sup>8</sup> )	£1,070
= Total Staff cost	£1,670

Note: Figures rounded to nearest ten pounds. Total may not equal sum of parts due to rounding. Methodology and assumptions are based on Table D1: Estimated costings used for several conditions (A2, C1, E1, E3, F2) of the Regulatory Framework IA. The registration conditions within that IA all require different information, but involve similar processes (produce, review and senior management sign off for the document), and therefore should be a relevant proxy for this registration condition.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727509/Regulatory\\_Framework\\_Final\\_Impact\\_Assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727509/Regulatory_Framework_Final_Impact_Assessment.pdf)

### Costs to HEPs – ongoing cost for existing registered HEPs and for new HEPs joining the OfS register.

3. In order, to determine whether a HEP continues to comply with the conditions on an ongoing basis, the OfS’s judgement will be informed by the HEP’s behaviour, as well as information submitted by the HEP or available to the OfS. One example of such behaviour

<sup>6</sup> ASHE data shows that the median hourly wage for 'other managers' is £14.84 - Occupation (12) – ASHE: Table 14.5a (2019) ([Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics \(ons.gov.uk\)](#)) A 22% uplift has been applied to the wage rate figures to include non-wage costs (£18.1). Eurostat defines wage and salary costs as direct remunerations, bonuses, and allowances paid by an employer in cash or in kind to an employee in return for work done, payments to employees saving schemes, payments for days not worked and remunerations in kind such as food, drink, fuel, company cars, etc. Non-wage costs are defined as the employers' social contributions plus employment taxes regarded as labour costs less subsidies intended to refund part or all of the employer's cost of direct remuneration. Using Eurostat data, non-wage costs as a percentage of wage costs were approximately 22% at the time of writing. The underlying data can be found at [Hourly labour costs - Statistics Explained \(europa.eu\)](#)

<sup>7</sup> ASHE data shows that the median hourly wage for a Senior professional of educational establishment is £32.40 - Occupation (2317) – ASHE: Table 14.5a (2019) ([Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics \(ons.gov.uk\)](#)) We then add the non-wage uplift of 22% to get £39.5.

<sup>8</sup> ASHE data shows that the median hourly wage for a Chief executive and senior official is £44.04 - Occupation 1115 – ASHE: Table 14.5a (2019) ([Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics \(ons.gov.uk\)](#)) We then add the non-wage uplift of 22% to get £53.73.

is that the HEP regularly reviews the adequacy and effectiveness of its policies and procedures.

4. To model the cost of meeting the ongoing condition, we assume that a mid-level staff and senior manager will both spend 8 hours per year (16 hours is total)<sup>9</sup>, reviewing their policies and procedures in place to comply with this condition. Thus, HEPs will pay an ongoing annual cost of £460 per year<sup>10</sup>.
5. To estimate this over the 10 year appraisal period, we have assumed the first year of the policy, and thus the first year the transition costs occur, is 2022/23. However, this is uncertain and dependent on when the Bill is introduced, and then when it receives Royal Assent.

**Table A2: The cost to HEPs of meeting the new and ongoing requirements of the freedom of speech and academic freedom registration conditions, 2019 prices, £ millions (not discounted)**

	2022/ 23	2023/ 24	2024/ 25	2025/ 26	2026/ 27	2027/ 28	2028/ 29	2029/ 30	2030/ 31	2031/ 32
Number of HEPs registering with the OfS <sup>11</sup>	468	20	15	5	5	5	5	5	5	5
Initial cost of the new conditions to HEPs (£m)	£0.78	£0.03	£0.03	£0.01	£0.01	£0.01	£0.01	£0.01	£0.01	£0.01
Number of HEPs <sup>12</sup>	0	468	488	503	508	513	518	523	528	533
Ongoing cost of the new conditions to HEPs (£m)	0	£0.22	£0.22	£0.23	£0.23	£0.24	£0.24	£0.24	£0.24	£0.25
Total cost (£m)	£0.78	£0.25	£0.25	£0.24	£0.24	£0.24	£0.25	£0.25	£0.25	£0.25

Between Feb 2020 and Feb 2021, 24 new HEPs registered with the OfS.<sup>13</sup>

### Benefits

6. Potential benefits arising from greater clarity around duties on freedom of speech. This is a non-monetised benefit. As set out above, the evidence of self-censorship in relation to freedom of speech and academic freedom suggests that the existing duties on freedom of speech are not by themselves enough to ensure that these values are protected. Specifically, we have identified key limitations of the current framework, including a lack of a clear means of enforcement of section 43 of the Education (No. 2) Act 1986 in the event of breach and limited scope of section 43 which does not directly regulate SU activities. It is disproportionate to collect further information before implementation because we are

<sup>9</sup> This was the amount of time, and staff level, the OfS felt necessary to be compliant in relation to condition C1. We assume the same costs for this registration condition.

<sup>10</sup> (8 hours \* £18.10 mid-level staff member) + (8 hours \* £39.53 senior staff member) = £461. See footnote 42 of previous IA: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727509/Regulatory\\_Framework\\_Final\\_Impact\\_Assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727509/Regulatory_Framework_Final_Impact_Assessment.pdf)

<sup>11</sup> It is assumed that HEP numbers for 2020-2021 is 413 (excluding HEPs that have merged). HEP forecasts for the ten-year period have been informed by intel on the number of HEPs going through the registration process and therefore expected to join the OfS register in the next two years. We assume that not all HEPs in the registration process will get through this process. Any de-registrations over this period are not estimated due to the high levels of uncertainty around this.

<sup>12</sup> Number of HEPs for whom ongoing conditions apply (calculated as previous years total number of HEPs). New joiners in current year excluded here as counted in transition cost.

<sup>13</sup> [The OfS Register - Office for Students](#)

plugging clearly identified gaps in the legislation but DfE will monitor the impact of the new condition on regulatory intervention by the OfS post-introduction.

**Proposal 2:** Legislate for a Director for Freedom of Speech and Academic Freedom within the OfS, with a remit to champion freedom of speech and academic freedom on campus, and responsibility for investigations of infringements of freedom of speech duties in higher education which may result in sanctions or individual redress via a new complaints scheme.

### Costs to HEPs

7. The cost of the OfS Director for Freedom of Speech and Academic Freedom will fall to HEPs via fees (to be determined whether it will be incorporated into registration fees (which are meant to be falling by 10% over two years), or to be funded via 'other fees' which the OfS can be empowered – through secondary legislation - to charge).
8. If assume compliance the cost to the HEPs of redress would be zero. In line with Better Regulation Guidance, any administrative burden related to complaints is not counted as part of this RTA on the basis that complaints would not arise if there was full compliance by HEPs.

### Costs to OfS - Annual

9. There would be administration costs to the OfS involved in recruiting and employing a Director for Freedom of Speech and Academic Freedom, as well as a supporting team to administer the new complaints scheme. Ahead of detailed design of the role and decisions on appropriate remuneration package, it is assumed:
  - a) The staff costs of the Director are estimated to be £230,000 annually, including salary, bonuses and pension costs. In 2019-20, the OfS Director for Fair Access and Participation (DFAP) was paid £134,000 in salary and £13,000 bonus, with pension contributions to the value of £53,000.<sup>14</sup> If we assume a similar employment cost for the Director for Freedom of Speech and Academic Freedom, and include a non-wage uplift, this is estimated to be £230,000.
  - b) For the supporting team, we assume a team of 5-10 staff. The total staff costs annually are estimated to be £295,000-£590,000. In 2019/20, the OfS total staff costs (including salary, bonus and pension contributions) was £24.6m<sup>15</sup> for 418 staff<sup>16</sup>. We use this to calculate a simple average staff cost of £59,000 per person. We recognise in practice this may be an over-estimate, as not all staff would be paid the same amount. If we assume five members of staff are required, this is estimated to cost £295,000<sup>17</sup> and for ten staff this is estimated to cost £590,000<sup>18</sup>.
10. There would also be administration costs to the OfS involved in monitoring and enforcing the freedom of speech duties. This is assumed to be covered by registration fees or other fees. In line with Better Regulation Guidance, indirect costs to HEPs, such as an increase in registration fees (to cover the increase in OfS's operating costs), are not counted in the EANDCB as these are considered to be indirect costs.

### Costs to Students/Staff

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<sup>14</sup> Office for Students Annual Report and Accounts 2019-20, p.82

<sup>15</sup> Office for Students Annual Report and Accounts 2019-20, p.109

<sup>16</sup> Office for Students Annual Report and Accounts 2019-20, p.80

<sup>17</sup> £59,000\*5 = £295,000

<sup>18</sup> £59,000\*10 = £590,000

11. This may confuse students/staff on the process of complaints as freedom of speech complaints often touch on other areas (e.g. harassment). Students/staff may be unsure when to go to the OfS complaints scheme and when to go the OIA/employment tribunal. This is a non-monetisable cost.

### Benefits

12. Students, staff and visiting speakers will have a clear route for making complaints and seek redress where they believe their freedom of speech or academic freedom has been unlawfully restricted on campus. This means clearer enforcement on freedom of speech and academic freedom, with monitoring and consequences for any breaches. It is difficult to quantify the benefits at this stage. We recognise the need to track impacts after implementation and have outlined a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these 'gaps' in the evidence base (more details in the 'Monitoring and Evaluation section')
13. **Proposal 3:** Strengthen the freedom of speech duties, including a duty on HEPs to promote lawful freedom of speech and academic freedom on campus

### Costs to HEPs

14. Under the preferred option, all OfS registered HEPs would be required to comply with the strengthened duties. For a number of HEPs, whose current code of practice would fail to meet this updated standard, this would involve updating their code of practice to meet the new statutory requirements. These compliance costs (i.e. the direct costs of complying with the requirements) can be broken down into the following:

- a) Familiarisation costs: This captures the costs, among other things, of any staff training that a HEP decides to conduct for their staff regarding the strengthened duties.
- i. Based on survey responses during consultation for the HERA impact assessment, on average, HEPs expected that familiarisation would cost their institution £2,312<sup>19</sup>. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator<sup>20</sup> to £2,414. We take this as our high estimate.
  - ii. Using ASHE data the hourly rate of a senior manager is £28.06<sup>21</sup> and the survey responses of familiarisation taking 28 hours on average, this indicates an average cost of familiarisation of £790. We take this as our low estimate.
  - iii. Accordingly, we take as our best estimate the mid-point between these two values which is £1,600.
- b) Costs of updating their code of practice: This captures the costs of updating the code of practice, alongside the costs of re-training staff regarding the updated code of practice. We assume that the majority of HEPs will not have to make significant changes to current procedures/codes of practice. For subsequent years we assume that new HEPs will need to produce a code of practice and then all HEPs will need to update this on an annual basis.

<sup>19</sup> An average of each HEP's estimate of the cost to their institution of familiarising themselves with what the freedom of speech duty requires of them. Page 197 [https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia\\_20170182\\_en.pdf](https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf)

<sup>20</sup> <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

<sup>21</sup> ASHE data shows that the hourly wage for a senior manager is £23.00 - Occupation (2digit SOC 11) – ASHE: table 2.5a (2019) Earnings and hours worked, occupation by two-digit SOC: ASHE Table 2 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £28.06.

- i. Survey respondents estimated that, on average, updating the code of practice would cost their institution £684<sup>22</sup>, which would be incurred every 2 years. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator<sup>23</sup> to £714 and assume this is the cost of updating code of practice on an annual basis.
  - ii. The hourly rate of a middle manager is estimated as £18.10<sup>24</sup> using ASHE data. Using the survey responses this takes 9 hours of a middle manager's time every 2 years. We assume the same amount of time would be required on an annual basis and we estimate the cost of updating a code of practice annually is £163 per HEP. We take this as our low estimate.
  - iii. Our best estimate is taken as the midpoint between these two values, which is £439.
- c) Costs of signing off their updated code of practice: This captures the costs of a senior manager signing off the updated code of practice.
- i. According to the University College Union (UCU)<sup>25</sup>, in 2017/18, the average total of remunerations for heads of institutions (including salary, benefits, employer pension contributions and bonuses) was £283,615. This translates to an estimated to a £180 hourly rate. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator<sup>26</sup> to £188 per hour. A code of practice is typically about six pages long. We estimate that a six-page document will take one hour of a senior manager's time to read, fully understand, and sign off. Using this information, we estimate that the cost of signing off a code of practice is £188. This is likely to be an overestimate as the salary estimate is based on Vice Chancellors in universities, whereas HEPs in scope are not all universities.
- d) Costs of issuing the updated code of practice: This captures the cost of any relevant staff time and any costs associated with publishing it on their institution's website and intranet.
- i. The survey results indicate that on average HEPs estimated it would cost £692<sup>27</sup> to issue a code of practice including the cost of any staff time, for example by publishing it on their institution's website and intranet. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator<sup>28</sup> to £722.
- e) Enforcement costs: This captures the costs of internal monitoring and enforcement of the code of practice. These enforcement costs fall under the previous HERA impact assessment and are therefore not additional costs. We have included them for the additional years not covered by the previous impact assessment.

15. As all HEPs registered with the OfS are already required to have a code of practice and comply with/enforce the freedom of speech duty as it stands, the additional costs to institutions of compliance and enforcement are likely to be minimal.

<sup>22</sup> An average of each surveyed HEP's estimate of the cost to their institution of updating their code of practice.

<sup>23</sup> <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

<sup>24</sup> ASHE data shows that the hourly wage for a middle manager is £14.84 - Occupation (2digit SOC 12) – ASHE: table 2.5a (2019) Earnings and hours worked, occupation by two-digit SOC: ASHE Table 2 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £18.10.

<sup>25</sup> [UCU - Transparency at the top?](https://www.transparencyatthetop.org/)

<sup>26</sup> <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

<sup>27</sup> An average of each surveyed HEP's estimate of the cost to their institution of issuing a code of practice. Page 199

[https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia\\_20170182\\_en.pdf](https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf)

<sup>28</sup> <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

**Table A3: The cost to HEPs of updating the codes of practice and signing off and issuing the updated codes of practice for HEPs, 2019 prices, £ millions (not discounted) central estimate**

	2022/ 23	2023/ 24	2024/ 25	2025/ 26	2026/ 27	2027/ 28	2028/ 29	2029/ 30	2030/ 31	2031/ 32
Number of HEPs registering with the OfS	468	20	15	5	5	5	5	5	5	5
Familiarisation costs	£0.75	£0.03	£0.02	£0.01	£0.01	£0.01	£0.01	£0.01	£0.01	£0.01
Initial cost <sup>29</sup>	£1.10	£0.04	£0.03	£0.01	£0.01	£0.01	£0.01	£0.01	£0.01	£0.01
Number of HEPs	0	468	488	503	508	513	518	523	528	533
Ongoing cost of updates <sup>30</sup>	0	£1.10	£1.15	£1.18	£1.19	£1.20	£1.22	£1.23	£1.24	£1.25
Enforcement costs <sup>31</sup>	0	0	0	0	0	0	£0.55	£0.56	£0.56	£0.57
Total cost	£1.85	£1.17	£1.20	£1.20	£1.21	£1.22	£1.79	£1.80	£1.82	£1.84

### Benefits

16. Consistent and improved standards on codes of practices to uphold freedom of speech on campus.

### Costs to HEPs

17. There are some additional costs associated with promoting freedom of speech on campus. Much of this is a non-prescriptive duty, so HEPs are not expected to carry out all of actions set out as examples above and they may find cost-effective ways of fulfilling the duty. We also anticipate that many (best practice) HEPs will already be undertaking these practices and will only need to familiarise themselves with the new duty and formalise existing practices.

18. We have estimated costs on HEPs of training staff on the enhanced duty and of their role in promoting freedom of speech. These are illustrative, and in practice, HEPs may choose other ways to promote freedom of speech on campus.

- a) Training costs: This is assumed to take place once per year and affect 5% of OfS registered HEPs. We assume that HEPs will run a one-hour training session for all staff. We take the average number of academic and non-academic staff from HESA

<sup>29</sup> Initial cost of updating the codes of practice and signing off and issuing the updated codes of practice for HEPs year 1, for subsequent years the cost is of writing the COP, signing off and issuing.

<sup>30</sup> Assuming annual updates to code of practice

<sup>31</sup> included in HERA impact assessment, but extended for last few years

2019/20<sup>32</sup> and multiply this with an average wage cost (including non-wage costs)<sup>33</sup> to estimate the cost of a training session for a HEP to be £69,000.

b) This is estimated to cost between £1.6 to £1.9m annually, over the appraisal period.

**Proposal 4:** legislate to extend the strengthened freedom of speech duties to cover SUs directly

Costs to SUs

19. Under the current framework, HEPs must ensure SUs comply with the freedom of speech duties. However, under the preferred option, all SUs associated with an approved (fee cap) provider would be directly required to comply with the new freedom of speech duties.

20. If we assume 1 SU per HEP, given that there are 350 approved (fee cap) providers registered with the OfS<sup>34</sup>, this policy would apply to 350 SUs.

21. There would be compliance costs (i.e. the direct costs of complying with the requirements) for the SUs. These can be):

**Table A4: break down of compliance costs (2019 prices)**

Activity	Cost (per SU)	Cost type (Initial) or transition	Total Est. Cost (central est.)
Familiarisation of freedom of speech duties	£1,600	Initial	£0.6m
Write a code of practice	£1,176	Initial	£0.7m
Sign-off a code of practice	£188	Initial	
Issue a code of practice	£722	Initial	
Update a code of practice	£439	Annual	£0.8m
Sign-off an updated code of practice	£188	Annual	
Issue an updated code of practice	£1,723	Annual	
Enforcement of code of practice	£1,067	Annual	£0.4m

Initial costs:

a) Familiarisation costs: This captures the costs, among other things, of any staff training that an SU decides to conduct for their staff regarding the strengthened duties. This occurs only in the initial year. Staff changes over time are unaccounted for.

i. Based on survey responses during consultation for the HERA impact assessment<sup>35</sup>, on average, HEPs expected that familiarisation would cost their institution £2,312<sup>36</sup>. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator<sup>37</sup> to £2,414. We

<sup>32</sup> Atypical staff are excluded. Averages calculated based on available information for OfS HEPs with HESA data -this will not cover all HEPs. Just over 1,000 academic staff and 1500 non- academic staff assumed.

<sup>33</sup> Academic staff median hourly wage rate is based on SOC 2311 (Higher education teaching professionals). In 2019, this was £26.76, including the non-wage uplift, this was £32.60. For non-academic staff, the median hourly wage rate is based on ASHE data Table 14.a for SOC 2319 (Teaching and other educational professionals n.e.c.). In 2019, this was £17.29, including the non-wage uplift, this was £21.09.

<sup>34</sup> As of 27 April 2021. The OfS Register - Office for Students

<sup>35</sup> See Table 4, pg 197 [https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia\\_20170182\\_en.pdf](https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf)

<sup>36</sup> An average of each HEP's estimate of the cost to their institution of familiarising themselves with what the freedom of speech duty requires of them.

<sup>37</sup> <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

take this as our high estimate, but it is likely to be considerably higher than the actual costs because that familiarisation has already taken place (or should have done), and this is just a slight change to the duty.

- ii. Using ASHE data the hourly rate of a senior manager is £28.06<sup>38</sup> and the survey responses of familiarisation taking 28 hours on average, this indicates an average cost of familiarisation of £790. We take this as our low estimate.
- iii. Accordingly, we take as our best estimate the mid-point between these two values which is £1,600.

For the 350 SUs in scope, this is estimated to cost £0.3m-£0.8m (£0.6m best estimate) for the first year. This does not include estimates for new HEPs that may join the OfS register in the approved (fee cap) category over the ten-year appraisal period. This is because of the uncertainty relating to the category in which a HEP would register, and thus the number of SUs affected as this policy affects approved (fee cap) providers only.

- b) Costs of writing their code of practice: This captures the costs of writing the code of practice. This occurs only in the initial year.
  - i. Based on survey responses during consultation for the HERA impact assessment, on average, HEPs expected that writing a code of practice would cost their institution £1,649<sup>39</sup>. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator<sup>40</sup> to £1,722. We take this as our high estimate.
  - ii. Using ASHE data, the hourly rate of a senior manager is £28.06<sup>41</sup> and the survey responses of writing a code of practice taking 3 days on average, this indicates an average cost of writing a code of practice of £631<sup>42</sup>. We take this as our low estimate.
  - iii. Accordingly, we take as our best estimate the mid-point between these two values which is £1,176.
- c) Costs of signing off their code of practice: This captures the costs of a senior manager signing off the code of practice. This occurs only in the initial year.
  - i. According to the UCU<sup>43</sup>, in 2017/18, the average total of remunerations for heads of institutions (including salary, benefits, employer pension contributions and bonuses) was £283,615. This translates to an estimated to a £180 hourly rate. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator<sup>44</sup> to £188 per hour. A code of practice is typically about six pages long. We estimate that a six-page document will take one hour of a senior manager's time to read, fully understand and sign off. Using this information, we estimate that the cost of signing off a code of practice is £188. This is likely to be an overestimate as the

<sup>38</sup> ASHE data shows that the hourly wage for a senior manager is £23.00 - Occupation (2digit SOC 11) – ASHE: table 2.5a (2019) Earnings and hours worked, occupation by two-digit SOC: ASHE Table 2 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £28.06.

<sup>39</sup> An average of each surveyed HEP's estimate of the cost to their institution of writing a code of practice.

<sup>40</sup> <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

<sup>41</sup> ASHE data shows that the hourly wage for a senior manager is £23.00 - Occupation (2digit SOC 11) – ASHE: table 2.5a (2019) Earnings and hours worked, occupation by two-digit SOC: ASHE Table 2 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £28.06.

<sup>42</sup> Assuming a working day of 7.5 hours.

<sup>43</sup> UCU - Transparency at the top?

<sup>44</sup> <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

salary estimate is based on Vice Chancellors in universities, whereas the SUs are smaller organisations which are likely to pay their staff, on average, less.

- d) Costs of issuing the code of practice: This captures the cost of any relevant staff time and any costs associated with publishing it on their SU's website. This occurs only in the initial year.
- i. The survey results indicate that on average HEPs estimated it would cost £692<sup>45</sup> to issue a code of practice including the cost of any staff time, for example by publishing it on their institution's website and intranet. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator<sup>46</sup> to £722.

For the 350 SUs in scope, costs b) to d) are estimated to cost £0.5m-£0.9m (£0.7m best estimate) for the first year. Costs over the subsequent 9 years of the appraisal period are assumed to be zero, due to the uncertainty around the number of SUs in scope in future.

Annual cost:

- e) Costs of updating their code of practice: This captures the costs of updating the code of practice, alongside the costs of re-training staff regarding the updated code of practice. This is assumed to occur annually.
- i. Survey respondents estimated that, on average, updating the code of practice would cost their organisation £684<sup>47</sup>, which would be incurred every 2 years. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator<sup>48</sup> to £714 and assume the cost of updating code of practice is the same whether done on a 2 year or annual basis. We take this as our high estimate.
- ii. The hourly rate of a middle manager is estimated as £18.10<sup>49</sup> using ASHE data. Using the survey responses this takes 9 hours of a middle manager's time every 2 years. We assume the same amount of time would be required on an annual basis and we estimate the cost of updating a code of practice annually is £163 per HEP. We take this as our low estimate.
- iii. Our best estimate is taken as the midpoint between these two values, which is £439.
- f) Costs of signing off their updated code of practice: This captures the costs of a senior manager signing off the updated code of practice. This is assumed to occur every year.
- i. This is as estimated as in paragraph 1.21.c)i and occurs annually.
- g) Costs of issuing the updated code of practice: This captures the cost of any relevant staff time and any costs associated with publishing it on their organisation's website and intranet.

<sup>45</sup> An average of each surveyed HEP's estimate of the cost to their institution of issuing a code of practice.

<sup>46</sup> <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

<sup>47</sup> An average of each surveyed HEP's estimate of the cost to their institution of updating their code of practice.

<sup>48</sup> <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

<sup>49</sup> ASHE data shows that the hourly wage for a middle manager is £14.84 - Occupation (2digit SOC 12) – ASHE: table 2.5a (2019) Earnings and hours worked, occupation by two-digit SOC: ASHE Table 2 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £18.10.

- i. The survey results indicate that on average HEPs estimated it would cost £1,650<sup>50</sup> to issue a code of practice including the cost of any staff time, for example by publishing it on their institution's website and intranet. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator<sup>51</sup> to £1,732.

For the 350 SUs in scope, costs e) to g) are estimated to cost £0.7m-£0.9m (£0.8m best estimate) every year. This does not include estimates for new HEPs that may join the OfS register in the approved (fee cap) category over the ten-year appraisal period. This is because of the uncertainty related to the category in which a HEP would register, and this policy affects approved (fee cap) providers only.

- h) Enforcement costs: This captures the costs of internal monitoring and enforcement of the code of practice. This is assumed to occur annually. These actions include:
  - i. Monitoring any events/talks to be held by affiliated societies.
  - ii. Keeping up to date with which speakers will be attending and what topics they will cover.
  - iii. General staff communication on the requirements of the freedom of speech duties (e.g. all staff emails).
  - iv. Holding safeguarding working groups.

Surveyed HEPs were asked to estimate the cost to their institution of compliance with their code of practice in the last academic year. On average survey respondents estimated that their annual cost of enforcement was £1,022<sup>52</sup>. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator<sup>53</sup> to £1,067.

For the 350 SUs in scope, this is estimated to cost £0.4m annually. This also does not cover any new HEPs that may join the OfS register in the approved (fee cap) category over the ten-year appraisal period.

22. There would be additional administrative costs associated with the duties applying to SUs. The non-exhaustive list of costs associated with SUs meeting the requirements of the duties includes ensuring the safety of students and speakers at controversial events e.g. by hiring security.
23. These additional costs are likely to be negligible and therefore we have taken a proportional approach by not monetising these costs.
24. SUs meeting the requirements of the duties may result in an increase in the number of events held by the SU and its affiliated societies. However, these additional costs incurred by the SU to host/finance these additional events is likely to be marginal as in practice HEPs currently often already work with SUs to ensure that the existing duty is being met via SUs.
25. In the case of breaches in the duties, SUs could incur penalties by the OfS or legal costs and potentially compensation in the case of individuals seeking redress for loss suffered as a result of breaches of the duties. Impact would be zero assuming compliance. Any

<sup>50</sup> An average of each surveyed HEP's estimate of the cost to their institution of issuing a code of practice.

<sup>51</sup> <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

<sup>52</sup> An average of each surveyed HEP's estimate of the cost to their institution per year of enforcing their code of practice.

<sup>53</sup> <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

administrative burden related to complaints is not counted as part of this RTA on the basis that complaints would not arise if there was full compliance by SUs.

### Benefits

26. The extension of freedom of speech duties to SUs is likely to lead to a greater strengthening of freedom of speech, which will be of benefit to students who gain from exposure to a range of viewpoints, and to visiting speakers whose freedom of speech is better protected.
27. It is inherently difficult to monetise this benefit to students and visiting speakers as it is difficult to attribute these solely to the measure proposed. We recognise the need to track impacts after implementation and suggest a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these 'gaps' in the evidence base (more details in the 'Monitoring and Evaluation section').
28. There may also be additional benefits if SUs have greater confidence that they will not face negative consequences for securing freedom of speech.

**Proposal 5:** extend remit of the OfS to regulate SUs on their freedom of speech duties

### Cost to SUs

29. There are likely to be familiarisation costs for the SU to understand the new regulatory environment in which it operates. We have assumed the cost is the same as familiarisation costs estimated for the impact of legislation to extend the freedom of speech duties to cover SUs directly would capture this. This is likely to be an overestimate because the cost of familiarisation was based on the cost for a HEP and SUs tend to be smaller organisations with less senior staff members.

### Cost to the OfS

30. The OfS would incur costs of familiarisation to understand their responsibilities around regulating SUs. For simplicity, we assume these equal those of an HEP.
31. In line with Better Regulation Guidance, indirect costs to HEPs, such as an increase in registration fees (to cover the increase in OfS's operating costs), are not counted in the EANDCB as these are considered to be indirect costs.

**Proposal 6:** introduce a statutory tort for breach of specified freedom of speech duties, enabling individuals to seek legal redress for loss they suffer as a result of breach

### Costs to HEPs

32. There would be administrative costs associated with employing additional lawyers in preparation of any potential legal challenges by students or staff alleging breaches of the freedom of speech or academic freedom duties. This impact should be zero if HEPs and SUs comply with the duty. Any administrative burden related to complaints is not counted as part of this RTA on the basis that complaints would not arise if there was full compliance by HEPs/SUs.
33. In the case of breaches of the duties, HEPs and SUs could incur penalties imposed by the OfS or legal costs and potentially compensation in the case of individuals seeking redress for loss suffered as a result of breaches in the duties. This compensation for individuals for loss suffered because of breaches of the freedom of speech or academic

freedom duties are a transfer from HEPs and/or SUs to individuals. Impacts should be zero if HEPs/SUs comply.

### Benefits

34. The statutory tort would allow students, staff and visiting speakers to seek recompense for loss caused by breaches of the duty. This compensation for individuals for loss suffered because of breaches of the freedom of speech or academic freedom duties are a transfer from HEPs and/or SUs to individuals. Impacts should be zero if HEPs/SUs comply.

**Proposal 7:** widen and enhance academic freedom protections, including extending protections so that recruitment and promotion are also covered, and making clear that it covers speech that is within an academic's field of expertise

### **Cost to HEPs:**

Reflecting the element of proposal 3 about protections for individuals applying externally for academic roles, this measure confers these protections on internal applicants for academic roles so they should not be disadvantaged during the recruitment process because of their lawful speech. Beyond initial familiarisation costs, HEPs that comply with this and conduct fair and open recruitment processes will not incur significant additional costs due to this measure. This measure applies to HEPs, not SUs.

### Benefits for applicants

35. Extending protections akin to academic freedom gives applicants for academic roles improved protections throughout recruitment processes. This gives applicants similar confidence to incumbent academic staff to challenge current thinking without fear of negative consequences to their application and promotes an environment where open debate can lead to new ideas and solutions which address the current challenges facing society.
36. It is inherently difficult to monetise the direct and wider benefits of enhanced academic freedom protections, particularly in relation to those applying for academic roles as it is challenging to identify this population. We recognise the need to track impacts after implementation and suggest a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these 'gaps' in the evidence base (more details in the 'Monitoring and Evaluation section.)

## Annex B: HEP forecasts

The HEP forecasts that underline the HEP numbers used in this Regulatory Triage Assessment have been updated since they were last used in the impact assessment ‘*Introducing registration fees for Office for Students*’<sup>1</sup> (March 2019). Forecasting future HEP numbers over a ten-year period is difficult because of uncertainties around the likely behavioural response of HEPs to the new regulatory framework and any wider policy decisions that may influence the relative costs and benefits of registration to non-registration. The numbers presented in this Regulatory Triage Assessment are based on our best judgement as to the most plausible scenario based on the latest available intel around current and projected HEP applications to the regulatory framework.

### Previous forecasts

The last published forecasts were included in the Impact assessment ‘*Introducing registration fees for Office for Students*’.

**Table B1: Forecasted number of providers registered with the OfS by registration category, revised figures, 19/20 to 28/29.**

	19/ 20	20/ 21	21/ 22	22 /23	23/ 24	24/ 25	25/ 26	26/ 27	27/ 28	28/29
Approved	112	121	131	140	148	155	162	167	172	177
Approved (fee cap)	352	357	362	367	372	376	380	384	387	391
Total	464	478	493	507	520	531	542	551	560	567
Old Total <sup>1a</sup>	508	531	555	580	606	631	654	677	698	718

Since the previous publication of the HEP forecasts new sector intelligence has become available that can be utilised to improve our estimates. Namely:

- We know the number of HEPs entering the regulated sector has not been as high we forecast. This is because a) HEPs have chosen not to enter the regulated sector and b) they applied but were rejected.
- We have not seen any switching between OfS register categories which we thought would happen.
- Actual HEP numbers may be lower than what is recorded in the OfS register because in the last 1-2 years some regulated HEPs have merged or dissolved.

### Revised forecasts

Given this more recent information, we have revised our forecasts downwards. It is assumed that HEP numbers for 2020-2021 were 413 (excluding HEPs that have merged or dissolved). HEP forecasts for the ten-year period have been informed by:

- information on the number of HEPs currently going through the registration process and therefore expected to join the OfS register in the next two years. We assume that not all HEPs in the registration process will get through this process.
- Given that the bulk of HEPs will have joined by this time, we anticipate that the numbers of new HEP registrations will continue to fall from 2023/24 and then from 2025/26

<sup>1</sup> [Introducing registration fees for Office for Students: impact assessment \(publishing.service.gov.uk\)](#)

onwards we assume reach a steady state of five new HEP registrations for the rest of the appraisal period (some of which could be HEP re-applications).

- Any de-registrations over the next ten years have not been estimated due to the high levels of uncertainty around this.

The new HEP forecast numbers are shown in the table below. The HEP numbers are lower in our updated forecasts.

**Table B2: Forecasted number of HEPs registered with the OfS, revised figures (central forecast), 2020/21 to 2031/32.**

	2020/ 2021 Actual	2021 /2022	2022/ 23	2023/ 24	2024/ 25	2025/ 26	2026/ 27	2027/ 28	2028/ 29	2029/ 30	2030/ 31	2031/ 32
New registrations	Since April 2020: 26	30	25	20	15	5	5	5	5	5	5	5
Total HEP number	413*	443	468	488	503	508	513	518	523	528	533	538

Note: \*420 HEPs on the OfS register less 7 that deregistered during the year. This excludes HEPs that have dissolved or merged.

## Annex C: Place based analysis

HEPs are heavily concentrated in London with more than a quarter of OfS registered HEPs located in the Greater London area. This is more than those in the North East, North West and Yorkshire and the Humber combined.

**Table C1: OfS registered HEPs, by region in England.**

Region	No. of HEPs registered with the OfS <sup>2</sup>	As %
East of England	33	8%
East Midlands	27	6%
Greater London	121	29%
North East	14	3%
North West	50	12%
South East	64	15%
South West	41	10%
West Midlands	35	8%
Yorkshire and the Humber	33	8%
<b>Total</b>	<b>418</b>	<b>100%</b>

*Note: This analysis is correct as of February 2021. Percentages may not sum due to rounding.*

This concentration is further emphasised when comparing the distribution of higher education student and staff numbers at OfS registered HEPs by region<sup>3</sup>. Around one fifth of the higher education student population were studying (and 24% of the higher education staff population were employed) at HEPs in London in 2019/20, compared to 16% of the English population living in London.

**Table C2: Student, staff and total population numbers, 2019/20**

Region	Total HE students	As %	Total HE staff	As %	Total population	As %
East of England	142,965	7%	27,435	8%	6,236,072	11%
East Midlands	185,025	9%	23,865	7%	4,835,928	9%
London	430,315	21%	80,600	24%	8,961,989	16%
North East	111,020	5%	17,830	5%	2,669,941	5%
North West	241,440	12%	42,165	12%	7,341,196	13%
South East	365,255	18%	57,910	17%	9,180,135	16%
South West	170,615	8%	29,620	9%	5,624,696	10%
West Midlands	217,965	11%	30,700	9%	5,934,037	11%
Yorkshire and The Humber	198,655	10%	32,070	9%	5,502,967	10%
<b>Total</b>		<b>100%</b>		<b>100%</b>		<b>100%</b>

<sup>2</sup> The OfS Register

<sup>3</sup> Data only available for providers included in HESA data.

	2,063,255	342,195	56,286,961
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Notes: Figures may not sum due to rounding. This analysis only looks at students and staff at HEPs registered with the OfS as of February 2021, where HESA data are available. HESA student number data were available for 216 OfS registered HEPs. HESA Staff records 2019/20 data was available for 165 HEPs in England however staff numbers were unavailable for 2 HEPs. Data coverage varies by HEP, some do not have non-academic staff numbers available - from 2019/20, it is not mandatory for HEPs in England and Northern Ireland to return information about non-academic staff. Source: HESA 2019/20 Student and Staff record: [Table 11 - HE student enrolments by domicile and region of HE provider 2014/15 to 2019/20 | HESA](#), <https://www.hesa.ac.uk/data-and-analysis/staff/table-1>. ONS population estimates: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesforukenglandandwalesandnorthernireland>

However, students in London are more likely to agree with statements that limit freedom of speech than students in the rest of England. For example, violence is justified to prevent someone espousing hateful views, being part of a university community where they are not exposed to intolerant or offensive views is important, or that universities should be able to implement policies that restrict expressing political views if they are upsetting or offensive to certain groups.

Students in the Eastern, South East and Yorkshire and the Humber regions are more likely to feel unable to express their views for fear of disagreeing with their peers.

Table C3 <sup>4</sup>	<b>If someone is using hate speech or making racially charged comments, physical violence can be justified to prevent this person from espousing their hateful views</b>	<b>Universities should be able to establish policies that restrict expressing political views that are upsetting or offensive to certain groups</b>	<b>It is important to be part of a university community where I am not exposed to intolerant and offensive ideas</b>	<b>I feel unable to express my views in my University because I'm scared of disagreeing with my peers</b>
	<b>% Agree with the following statements</b>			
<b>Total</b>	26%	51%	61%	25%
<b>University Region</b>				
<b>Eastern</b>	29%	48%	58%	33%
<b>East Midlands</b>	27%	52%	63%	23%
<b>London</b>	32%	58%	70%	25%
<b>North East</b>	24%	55%	69%	24%
<b>North West</b>	26%	53%	62%	24%
<b>South East</b>	25%	50%	61%	30%
<b>South West</b>	20%	47%	55%	23%
<b>West Midlands</b>	29%	52%	61%	26%
<b>Yorkshire and the Humber</b>	26%	51%	64%	30%

<sup>4</sup> <https://www.kcl.ac.uk/policy-institute/assets/freedom-of-expression-in-uk-universities.pdf>