

# Higher Education (Freedom of Speech) Bill

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THIRD  
MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
IN COMMITTEE OF THE WHOLE HOUSE

*The amendments have been marshalled in accordance with the Instruction of 28th June 2022, as follows –*

Clauses 1 to 11 Schedule	Clauses 12 to 14 Title
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*[Amendments marked ★ are new or have been altered]*

**Amendment  
No.**

**Clause 4**

LORD ETHERTON

**48** Page 6, line 19, after “person” insert “who is within one of the categories specified in section A1(2) and has suffered loss caused by a breach of the duties in (a), (b) or (c) in this section”

***Member’s explanatory statement***

*This amendment narrows and provides certainty as to those entitled to enforce the statutory tort by limiting enforcement to a person for whose benefit there is a duty to secure freedom of speech and, consistent with the Explanatory Notes, only if that person has suffered loss caused by breach of the duty.*

LORD SANDHURST

**49** Page 6, line 27, at end insert –

- “(2) A civil court or an employment tribunal shall have jurisdiction to determine a complaint brought by a member of academic staff under section A7(1)(a) or (b).
- (3) “Civil court” has the meaning set out at section 194(10) of the Legal Services Act 2007.
- (4) A claim before an employment tribunal may include a claim for damages relating to dismissal.

**Clause 4 - continued**

- (5) A member of academic staff who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is any act or expression by the member of academic staff to which section A1 applies.”

***Member’s explanatory statement***

*This amendment seeks to allow the Employment Tribunals to determine claims brought by academic staff members under the new statutory tort, and to make dismissal for exercise of academic freedom automatically unfair.*

50 Page 6, line 27, at end insert –

**“A8 Staying court proceedings**

- (1) This section applies when a person brings civil proceedings before a civil court under section A7.
- (2) Where this section applies the defendant may at any time after acknowledgement of service, and before delivering any pleadings or taking any other step in the proceedings, apply to that court to stay the proceedings.
- (3) On an application under subsection (2) the court may make an order staying the civil proceedings if it is satisfied –
  - (a) that there is no sufficient reason why the matter should not be determined under the free speech complaints scheme; and
  - (b) that the applicant was at the time when the civil proceedings were commenced and still remains ready and willing to do all things necessary to the proper conduct of the investigation.”

***Member’s explanatory statement***

*This new clause gives the civil court the power to stay proceedings where it appears that the OfS scheme should be tried and costs and resources avoided.*

51 [Assigned in error]

52 Page 6, line 27, at end insert –

**“A8 Academic staff: amendments to the Employment Rights Act 1996**

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) In section 108(3), insert –
 

“(s) subsection (5) of section A7 of the Higher Education and Research Act 2017 applies.”
- (3) In section 117, insert –
 

“(9) This section shall not apply to a dismissal contrary to subsection (5) of section A7 of the Higher Education and Research Act 2017.”
- (4) In section 124(1A), for “or 105(6A)” substitute “, 105(6A) or subsection (5) of section A7 of the Higher Education and Research Act 2017”.
- (5) In section 128(1)(a), insert –

**Clause 4 - continued**

“(iii) section A7(5) of the Higher Education and Research Act 2017, or”.

**Member’s explanatory statement**

*This is consequential on the amendment to A7 tabled by Lord Sandhurst. It removes the qualifying period for unfairly dismissed academics and the cap on the compensatory award; it allows the Tribunal to order interim relief.*

LORD STEVENS OF BIRMINGHAM  
LORD WILLETTS  
LORD WALLACE OF SALTAIRE  
LORD COLLINS OF HIGHBURY

*The above-named Lords give notice of their intention to oppose the Question that Clause 4 stand part of the Bill.*

**Member’s explanatory statement**

*This would prevent the creation of a new statutory tort, which risks duplicating functions of the Office for Students and imposing unnecessary additional costs on universities.*

**After Clause 4**

LORD SIKKA

53 Insert the following new Clause –

**“Duty on providers of grants**

After section A7 of the Higher Education and Research Act 2017 (inserted by section 4) insert –

“*Research grants*

**A8 Duty on providers of grants**

- (1) Providers of grants of funds must take reasonable steps to ensure that they do not interfere with the freedom of speech of academics applying for research grants.
- (2) In fulfilling the duty under subsection (1), providers must not require changes to academic research as a condition for a grant, in relation to the following –
  - (a) research design,
  - (b) data collection, or
  - (c) distribution of the research.”

**Clause 5**

LORD WILLETTS  
LORD STEVENS OF BIRMINGHAM

54 Page 7, line 11, leave out “may” and insert “must”

55 Page 7, line 12, leave out “identify” and insert “consult on and publish guidance on”

56 Page 7, line 14, after “practice” insert “in a timely manner”

**Member's explanatory statement**

*Along with other amendments to this Clause in the name of Lord Willets, this amendment would ensure that universities and others know what their free speech duties require of them at any one time and can consult the OfS for advice where this is not clear.*

**Clause 7**

BARONESS GARDEN OF FROGNAL  
LORD WALLACE OF SALTAIRE

*The above-named Lords give notice of their intention to oppose the Question that Clause 7 stand part of the Bill.*

**Member's explanatory statement**

*Removing Clause 7, along with the proposed new Clause 3 in the name of Baroness Garden of Frognal, seeks to probe whether the OfS should directly regulate SUs or whether they should be regulated via the relevant provider.*

**Clause 8**

LORD WALLACE OF SALTAIRE

57 Page 9, line 27, leave out first "member"

**Member's explanatory statement**

*This amendment is intended to probe the definition of "member" in this paragraph.*

LORD WILLETTS  
LORD STEVENS OF BIRMINGHAM

58 Page 10, line 20, leave out "may" and insert "must"

**Member's explanatory statement**

*The purpose of this amendment is to specify the route through which complaints must go, i.e., the OfS cannot intervene until a university's own procedures, or those of the Office of the Independent Adjudicator, are exhausted.*

59 Page 11, line 2, leave out "may allow" and insert "must require"

**Member's explanatory statement**

*The amendment will require the OfS to dismiss frivolous or vexatious complaints, which should reduce bureaucratic burden on the OfS and should make frivolous or vexatious complaints to universities less likely – so reducing bureaucratic burden on universities too.*

LORD SANDHURST

60 Page 11, line 8, at end insert –

“(1A) A decision that a free speech complaint is justified includes a decision that, in the opinion of the OfS, a registered higher education provider has breached the duty at section A1 or has interfered unlawfully with the complainant’s right to freedom of speech.”

**Member's explanatory statement**

*This amendment seeks to ensure that the Director's power to determine rights and duties, which is essential to his or her role, is clear in the statute and not open to challenge by way of judicial review solely on jurisdictional grounds.*

LORD COLLINS OF HIGHBURY  
LORD BLUNKETT

61 Page 11, line 12, at end insert –

“(2A) When assessing whether a free speech complaint is justified, the scheme must require the OfS to be mindful of –

- (a) the right of students to feel safe on university campuses, and
- (b) other legal duties of governing bodies and students' unions, specified in guidance which the Government must publish within three months of the passing of the Higher Education (Freedom of Speech) Act 2022.”

**Member's explanatory statement**

*This amendment would ensure that free speech complaints are considered alongside other competing freedoms, such as the Equality Act 2010 and the Counter-Terrorism Act and Security Act 2015, which the Government must specify in guidance.*

LORD TRIESMAN

62 Page 11, line 23, leave out from “may” to end of line 24 and insert “designate an officer of the OfS, to be known as the Free Speech and Academic Freedom Officer (FSAFO), on behalf of the OfS, to require anyone to do or not do anything found to be necessary as a result of an inquiry undertaken within the scope of the scheme, and to publish a report setting out the FSAFO's findings and reasons.

(5A) A constituent institution of a registered higher education provider or a student union must comply with any requirement of the FSAFO unless –

- (a) it has reasons for not doing so which are compelling having regard to the importance of the matters mentioned in section 2(1)(aa) and (ab), and
- (b) it has published those reasons and sent them to the Board of the OfS.

(5B) Upon receiving such reasons, the Board of the OfS must make immediate arrangements to consider them and make a binding decision in respect of the requirements on the higher education provider or students' union.

(5C) The registration of an institution as a public education provider must contain an obligation to act on a requirement made under this Schedule by the FSAFO or the Board of the OfS.

(5D) It is a condition for a students' union to comply with a requirement made under this Schedule for its financial support.”

LORD WALLACE OF SALTIRE

*Lord Wallace of Saltire gives notice of his intention to oppose the Question that Clause 8 stand part of the Bill.*

**Member's explanatory statement**

*This is to probe why the existing Office of the Independent Adjudicator is not sufficient to respond to student complaints.*

**Clause 9**

LORD JOHNSON OF MARYLEBONE  
LORD TRIESMAN

63 Page 12, line 39, at end insert –

“(3A) The duty in subsection (1) includes a duty to consider whether a registered higher education provider or any constituent institution is overly reliant on overseas funding from a single country of origin.”

**Member's explanatory statement**

*This amendment, together with the other amendment to this clause in Lord Johnson's name, would include income from international tuition fees in the definition of overseas funding and ensure that the Office for Students has a duty to monitor over-reliance on overseas funding from a single country.*

64 Page 13, line 17, at end insert –

“(e) by way of tuition fees.”

**Member's explanatory statement**

*This amendment, together with the other amendment to this clause in Lord Johnson's name, would include income from international tuition fees in the definition of overseas funding and ensure that the Office for Students has a duty to monitor over-reliance on overseas funding from a single country.*

LORD WILLETTS

65 Page 13, line 45, after “amount” insert “, no less than one per cent of the total income of a registered provider in the previous financial year,”

**Member's explanatory statement**

*This amendment would reduce the burden on providers by requiring them to report only the significant sums of overseas funding that might reasonably be believed to affect their behaviour.*

LORD WALLACE OF SALTAIRE

66 Page 14, leave out lines 3 to 41

**Member's explanatory statement**

*This amendment is to probe what evidence there is of significant overseas funding of, or influence over, student unions.*

**Clause 10**

LORD COLLINS OF HIGHBURY  
LORD BLUNKETT

67 Page 15, line 11, at end insert –

- “(1A) A person may not be appointed as the Free Speech Director if the person has at any time within the previous three years made a donation to a political party registered under the Political Parties, Elections and Referendums Act 2000.
- (1B) The person appointed as the Free Speech Director may not while in office make any donation to a political party registered under the Political Parties, Elections and Referendums Act 2000.
- (1C) The appointment for the Free Speech Director must be made by an independent advisory panel to be established by regulations made by the Secretary of State.
- (1D) The appointment of the Free Speech Director is subject to a confirmatory resolution of the relevant Select Committee of the House of Commons.
- (1E) A statutory instrument containing regulations under subparagraph (1C) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

***Member’s explanatory statement***

*This would ensure that the Free Speech Director has not recently and cannot while in office donate to a political party, and that they are only appointed subject to confirmation of an independent advisory panel, a Select Committee of the House of Commons and a resolution of each House of Parliament.*

LORD WALLACE OF SALTIRE  
LORD COLLINS OF HIGHBURY

68 Page 15, line 17, at end insert –

- “(3) The Free Speech Director is to be nominated by the Secretary of State, after consultation with Universities UK and subject to the approval of the House of Commons Select Committee for Education.”

***Member’s explanatory statement***

*This amendment is intended to ensure the independence of those appointed to the position of Director for Freedom of Speech.*

**After Clause 10**

LORD SANDHURST  
BARONESS FOX OF BUCKLEY  
BARONESS BENNETT OF MANOR CASTLE

69 Insert the following new Clause –

**“Amendment to the Counter-Terrorism and Security Act 2015**

In section 31 of the Counter-Terrorism and Security Act 2015, insert –

**After Clause 10 - continued**

- “(2A) The duty imposed by section 26(1) shall not apply to any decision made by a specified authority to which this section applies that directly concerns—
- (a) the content or delivery of the curriculum;
  - (b) the provision of library or other teaching resources; or
  - (c) research carried out by academic staff.”

**Member’s explanatory statement**

*This strengthens the academic freedom protections in the Counter-Terrorism and Security Act 2015 so that inappropriate application of the Prevent duty does not interfere with academic freedom.*

**After Clause 11**

LORD COLLINS OF HIGHBURY  
BARONESS BENNETT OF MANOR CASTLE  
LORD BLUNKETT

70 Insert the following new Clause—

**“Expiry**

- (1) This Act expires at the end of the period of three years beginning with the day on which it is passed, subject to subsection (4).
- (2) A Minister of the Crown may by regulations made by statutory instrument repeal any of the provisions of this Act after one year from the day on which it is passed if the Minister is not satisfied that the provision is working as intended.
- (3) Before the end of the period of three years beginning with the day on which this Act is passed a Minister of the Crown must lay before Parliament a written report on the effectiveness of the provisions of the Act.
- (4) A Minister of the Crown may by regulations made by statutory instrument—
  - (a) provide that this Act does not expire in accordance with subsection (1), in full or in part, subject to approval by resolution of both Houses of Parliament, or
  - (b) make transitional, transitory or saving provision in connection with the expiry of any provision of this Act.
- (5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

**The Schedule**

LORD SANDHURST

71 Page 19, line 40, at end insert—

- “(ca) references to academic staff have the same meaning as in Part A1 (see section A1(11));”



***Member's explanatory statement***

*This amendment is consequential on the amendment to section A1(11) tabled by Lord Sandhurst. It applies the new definition of "academic staff" to the OfS's regulatory duties regarding freedom of speech and academic freedom as set out in Part 1 of the Higher Education and Research Act 2017.*

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*10 November 2022*

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