
Committee Stage: Wednesday 22 September 2021

Higher Education (Freedom of Speech) Bill (Amendment Paper)

This document lists all amendments tabled to the Higher Education (Freedom of Speech) Bill. Any withdrawn amendments are listed at the end of the document. The amendments are arranged in the order in which it is expected they will be decided.

This document should be read alongside the Chair’s provisional selection and grouping, which sets out the order in which the amendments will be debated.

Matt Western 36

Clause 7, page 8, line 24, leave out “at any time”

Member’s explanatory statement

See the explanatory statement for Amendment 37.

Matt Western 37

Clause 7, page 8, line 25, at end insert—

“(2A)An eligible person specified under sub-paragraph (2) may not make a complaint if more than five years has elapsed since the date to which the claim relates.”

Member’s explanatory statement

This amendment narrows the eligibility requirements for the free speech complaints scheme so that an eligible person may not make a claim if more than five years has elapsed since the date to which the claim relates.

Michelle Donelan 12

Clause 7, page 8, leave out lines 40 to 42 and insert—

- “(ii) a student of the provider, or
- (iii) a member or member of staff of the provider or of any of its constituent institutions, or”

Member’s explanatory statement

See explanatory statement to Amendment 8.

Michelle Donelan	13
Clause 7, page 9, line 6, after “provider” insert “or constituent institution”	
Member’s explanatory statement See explanatory statement to Amendment 8.	
Michelle Donelan	14
Clause 7, page 9, line 18, after “provider” insert “, constituent institution”	
Member’s explanatory statement See explanatory statement to Amendment 8.	
Matt Western	38
Clause 7, page 9, line 27, at end insert— “(e) A free speech complaint is not to be referred to the OfS under the scheme if a complaint relating to the same subject-matter is being, or has been, dealt with by the Office of the Independent Adjudicator.”	
Matt Western	39
Clause 7, page 9, line 37, at end insert— “(1A) In reaching a decision under subsection (1)(a), the OfS must consider the other legal duties of governing bodies and students’ unions, such as but not limited to those under the Equalities Act 2010 and section 26 of the Counter-Terrorism and Security Act 2015.”	
Member’s explanatory statement This amendment would require the OfS to consider other legal duties incumbent on higher education providers and students’ unions when reaching a decision as to the extent to which a free speech complaint is justified.	
Matt Western	40
Clause 7, page 9, line 42, after “may” insert “issue guidance, give a warning or”	
Member’s explanatory statement This amendment would allow the OfS to issue guidance or give a warning, instead of a recommendation, to governing bodies or students’ unions against which a complaint has been upheld.	

Michelle Donelan

15

Clause 7, page 10, line 29, after “provider” insert “, a constituent institution of such a provider”

Member’s explanatory statement

See explanatory statement to Amendment 8.

Michelle Donelan

16

Clause 7, page 10, line 32, after “provider” insert “, a constituent institution”

Member’s explanatory statement

See explanatory statement to Amendment 8.

Matt Western

41

Clause 7, page 10, line 2, at end insert—

“(2A) In assessing whether to issue guidance, give a warning or make a recommendation, the OfS must consider the seriousness of the free speech complaint and whether the governing body or students’ union to which the complaint relates has repeatedly breached its freedom of speech duty.”

Member’s explanatory statement

This amendment would require the OfS to gradate the penalty it issues to a governing body or students’ union according to the seriousness of the complaint that has been upheld against it.

Matt Western

42

Clause 7, page 10, line 21, at end insert—

“(8A) The scheme must provide an appeals process for governing bodies and students’ unions that have had free speech complaints upheld against them.”

Member’s explanatory statement

This amendment would require the free speech complaints scheme to have an appeals process for higher education providers and students’ unions.

Matt Western 78
John McDonnell

Clause 8, page 11, line 22, after “OfS” insert “and an advisory board consisting of sector bodies”

Member’s explanatory statement

This amendment would ensure that there is the involvement of relevant sector bodies in the sector.

Matt Western 79
John McDonnell

Clause 8, page 11, line 23, at end insert—

- “(d) providing an annual update made available to students’ unions and higher education institutions on—
- (i) the number and nature of complaints made to OfS regarding freedom of speech; and
 - (ii) examples of what OfS believes to constitute unacceptable infringements of freedom of speech as set out in this Act.”

Member’s explanatory statement

This amendment would help monitor this impact of the legislation and assist student unions and higher education institutions to stay within the law as set out in the Act by providing examples of bad practice.

Matt Western 85

Clause 8, page 11, line 23, at end insert—

- “(1A) A person may not be appointed as the Director for Freedom of Speech and Academic Freedom if the person has at any time within the last 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 Director for Freedom of Speech and Academic Freedom may not whilst in office make any donation to a political party registered under the Political Parties, Elections and Referendums Act 2000.”

Member’s explanatory statement

This amendment would ensure that the Director of Freedom of Speech and Academic Freedom had not donated to any political party in the last three years and that they may not make any further donations to political parties for the duration of his tenure.

Fiona Bruce

64

Schedule, page 13, line 8, after "staff" insert "and students"

Member's explanatory statement

This amendment seeks to protect the right of academic freedom for students in addition to academic staff.

Michelle Donelan

17

Schedule, page 13, line 25, leave out from "subsection (1)," to end of line and insert "for "a provider" substitute "a registered higher education provider, or a students' union,""

Member's explanatory statement

This amendment is consequential on Amendment 18.

Michelle Donelan

18

Schedule, page 13, line 27, leave out "provider," and insert "registered higher education provider or of a constituent institution of such a provider,"

Member's explanatory statement

This enables costs recovery from constituent institutions in connection with the complaints scheme.

Michelle Donelan

19

Schedule, page 14, line 6, after "provider" insert ", constituent institution"

Member's explanatory statement

This amendment is consequential on Amendment 18.

Fiona Bruce

65

Schedule, page 14, line 9, after "staff" insert "and students"

Member's explanatory statement

This amendment seeks to protect the right of academic freedom for students in addition to academic staff.

Fiona Bruce 66

Schedule, page 14, line 36, after "staff" insert "and students"

Member's explanatory statement

This amendment seeks to protect the right of academic freedom for students in addition to academic staff.

Michelle Donelan 20

Schedule, page 14, line 43, at end insert—

“(aa) after the definition of “a fee limit condition” insert—

““constituent institution”, in relation to a registered higher education provider, has the same meaning as in Part A1 (see section A3A(4));”;

Member's explanatory statement

This defines “constituent institution” for the purposes of Part 1 of the Higher Education and Research Act 2017.

Fiona Bruce 67

Schedule, page 15, line 16, after "staff" insert "and students"

Member's explanatory statement

This amendment seeks to protect the right of academic freedom for students in addition to academic staff.

Fiona Bruce 58

Schedule, page 15, line 17, leave out "and within their field of expertise"

Member's explanatory statement

This amendment is consequential on Amendment 27.

Fiona Bruce 68

Schedule, page 15, line 27, at end insert—

“and

(c) adverse impact on educational progress.”

Member's explanatory statement

This amendment seeks to protect the right of academic freedom for students in addition to academic staff.

Michelle Donelan

21

Schedule, page 15, line 46, leave out sub-paragraphs (2) to (4) and insert—

“(2) In paragraph 1, for the words from “in relation” to the end substitute “where under section 73 the OfS imposes a requirement to pay costs on—

- (a) the governing body of a registered higher education provider,
- (b) the governing body of a constituent institution of a registered higher education provider, or
- (c) a students’ union.”

(3) In paragraph 2—

- (a) in sub-paragraph (1)—
 - (i) after “governing body” insert “or students’ union”;
 - (ii) for “73(1)” substitute “73”;
- (b) in sub-paragraphs (3) and (5), after “governing body” insert “or students’ union”.

(4) In paragraph 3(1) for “of a provider” substitute “or students’ union”.

Member’s explanatory statement

This amendment is consequential on Amendment 18.

Michelle Donelan

22

Schedule, page 16, line 15, at end insert—

“(1A) In subsection (1)—

- (a) in paragraph (b), omit the final “or”;
- (b) after paragraph (b) insert—
 - “(ba) a constituent college, school or hall or other institution in England or Wales of an institution within paragraph (b), or”.

Member’s explanatory statement

This amendment aligns section 31(1)(b) of the Counter-Terrorism and Security Act 2015 with the concepts used in the Higher Education and Research Act 2017, in order to facilitate the Minister’s other amendments to Part 2 of the Schedule.

Michelle Donelan

23

Schedule, page 17, line 4, leave out from “provider” to end of line 7 and insert “or a constituent institution of such a provider has the meaning given by section 85(6) of the Higher Education and Research Act 2017;”

Member’s explanatory statement

This amendment and the Minister’s remaining amendments to Part 2 of the Schedule clarify how section 31 of the Counter-Terrorism and Security Act 2015 applies in relation to constituent institutions of registered higher education providers.

Michelle Donelan 24

Schedule, page 17, line 13, at end insert—

““constituent institution”, in relation to a registered higher education provider, has the same meaning as in Part A1 of the Higher Education and Research Act 2017 (see section A3A(4) of that Act);”

Member’s explanatory statement

See the explanatory statement to Amendment 23.

Michelle Donelan 25

Schedule, page 17, line 22, leave out from “provider” to end of line 24 and insert—

“(aa) a constituent institution of such a provider, and”

Member’s explanatory statement

See the explanatory statement to Amendment 23.

Michelle Donelan 26

Schedule, page 17, line 28, at end insert—

“(e) after the definition of “qualifying institution” (inserted by paragraph (d)) insert—

““registered higher education provider” has the meaning given by section 3(10)(a) of the Higher Education and Research Act 2017.””

Member’s explanatory statement

See the explanatory statement to Amendment 23.

Sir John Hayes 70

Schedule , page 17, line 36, at end insert—

“14A After section 32, insert—

“32A Section 26(1) duty: exception for higher education providers

For the purposes of section 26(1) of this Act, the obligation to have due regard to the need to prevent people from being drawn into terrorism shall not apply to any decision made by a registered higher education provider 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.””
-

Michelle Donelan

NC1

To move the following Clause—

“Duties of constituent institutions

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

“Duties of constituent institutions

A3A Duties of constituent institutions

- (1) Sections A1 to A3 apply in relation to the governing body of a constituent institution of a registered higher education provider as they apply in relation to the governing body of the provider.
- (2) Accordingly, in the application of those sections by virtue of subsection (1), references to “the provider” are to be read as references to the constituent institution.
- (3) The duties of the governing body of a constituent institution of a registered higher education provider under sections A1 to A3 do not affect the application of any initial or ongoing registration conditions imposed on the provider under Part 1.
- (4) In this Part—

“constituent institution”, in relation to a registered higher education provider, means any constituent college, school, hall or other institution of the provider;

“governing body”, in relation to a constituent institution of a registered higher education provider, has the same meaning as in Part 1 of this Act.””

Member’s explanatory statement

This new clause secures that the new duties relating to freedom of speech apply to colleges and other constituent institutions of registered higher education providers in England.

Matt Western

NC2

To move the following Clause—

“Providers’ duty to ensure adequate resources for students’ unions

After section A5 of the Higher Education and Research Act 2017 (inserted by section 2) insert—

“A5A Resourcing of students’ unions

The provider must take steps to ensure that students’ unions have sufficient resources to carry out their duties under sections A4 and A5 of this Act.””

Matt Western

NC3

To move the following Clause—

“Select committee review

- (1) The Secretary of State must, at least once every calendar year, invite a select committee of the House of Commons to carry out a review into the effectiveness of the provisions of this Act.
- (2) The Secretary of State must invite the select committee to carry out its first review within one year of this Act being passed.”

Matt Western

NC4

To move the following Clause—

“Other student bodies

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

“A4A Application of students’ union provisions to other student bodies

- (1) In this Part, where a provision applies to a students’ union, it should also be taken to apply to any other student body.
- (2) For the purposes of this section “other student body” means—
 - (a) any Junior Common Room or Middle Common Room of a constituent institution; and
 - (b) any club or society made up of students at a higher education institution, whether or not the club or society is affiliated to the students’ union.””

Member’s explanatory statement

This amendment would expand the definition of a student body to include any Junior Common room or Middle Common room of a constituent institution or any club or society at a higher education institution, regardless of whether student union affiliation requirements have been complied with.

Fiona Bruce

NC5

To move the following Clause—

“Unfair dismissal

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

“A7 Unfair dismissal

An employee 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 omission which contravenes the duty in section A1.””

Member's explanatory statement

This new clause ensures that employment tribunals have jurisdiction to hear claims relating to the duty in section A1.

Matt Western
John McDonnell

NC6

To move the following Clause—

"Sunset clause

- (1) This Act expires at the end of the period of 3 years beginning with the day on which it is passed.
- (2) A Minister of the Crown may by regulations made by statutory instrument remove any of the provisions of this Act after one year from the day on which it is passed if he is not satisfied that the provision is working as intended.
- (3) Before three years from the day on which this Act is passed a Minister of the Crown must present to 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 renew this Act, subject to parliamentary approval in full or in part, or make transitional, transitory or saving provision in connection with the expiry of any provision of this Act.
- (5) Regulations under this section shall be subject to the affirmative procedure."

Member's explanatory statement

This new clause would mean the legislation would have to be renewed by Parliament after a period of three years.

Matt Western
John McDonnell

NC7

To move the following Clause—

"Independent Advisory Body to advise the Director and OfS on the operation of the scheme

- (1) Following the passing of this Act, the Secretary of State shall establish an independent advisory body (IAB) to give independent advice to the Director and OfS on the operation of the Act.
- (2) The independent advisory body shall comprise of representatives of Universities UK, the Universities and Colleges Union and the National Union of Students.
- (3) The advice of IAB shall be public except where mutually agreed by the Director and the IAB."

Member's explanatory statement

This new clause would establish an advisory body of representative bodies within the sector to advise the Director and the OfS.

Matt Western
John McDonnell

NC8

To move the following Clause—

"Guidance on making a complaint

- (1) Notwithstanding clause 11, this Act cannot come into force until the Secretary of State publishes guidance for students, university staff, and others setting out which complaint route each should pursue, through which regulatory bodies, and in which order, when making a complaint relating to freedom of speech."

Member's explanatory statement

This new clause would ensure that those engaging with universities knew which was the appropriate route to make complaints in the first instance, and how to escalate the process should that be necessary.

John McDonnell
Matt Western

NC9

To move the following Clause—

"Appointment of the Director for Freedom of Speech and Academic Freedom

- (1) The appointment of the Director for Freedom of Speech and Academic Freedom shall be subject to a confirmatory resolution of the relevant Select Committee of the House of Commons.
- (2) The Secretary of State shall when appointing the Director for Freedom of Speech and Academic Freedom have regard to the views of an Independent Advisory Body."

Member's explanatory statement

This new clause would require the appointment of the Director for Freedom of Speech and Academic Freedom to be confirmed by the Education Select Committee, and for the Secretary of State to consult the Independent Advisory Body when appointing the Director for Freedom of Speech and Academic Freedom.

Emma Hardy

NC10

To move the following Clause—

"OfS guidance

- (1) Within six months of sections 1 and 2 of this Act coming into force, the OfS must publish guidance on how universities and students' unions are to carry out the duties under those sections.

- (2) Guidance under subsection (1) must be produced in consultation with representatives from higher education providers and students' unions."

Member's explanatory statement

This new clause would require the OfS to publish guidance, within six months of the relevant clauses coming into effect, on how higher education providers and student unions are to carry out their new duties under clauses 1 and 2.

Emma Hardy

NC11

To move the following Clause—

"Review of the appointment process for the Director for Freedom of Speech and Academic Freedom

- (1) The Secretary of State must conduct a review of the appointment process for the Director for Freedom of Speech and Academic Freedom within six months following the calling of a new Parliament.
- (2) Any review conducted under subsection (1) must assess the suitability of the appointment process for selecting politically impartial candidates.
- (3) The Secretary of State must lay the report of the review before Parliament."

Member's explanatory statement

This new clause would require the Secretary of State to review the appointment process for the Director for Freedom of Speech within six months following the calling of a new Parliament, and lay the report of this review before Parliament. The review must include an assessment of the suitability of the appointment process for selecting politically impartial candidates.

Matt Western

NC12

To move the following Clause—

"Harassment

In section 26 of the Equality Act 2010, after subsection (4)(c) insert—

- "(d) When the case concerns the conduct of academic staff of a registered higher education provider, the importance of freedom of speech and academic freedom, as provided for under Part A1 of the Higher Education and Research Act 2017 (as inserted by section 1 of the Higher Education (Freedom of Speech) Act 2021)."

Member's explanatory statement

This new clause amends the Equality Act 2010 so that, in deciding whether the conduct of academic staff of a registered higher education provider constitutes harassment, the importance of freedom of speech and academic freedom must be taken into account.

Matt Western

NC13

To move the following Clause—

“Unfair dismissal in violation of academic freedom

- (1) A member of academic staff of a higher education provider 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 omission by the provider which contravenes the duty in Section A1.
- (2) For the purposes of dismissals under subsection (1), Section 108(1) of the Employment Rights Act 1996 (Qualifying period of employment) shall not apply.
- (3) Notwithstanding Section 124 of the Employment Rights Act 1996 (Limit of compensatory award etc.), there shall be no limit on the level of compensation that can be awarded in cases of unfair dismissal in violation of academic freedom.
- (4) Section 128 of the Employment Rights Act 1996 (Interim relief pending determination of complaint) shall apply in cases of dismissals under subsection (1).”

Member’s explanatory statement

This new clause would render a violation of clause 1 in employment practice as unfair dismissal, regardless of the period of employment at a higher education provider, with no cap on the level of compensation. Interim relief would be available to complainants in such cases.

Order of the House

[12 July 2021]

That the following provisions shall apply to the Higher Education (Freedom of Speech) Bill:

Committal

1. The Bill shall be committed to a Public Bill Committee.

Proceedings in Public Bill Committee

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Thursday 23 September 2021.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Proceedings on Consideration and Third Reading

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which proceedings on Consideration are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.

6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and Third Reading.

Other proceedings

7. Any other proceedings on the Bill may be programmed.

Order of the Committee

[7 September 2021]

That—

1. the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 7 September) meet—
 - (a) at 2.00 pm on Tuesday 7 September;
 - (b) at 3.30 pm and 5.30pm on Monday 13 September;
 - (c) at 9.25 am and 2.00 pm on Wednesday 15 September;
 - (d) at 11.30 am and 2.00 pm on Thursday 16 September;
 - (e) at 3.30 pm and 5.30pm on Monday 20 September;
 - (f) at 9.25 am and 2.00 pm on Wednesday 22 September;
2. the Committee shall hear oral evidence in accordance with the following Table:

Date	Time	Witness
Tuesday 7 September	Until no later than 10.30 am	Professor Kathleen Stock OBE, Professor of Philosophy, University of Sussex; Dr Arif Ahmed, Reader in Philosophy, University of Cambridge and Fellow of Gonville and Caius College
Tuesday 7 September	Until no later than 11.25 am	Trevor Philips OBE; Professor Nigel Biggar, Regius Professor of Moral and Pastoral Theology at the University of Oxford
Tuesday 7 September	Until no later than 2.45 pm	Professor Stephen Whittle, Professor of Equalities Law, Manchester Metropolitan University
Tuesday 7 September	Until no later than 3.30 pm	Shakespeare Martineau
Tuesday 7 September	Until no later than 4.15 pm	Policy Exchange
Tuesday 7 September	Until no later than 5.00 pm	Free Speech Union

Date	Time	Witness
Monday 13 September	Until no later than 4.15 pm	Professor Eric Kaufmann, Professor of Politics, Birkbeck College, University of London; Professor Matthew Goodwin, Professor of Politics and International Relations, University of Kent and Director of the Centre for UK Prosperity at the Legatum Institute
Monday 13 September	Until no later than 4.45 pm	British Future
Monday 13 September	Until no later than 5.15 pm	Office for Students
Monday 13 September	Until no later than 6.00 pm	Jonathan Grant, Professor of Public Policy, King's College London; Paul Layzell, Principal, Royal Holloway, University of London
Monday 13 September	Until no later than 6.45 pm	Antisemitism Policy Trust; National Union of Students

3. proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 9; the Schedule; Clauses 10 to 12; new Clauses; new Schedules; remaining proceedings on the Bill;
 4. the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 23 September.
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