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Report Stage: Thursday 9 June 2022

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## 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 Any withdrawn amendments are listed at the end of the document.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.

★ New Amendments.

New Amendments: 17 to 21 and NC3 to NC7

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Secretary Nadhim Zahawi

NC2

To move the following Clause—

**“Overseas funding**

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

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

- (1) The OfS must monitor the overseas funding of registered higher education providers and their constituent institutions with a view to assessing the extent to which the funding presents a risk to the matters in subsection (2).
- (2) The matters are—
  - (a) freedom of speech within the law, and
  - (b) the academic freedom of academic staff of registered higher education providers and their constituent institutions, in the provision of higher education by registered higher education providers and their constituent institutions.
- (3) The duty in subsection (1) includes a duty to consider, in a case where the OfS has found that a registered higher education provider or any constituent institution of a registered higher education provider is in breach of its duty under section A1, whether overseas funding was relevant to the breach.

- (4) The information which the governing body of a registered higher education provider may be required to provide under the condition under section 8(1)(b) in relation to the function of the OfS under subsection (1) is—
  - (a) information as to relevant funding from a relevant overseas person, where the funding from that person exceeds the threshold in any period of 12 months specified by the OfS, and
  - (b) if the OfS considers it appropriate in any circumstances, such other information as the OfS may reasonably require.
- (5) In this section “relevant funding” from a relevant overseas person, in relation to a registered higher education provider, means amounts which are received by the provider or a connected person—
  - (a) by way of endowment, gift or donation from the relevant overseas person,
  - (b) by way of research grant from the relevant overseas person,
  - (c) pursuant to a research contract with the relevant overseas person, or
  - (d) pursuant to an educational or commercial partnership with the relevant overseas person.
- (6) In subsection (5) “connected person”, in relation to a registered higher education provider, means—
  - (a) the governing body of the provider,
  - (b) a constituent institution of the provider, or
  - (c) a member or member of staff of the provider or of a constituent institution, in their capacity as such.
- (7) For the purposes of subsection (5), treat receipt of anything that is not money as receipt of an amount equal to the value of the thing to the recipient at the time of receipt.
- (8) In this section “relevant overseas person” means—
  - (a) the government of an overseas country, other than a prescribed country,
  - (b) a body which is incorporated or registered in, or has its headquarters in, an overseas country other than a prescribed country, or
  - (c) an individual who is a politically exposed person in relation to an overseas country other than a prescribed country.

- (9) In this section—

“overseas country” means any country or territory outside the United Kingdom, but not including the Channel Islands, the Isle of Man and any British overseas territory;

“politically exposed person” has the meaning given by regulation 35 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692);

“prescribed country” means a country or territory specified in regulations made by the Secretary of State.

- (10) For the purposes of subsection (4)(a), “the threshold” means an amount specified in regulations made by the Secretary of State.
- (11) Regulations under subsection (10) may include provision—
  - (a) as to how the amount specified is to be calculated;
  - (b) to treat amounts received from a person other than a relevant overseas person as received from the relevant overseas person.

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

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

“(3A) The report must include—

- (a) a summary of information received by the OfS pursuant to sections 69D and 69E for that year, and

- (b) a summary of conclusions drawn by the OfS for that year, from its monitoring under sections 69D(1) and 69E(1), regarding relevant patterns, trends or other matters which it has identified and which are of concern to the OfS.””

#### **Member’s explanatory statement**

This new clause makes provision for the reporting of overseas funding by registered higher education providers and their students’ unions.

Jesse Norman  
Robert Halfon  
Sir Robert Buckland  
Damian Green

NC1

To move the following Clause—

#### **“Duty to disclose overseas gifts and contracts affecting freedom of speech**

In section A3 of the Higher Education and Research Act 2017 (inserted by section 1), at end insert—

- “(2) Whenever a registered higher education provider, or any of its members, employees, departments or associated bodies, enters into a disclosable arrangement with an overseas counterparty, its governing body shall, as one part of discharging the duty to promote the importance of freedom of speech and academic freedom in subsection (1), promptly report the required information about such arrangement to the OfS and the Secretary of State.
- (3) By 30 April each year, the OfS shall publish on its website a searchable report which contains all required information which has been disclosed to it pursuant to subsection (2) above in the preceding year.
- (4) If the governing body of a registered higher education reasonably believes that the publication of the identity of the overseas counterparty pursuant to subsection (3) or subsection (6) might present a risk of serious harm to any natural person, it may notify the OfS and will provide such information as the OfS may require to investigate such risk(s).
- (5) If, following a report under subsection (4) above and such investigation as it considers appropriate in the circumstances, the OfS finds that the publication of the identity of the overseas counterparty pursuant to subsection (3) or subsection (6) might present a risk of serious harm to any natural person, then it may redact such information from its report.
- (6) By 30 April 2023, the governing body of each registered higher education provider shall report to the OfS and the Secretary of State the required information of any disclosable arrangement which it, or any of its members, employees, departments or associated bodies, entered into during the ten years prior to this section coming into force, and the OfS shall publish such information on its website in a searchable report by 30 April 2024.
- (7) If the registered higher education provider fails to comply with this duty, the OfS may enforce compliance in civil proceedings for an injunction.

(8) In this Part—

- (a) “associated bodies” means any company, institution, trust, organisation or similar body or group in respect of which the relevant registered higher education provider has significant control or ultimate beneficial interest;
- (b) “disclosable arrangement” means any formal or informal contract, gift or other arrangement by which a financial or other advantage is offered, promised or given to a registered higher education provider or any person or body mentioned in subsection (2) above, whether conditionally or unconditionally, which is equal to or exceeds £50,000 (or would equal or exceed such value in combination with other potentially disclosable arrangements entered into with the same overseas counterparty, or connected overseas counterparties, within the previous twelve months);
- (c) “overseas counterparty” means—
  - (i) any natural person who holds citizenship of, or is domiciled in, any country or territory outside the United Kingdom (or any subdivision of such a country or territory);
  - (ii) any government, organisation, institution, company, foundation, legal person, trust, or similar body or group which is registered, incorporated, headquartered or carries out significant activities in any country or territory outside the United Kingdom (or any subdivision of such a country or territory) or in respect of which ultimate beneficial ownership or significant control resides in a person falling within subsection (c)(i) above; or
  - (iii) any person acting in any capacity for or on behalf of any person who would fall within subsection (c)(i) or (c)(ii) above if they were acting on their own account;
- (d) “required information” means—
  - (i) the exact value of the relevant disclosable arrangement(s);
  - (ii) the identity of the overseas counterparty and the name of any relevant country or territory (and, if relevant, such information about the person(s) for whom they are acting or in whom ultimate beneficial ownership or significant control resides);
  - (iii) the date on which the relevant disclosable arrangement(s) was entered into;
  - (iv) details on the general purpose of the relevant disclosable arrangement(s); and
  - (v) any specific stipulations or obligations imposed on the registered higher education provider or any of its members, employees, departments or associated bodies (including, but not limited to, any changes to any curricula, governance or control of them).”

**Member's explanatory statement**

This new clause seeks to introduce transparency and public reporting of foreign donations to universities, in order to promote freedom of speech and academic freedom, and increase public confidence in universities.

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Alicia Kearns

Mr Alistair Carmichael

Sir Iain Duncan Smith

Henry Smith

Bob Seely

Kevin Hollinrake

Simon Fell

Anthony Mangnall

Royston Smith

Andrew Selous

Tom Tugendhat

Damian Green

NC3

★ To move the following Clause—

**“Duties regarding language and cultural programmes**

In section A3 of the Higher Education and Research Act 2017 (inserted by section 1), at end insert—

- “(2) Whenever a registered higher education provider enters into partnership with an overseas organisation to deliver foreign language, culture or exchange programmes or courses, its governing body must, as one part of discharging the duty to promote the importance of freedom of speech and academic freedom in subsection (1), promptly report the required information about the partnership to the OfS and the Secretary of State.
- (3) In response to the information received under subsection (2), and where there are concerns regarding the effect of the partnership on freedom of speech and academic freedom, the Secretary of State may issue a direction to the registered higher education provider.
- (4) A direction under subsection (3) may be either to—
- (a) terminate the partnership, or
  - (b) offer an equivalent range of programmes or courses delivered in partnership with an alternative organisation.
- (5) In this Part, “required information” means—
- (a) the financial value of the partnership;
  - (b) any specific stipulations or obligations imposed on the registered higher education provider or any of its members, employees, departments or associated bodies (including, but not limited to, any changes to curricula, governance or control of them).”

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Matt Western

NC4

★ To move the following Clause—

**“Appointment of the Director for Freedom of Speech and Academic Freedom**

- (1) A person may not be appointed as the Director for Freedom of Speech and Academic Freedom (‘Director’) 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.

- (2) The person appointed as the Director may not whilst in office make any donation to a political party registered under the Political Parties, Elections and Referendums Act 2000.
- (3) The appointment for the Director shall be made by an independent advisory panel to be established by regulations made by the Secretary of State.
- (4) 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.
- (5) A statutory instrument containing regulations under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament."

#### **Member's explanatory statement**

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

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Matt Western

NC5

★ 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.

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Sir John Hayes  
Tom Hunt

NC6

★ To move the following Clause—

**“Academic staff: interpretation**

(1) Section 121 of the Higher Education and Research Act 2017 is amended as follows.

(2) After “Act—” insert—

“academic staff, for the purposes of any provision inserted by the Higher Education (Freedom of Speech) Act 2022, includes any academic staff (however engaged or employed), honorary, visiting and emeritus academic members of a provider and any other person held out as holding any academic position at the provider;”

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Sir John Hayes  
Tom Hunt

NC7

★ To move the following Clause—

**“Harassment**

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

“(d) when A is a student or a member of the academic staff of a registered higher education provider and the conduct took place in the context of a discussion in a higher education setting—

- (i) 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 2022), and
  - (ii) whether A intended to harass B, or was reckless as to whether A’s conduct constituted harassment towards B.”
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Sir John Hayes  
Tom Hunt

21

★ Clause 1, page 2, line 2, at end insert—

“(3A) Any conduct that would otherwise constitute conduct having the effect of harassment in accordance with section 26(1) of the Equality Act 2010 shall, notwithstanding any provision to the contrary in that Act, constitute freedom of speech within the law for the purposes of subsection (2), provided that—

- (a) the conduct constitutes, or forms part of, discussion of an academic or scientific matter in a higher education setting, and



- (b) the person engaging in such conduct did not know or could reasonably not have known that it would have the effect of harassment.”

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Matt Western  
Jess Phillips

19

★ Clause 1, page 2, line 6, at end insert—

“(4A) The objective in subsection (2) includes securing that no person listed in paragraphs (a) to (d) of subsection (2) is deprived of an ability to speak freely as a result of a non-disclosure agreement or confidentiality agreement between that person and the governing body of the registered higher education provider.

(4B) The provision in subsection (4A) does not prevent the use of a non-disclosure agreement in any case where the governing body and academic staff member agree that a non-disclosure agreement or confidentiality agreement is necessary for the protection of intellectual property.”

**Member’s explanatory statement**

This amendment would ensure that non-disclosure agreements or confidentiality agreements between those listed on the Bill and a higher education providers does not inhibit the freedom of speech for those concerned, save where it is agreed to protect intellectual property.

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Secretary Nadhim Zahawi

1

Clause 1, page 2, line 11, leave out “and within their field of expertise”

**Member’s explanatory statement**

This amendment removes the express limitation that academic freedom covers only matters within an academic’s field of expertise.

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Matt Western

17

★ Clause 1, page 2, line 14, at end insert—

- “(c) to conduct research,  
(d) to engage in intellectual inquiry and contribute to public debate,  
(e) to criticise any institution,  
(f) to be affiliated to any institution, and  
(g) to be a member of a trade union body,”

**Member’s explanatory statement**

This amendment would widen the definition of academic freedom.

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Secretary Nadhim Zahawi

2

Clause 1, page 2, line 28, leave out “and within their field of expertise”

**Member’s explanatory statement**

See explanatory statement for Amendment 1.

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Secretary Nadhim Zahawi

3

Clause 1, page 2, line 29, at end insert—

“(9A)In order to achieve the objective in subsection (2), the governing body of a registered higher education provider must secure that, apart from in exceptional circumstances, use of its premises by any individual or body is not on terms that require the individual or body to bear some or all of the costs of security relating to their use of the premises.”

**Member’s explanatory statement**

This amendment would place a new duty on governing bodies of registered higher education providers to secure freedom of speech for certain persons by requiring such providers to secure that use of its premises is not conditional on requiring the person wishing to use them to bear the costs of security - unless there are exceptional circumstances.

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Matt Western  
Jess Phillips

20

★ Clause 1, page 2, line 32, after “views” insert “or to share experiences”

**Member’s explanatory statement**

This amendment is consequential on Amendment 19.

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Secretary Nadhim Zahawi

4

Clause 1, page 2, line 39, leave out “duty in section A1(1)” and insert “duties in section A1(1) and (9A)”

**Member’s explanatory statement**

This amendment is consequential on the changes made by Amendments 3 and 6.

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Secretary Nadhim Zahawi

5

Clause 1, page 2, line 46, after “provider” insert “and any students’ union for students at the provider”

**Member's explanatory statement**

The duties on registered higher education providers and constituent colleges to secure freedom of speech extends to taking steps as regards the activities of its students' unions (which will include JCRs and MCRs of colleges). Expanding the matters which must be included in the code of practice is to re-inforce this.

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Secretary Nadhim Zahawi

6

Clause 1, page 3, line 9, at end insert "(which must include its criteria for determining whether there are exceptional circumstances for the purposes of section A1(9A))."

**Member's explanatory statement**

This amendment requires the code of practice maintained by a registered higher education provider to set out the provider's criteria for deciding whether there are "exceptional circumstances" which will enable it to require a person wishing to use its premises to bear the costs of security.

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Secretary Nadhim Zahawi

7

Clause 3, page 4, line 36, at end insert—

"(4A)In order to achieve the objective in subsection (2), a students' union for students at a registered higher education provider that is eligible for financial support must secure that, apart from in exceptional circumstances, use by any individual or body of premises occupied by the students' union is not on terms that require the individual or body to bear some or all of the costs of security relating to their use of the premises."

**Member's explanatory statement**

This amendment would place a new duty on certain students' unions to secure freedom of speech for certain persons by requiring the students' unions to secure that use of premises is not conditional on requiring the person wishing to use them to bear the costs of security - unless there are exceptional circumstances.

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Secretary Nadhim Zahawi

8

Clause 3, page 5, line 13, leave out "duty" and insert "duties"

**Member's explanatory statement**

This amendment is consequential on the changes made by Amendments 7 and 10.

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Secretary Nadhim Zahawi

9

Clause 3, page 5, line 32, leave out “duty in section A5 is” and insert “duties in section A5 are”

**Member’s explanatory statement**

This amendment is consequential on the changes made by Amendments 7 and 10.

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Secretary Nadhim Zahawi

10

Clause 3, page 5, line 33, at end insert “(which must include its criteria for determining whether there are exceptional circumstances for the purposes of section A5(4A)).”

**Member’s explanatory statement**

This amendment requires the code of practice maintained by a students’ union to set out the union’s criteria for deciding whether there are “exceptional circumstances” which will enable it to require a person wishing to use its premises to bear the costs of security.

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Matt Western

18

★ Clause 8, page 9, line 32, at end insert—

“(3A) In reaching a decision as to the extent to which a free speech complaint is justified, the OfS must be mindful of the following—

- (a) the right of students to feel safe on university campuses, and
- (b) other legal duties of governing bodies and students’ unions, such as but not limited to those under the Equality Act 2010 and section 26 of the Counter-Terrorism and Security Act 2015.”

**Member’s explanatory statement**

This amendment would ensure other competing freedoms as found in the Equality Act and the Counter-Terrorism Act and Security Act 2015 are considered in relation to complaints lodged under the Free Speech Complaints Scheme

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Secretary Nadhim Zahawi

11

Clause 8, page 10, line 22, after “complaint” insert “which is referred under the scheme and not withdrawn”

**Member’s explanatory statement**

This amendment is to make it clear that the scheme can provide for complaints to be withdrawn and that the OfS is not required to make a decision about a withdrawn complaint.

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Secretary Nadhim Zahawi 12

Clause 8, page 11, line 34, after “publication” insert “under section 67A”

**Member’s explanatory statement**

This makes it clear which power the OfS is acting under when it publishes information covered by this paragraph.

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Secretary Nadhim Zahawi 13

Clause 9, page 12, leave out lines 17 to 21 and insert—

“(b) its functions under sections 69A to 69E and Schedule 6A.”

**Member’s explanatory statement**

This amendment gives the Director for Freedom of Speech and Academic Function responsibility for oversight of the functions conferred on the OfS by the proposed new clause relating to overseas funding.

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Secretary Nadhim Zahawi 14

Clause 12, page 12, line 36, at end insert—

“(aa) section [*overseas funding*], so far as is necessary for enabling the exercise on or after the day on which this Act is passed of the powers to make regulations conferred by section 69D of the Higher Education and Research Act 2017 (inserted by section [*overseas funding*]);”

**Member’s explanatory statement**

This amendment allows the regulation-making powers conferred by the proposed new clause relating to overseas funding to come into force on Royal Assent.

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Secretary Nadhim Zahawi 15

Schedule, page 14, line 23, at end insert—

“4A(1) Section 67B (publication of decision to conduct or terminate investigation) is amended as follows.

- (2) In subsection (3), for “Section 67C does not apply” substitute “Neither section 67C nor paragraph 13 of Schedule 6A applies”.
- (3) After subsection (3) insert—
- “(3A) In the application of this section to publication of a decision under the scheme provided by virtue of Schedule 6A (free speech complaints scheme)—
- (a) references to an investigation (however expressed) are to a review of a free speech complaint under the scheme;
  - (b) for the purposes of subsection (2)(a), the OfS terminates an investigation without making a finding if it—
    - (i) does not make a decision as to whether a free speech complaint is justified because the complaint is withdrawn, or
    - (ii) dismisses a free speech complaint without considering its merits;
  - (c) for the purposes of subsection (2)(b), the findings of an investigation do not result in the OfS taking any further action only where—
    - (i) the OfS decide that a complaint is wholly not justified, or
    - (ii) the OfS decide that a complaint is justified (wholly or partly) but do not make any recommendations about the person about which the complaint is made.”
- 4B In section 67C (protection for defamation claims) after subsection (2) insert—
- “(3) This section does not apply to the publication of—
- (a) a decision or recommendation made by the OfS under the scheme provided by virtue of Schedule 6A, or
  - (b) a report under paragraph 12(1)(b) of that Schedule.

(See instead paragraph 13 of Schedule 6A.)””

#### **Member’s explanatory statement**

Section 67C of the Higher Education and Research Act 2017 (inserted by the Skills and Post-16 Education Act 2022) provides for qualified privilege to defamation claims arising from publication by the OfS of decisions etc. The free speech complaints scheme inserted into the 2017 Act by the Bill provides for absolute privilege for defamation claims arising from publication of OfS decisions etc under the scheme. This amendment modifies the application of section 67B so it is clear how it applies in the context of the free speech complaints scheme and removes the overlap between section 67C and the provisions of Schedule 6A by providing that section 67C does not apply to decisions etc under the free speech complaints scheme.

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Secretary Nadhim Zahawi

16

Schedule, page 16, line 25, leave out “and within their field of expertise”

#### **Member’s explanatory statement**

See explanatory statement for Amendment 1.

## 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.
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