

# HIGHER EDUCATION (FREEDOM OF SPEECH) BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- These Explanatory Notes relate to the Lords amendments to the Higher Education (Freedom of Speech) Bill as brought from the House of Lords on 14 December 2022.
- These Explanatory Notes have been prepared by the Department for Education in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes, like the Lords amendments themselves, refer to Bill 30, the Bill as first printed for the Lords.
- These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- Lords Amendments 1 to 2, 4 to 9 and 11 to 12 were tabled in the name of the Minister.
- Lords Amendment 10 was tabled by Lord Willetts, Lord Collins of Highbury, Lord Wallace of Saltaire and Baroness Shafik, and was opposed by the Government.
- Lords Amendment 3 was tabled by Lord Collins of Highbury and Baroness Thornton and was supported by the Government.
- In the following Commentary, an asterisk(\*) appears in the heading of any paragraph that deals with a non-Government amendment.

# Commentary on Lords amendments

## Lords amendments to clause 1: Duties of Registered Higher Education Providers

### Lords Amendments 1 and 2

1. Lords Amendments 1 and 2 would amend section A1 (to be inserted into the Higher Education and Research Act 2017) with consequential amendments to Lords Amendment 4, by replacing “, beliefs or views” with “or opinions”.

### Lords Amendment 3\*

2. Lords Amendment 3 would insert a new subsections A1(11) and (12) to require that the governing bodies of registered higher education providers secure that the provider does not enter into non-disclosure agreements with specified individuals in relation to complaints of sexual abuse, harassment or misconduct, or other bullying or harassment. It would also apply to constituent institutions as a result of section A4 of the Higher Education and Research Act 2017 (as inserted by clause 2).

### Lords Amendment 4

3. Lords Amendment 4 would amend section A1(13) to define “freedom of speech”, referring to Article 10(1) of the European Convention on Human Rights as it has effect for the purposes of the Human Rights Act 1998.

### Lords Amendment 5

4. Lords Amendment 5 would amend section A1(13) to define the European Convention of Human Rights for the purposes of Lords Amendment 4.

### Lords Amendment 6

5. Lords Amendment 6 would amend section A1(13) by inserting a definition of “member”. This definition would exclude those who are members of a registered higher education provider, solely due to having been a student of the provider, from being a “member” of a provider for the purposes of Part A1 of the Higher Education and Research Act 2017.

## Lords Amendments to clause 2: Duties of constituent institutions

### Lords Amendment 7

11. Lords Amendment 7 would amend section A4(4) by inserting a definition of “member”. This definition would exclude those who are members of a constituent institution (e.g. a college), solely due to having been a student of the institution, from being a “member” of a constituent institution for the purposes of Part A1 of the Higher Education and Research Act 2017.

These Explanatory Notes relate to the Lords Amendments to the Higher Education (Freedom of Speech) Bill [HL] as brought from the House of Lords on 14<sup>th</sup> December (HL Bill 79)

## **Lords Amendments to clause 3: Duties of students' unions**

### **Lords Amendments 8 and 9**

12. Lords Amendments 8 and 9 would amend section A5 with amendments consequential on Lords Amendment 4, by replacing “, beliefs or views” with “or opinions”.

## **Lords Amendments to clause 4: Civil claims**

### **Lords Amendment 10\***

13. Lords Amendment 10 would remove clause 4 from the Bill, which would amend the Higher Education and Research Act 2017 to insert new section A7 in the Higher Education and Research Act 2017. That provision would create a new statutory tort for breach of specified freedom of speech duties. It would enable civil proceedings to be brought against a registered higher education provider or a constituent institution of such a provider in respect of a breach of section A1, and against a students' union in respect of a breach of section A5. This would enable individuals to seek legal redress for loss they have suffered as a result of breach of those duties.

## **Lords Amendments to clause 5: General functions**

### **Lords Amendment 11**

14. Lords Amendment 11 would amend clause 5(2) of the Bill, which would insert new section 69A into the Higher Education and Research Act 2017. It would replace “the promotion of” with “how to support”. This would clarify that the new function conferred on the Office for Students enabling it to identify good practice in freedom of speech matters and to give good advice about such practice is not directed at giving guidance about how to discharge the new duty on registered higher education providers and their constituent institutions to promote the importance of freedom of speech and academic freedom under new section A3 (in clause 1 of the Bill).

## **Lords Amendments to the Schedule: Minor and consequential amendments**

### **Lords Amendment 12**

15. Lords Amendment 12 would amend paragraph 11(2) in Part 1 of the Schedule, which amends subsection 85(1) of the Higher Education and Research Act 2017. The amendment would insert new definitions of “member”, to ensure that “member” (of a registered higher education provider, of a constituent institution of such a provider and of a students' union)

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means the same in Part A1 and Part 1 of that Act.

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## Financial Effects of Lords Amendments

16. There are no financial implications related to the Lords amendments.

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