

# Higher Education (Freedom of Speech) Bill

## Universities UK (UUK) parliamentary briefing June 2022 – Lords Second Reading

This briefing provides a short summary of the Bill, as well as those areas where we feel further clarification and assurances are still required ahead of the Bill's Second Reading in the Lords.

## **Summary of developments at Commons Third Reading**

The Higher Education (Freedom of Speech) Bill completed its final stages in the House of Commons on 13 June 2022. A government-led amendment (now Clause 9) was added to the Bill that would require higher education providers to report overseas funding of their

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UK universities are committed to protecting and promoting free speech, which is critical to

2. Provide safeguards to ensure the statutory tort does not lead to universities having to defend themselves against vexatious or frivolous claims.
3. Clarify the role of the OFS Complaints Scheme and Director for Freedom of Speech and Academic Freedom in relation to that of the existing ombudsman, the Office of the Independent Adjudicator for Higher Education (the OIA).
4. Ensure that duties on overseas(c)-1.9 (l)0.6 /MCIDn7a

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for an individual to take a university to court over a breach regarding free speech (covered in more detail below).

UUK believes it is right that, where an individual feels they have suffered harm due to a breach of the Section 43 duty, they have the right to redress. Nonetheless, feedback from our

To help mitigate against this risk, UUK would welcome clarification on:

- x how individuals will be expected to demonstrate they have suffered adverse consequences or a material loss as a result of a breach of Section 43,
- x whether there will be a financial threshold for this loss, and
- x whether there will be any requirement for individuals to exhaust other complaint routes available to them before pursuing redress by means of the tort.

### **Three: Clarify the role of the OfS Complaints Scheme and Director for Freedom of Speech and Academic Freedom in relation to that of the existing ombudsman, the OIA.**

The Bill also proposes creating the role of a Director for Freedom of Speech and Academic Freedom, who would be appointed to the OfS Board. Among their responsibilities, the Champion will have the power to investigate individual claims relating to breaches of the registration conditions relating to freedom of speech and recommend redress to the Board.

While it is right that individuals are provided the opportunities to seek the right of redress, UUK has concerns that the current proposal risks duplicating the role of the existing ombudsman for student complaints, the OIA, with that of the regulator, the OfS. Although details have not been confirmed, we understand that students would be asked to choose between one of two different avenues to pursue complaints relating to free speech or academic freedom, which will each have different powers regarding the type of redress they can offer. The OfS Director would, for example, be able to consider the whole complaint – including those not related to freedom of speech – but their recommendations would only be able to relate to the freedom of speech aspects of the complaint. In addition, it is not clear what would happen if two individuals complained about the same incident, but opted to pursue different avenues, with one applying to the OfS and another to the OIA.

Furthermore, it has been suggested that universities would be able to use the new Director role as a 'two-way resource' who could advise universities on related issues, as well as being the primary route for concerns. While this could provide a welcome resource for universities and students, there are concerns that this further confuses the role of the new Director and raises questions over whether it would then be appropriate for them to oversee a complaint which they had previously advised on.

We understand the government are keen to ensure that academic staff and external

UUK would welcome further clarity on how the government intend the Complaints Scheme to work in practise and what the role of the OfS Director for Freedom of Speech and Academic Freedom will be in relation to the OIA.

We would also welcome a guarantee that the new OfS Director will have the necessary experience and understanding of higher education and the complex legal framework in place around free speech. This will be critical to ensure they are able to manage complaints effectively and fairly. Adding information on R&D partnerships and commercial arrangements to the list of issues to be considered by the Director also underlines the importance of securing an appropriate appointment.

**Four: Ensure that duties on overseas funding are targeted with risk-based exemptions and proportionate reporting that will protect UK values and our national interest as universities continue to pursue new knowledge and commercial partnerships.**

In developing new relationships with overseas higher education institutions, businesses and states, UK universities comply fully with national security regulations to help protect national interests and have well established processes to ensure new partnerships fully respect a commitment to values like freedom of speech and academic freedom that are central to their public purpose.

It is right that we continue to keep the activities outlined in Clause 9 under review, and that the way universities work with overseas partners is scrutinised appropriately and proportionately. We therefore welcome that Clause 9 is narrower in scope than was proposed by the NC1 amendment with regard to requiring the OfS to provide an annual summary report outlining general themes and trends, as opposed to publishing a list of all financial disclosures. We also welcome the confirmation that it will take a more risk-based approach, with trusted partner countries that are exempt from requirements under the Academic Technology Approval Scheme (ATAS) also now excluded from the requirements of the duty.

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threshold is set in regulations following the Bill. For example, equivalent legislation in the

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We hope that through this work we can help equip those working across institutions but particularly at departmental level to manage areas of tension, recognising that this can often be where challenges arise.

This challenge has been exacerbated by ongoing questions over legal landscape and concerns over the context in which any new legislation would sit. The existing landscape is complex and, as such, there is often confusion and concern raised when discussing how universities should navigate this issue.