Department for Education

Higher Education (Freedom of Speech) Bill

Updated Impact Assessment

June 2022

Title: Higher Education (Freedom of Speech) Bill **IA No: DfE 126** **RPC Reference No:** RPC-DfE-5062(1) **Lead department or agency:** Department for Education **Other departments or agencies:**	**Impact Assessment (IA)** **Date: 01/04/2021** **Stage: Final** **Source of intervention: Domestic** **Type of measure: Primary legislation** **Contact for enquiries:**

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option (in 2019 prices, 2020 present value)			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
£45.4m	£45.4m	£4.7m	Non-Qualifying provision

What is the problem under consideration? Why is government action or intervention necessary?

There is growing concern within the Government that freedom of speech and academic freedom within some higher education providers (HEPs) are being improperly restricted. Evidence shows that some students and staff feel unable to exercise their right to freedom of speech without fear of repercussion. The Government therefore considers it necessary to take steps to strengthen freedom of speech and academic freedom in higher education. Without action to counter attempts to discourage or even silence unpopular views, intellectual life on campus for both staff and students may be unfairly narrowed and diminished. It was a 2019 manifesto commitment to strengthen academic freedom and free speech in universities in England.

What are the policy objectives of the action or intervention and the intended effects?

The policy objective is to embed principles that enable students, staff, members and visiting speakers to feel actively encouraged to express, debate and expand their views on campus and online, within the law; ensure students and staff etc. are not disadvantaged (or reasonably feel that they might be) if they do not align with a certain viewpoint; provide that academic staff are able to exercise freedom to question and test received wisdom and put forward new ideas and controversial or unpopular opinions without fear of detrimental treatment in terms of recruitment and promotion, in addition to dismissal; and to provide clear routes to make complaints and have access to redress.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing. The existing regulatory framework is maintained.

Option 1: a) legislate to require the Office for Students (OfS) to introduce new registration conditions on freedom of speech and academic freedom, with the power to impose sanctions for breaches; b) legislate for a Director for Freedom of Speech and Academic Freedom within the OfS with a remit to champion freedom of speech and academic freedom on campus, and responsibility for investigations of infringements of freedom of speech duties in higher education which may result in sanctions or individual redress via a new complaints scheme; c) strengthen the freedom of speech duties to include a duty on HEPs and their constituent institutions to promote lawful freedom of speech and academic freedom in higher education; d) extend the duties to apply directly to students' unions (SUs); e) introduce a statutory tort for breach of the duties, enabling individuals to seek legal redress for loss they suffer as a result of breach of the duties; f) widen and enhance academic freedom protections, including in relation to recruitment and promotion.

Option 2: Non-legislative options considered: a) promotion of Equality and Human Rights Commission (EHRC) guidance on freedom of expression; b) government-led discussions – for example, hosting an experts' roundtable discussion on freedom of speech/a freedom of speech conference; c) OfS-led review/guidance on freedom of speech and academic freedom, including in relation to registration conditions.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date: After 2027**

Does implementation go beyond minimum EU requirements?		N/A		
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:**	**Non-traded:**	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Michelle Donelan  Date: 13/06/2022

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2023	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -55.0	**High:** -45.7	**Best Estimate:** -50.3

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	3.7		5.0	**45.7**
High	6.6		1. 5.7	• **55.0**
Best Estimate	5.2		5.3	**53. 50.3**

Description and scale of key monetised costs by 'main affected groups'

HEPs, their constituent institutions and SUs are the main affected groups that we expect to incur costs including: familiarisation costs; compliance costs: the direct costs of complying with the regulation and enforcement including the new registration conditions for all registered HEPs; and administrative burden – the costs associated with the paperwork burdens on the administrative structures of HEPs, their constituent institutions and SUs as a result of regulation - e.g. updating codes of practices, and introducing codes of practice for SUs and constituent institutions. There are also costs to the OfS relating to the new Director for Freedom of Speech and Academic Freedom and the creation of an OfS complaints scheme.

Other key non-monetised costs by 'main affected groups'

n/a

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate			•	

Description and scale of key monetised benefits by 'main affected groups'

n/a

Other key non-monetised benefits by 'main affected groups'

Freedom of speech in higher education can also lead to a variety of other benefits for society through the development of a culture of critical thinking, challenge and debate in which ideas can be confronted. There is a wider impact on dissemination of new knowledge and thinking which could lead to the development and implementation of new, more effective solutions which address the current challenges facing science, the economy, the environment and society as a whole.

Key assumptions/sensitivities/risks	Discount rate (%)
	3.5

The distribution of HEPs in the sector already compliant with the existing freedom of speech duties is unknown, therefore it is difficult to say where the burden would fall amongst all HEPs. It is unclear how many staff would be required to support the OfS Director for Freedom of Speech and Academic Freedom and their renumeration package. There remains some uncertainty around how many HEPs will join the OfS register, the number of SUs of approved (fee cap) providers and how the number of constituent institutions of HEPs may change over the appraisal period.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	

Costs: 5.2	**Benefits:** 0	**Net:** 5.2	**Score for Business Impact Target (qualifying**
			N/A

Evidence Base

This is an updated version of the Higher Education (Freedom of Speech) Bill Impact Assessment published in May 2022. It provides additional information relating to the government amendments added to the Bill in 2021 and 2022 at Report Stage of the Bill's passage through the House of Commons. Please note that the RPC opinion is indicative of the Impact Assessment published in May 2021, and not this updated version.

Problem under consideration

1. Government is clear that the restriction of lawful speech and academic freedom in most situations goes against the fundamental principles of the English higher education sector. Staff and students should feel safe to discuss issues and academic staff in particular should feel safe to question and test received wisdom, and put forward new ideas and controversial or unpopular opinions, without the risk of losing their jobs, privileges or promotion.[1]

2. The Higher Education (Freedom of Speech) Bill was introduced on 12 May 2021 and passed its Second Reading in the House of Commons on 12 July 2021. It completed Commons Committee Stage on 23 September 2021. The Bill will continue its Parliamentary passage in the third session. This Impact Assessment has been updated to reflect technical amendments made to the Bill at Report stage to ensure that that the strengthened freedom of speech duties apply directly to the constituent institutions of HEPs.

The chilling effect

3. There is growing concern within government that freedom of speech and academic freedom on some university campuses is being affected by increasing intolerance of ideas that challenge conventional wisdom leading to a 'chilling effect' whereby some students and staff may feel unable to express themselves without fear of repercussion.[2]

4. A number of studies, surveys and reports highlight instances where freedom of speech and academic freedom is being curtailed in the higher education sector. The most notable are studies by Kings College London, Policy Exchange, University and College Union (UCU) and the Joint Committee on Human Rights (JCHR). Some of the key findings are set out below.

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[1] See also Universities UK (2011) *Freedom of speech: rights and responsibilities in UK universities* for a useful commentary on the importance of freedom of speech in higher education. https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2011/freedom-of-speech-on-campus.pdf

[2] Policy Exchange (2020); Policy Exchange (2019); KCL Policy institute (2019); UCU (2017); Hillman (2016)

- The King's report indicates that 26% of students think that violence can be justified as a way to prevent someone espousing hateful views.[3] The same report showed that a similar proportion of students reported not feeling free to express their views at university for fear of disagreeing with their peers.

- This chilling effect appears to increase when political views are expressed. For example, the think tank Policy Exchange found that 4 out of 10 students who voted for the UK to leave the European Union felt uncomfortable expressing that in class, though the report was not clear as to the specific reasons that this might be the case.[4] The King's report found a similar problem, with 59% of Conservative-supporting students saying that those with Conservative views are reluctant to express them at their university. However, this is not simply an issue of Conservative, or more right-leaning, opinions being prevented from being openly aired. In the King's study, 24% of Labour supporters, 22% of Liberal Democrat supporters and 20% of Green supporters reported that they felt unable to express their views.

- Policy Exchange polling shows that a number of current and retired academics choose to self-censor.[5] The survey shows that 32% of those who identify as 'fairly right' or 'right' have refrained from airing views in teaching and research, with 15% of those identifying as 'centre' or 'left' also self-censoring.

- This effect is more pronounced for certain individuals, in that they can experience more censorship than others. Data from a survey of 2,153 UK students undertaken by the Policy Institute at King's College London in 2019 shows that male, BAME and mature students are more likely to feel unable to express their views for fear of disagreeing with their peers.[6] However, the reasons behind this are unclear. In addition, the 2017 UCU report which surveyed 2,330 UCU members found that older members, those with a disability and ethnic minorities suffer greater encroachment upon their academic freedom than their peers.[7]

- Although, the JCHR 2018 report did not find evidence of widespread censorship of debate in universities[8], they did find that the fear of being reported for organising or attending an event, combined with the increased

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[3] Freedom of expression in UK universities, King's College London, 2019. The sample includes 2,153 online survey responses from a representative sample of students enrolled in UK higher education institutions.

[4] Academic freedom in the UK, Policy Exchange, 2019. The report used a sample of 505 UK university undergraduate students, aged 18-25. Note: The number of leave supporters in the sample was 64.

[5] Academic freedom in the UK, Policy Exchange, 2020. Based on a survey of UK academics administered on 27 March 2020 by YouGov. The sample consists of 820 respondents (484 currently employed and 336 retired).

[6] https://www.kcl.ac.uk/policy-institute/assets/freedom-of-expression-in-uk-universities.pdf

[7] Karran, T., Mallinson, L., (2016) Protection for Academic Freedom in the U.K., Legal and Normative Protection in a Comparative Context, Report for the University and College Union: Appendix Tables (London: UCU, mimeo)

[8] Freedom of Speech in Universities, JCHR, 2018.

levels of bureaucracy following the introduction of the Prevent Duty, was reported to be having a chilling effect on freedom of speech.

5. This all suggests that the fundamental principles of freedom of speech and academic freedom at some universities are not being sufficiently promoted and protected.

Rationale for intervention

6. There is already a legal framework in place to protect and preserve freedom of speech in the higher education sector. The duty under section 43 of the Education (No. 2) Act 1986 places an obligation on those concerned in the governance of all HEPs registered with the OfS (as well as establishments of higher or further education (FE) maintained by a local authority and other institutions within the FE sector and certain institutions in Wales) to take reasonably practicable steps to ensure that freedom of speech within the law is secured for their members, students and employees, and for visiting speakers.

7. However, there is no direct sanction provided for in legislation if a HEP breaches the section 43 duty. A person affected by a HEP's failure to comply with this duty can seek to bring a claim for judicial review of the relevant decision. The lack of a clear means of enforcement is a specific gap within the current framework. The Government believes that, if the duty is to have the status and level of compliance it deserves, as a measure designed to protect the fundamental principle of freedom of speech, then there must be clear consequences for any breach. In addition, there is a gap in that the duty does not currently apply directly to SUs, or to constituent institutions of HEPs that may be largely independent of their parent institution, e.g. colleges of the Universities of Oxford, Cambridge and Durham.

8. Government intervention is therefore needed on the grounds that there is apparent regulatory failure. This is because the existing legal framework for protecting and preserving freedom of speech is insufficiently effective, to the detriment of students, staff and visiting speakers. This effect is more pronounced for certain individuals, hence there are also equality considerations which are being considered as part of the Public Sector Equality Duty analysis. Enforcement and sanctions would ensure HEPs take their duties more seriously, there would be a conscious process of ensuring policies and procedures are current and effective, and this would all contribute to a cultural change to counter the chilling effect described above.

9. There is also a need to intervene on the grounds that spill-over benefits are being curtailed, for example, through knowledge exchange. Without a welcoming environment in which participants can debate, bring forward ideas and criticise those of others without fear or risk of censorship, rebuke or reprisal, the exchange and dissemination of new ideas and knowledge may be greatly constrained. When individuals are not able to exercise their right to freedom of speech within the law, either through incorrect implementation of policy or through self-censorship, there is a wider impact on dissemination of new knowledge and thinking may be stifled. This hampers the development and implementation of new, more effective solutions which address the current challenges facing science, the economy, the environment and society as a whole.

Policy objective

10. Changes to legislation regulating freedom of speech at HEPs are intended to ensure that individuals feel more able and supported to freely express their views. However, HEPs must acknowledge the myriad pressures on students and staff seeking to express their views - including any inclination towards self-censorship - and should keep under review how their internal policies and processes can best promote a culture of lively intellectual debate and academic discovery.

11. Therefore, the proposals are based on these principles:

a) that students with a diverse range of views feel comfortable, and are actively encouraged, to express, debate and expand their views on campus and online, within the law;

b) that students are not disadvantaged (or reasonably feel that they might be) if they choose not to align with a certain viewpoint;

c) that academics within HEPs are able to exercise freedom to question and test received wisdom and put forward new ideas and controversial or unpopular opinions without fear of detrimental treatment in terms of recruitment and promotion, in addition to dismissal;

d) that those who feel their speech has been unlawfully restricted in the context of higher education have clearer routes to make complaints and have access to redress.

12. The intended effect of this policy is to ensure freedom of speech is protected, promoted and enforced across the whole higher education sector in England and to the wider benefit of society and the economy.

Description of options considered

Option 0 (“Do nothing”)

13. Under this option, the existing regulatory framework is maintained. As the growing body of evidence has found a chilling effect on freedom of speech[9] and the existing legal framework for protecting and preserving freedom of speech is insufficiently effective to the detriment of students, staff, members and visiting speakers, under the current framework, it is likely that the fundamental principles of freedom of speech and academic freedom at some HEPs would continue to not be sufficiently promoted and protected.

[9] Policy Exchange (2019); KCL Policy institute (2019); JCHR (2018); Hillman (2016)

Option 1 (Preferred)

14. In light of the limitations identified in the existing legal framework, the preferred option aims not only to ensure that the gaps in the existing framework are closed but also that HEPs, academics, other staff, members, students and visiting speakers - as well as the domestic and international organisations they partner with - are all aware of the importance of preserving the fundamental values of freedom of speech and academic freedom.

15. This policy will apply to all HEPs registered with the OfS and to the constituent institutions of such HEPs. It will also extend to SUs at approved (fee cap) providers (a category of registered HEPs). The legislative proposals are:

I. Legislate to require the OfS to introduce new registration conditions on freedom of speech and academic freedom, with the power to impose sanctions for breaches

II. Legislate for a Director for Freedom of Speech and Academic Freedom within the OfS with a remit to champion freedom of speech and academic freedom on campus, and responsibility for investigations of infringements of freedom of speech duties in higher education which may result in sanctions or individual redress via a new complaints scheme

III. Strengthen the freedom of speech duties, including a duty on HEPs and the constituent institutions of HEPs to promote lawful freedom of speech and academic freedom in higher education

IV. Extend the freedom of speech duties to apply directly to SUs at approved (fee cap) providers

V. Extend the remit of the OfS to regulate SUs in relation to their freedom of speech duties

VI. Introduce a statutory tort for breach of the duties, enabling individuals to seek legal redress for loss they suffer as a result of breach of specified freedom of speech duties

VII. Widen and enhance academic freedom protections, including extending protections so that recruitment and promotion are also covered

Option 2 (non-legislative options)

Option 2a; Promotion of the Equalities and Human Rights Commission guide on freedom of expression for HEPs and SUs in England and Wales

16. The EHRC guide[10] on freedom of expression in higher education sought to address barriers to freedom of expression in higher education. Published in February 2019, it was backed by HEPs, student bodies, Government and the Charity Commission. The then Secretary of State asked the OfS to promote the implementation of this guidance.

17. Since the publication of this guidance, research has continued to find evidence of a chilling effect on campuses and high-profile incidents of individuals having their freedom of speech or academic freedom supressed have continued to be reported in the media. The guidance itself is not sufficient to solve the problems identified, particularly in regard to enforcement routes and redress.

Option 2b: Government-led discussions – for example, hosting an experts' roundtable discussion on freedom of speech/a freedom of speech conference.

18. In May 2018, the then Universities Minister, Sam Gyimah, called a summit for university and student leaders to discuss concerns that universities had become hostile places for freedom of expression. They agreed that the sector should support the EHRC in developing new guidance on this topic.

19. Further events were not seen in themselves as sufficient to plug existing gaps in the legislation, particularly in regard to enforcement routes and redress.

Option 2c: OfS-led review/guidance on freedom of speech and academic freedom, including in relation to registration conditions

20. The Secretary of State highlighted that freedom of speech and academic freedom should be OfS priorities in his guidance to the OfS of 8 February 2021. The OfS is continuing to pursue further work in this area, but non-legislative work in this area is not sufficient to solve the problems identified.

21. The legislation will give the OfS increased ability to deal with freedom of speech and academic freedom related complaints, as well as introducing new registration conditions in relation to freedom of speech and academic freedom, enabling the OfS to regulate these issues more effectively.

22. Non-legislative proposals have been discounted because a voluntary approach would not have the desired effect. It would not be possible through non-legislative means to introduce the sanctions and consequences (and associated deterrent) for improper restrictions of lawful free speech that can be achieved through the Bill. Expert roundtables and similar non-legislative options would be a necessary part of achieving the cultural shift that the government seeks, but not sufficient. Government is clear that the restriction of lawful speech and/or academic freedom in most situations goes against the fundamental principles of the English higher education sector. Staff and students should feel safe to discuss issues and academic staff in particular should feel safe to

[10] Freedom of expression: a guide for higher education providers and students' unions in England and Wales (equalityhumanrights.com)

question and test received wisdom, and put forward new ideas and controversial or unpopular opinions, without the risk of losing their jobs, privileges or promotion.[11] The Government believes that new legislation will provide the necessary framework to preserve freedom of speech and academic freedom, and to give clear routes of redress in cases of non-compliance.

Summary and preferred option with description of implementation plan

23. Option 1 as set out above is the preferred option. The Higher Education (Freedom of Speech) Bill was introduced on 12 May 2021 and passed its Second Reading in the House of Commons on 12 July 2021. It completed Commons Committee Stage on 23 September 2021. The Bill will continue its Parliamentary passage in the third session. The legislation will lead to the achievement of the policy objectives by creating a regulatory environment that better protects freedom of speech and academic freedom in English higher education. The OfS, as the regulator, will be responsible for implementing certain elements of the legislation which will require changes to their regulatory framework and to their operational structures. They will consult on the changes to the regulatory framework before implementation. Enforcement of the new arrangements will be through regulatory intervention (the OfS has a range of sanctions at its disposal) and, in the case of the statutory tort, through the courts. The OfS will also create a complaints scheme in relation to breach of the freedom of speech duties to allow those who have suffered adverse consequences as a result of a breach to seek redress.

[11] See also Universities UK (2011) *Freedom of speech: rights and responsibilities in UK universities* for a useful commentary on the importance of freedom of speech in higher education. https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2011/freedom-of-speech-on-campus.pdf

Analysis of options

Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

24. The DfE has carried out previous impact assessments around freedom of speech. In 2017, it published an impact assessment on the freedom of speech duty.[12] This detailed impact assessment was published alongside additional measures under the Higher Education and Research Act 2017 (HERA). This analysis estimated the annual cost to HEPs of introducing the freedom of speech duty, including the costs of familiarisation with the duty; the costs of writing, signing off and updating a code of practice on freedom of speech; and the costs of enforcing the duty. For each HEP, this was estimated to cost £4,714 in the initial year and £2,151 onwards. This estimated an overall equivalent annual net direct cost to business of £1.0m in 2014 prices.

25. The DfE also produced an impact assessment in 2018 on the OfS regulatory framework, including conditions E1 and E2 which relate to governance (including around freedom of speech and academic freedom).[13] This analysis estimated the costs to HEPs of producing a self-assessment of how their governing documents uphold the public interest governance principles. This was estimated to be £0.9m overall in 2018/19 prices.

26. This impact assessment builds on this earlier analysis, refining the assumptions and cost-benefit where appropriate to estimate the expected additional costs and benefits of amending the legal framework as set out in the preferred option.

Option 0 ("Do nothing")

27. Under this option, the existing regulatory framework is maintained.

28. The costs and benefits are as set out in the previous impact assessments on the freedom of speech duty and the regulatory framework.

Option 1 (Preferred Option)

29. In light of the limitations identified in the existing legal framework, the preferred option aims not only at ensuring that the gaps in the existing framework are closed, including by providing clear mechanisms for enforcement which are currently lacking and extending provisions to cover SUs, but also that HEPs, their constituent institutions, academics, other staff, members, students and visiting speakers - as well as the domestic and international organisations they partner

[12] Higher Education and Research Act 2017: detailed impact assessments (legislation.gov.uk), p.185.
[13] Securing student success: Regulatory framework for higher education in England - impact assessment (publishing.service.gov.uk), p.37.

with - are all aware of the importance of preserving the fundamental values of freedom of speech and academic freedom.

30. This policy will apply to all HEPs registered with the OfS, constituent institutions of such HEPs and SUs of approved (fee cap) providers. As of 13 April 2022, there were 416 HEPs on the OfS register.

31. These proposals will impact on a variety of different groups including:

a) **HEPs:** HEPs will be required to strengthen their codes of practice and promote lawful freedom of speech and academic freedom on campus.

b) **Constituent institutions of HEPs:** Constituent institutions in relation to a registered HEP means any constituent college, school, hall or other institution of the HEP. These institutions will be required to draft new codes of practice (where they do not already have them) and promote lawful freedom of speech and academic freedom on campus. Some colleges also have their own Junior and Middle Common Rooms (JCRs and MCRs), and the duties of these colleges will apply in relation to their JCRs and MCRs.

c) **SUs at approved (fee cap) providers:** SUs will be directly accountable under the new duties and will be required to draft new codes of practice.

d) **Students:** Students will experience an environment that encourages them to challenge the current thinking and debate unpopular ideas, without fear of repercussion.

e) **Student societies:** Student societies affiliated with SUs will be required to conform to the codes of practice.

f) **Staff:** Staff (including academic staff) will experience an environment that encourages them to challenge the current thinking and debate unpopular ideas, without fear of repercussion.

g) **Visiting Speakers:** Visiting speakers will be ensured a platform for their legally expressed views, however controversial, within certain constraints.

h) **Applicants:** HEPs must take reasonably practicable steps to protect external applicants for academic roles from adverse consequences because they have questioned and tested received wisdom or put forward new ideas and controversial or unpopular opinions.

i) **Government:** The Government will have delivered its manifesto commitment to strengthen academic freedom and free speech in universities in England.

j) **OfS:** The OfS will have an enhanced role to champion and enforce freedom of speech and academic freedom duties on HEPs, including through the imposition of penalties and other sanctions.

k) **OIA:** The Office of the Independent Adjudicator for Higher Education (OIA) currently handles student complaints against HEPs; those complaints with

elements of freedom of speech in them could now go for consideration to the complaints scheme at the OfS.

l) **Charity Commission:** The Charity Commission currently regulates SUs which are registered charities as regards compliance with charity law and will continue to do so. It will need to work closely with the OfS which will regulate SUs on freedom of speech.

m) **Wider sector:** HEPs promoting freedom of speech and open debate will have wider cultural benefits for higher education.

n) **Wider society:** HEPs promoting freedom of speech and open debate will have wider cultural benefits for society.

32. This policy will impact HEPs and their constituent institutions as they will be required to strengthen/create new codes of practice and promote lawful freedom of speech and academic freedom on campus; and SUs at approved (fee cap) providers as they will be directly accountable under the new strengthened freedom of speech duties. There will be a greater impact on SUs and constituent institutions of HEPs than on HEPs, as they will be subject to additional direct regulation compared to the current position. It is assumed that a large proportion of HEPs are deemed to already be meeting existing requirements around freedom of speech, and indeed some will be operating above and beyond this minimum and in line with the raised expectations contained in the Government's reforms. This intervention is about addressing those particular areas of the higher education sector where freedom of speech is either currently being restricted, or where they could be doing more to promote it.

33. In line with Better Regulation Guidance, compliance with measures is assumed, thus any financial costs of possible compensation for claims are excluded from cost estimates as this would be considered a 'sanction'.

34. It is worth noting that there are uncertainties and sensitivities around the estimates of impact, as it largely depends on how HEPs, their constituent institutions and SUs react to these requirements. Full calculations, sources and assumptions used can be found at Annex A.

Proposal 1: legislate to require the OfS to introduce new registration conditions on freedom of speech and academic freedom, with the power to impose sanctions for breaches.

Costs

HEPs

35. There would be additional administration costs involved in demonstrating that the HEP meets the new registration conditions. Both new HEPs and current registered HEPs would need to demonstrate they meet these conditions.

36. HEPs will need to submit a self-assessment of how their governing documents meet the new registration conditions. This requires HEPs to either

publish or submit short documents to the OfS. This would apply to approved and approved (fee cap) providers and is estimated to cost £0.8m in the first year, and then up to £0.25m in each year of the appraisal period.

OfS

37. There would also be administration costs to the OfS involved in monitoring and enforcing the freedom of speech duties. This is assumed to be covered by income from registration or other fees in the same way as the rest of the OfS's administrative budget.

Benefits

38. There will be benefits arising from greater clarity and status in relation to HEPs' duties on freedom of speech. This is a non-monetised benefit. The evidence of self-censorship in relation to freedom of speech and academic freedom, combined with the lack of OfS intervention in relation to freedom of speech or academic freedom concerns to date, suggests that the current registration conditions are not by themselves enough to allow the OfS to take effective action. Stakeholder engagement has also revealed concerns that existing codes of practices in relation to freedom of speech are inconsistent between HEPs. It is disproportionate to collect further information before implementation because we already have information that suggests that there is a lack of clarity in this area but DfE will monitor the impact of the new conditions on regulatory intervention by the OfS post-introduction.

Proposal 2: legislate for a Director for Freedom of Speech and Academic Freedom within the OfS, with a remit to champion freedom of speech and academic freedom on campus, and responsibility for investigations of infringements of freedom of speech duties in higher education which may result in sanctions or individual redress via a new complaints scheme

Costs to OfS

39. There will be administration costs to the OfS involved in recruiting and employing a Director for Freedom of Speech and Academic Freedom, as well as a supporting team to administer the new complaints scheme. Ahead of detailed design of the role, the scheme that will be operated, and decisions on appropriate renumeration package, it is assumed this ranges between £0.5 to £0.8m in each year of the appraisal period.

Costs to Students/Staff

40. Students/staff may be confused about the complaints process as freedom of speech complaints often touch on other areas (e.g. harassment). Students/staff may be unsure when to go to the OfS complaints scheme and when to go the OIA or an employment tribunal. However, the Government will work with HEPs, the OIA and the OfS to ensure that this process is clearly signposted. This is a non-monetisable cost.

Benefits

41. Students, staff and visiting speakers will have a clear route for making complaints and seek redress where they believe their freedom of speech or academic freedom has been unlawfully restricted on campus. This means clearer enforcement on freedom of speech and academic freedom, with monitoring and consequences for any breaches. It is difficult to quantify the benefits at this stage. We recognise the need to track impacts after implementation and have outlined a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these 'gaps' in the evidence base (more details in the 'Monitoring and Evaluation section below.)

Proposal 3: strengthen the freedom of speech duties, including a duty on HEPs and their constituent institutions to promote lawful freedom of speech and academic freedom on campus

42. Under the preferred option, all OfS registered HEPs and the constituent institutions of such HEPs would be required to comply with the strengthened freedom of speech duties. For a number of HEPs, whose current code of practice would fail to meet this updated standard, this would involve updating their code of practice to meet the new statutory requirements. Constituent institutions will need to create new codes of practice (or update existing ones if they already have them). These compliance costs (i.e. the direct costs of complying with the requirements) can be broken down into the following:

a) Familiarisation costs: This captures the costs, among other things, of any staff training that a HEP or constituent institution decides to conduct for their staff regarding the strengthened duties.

b) Costs of updating/creating their code of practice: This captures the costs of updating/creating the code of practice, alongside the costs of re-training staff regarding the updated code of practice. We assume that the majority of HEPs will not have to make significant changes to current procedures/codes of practice. Constituent institutions of HEPs will need to create new codes of practice (or update existing ones if they already have them). This will only occur in the first year, as any recurring updates to codes of practice fall under the previous estimates in the HERA impact assessment.

c) Costs of signing off their code of practice: This captures the costs of a senior manager signing off the updated code of practice. This will only occur in the first year, as any recurring updated to codes of practices fall under the previous estimates in the HERA impact assessment.

d) Costs of issuing the code of practice: This captures the cost of any relevant staff time and any costs associated with publishing it on their institution's website and intranet. This will only occur in the first year, as any recurring updated to codes of practices fall under the previous estimates in the HERA impact assessment.

e) Enforcement costs: This captures the costs of internal monitoring and enforcement of the code of practice.

43. As all HEPs registered with the OfS are already required to have a code of practice and comply with/enforce the freedom of speech duty as it stands, the additional costs to institutions of compliance and enforcement are likely to be minimal.

44. Until 2019, constituent colleges (e.g. at the Universities of Oxford, Cambridge and Durham) had their own codes of practice, as was required at the time. Therefore, we assume that only an update to the code of practice is required. There are estimated to be 72 constituent colleges of collegiate universities[14].

45. The estimated costs for the initial year are £2.1m, and for subsequent years this is estimated to cost £1.4m to £2.0m.

46. There are some additional costs to HEPs and their constituent institutions associated with promoting lawful freedom of speech and academic freedom in higher education. The following non-exhaustive list of what this could look like includes HEPs and their constituent institutions taking steps to:

a) ensure that students with a range of views are represented in student engagement work;

b) train staff and educate students on the importance of debate;

c) demonstrate how democracy works by actively promoting democratic processes in HEPs and holding Democracy Days (as some HEPs currently do);

d) affirm frequently and publicly the importance of freedom of speech, particularly where individual staff and students have faced criticism for expressing lawful views;

e) ensure that there is a process in place for staff and students to report actions/behaviours that they see, not just to make complaints about where they consider their own freedom of speech has been unlawfully infringed.

47. This is a non-prescriptive duty, so HEPs and their constituent institutions are not expected to necessarily do all of the actions set out as examples above and they may find cost-effective ways of fulfilling the duty. There is therefore a high degree of uncertainty around what additional costs HEPs and constituent institutions which need to raise their standards might incur. To illustrate, if we

[14] The University of Oxford has 39 colleges A-Z of colleges | University of Oxford and the University of Cambridge has 31 College A-Z | University of Cambridge. Durham University has two colleges Our Colleges - Durham University

assume 5% of OfS registered HEPs[15] run a one-hour staff training session, this is estimated to cost between £1.7 to £1.9m annually over the appraisal period.

48. This measure will make clear that academic freedom is part of freedom of speech and that individuals applying as external candidates for academic roles at a HEP or constituent institution will have similar protections to those already in roles around academic freedom. This is based also on the assumption that many HEPs may already be meeting (or exceeding) existing requirements around freedom of speech.

- **Proposal 4:** extend the freedom of speech duties to directly apply to SUs

Costs to SUs:

49. Under the current framework, the freedom of speech duty applies to the use of SU premises but action can only be taken against a HEP for non-compliance. However, under the preferred option, SUs at approved (fee cap) providers would be directly required to comply with new freedom of speech duties. If we assume 1 official/affiliated SU per HEP, given that there are 346 approved (fee cap) providers registered with the OfS (as of 13 April 2022), this policy would apply to 346 SUs.

50. There would be compliance costs (i.e. the direct costs of complying with the duties) for the SU. These can be broken down into the following:

a) Familiarisation costs: This captures the costs, among other things, of any staff training that an SU decides to conduct for their staff regarding the strengthened freedom of speech duties. This occurs only in the initial year.

51. For the 346 SUs in scope, this is estimated to cost £0.3m-£0.8m (£0.6m best estimate) for the first year.

b) Costs of drafting their code of practice: This captures the costs of drafting the code of practice. This occurs only in the initial year.
c) Costs of signing off their code of practice: This captures the costs of a senior manager signing off the code of practice. This occurs only in the initial year.
d) Costs of issuing the code of practice: This captures the cost of any relevant staff time and any costs associated with publishing it on their SU website. This occurs only in the initial year.

52. For the 346 SUs in scope, costs b) to d) are estimated to cost £0.5m-£0.9m (£0.7m best estimate) for the first year.

[15] This figure includes constituent institutions.

53. For subsequent years, it is assumed that the SU updates, signs off and distributes the code of practice every year. For the 346 SUs in scope, this is estimated to cost £0.8m (best estimate) every year.

54. Enforcement costs: This captures the costs of internal monitoring and enforcement of the code of practice. This is assumed to occur annually and are estimated to be £0.4m per year.

a) There would be additional administrative costs associated with the freedom of speech duties applying directly to SUs. The non-extensive list of costs associated with SUs meeting the requirements of the duties includes ensuring the safety of students and speakers at controversial events e.g. by hiring security. The duty to promote freedom of speech does not apply to SUs.

These additional costs are likely to be negligible.

55. SUs meeting the requirements of the duties may result in an increase in the number of events held by the SU and its affiliated societies. However, these additional costs incurred by the SU to host/finance these additional events is likely to be marginal as in practice HEPs currently often already work with SUs to ensure that the duties are being met via SUs.

56. In the case of breaches in the duties, SUs could incur penalties imposed by the OfS, legal costs and potentially a requirement to pay compensation in the case of individuals seeking redress for loss suffered as a result of breach of the duties. The impact would be zero assuming compliance.

Benefits

57. The extension of the freedom of speech duties to SUs is likely to lead to a greater strengthening of freedom of speech, which will be of benefit to students who gain from exposure to a range of viewpoints, and to visiting speakers whose freedom of speech is better protected.

58. It is inherently difficult to monetise this benefit to students and visiting speakers as it is difficult to attribute these solely to the measure proposed. We recognise the need to track impacts after implementation and suggest a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these ‘gaps’ in the evidence base (more details in the ‘Monitoring and Evaluation section below.)

59. There may also be additional benefits if SUs have greater confidence that they will not face negative consequences for securing freedom of speech.

Proposal 5: extend the remit of the OfS to regulate SUs on their freedom of speech duties

Cost to SUs

60. There are likely to be familiarisation costs for the SU to understand the new regulatory environment in which it operates. We have assumed the cost is the same as familiarisation costs estimated for the impact of legislation to extend the freedom of speech duties to SUs, thus £0.6m in the first year. This is likely to be an over-estimate because the cost of familiarisation was based on the cost for a HEP and SUs tend to be smaller organisations with less senior staff members.

Cost to the OfS

61. The OfS would incur costs of familiarisation to understand their responsibilities around regulating SUs. For simplicity, we assume these equal those of an HEP.

Proposal 6: introduce a statutory tort for breach of specified freedom of speech duties, enabling individuals to seek legal redress for loss they suffer as a result of breaches

62. In line with Better Regulation Guidance, compliance with measures is assumed, thus any financial costs of possible compensation for claims are excluded from cost estimates as this would be considered a 'sanction'. We assume costs associated with complaints are excluded on the basis that these would not arise if there was full compliance by HEPs, their constituent institutions and SUs.

63. No direct impact on HEPs/constituent institutions/SUs.

Benefits

64. The statutory tort would allow students, staff, members, external applicants and visiting speakers to seek recompense for loss caused by breaches of specified freedom of speech duties. This compensation for individuals for the loss incurred by breaches of their freedom of speech or academic freedom are a transfer from HEPs, constituent institutions of HEPs and/or SUs to individuals. Impacts should be zero if HEPs, constituent institutions and SUs comply.

Proposal 7: widen and enhance academic freedom protections, including extending protections so that recruitment and promotion are also covered

65. Reflecting the element of proposal 3 about protections for individuals applying externally for academic roles, this measure confers these protections on internal applicants for academic roles so they should not be disadvantaged during the recruitment process due to their lawful speech. Beyond initial familiarisation costs, HEPs and constituent institutions that comply with this and conduct fair and open recruitment processes will not incur significant additional costs due to this measure. This measure applies to OfS registered HEPs and their constituent institutions, not SUs.

Benefits for Staff

66. Strengthening protections on academic freedom gives staff improved employment security. This gives staff confidence to challenge the current thinking

without fear of consequences to their employment status or progression; and promotes an environment where open debate can lead to new ideas and solutions which address the current challenges facing society.

67. It is inherently difficult to monetise the direct and wider benefits of enhanced academic freedom protections, particularly in relation to those applying for academic roles as it is challenging to identify this population. We recognise the need to track impacts after implementation and suggest a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these ‘gaps’ in the evidence base (more details in the ‘Monitoring and Evaluation section below.)

Monetised and non-monetised costs and benefits of each option (including administrative burden)

Table 1: Summary table of the expected costs of the proposed approach

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33
OfS Director for Freedom of Speech and Academic Freedom	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7
New Registration Conditions	0.8	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Strengthening Duties, including promotion of freedom of speech	1.8	1.8	1.8	1.8	1.8	1.8	1.9	1.9	1.9	1.9
Strengthening Duties – Codes of Practices for HEPs and constituent institutions	2.1	1.4	1.4	1.4	1.4	1.9	2.0	2.0	2.0	2.0
Application of Duties to SUs	1.6	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
OfS to regulate SUs	0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Statutory Tort	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Academic Contractual Protections	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	**7.5**	**5.2**	**5.3**	**5.3**	**5.3**	**5.9**	**5.9**	**6.0**	**6.0**	**6.0**

Monetised benefits

68. It is difficult to establish the causal relationship between freedom of speech/ academic freedom and wider impacts on society and the economy. It is not possible to monetise the benefits due to a lack of evidence enabling us to quantify the impact of the legislation. It is disproportionate to collect evidence before implementation because undertaking a wholesale analysis of the relationship between the values of freedom of speech and wider economic impacts would be a substantial undertaking and the primary policy objective is the non-monetised benefit of protecting freedom of speech and academic freedom as fundamental values in themselves.

69. We recognise the need to track impacts after implementation and suggest a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these 'gaps' in the evidence base (more details in the 'Monitoring and Evaluation section below.)

Non-monetised benefits

70. Freedom of speech is a fundamental principle in higher education which promotes a culture where students learn the skills of critical thinking, challenge and debate. It helps to expose individuals to ideas or subjects they would otherwise not have known about, which allows students to understand a wider range of issues and develop frameworks for thinking about and debating these issues effectively.

71. It also supports a wider public interest because academic, political and wider civic debate helps improve outcomes for the economy and society. Debates in higher education are often at the forefront of new ideas or constructive challenges to conventional thinking which, in turn, can enable citizens, communities and government to make better decisions about the key issues they face. Freedom of speech in higher education can also lead to a variety of other benefits for society such as the robust confrontation of harmful ideas or by enabling a better understanding of cultural diversity.

72. Informal consultation since the publication of the policy paper has indicated support across the sector for freedom of speech and academic freedom as central principles of higher education. The evidence cited earlier, of increasing intolerance of ideas that challenge conventional wisdom, has led to concern about a chilling effect on freedom of speech and robust debate; these changes seek to have a positive impact to turn that trend around.

73. There is a wider impact on dissemination of new knowledge and thinking which could lead to the development and implementation of new, more effective solutions which address the current challenges facing science, the economy, the environment and society as a whole.

74. There is research on the wider benefits to society of freedom of expression, most often through the lens of freedom of the press. For example, a 2008 UNESCO report

into press freedom and development[1] showed the correlations between freedom of the press and the different dimensions of development, poverty, governance and peace. It found that, whilst a causal link between freedom of press and other variables cannot be reached, free press was found to have a positive influence on poverty, governance and on violence and conflict issues. A 2013 paper on the role of press freedom in economic development[2] estimated the relationship between press freedom and economic growth, and foreign direct investment. It found the bi-directional relationship between press freedom and economic growth "*indicates that press freedom plays a vital role in economic development and the reverse relationship points out that an economically growing country implements additional press freedom.*"

Direct costs and benefits to business calculations

75. This policy will apply to all HEPs registered with the OfS, the constituent institutions of such HEPs, and SUs at approved (fee cap) providers. As of 13 April 2022, there were 416 HEPs on the OfS register. The costs are largely administrative and include:

a) Familiarisation costs: This captures the costs, among other things, of any training required to get up to speed with the new requirements.

b) Compliance costs – the direct costs of complying with the regulation and enforcement: new registration conditions for all registered HEPs.

c) Administrative burden – the costs associated with the paperwork burdens on the administrative structures of HEPs, their constituent institutions and SUs as a result of regulation - e.g. updating codes of practices, and introducing codes of practice for constituent institutions and SUs.

76. In line with Better Regulation Guidance, indirect costs to HEPs, such as an increase in fees (to cover the increase in OfS's operating costs), are not counted in the EANDCB as these are considered to be indirect costs and fee increases are out of scope of the better regulation framework under a statutory exclusion.

77. The EANDCB is estimated to be -£5.2m per year, with a range of between -£4.8m and -£5.6m. There are uncertainties and sensitivities around this estimate, as it largely depends on how HEPs, their constituent institutions and SUs react.

[1] Press freedom and development: an analysis of correlations between freedom of the press and the different dimensions of development, poverty, governance and peace - UNESCO Digital Library . This study is the outcome of a research project implemented by the Centre for Peace and Human Security (CPHS) at Sciences Po University with support by UNESCO.

[2] Abdullah Alam & Syed Zulfiqar Ali Shah (2013): The Role of Press Freedom in Economic Development: A Global Perspective, Journal of Media Economics, 26:1, 4-20. http://dx.doi.org/10.1080/08997764.2012.755986. This study used a panel dataset of 115 countries1 over the time period 2002–2010.

Risks and assumptions

78. It is unclear how many staff would be required to support the OfS Director for Freedom of Speech and Academic Freedom and how much they would be paid. Therefore, a range has been given of between 5 and 10 staff, but this is uncertain.

79. HEP forecasts: Due to the nature of forecast data, there remains some uncertainty around how many HEPs will join the OfS register over the appraisal period. Forecast numbers of the next two years have been informed by new sector intelligence that has become available which we have utilised to improve our estimates.

80. The constituent institutions of HEPs: the number of constituent institutions of registered HEPs is difficult to accurately estimate because not all institutions are financially or legally independent and many do not tend to have teaching responsibilities, focusing instead on residential and student support functions. These types of institutions are excluded from the analysis. Furthermore, the number of constituent institutions has been kept constant over the appraisal period as it is unclear how this may change over time.

81. To model the cost to HEPs of meeting the ongoing registration conditions, we make assumptions around the time taken for a HEP to demonstrate this. The policy itself is not prescriptive on how HEPs should do this.

82. Survey responses from the HERA impact assessment[3] have been used and uprated by inflation and the cost estimates in this IA follow a similar methodology. The questions focused on the actual and estimated costs to HEPs of familiarising themselves with the duty; drafting, issuing and updating the required code of practice; and then enforcing it. At that time, a total of 30 HEPs were contacted and responses were received from six, representing a 20 per cent response rate. The majority of these respondents were Alternative Providers, a group which made up the majority of the HEPs which would be newly subject to the duty at that time. Four of the six HEPs already voluntarily produced a code of practice, meaning they could provide accurate cost estimates for producing, updating and enforcing a code of practice. However, it is worth noting that the sample size is not representative of the rest of the higher education sector which includes HEPs with university title, and FE colleges. This approach is also applied to SUs, which tend to be smaller organisations compared with HEPs, and thus may not be an accurate reflection of the cost.

83. For SU costs, if we assume 1 SU per HEP, given that there are 346 approved (fee cap) providers registered with the OfS[4], this policy would apply to 346 SUs. This does not include estimates for new HEPs that may join the OfS register in the approved (fee cap) category over the ten-year appraisal period. This is because of the uncertainty related to the category in which a HEP would register, and because the number of SUs affected as this policy affects approved (fee cap) providers only. It is also important to note that over 150 HEPs in this category are FE colleges, which will have smaller SUs, thus costs may differ for these HEPs.

[3] https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf

[4] As of 27 April 2021.

84. As the OfS would have SU regulation under its remit, we have assumed costs of familiarisation to understand their responsibilities around regulating SUs are equal to those of a HEP on the basis that it is a large organisation that has to understand new requirements. As there is insufficient detail on the exact requirements of what the OfS would need to do, it is not possible to develop the cost estimate at this time.

85. The distribution of HEPs in the sector already compliant with the freedom of speech duties is unknown, so it is difficult to say where the burden would fall amongst all HEPs, particularly in relation to the new duty to promote freedom of speech. We have taken an assumption that 5% of HEPs will be required to promote freedom of speech through a one-hour training session.

Impact on small and micro businesses

86. The measures apply to all OfS registered HEPs and the constituent institutions of such HEPs. In November 2021, there were 418 HEPs registered with the OfS[5].

87. The total number of employees at each HEP is analysed to determine the number of small and micro businesses in the higher education sector. The vast majority of HEPs do not fall into the small or micro business category (Table 1) (See Annex D for full methodology).

Table 1: Number and size of HEPs by type			
	Number of HEPs	% of all registered HEPs in England	Number of small/micro HEPs
HEPs with university title	119	28%	3
Further Education colleges	161	39%	1
Other HEPs	138	33%	*
Total	418	100%	-

Notes: Small businesses (up to 49 employees) and micro-businesses (up to 9 employees). *There are 138 'other' HEPs, of which 53 have Higher Education Statistics Agency (HESA) data available in 2019/20. 21 of these HEPs have academic staff numbers of less than 50. From 2019/20, it is not mandatory for HEPs in England and Northern Ireland to return information about non-academic staff, therefore it is not possible to say for certain that these HEPs are small or micro businesses. There are 85 HEPs without data on staff.

88. There is no official data available which covers staff at SUs. Given these tend to be smaller organisations, we assume they would fall in either the small or micro business category.

89. Some of the small and micro businesses will be HEPs which are also FE institutions (FE colleges, sixth form colleges and designated institutions). We have chosen not to carve these out from the scope of the legislation for a number of reasons:

[5] The OfS Register - Office for Students

a) There are no other registration conditions which do not apply to FE institutions.

b) It would make regulation for the OfS much more complicated going forward, as they would have different rules to apply to FE and higher education institutions in each category. There would need to be different consideration for each type of institution and different guidance in the regulatory framework, for example. The decision to allow FE institutions with higher education provision to register with the OfS was taken in HERA, and the changes now proposed simply follow that approach.

c) As it stands, all FE institutions already have to meet the current duties for all students, not only those studying on higher education courses, and those registered with the OfS must meet the registration conditions on the Public Interest Governance Principles which include protecting freedom of speech and academic freedom, so it should not be a disproportionate burden for them to comply with the strengthened duties.

90. For the purposes of our cost estimates, we have assumed the cost of the proposals will not vary by type of institution e.g. small/micro-organisation. Although this is simplistic and in reality it is likely that the impact will depend on the size of HEP, we have taken a proportionate approach to the calculation of cost estimates.

Wider impacts (consider the impacts of your proposals)

91. The wider impacts are outlined above, including in the section on non-monetised benefits. There are no significant environmental, business, innovation, market or competition impacts. An equalities impact assessment has been carried out. Consideration has been given to whether the measures in the Bill could have deleterious impacts on those with protected characteristics, and to whether there may be consequences for those who could be affected by lawful views freely expressed. Nothing in the Bill affects the balance of what is and is not lawful free speech, and HEPs will still need to balance their freedom of speech duties with their existing legal duties under the Equality Act 2010, the Prevent duty and the Public Sector Equality Duty.

A summary of the potential trade implications of measure

92. This policy has no trade implications.

Monitoring and Evaluation

93. The OfS monitors compliance with its registration conditions and currently monitors for systemic issues across the sector, including in relation to freedom of speech and academic freedom. The Government will continue to work with the OfS to ensure that progress is being made in this area. The new role of the Director for Freedom of Speech and Academic Freedom and the OfS complaints scheme is likely to lead to a higher number of cases being brought to the attention of the OfS which will allow this monitoring function to be carried out more effectively.

94. In respect of redress and enforcement, the Government will work with the OfS to analyse the nature and volume of complaints being made to the OfS complaints scheme. Initially we expect that a larger number of complaints would suggest that the

legislation is having a positive impact as it would indicate that the new complaints route was being utilised, but over time we would see a decline in those complaints as a positive sign that these issues are being effectively dealt with by HEPs, their constituent institutions and SUs.

95. A Post implementation review (PIR) will be carried out to assess if the objectives of the regulation have been achieved and if they could be achieved in a less burdensome way. As the purpose of the policy intervention is to ensure that staff, students, members of the HEP and visiting speakers should feel safe to discuss issues, and academic staff should be able to question and test received wisdom, and put forward new ideas and controversial or unpopular opinions, without the risk of losing their jobs, privileges or promotion, one of the key indicators of whether this objective has been met will be that the levels of self-censorship that are currently reported are reduced.

96. The Government will carry out qualitative research to assess the levels of self-censorship amongst students to establish whether the problem has been reduced. A separate survey of academics within HEPs will be carried out to understand the impact of the legislation on their willingness to put forward new ideas and controversial or unpopular opinions without fear of detrimental treatment in terms of recruitment and promotion, in addition to dismissal. The research will also cover the impact of the complaints scheme and its effectiveness in providing redress. This research will be conducted ahead of the policy review date (after 2027).

97. On the administrative burden of the legislation, the government will conduct workshops with HEPs to:

- assess the administrative impact of the legislation, including, for example the time taken to update codes of practice;
- produce case studies of HEPs taking proactive steps to promote free speech and the impact of these activities; and
- capture examples of the benefits of the legislation.

98. More generally, the Government will consider a range of other factors that may indicate a wider change in culture on campus. For example, looking at the number of instances in which a HEP is taking proactive steps to promote the values of lawful freedom of speech and academic freedom in higher education and taking a lead that goes beyond the minimum requirements of the legislation.

99. A number of government amendments were tabled at Commons Report stage. These were made to ensure the following:

a) that security costs are only passed onto event organisers in exceptional circumstances and that such circumstances are set out in codes of practice; in the absence of this amendment a HEP or SU can refuse to pay for security costs of an event and ask, for example, the student society/event organiser to pay for these costs. The event may not go ahead in this case if the student society/event organiser cannot meet the cost of security.

Impact on HEPs/SUs: In instances where the costs may have previously been passed on, it would no longer be possible for HEPs/SUs to pass these on (except in exceptional circumstances), therefore there is no longer a transfer of the security cost from the HEP/SU to another party. In instances where an event previously would not have gone ahead because security costs would have been passed onto the organiser, these events would now go ahead so there is a new cost in this instance. These additional costs are likely to be negligible (see para 54a).

b) that overseas funding to registered HEPs and SUs is reported to the OfS - to increase transparency and enable the OfS to assess the extent to which the funding presents a risk to freedom of speech and academic freedom – see Annex E for the impact on business;

c) that the definition of academic freedom no longer refers to an academic's field of expertise, to ensure that academic freedom protections are not inadvertently narrowed;

d) that it is clear on the face of the Bill that duties on HEPs and constituent colleges cover members of junior and middle common rooms;

e) that the complaints scheme works properly, with the withdrawal of complaints by complainants allowed and appropriate protection from defamation claims for the OfS when publishing decisions.

Annex A: detailed cost breakdowns

Proposal 1: Legislate to require the OfS to introduce new registration conditions on freedom of speech and academic freedom, with the power to impose sanctions for breaches

Costs to HEPs – Initial cost for existing registered HEPs and for new HEPs joining the OfS register.

1. There would be additional administration costs involved in demonstrating that the HEP meets these new registration conditions. Both new HEPs and current registered HEPs would need to demonstrate they meet these conditions.

2. It is likely that HEPs will need to submit a self-assessment of how their governing documents uphold the freedom of speech duties. This requires HEPs to either publish or submit short documents to the OfS. This cost would fall on existing OfS registered HEPs, and any subsequent new HEPs registering with the OfS.

A breakdown of the estimate of cost per HEP are shown below.

Table A1: Cost breakdowns of meeting registration condition.

Activity	Cost
Produce documents, mid-level HE staff (24 hours x £18.1[6])	£430
+ Review documents, senior management (4 hours * £39.5[7])	£160
+ Clearing documents, executive board time (2 hours x 10 staff members x £53.73[8])	£1,070
= Total Staff cost	£1,670

Note: Figures rounded to nearest ten pounds. Total may not equal sum of parts due to rounding. Methodology and assumptions are based on Table D1: Estimated costings used for several conditions (A2, C1, E1, E3, F2) of the Regulatory Framework IA. The registration conditions within that IA all require different information, but involve similar processes (produce, review and senior management sign off for the document), and therefore should be a relevant proxy for this registration condition. **https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727509/Regulatory_Framework_Final_Impact_Assessment.pdf**

Costs to HEPs – ongoing cost for existing registered HEPs and for new HEPs joining the OfS register.

[6] ASHE data shows that the median hourly wage for 'other managers' is £14.84 - Occupation (12) – ASHE: Table 14.5a (2019) (Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics (ons.gov.uk) A 22% uplift has been applied to the wage rate figures to include non-wage costs (£18.1). Eurostat defines wage and salary costs as direct remunerations, bonuses, and allowances paid by an employer in cash or in kind to an employee in return for work done, payments to employees saving schemes, payments for days not worked and remunerations in kind such as food, drink, fuel, company cars, etc. Non-wage costs are defined as the employers' social contributions plus employment taxes regarded as labour costs less subsidies intended to refund part or all of the employer's cost of direct remuneration. Using Eurostat data, non-wage costs as a percentage of wage costs were approximately 22% at the time of writing. The underlying data can be found at Hourly labour costs - Statistics Explained (europa.eu)

[7] ASHE data shows that the median hourly wage for a Senior professional of educational establishment is £32.40 - Occupation (2317) – ASHE: Table 14.5a (2019) (Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £39.5.

[8] ASHE data shows that the median hourly wage for a Chief executive and senior official is £44.04 - Occupation 1115 – ASHE: Table 14.5a (2019) (Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £53.73.

3. In order, to determine whether a HEP continues to comply with the registration conditions on an ongoing basis, the OfS's judgement will be informed by the HEP's behaviour, as well as information submitted by the HEP or available to the OfS. One example of such behaviour is that the HEP regularly reviews the adequacy and effectiveness of its policies and procedures.

4. To model the cost of meeting the ongoing conditions, we assume that a mid-level staff and senior manager will both spend 8 hours per year (16 hours is total)[9], reviewing their policies and procedures in place to comply with the conditions. Thus, HEPs will pay an ongoing annual cost of £460 per year[10].

5. To estimate this over the 10 year appraisal period, we have assumed the first year of the policy, and thus the first year the transition costs occur, is 2023/24. However, this is uncertain and dependent on the Bill's parliamentary passage and when it receives Royal Assent.

Table A2: The cost to HEPs of meeting the new and ongoing requirements of the freedom of speech and academic freedom registration conditions, 2019 prices, £ millions (not discounted)

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33
Number of HEPs registering with the OfS[11]	451	15	15	10	10	10	10	10	10	10
Initial cost of the new conditions to HEPs (£m)	£0.75	£0.03	£0.03	£0.02	£0.02	£0.02	£0.02	£0.02	£0.02	£0.02
Number of HEPs[12]	0	461	471	476	481	486	491	496	501	506
Ongoing cost of the new conditions to HEPs (£m)	0	£0.21	£0.22	£0.22	£0.22	£0.22	£0.23	£0.23	£0.23	£0.23
Total cost (£m)	£0.75	£0.24	£0.24	£0.24	£0.24	£0.24	£0.24	£0.25	£0.25	£0.25

Benefits

6. Potential benefits arising from greater clarity around duties on freedom of speech. This is a non-monetised benefit. As set out above, the evidence of self-censorship in relation to freedom of speech and academic freedom suggests that the existing duties on freedom of

[9] This was the amount of time, and staff level, the OfS felt necessary to be compliant in relation to condition C1. We assume the same costs for this registration condition.

[10] (8 hours * £18.10 mid-level staff member) + (8 hours * £39.53 senior staff member) = £461. See footnote 42 of previous IA: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727509/Regulatory_Framework_Final_Impact_Assessment.pdf

[11] HEP forecasts for the ten-year period have been informed by intel on the number of HEPs going through the registration process and therefore expected to join the OfS register in the next two years. We assume that not all HEPs in the registration process will get through this process.

[12] Number of HEPs for whom ongoing conditions apply (calculated as previous years total number of HEPs). New joiners in current year excluded here as counted in transition cost. Assumes five HEP deregistrations per year.

speech are not by themselves enough to ensure that these values are protected. Specifically, we have identified key limitations of the current framework, including a lack of a clear means of enforcement of section 43 of the Education (No. 2) Act 1986 in the event of breach and limited scope of section 43 which does not directly regulate SU activities or the constituent institutions of HEPs. It is disproportionate to collect further information before implementation because we are plugging clearly identified gaps in the legislation but DfE will monitor the impact of the new conditions on regulatory intervention by the OfS after commencement of the Bill as enacted.

Proposal 2: Legislate for a Director for Freedom of Speech and Academic Freedom within the OfS, with a remit to champion freedom of speech and academic freedom on campus, and responsibility for investigations of infringements of freedom of speech duties in higher education which may result in sanctions or individual redress via a new complaints scheme.

Costs to HEPs

7. The cost of the OfS Director for Freedom of Speech and Academic Freedom will fall to HEPs via fees (to be determined whether it will be incorporated into registration fees, or to be funded via 'other fees' which the OfS can be empowered – through secondary legislation – to charge).

8. If we assume compliance, the cost to the HEPs of redress would be zero. In line with Better Regulation Guidance, any administrative burden related to complaints is not counted as part of this RTA on the basis that complaints would not arise if there was full compliance by HEPs.

Costs to the OfS - Annual

9. There would be administration costs to the OfS involved in recruiting and employing a Director for Freedom of Speech and Academic Freedom, as well as a supporting team to administer the new complaints scheme. Ahead of detailed design of the role and decisions on appropriate renumeration package, it is assumed:

    a) The staff costs of the Director are estimated to be £230,000 annually, including salary, bonuses and pension costs. In 2019-20, the OfS Director for Fair Access and Participation (DFAP) was paid £134,000 in salary and £13,000 bonus, with pension contributions to the value of £53,000.[13] If we assume a similar employment cost for the Director for Freedom of Speech and Academic Freedom, and include a non-wage uplift, this is estimated to be £230,000.

    b) For the supporting team, we assume a team of 5-10 staff. The total staff costs annually are estimated to be £295,000-£590,000. In 2019/20, the OfS total staff costs (including salary, bonus and pension contributions) was £24.6m[14] for 418 staff[15]. We use this to calculate a simple average staff cost of £59,000 per person. We recognise in practice this may be an over-estimate, as not all staff would be paid the same

[13] Office for Students Annual Report and Accounts 2019-20, p.82

[14] Office for Students Annual Report and Accounts 2019-20, p.109

[15] Office for Students Annual Report and Accounts 2019-20, p.80

amount. If we assume five members of staff are required, this is estimated to cost £295,000[16] and for ten staff this is estimated to cost £590,000[17].

10. There would also be administration costs to the OfS involved in monitoring and enforcing the freedom of speech duties. This is assumed to be covered by registration fees or other fees. In line with Better Regulation Guidance, indirect costs to HEPs, such as an increase in registration fees (to cover the increase in OfS's operating costs), are not counted in the EANDCB as these are considered to be indirect costs.

Costs to Students/Staff

11. There may be confusion for students/staff on the process of complaints as freedom of speech complaints often touch on other areas (e.g. harassment). Students/staff may be unsure when to go to the OfS complaints scheme and when to go the OIA or an employment tribunal. This is a non-monetisable cost.

Benefits

12. Students, staff, members and visiting speakers will have a clear route for making complaints and seeking redress where they believe their freedom of speech or academic freedom has been unlawfully restricted on campus. This means clearer enforcement on freedom of speech and academic freedom, with monitoring and consequences for any breaches. It is difficult to quantify the benefits at this stage. We recognise the need to track impacts after implementation and have outlined a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these 'gaps' in the evidence base (more details in the 'Monitoring and Evaluation section)

13. **Proposal 3:** Strengthen the freedom of speech duties, including a duty on HEPs and their constituent institutions to promote lawful freedom of speech and academic freedom on campus.

Costs to HEPs and their constituent institutions

14. Under the preferred option, all OfS registered HEPs and the constituent institutions of such HEPs would be required to comply with the strengthened duties. For a number of HEPs whose current code of practice would fail to meet this updated standard, this would involve updating their code of practice to meet the new statutory requirements. Constituent institutions will need to create new codes of practice (or update existing ones if they have them). These compliance costs (i.e. the direct costs of complying with the requirements) can be broken down into the following:

    a) Familiarisation costs: This captures the costs, among other things, of any staff training that a HEP or constituent institution decides to conduct for their staff regarding the strengthened duties.

[16] £59,000*5 = £295,000

[17] £59,000*10 = £590,000

i. Based on survey responses during consultation for the HERA impact assessment, on average, HEPs expected that familiarisation would cost their institution £2,312[18]. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator[19] to £2,406. We take this as our high estimate.

ii. Using ASHE data the hourly rate of a senior manager is £28.06[20] and the survey responses of familiarisation taking 28 hours on average, this indicates an average cost of familiarisation of £786. We take this as our low estimate.

iii. Accordingly, we take as our best estimate the mid-point between these two values which is £1,596.

b) Costs of updating their code of practice: This captures the costs of updating the code of practice, alongside the costs of re-training staff regarding the updated code of practice. We assume that the majority of HEPs will not have to make significant changes to current procedures/codes of practice. Constituent institutions of HEPs will need to create new codes of practice (or update existing ones if they already have them). For subsequent years we assume that new HEPs will need to produce a code of practice and then all HEPs and their constituent institutions will need to update this on an annual basis.

i. Survey respondents estimated that, on average, updating the code of practice would cost their institution £684[21], which would be incurred every 2 years. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator[22] to £712 and assume this is the cost of updating code of practice on an annual basis.

ii. The hourly rate of a middle manager is estimated as £18.10[23] using ASHE data. Using the survey responses this takes 9 hours of a middle manager's time every 2 years. We assume the same amount of time would be required on an annual basis and we estimate the cost of updating a code of practice annually is £163 per HEP. We take this as our low estimate.

iii. Our best estimate is taken as the midpoint between these two values, which is £437.

c) Costs of signing off their code of practice: This captures the costs of a senior manager signing off the updated code of practice.

i. According to the UCU[24], in 2017/18, the average total of remunerations for heads of institutions (including salary, benefits, employer pension contributions and

[18] An average of each HEP's estimate of the cost to their institution of familiarising themselves with what the freedom of speech duty requires of them. Page 197 https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf
[19] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp
[20] ASHE data shows that the hourly wage for a senior manager is £23.00 - Occupation (2digit SOC 11) – ASHE: table 2.5a (2019) Earnings and hours worked, occupation by two-digit SOC: ASHE Table 2 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £28.06.
[21] An average of each surveyed HEP's estimate of the cost to their institution of updating their code of practice.
[22] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp
[23] ASHE data shows that the hourly wage for a middle manager is £14.84 - Occupation (2digit SOC 12) – ASHE: table 2.5a (2019) Earnings and hours worked, occupation by two-digit SOC: ASHE Table 2 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £18.10.
[24] UCU - Transparency at the top?

bonuses) was £283,615. This translates to an estimated to a £180 hourly rate. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator[25] to £187 per hour. A code of practice is typically about six pages long. We estimate that a six-page document will take one hour of a senior manager's time to read, fully understand, and sign off. Using this information, we estimate that the cost of signing off a code of practice is £187. This is likely to be an overestimate as the salary estimate is based on Vice Chancellors in universities, whereas HEPs in scope are not all universities.

d) Costs of issuing the code of practice: This captures the cost of any relevant staff time and any costs associated with publishing it on their institution's website and intranet.

   i. The survey results indicate that on average HEPs estimated it would cost £692[26] to issue a code of practice including the cost of any staff time, for example by publishing it on their institution's website and intranet. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator[27] to £720.

e) Enforcement costs: This captures the costs of internal monitoring and enforcement of the code of practice. These enforcement costs fall under the previous HERA impact assessment and are therefore not additional costs. However, we have included them for the additional years not covered by the previous impact assessment, and also estimated this for constituent institutions of HEPs.

15. As all HEPs registered with the OfS are already required to have a code of practice and comply with/enforce the freedom of speech duty as it stands, the additional costs to institutions of compliance and enforcement are likely to be minimal.

16. Until 2019, constituent colleges of HEPs (e.g. the Universities of Oxford, Cambridge and Durham) had their own codes of practice. Therefore, only the cost of updating their code of practice is estimated. There are estimated to be 72 constituent institutions of collegiate universities. The reason why some constituent institutions will have the new duties directly applied to them and others will be covered by the duties on the parent HEP is down to the level of autonomy of each college. We understand that constituent colleges at the University of Oxford, the University of Cambridge and some at Durham University have a level of control over their affairs which is deemed to give them sufficient independence from their parent university in matters relating to freedom of speech, i.e. it may not be reasonably practicable for the parent HEP to have control over a range of college level decisions. Some other universities, such as Lancaster University, may use the term 'college' to represent elements of their university such as halls of residence– but these are likely to have a lower level of autonomy than colleges at the three aforementioned universities, i.e. it is more likely that it would be reasonable for the parent HEP to take steps to protect freedom of speech across its colleges.

Table A3: The cost to HEPs and their constituent institutions of updating the codes of practice and signing off and issuing the updated codes of practice, 2019 prices, £ millions (not discounted) central estimate

[25] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp
[26] An average of each surveyed HEP's estimate of the cost to their institution of issuing a code of practice. Page 199 https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf
[27] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp

	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33
Number of HEPs registering with the OfS	523[28]	15	15	10	10	10	10	10	10	10
Familiarisation costs	£0.83	£0.02	£0.02	£0.02	£0.02	£0.02	£0.02	£0.02	£0.02	£0.02
Initial cost[29]	£1.22	£0.03	£0.03	£0.02	£0.02	£0.02	£0.02	£0.02	£0.02	£0.02
Number of HEPs[30]	0	533	543	548	553	558	563	568	573	578
Ongoing cost of updates[31]	n/a	£1.25	£1.27	£1.28	£1.29	£1.31	£1.32	£1.33	£1.34	£1.35
Enforcement costs[32]	£0.08	£0.08	£0.08	£0.08	£0.08	£0.59	£0.60	£0.60	£0.61	£0.61
Total cost	£2.14	£1.38	£1.40	£1.40	£1.41	£1.94	£1.95	£1.97	£1.99	£2.00

Benefits

17. Consistent and improved standards on codes of practices to uphold freedom of speech on campus.

Costs to HEPs and their constituent institutions

18. There are some additional costs associated with promoting freedom of speech on campus. Much of this is a non-prescriptive duty, so HEPs and their constituent institutions are not expected to carry out all of actions set out as examples set out above and they may find cost-effective ways of fulfilling the duty. We also anticipate that many (best practice) HEPs will already be undertaking these practices and will only need to familiarise themselves with the new duty and formalise existing practices.

19. We have estimated costs on HEPs of training staff on the enhanced duty and of their role in promoting freedom of speech. These are illustrative, and in practice, HEPs may choose other ways to promote freedom of speech on campus.

[28] Includes 72 constituent colleges of HEPs.
[29] Initial cost of updating the codes of practice and signing off and issuing the updated codes of practice for HEPs year 1, for subsequent years the cost is of writing the COP, signing off and issuing.
[30] Includes constituent colleges of HEPs.
[31] Assuming annual updates to code of practice
[32] included in HERA impact assessment, but extended for last few years

a) Training costs: This is assumed to take place once per year and affect 5% of OfS registered HEPs[33]. We assume that HEPs will run a one-hour training session for all staff. We take the average number of academic and non-academic staff from HESA 2020/21[34] and multiply this with an average wage cost (including non-wage costs)[35] to estimate the cost of a training session for a HEP to be £65,000.

b) This is estimated to cost between £1.7 to £1.9m annually, over the appraisal period.

Proposal 4: legislate to extend the strengthened freedom of speech duties to cover SUs directly

Costs to SUs

20. Under the current framework, HEPs must ensure SUs comply with the freedom of speech duties. However, under the preferred option, SUs at approved (fee cap) providers would be directly required to comply with the new freedom of speech duties.

21. If we assume 1 SU per HEP, given that there are 346 approved (fee cap) providers registered with the OfS[36], this policy would apply to 346 SUs.

22. There would be compliance costs (i.e. the direct costs of complying with the requirements) for the SUs. These can be):

Table A4: break down of compliance costs (2019 prices)

Activity	Cost (per SU)	Cost type (Initial) or transition	Total Est. Cost (central est.)
Familiarisation of freedom of speech duties	£1,596	Initial	£0.6m
Write a code of practice	£1,174	Initial	£0.7m
Sign-off a code of practice	£187	Initial	
Issue a code of practice	£720	Initial	
Update a code of practice	£437	Annual	£0.8m
Sign-off an updated code of practice	£187	Annual	
Issue an updated code of practice	£1,717	Annual	
Enforcement of code of practice	£1,063	Annual	£0.4m

[33] Constituent colleges are included in total number of HEPs.
[34] Atypical staff are excluded. Averages calculated based on available information for OfS HEPs with HESA data -this will not cover all HEPs. Just over 1,000 academic staff and around 1500 non-academic staff assumed.
[35] Academic staff median hourly wage rate is based on SOC 2311 (Higher education teaching professionals). In 2019, this was £26.76, including the non-wage uplift, this was £32.60. For non-academic staff, the median hourly wage rate is based on ASHE data Table 14.a for SOC 2319 (Teaching and other educational professionals n.e.c.). In 2019, this was £17.29, including the non-wage uplift, this was £21.09.
[36] As of 27 April 2021. The OfS Register - Office for Students

Initial costs:

a) Familiarisation costs: This captures the costs, among other things, of any staff training that an SU decides to conduct for their staff regarding the strengthened duties. This occurs only in the initial year. Staff changes over time are unaccounted for.

   i. Based on survey responses during consultation for the HERA impact assessment[37], on average, HEPs expected that familiarisation would cost their institution £2,312[38]. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator[39] to £2,406. We take this as our high estimate, but it is likely to be considerably higher than the actual costs because that familiarisation has already taken place (or should have done), and this is just a slight change to the duty.

   ii. Using ASHE data the hourly rate of a senior manager is £28.06[40] and the survey responses of familiarisation taking 28 hours on average, this indicates an average cost of familiarisation of £786. We take this as our low estimate.

   iii. Accordingly, we take as our best estimate the mid-point between these two values which is £1,596.

   For the 346 SUs in scope, this is estimated to cost £0.3m-£0.8m (£0.6m best estimate) for the first year. This does not include estimates for new HEPs that may join the OfS register in the approved (fee cap) category over the ten-year appraisal period. This is because of the uncertainty relating to the category in which a HEP would register, and thus the number of SUs affected as this policy affects approved (fee cap) providers only.

b) Costs of drafting their code of practice: This captures the costs of drafting the code of practice. This occurs only in the initial year.

   i. Based on survey responses during consultation for the HERA impact assessment, on average, HEPs expected that writing a code of practice would cost their institution £1,649[41]. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator[42] to £1,716. We take this as our high estimate.

[37] See Table 4, pg 197 https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf
[38] An average of each HEP's estimate of the cost to their institution of familiarising themselves with what the freedom of speech duty requires of them.
[39] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp
[40] ASHE data shows that the hourly wage for a senior manager is £23.00 - Occupation (2digit SOC 11) – ASHE: table 2.5a (2019) Earnings and hours worked, occupation by two-digit SOC: ASHE Table 2 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £28.06.
[41] An average of each surveyed HEP's estimate of the cost to their institution of writing a code of practice.
[42] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp

ii. Using ASHE data, the hourly rate of a senior manager is £28.06[43] and the survey responses of writing a code of practice taking 3 days on average, this indicates an average cost of writing a code of practice of £631[44]. We take this as our low estimate.

iii. Accordingly, we take as our best estimate the mid-point between these two values which is £1,174.

c) Costs of signing off their code of practice: This captures the costs of a senior manager signing off the code of practice. This occurs only in the initial year.

i. According to the UCU[45], in 2017/18, the average total of remunerations for heads of institutions (including salary, benefits, employer pension contributions and bonuses) was £283,615. This translates to an estimated to a £180 hourly rate. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator[46] to £187 per hour. A code of practice is typically about six pages long. We estimate that a six-page document will take one hour of a senior manager's time to read, fully understand and sign off. Using this information, we estimate that the cost of signing off a code of practice is £187. This is likely to be an overestimate as the salary estimate is based on Vice Chancellors in universities, whereas the SUs are smaller organisations which are likely to pay their staff, on average, less.

d) Costs of issuing the code of practice: This captures the cost of any relevant staff time and any costs associated with publishing it on their SU's website. This occurs only in the initial year.

i. The survey results indicate that on average HEPs estimated it would cost £692[47] to issue a code of practice including the cost of any staff time, for example by publishing it on their institution's website and intranet. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator[48] to £720.

For the 346 SUs in scope, costs b) to d) are estimated to cost £0.5m-£0.9m (£0.7m best estimate) for the first year. Costs over the subsequent 9 years of the appraisal period are assumed to be zero, due to the uncertainty around the number of SUs in scope in future.

[43] ASHE data shows that the hourly wage for a senior manager is £23.00 - Occupation (2digit SOC 11) – ASHE: table 2.5a (2019) Earnings and hours worked, occupation by two-digit SOC: ASHE Table 2 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £28.06.

[44] Assuming a working day of 7.5 hours.
[45] UCU - Transparency at the top?
[46] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp
[47] An average of each surveyed HEP's estimate of the cost to their institution of issuing a code of practice.
[48] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp

Annual cost:

e) Costs of updating their code of practice: This captures the costs of updating the code of practice, alongside the costs of re-training staff regarding the updated code of practice. This is assumed to occur annually.

   i. Survey respondents estimated that, on average, updating the code of practice would cost their organisation £684[49], which would be incurred every 2 years. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator[50] to £712 and assume the cost of updating code of practice is the same whether done on a 2 year or annual basis. We take this as our high estimate.

   ii. The hourly rate of a middle manager is estimated as £18.10[51] using ASHE data. Using the survey responses this takes 9 hours of a middle manager's time every 2 years. We assume the same amount of time would be required on an annual basis and we estimate the cost of updating a code of practice annually is £163 per SU. We take this as our low estimate.

   iii. Our best estimate is taken as the midpoint between these two values, which is £437.

f) Costs of signing off their updated code of practice: This captures the costs of a senior manager signing off the updated code of practice. This is assumed to occur every year.

   i. This is as estimated as in paragraph 21.c) and occurs annually.

g) Costs of issuing the updated code of practice: This captures the cost of any relevant staff time and any costs associated with publishing it on their organisation's website and intranet.

   i. The survey results indicate that on average HEPs estimated it would cost £1,650[52] to issue a code of practice including the cost of any staff time, for example by publishing it on their institution's website and intranet. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator[53] to £1,717.

For the 346 SUs in scope, costs e) to g) are estimated to cost £0.7m-£0.9m (£0.8m best estimate) every year. This does not include estimates for new HEPs that may join the OfS register in the approved (fee cap) category over the ten-year appraisal

[49] An average of each surveyed HEP's estimate of the cost to their institution of updating their code of practice.

[50] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp

[51] ASHE data shows that the hourly wage for a middle manager is £14.84 - Occupation (2digit SOC 12) – ASHE: table 2.5a (2019) Earnings and hours worked, occupation by two-digit SOC: ASHE Table 2 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £18.10.

[52] An average of each surveyed HEP's estimate of the cost to their institution of issuing a code of practice.

[53] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp

period. This is because of the uncertainty related to the category in which a HEP would register, and this policy affects SUs at approved (fee cap) providers only.

h) Enforcement costs: This captures the costs of internal monitoring and enforcement of the code of practice. This is assumed to occur annually. These actions include:

i. Monitoring any events/talks to be held by affiliated societies.

ii. Keeping up to date with which speakers will be attending and what topics they will cover.

iii. General staff communication on the requirements of the freedom of speech duties (e.g. all staff emails).

iv. Holding safeguarding working groups.

Surveyed HEPs were asked to estimate the cost to their institution of compliance with their code of practice in the last academic year. On average survey respondents estimated that their annual cost of enforcement was £1,022[54]. We assume the costs will be equivalent for SUs. As this is in 2017 prices, we uprate this to 2019 prices using the GDP deflator[55] to £1,063.

For the 346 SUs in scope, this is estimated to cost £0.4m annually. This also does not cover SUs at any new HEPs that may join the OfS register in the approved (fee cap) category over the ten-year appraisal period.

23. There would be additional administrative costs associated with the duties applying to SUs. The non-exhaustive list of costs associated with SUs meeting the requirements of the duties includes ensuring the safety of students and speakers at controversial events e.g. by hiring security.

24. These additional costs are likely to be negligible and therefore we have taken a proportional approach by not monetising these costs.

25. SUs meeting the requirements of the duties may result in an increase in the number of events held by the SU and its affiliated societies. However, these additional costs incurred by the SU to host/finance these additional events is likely to be marginal as in practice HEPs currently often already work with SUs to ensure that the existing duty is being met via SUs.

26. In the case of breaches in the duties, SUs could incur penalties by the OfS or legal costs and potentially compensation in the case of individuals seeking redress for loss suffered as a result of breaches of the duties. Impact would be zero assuming compliance. Any administrative burden related to complaints is not counted as part of this RTA on the basis that complaints would not arise if there was full compliance by SUs.

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[54] An average of each surveyed HEP's estimate of the cost to their institution per year of enforcing their code of practice.

[55] https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp

Benefits

27. The extension of freedom of speech duties to SUs is likely to lead to a greater strengthening of freedom of speech, which will be of benefit to students who gain from exposure to a range of viewpoints, and to visiting speakers whose freedom of speech is better protected.

28. It is inherently difficult to monetise this benefit to students and visiting speakers as it is difficult to attribute these solely to the measure proposed. We recognise the need to track impacts after implementation and suggest a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these 'gaps' in the evidence base (more details in the 'Monitoring and Evaluation section).

29. There may also be additional benefits if SUs have greater confidence that they will not face negative consequences for securing freedom of speech.

Proposal 5: extend remit of the OfS to regulate SUs on their freedom of speech duties

Cost to SUs

30. There are likely to be familiarisation costs for the SU to understand the new regulatory environment in which it operates. We have assumed the cost is the same as familiarisation costs estimated for the impact of legislation to extend the freedom of speech duties to cover SUs directly would capture this. This is likely to be an overestimate because the cost of familiarisation was based on the cost for a HEP and SUs tend to be smaller organisations with less senior staff members.

Cost to the OfS

31. The OfS would incur costs of familiarisation to understand their responsibilities around regulating SUs. For simplicity, we assume these equal those of an HEP.

32. In line with Better Regulation Guidance, indirect costs to HEPs, such as an increase in registration fees (to cover the increase in OfS's operating costs), are not counted in the EANDCB as these are considered to be indirect costs.

Proposal 6: introduce a statutory tort for breach of specified freedom of speech duties, enabling individuals to seek legal redress for loss they suffer as a result of breach

Costs to HEPs, their constituent institutions and SUs

33. There would be administrative costs associated with instructing lawyers in preparation of any potential legal challenges by students, staff or others alleging breaches of the freedom of speech or academic freedom duties. This impact should be zero if HEPs, constituent institutions and SUs comply with the duty. Any administrative burden related to complaints is not counted as part of this RTA on the basis that complaints would not arise if there was full compliance by HEPs/constituent institutions/SUs.

34. In the case of breaches of the duties, HEPs, their constituent institutions and SUs could incur penalties imposed by the OfS, legal costs and potentially a requirement to pay compensation in the case of individuals seeking redress for loss suffered as a result of breaches in the duties. This compensation for individuals for loss suffered because of

breaches of the freedom of speech or academic freedom duties are a transfer from HEPs, their constituent institutions and/or SUs to individuals. Impacts should be zero if HEPs/constituent institutions/SUs comply.

Benefits

35. The statutory tort would allow students, staff, members and visiting speakers to seek recompense for loss caused by breaches of the duty. This compensation for individuals for loss suffered because of breaches of the freedom of speech or academic freedom duties are a transfer from HEPs, their constituent institutions and/or SUs to individuals. Impacts should be zero if HEPs/constituent institutions/SUs comply.

Proposal 7: widen and enhance academic freedom protections, including extending protections so that recruitment and promotion are also covered

Cost to HEPs and their constituent institutions:

Reflecting the element of proposal 3 about protections for individuals applying externally for academic roles, this measure confers these protections on internal applicants for academic roles so they should not be disadvantaged during the recruitment process because of their lawful speech. Beyond initial familiarisation costs, HEPs and constituent institutions of HEPs that comply with this and conduct fair and open recruitment processes will not incur significant additional costs due to this measure. This measure applies to HEPs and their constituent institutions, not SUs.

Benefits for applicants

36. Extending protections akin to academic freedom gives applicants for academic roles improved protections throughout recruitment processes. This gives applicants similar confidence to incumbent academic staff to challenge current thinking without fear of negative consequences to their application and promotes an environment where open debate can lead to new ideas and solutions which address the current challenges facing society.

37. It is inherently difficult to monetise the direct and wider benefits of enhanced academic freedom protections, particularly in relation to those applying for academic roles as it is challenging to identify this population. We recognise the need to track impacts after implementation and suggest a proportionate approach of monitoring the impacts of the proposals which should assist in plugging some of these ‘gaps’ in the evidence base (more details in the ‘Monitoring and Evaluation section.)

Annex B: HEP forecasts

Forecasting future HEP numbers over a ten-year period is difficult because of uncertainties around the likely behavioural response of HEPs to the new regulatory framework and any wider policy decisions that may influence the relative costs and benefits of registration to non-registration[71]. The numbers presented in this Regulatory Triage Assessment are based on our best judgement as to the most plausible scenario based on the latest available intel around current and projected HEP applications to the regulatory framework.

As of 13 April, there are 416 HEPs registered on the OfS register. HEP forecasts for the ten-year period are shown in the table below and have been informed by:

- information on the number of HEPs currently going through the registration process and therefore expected to join the OfS register in the next two years.
- Given that the bulk of HEPs will have joined by this time, we anticipate that the numbers of new HEP registrations will continue to fall from 2023/24 and then from 2026/27 onwards we assume reach a steady state of ten new HEP registrations for the rest of the appraisal period (some of which could be HEP re-applications).
- We assume five deregistrations over the next ten years, but there remain high levels of uncertainty around this.

Table B1: Forecasted number of HEPs registered with the OfS, revised figures (central forecast), 2022/23 to 2032/33.

	21/22 Actual	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33
New registrations	6	25	20	15	15	10	10	10	10	10	10	10
Deregistrations (including mergers)	10	5	5	5	5	5	5	5	5	5	5	5
Total HEP number	416	436	451	461	471	476	481	486	491	496	501	506

[71] The impact of the introduction of the Lifelong Loan Entitlement (LLE) has not been incorporated in these forecasts.

Annex C: Place based analysis

HEPs are heavily concentrated in London with more than a quarter of OfS registered HEPs located in the Greater London area. This is more than those in the North East, North West and Yorkshire and the Humber combined.

Table C1: OfS registered HEPs, by region in England.

Region	No. of HEPs registered with the OfS[72]	As %
East of England	33	8%
East Midlands	27	6%
Greater London	121	29%
North East	14	3%
North West	50	12%
South East	64	15%
South West	41	10%
West Midlands	35	8%
Yorkshire and the Humber	33	8%
Total	**418**	**100%**

Note: This analysis is correct as of February 2021. Percentages may not sum due to rounding.

This concentration is further emphasised when comparing the distribution of higher education student and staff numbers at OfS registered HEPs by region[73]. Around one fifth of the higher education student population were studying (and 24% of the higher education staff population were employed) at HEPs in London in 2019/20, compared to 16% of the English population living in London.

Table C2: Student, staff and total population numbers, 2019/20

Region	Total HE students	As %	Total HE staff	As %	Total population	As %
East of England	142,965	7%	27,435	8%	6,236,072	11%
East Midlands	185,025	9%	23,865	7%	4,835,928	9%
London	430,315	21%	80,600	24%	8,961,989	16%
North East	111,020	5%	17,830	5%	2,669,941	5%
North West	241,440	12%	42,165	12%	7,341,196	13%
South East	365,255	18%	57,910	17%	9,180,135	16%
South West	170,615	8%	29,620	9%	5,624,696	10%
West Midlands	217,965	11%	30,700	9%	5,934,037	11%

[72] The OfS Register
[73] Data only available for HEPs included in HESA data.

Yorkshire and The Humber	198,655	10%	32,070	9%	5,502,967	10%
Total	**2,063,255**	**100%**	**342,195**	100%	**56,286,961**	100%

Notes: Figures may not sum due to rounding. This analysis only looks at students and staff at HEPs registered with the OfS as of February 2021, where HESA data are available. HESA student number data were available for 216 OfS registered HEPs. HESA Staff records 2019/20 data was available for 165 HEPs in England however staff numbers were unavailable for 2 HEPs. Data coverage varies by HEP, some do not have non- academic staff numbers available - from 2019/20, it is not mandatory for HEPs in England and Northern Ireland to return information about non-academic staff. Source: HESA 2019/20 Student and Staff record: Table 11 - HE student enrolments by domicile and region of HE provider 2014/15 to 2019/20 | HESA, https://www.hesa.ac.uk/data-and-analysis/staff/table-1. ONS population estimates: https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesforukenglandandwalesscotlandandnorthernireland

However, students in London are more likely to agree with statements that limit freedom of speech than students in the rest of England. For example, violence is justified to prevent someone espousing hateful views, being part of a university community where they are not exposed to intolerant or offensive views is important, or that universities should be able to implement policies that restrict expressing political views if they are upsetting or offensive to certain groups.

Students in the Eastern, South East and Yorkshire and the Humber regions are more likely to feel unable to express their views for fear of disagreeing with their peers.

Table C3[74]

	If someone is using hate speech or making racially charged comments, physical violence can be justified to prevent this person from espousing their hateful views	**Universities should be able to establish policies that restrict expressing political views that are upsetting or offensive to certain groups**	**It is important to be part of a university community where I am not exposed to intolerant and offensive ideas**	**I feel unable to express my views in my University because I'm scared of disagreeing with my peers**
% Agree with the following statements				
Total	26%	51%	61%	25%
University Region				
Eastern	29%	48%	58%	33%
East Midlands	27%	52%	63%	23%
London	32%	58%	70%	25%
North East	24%	55%	69%	24%
North West	26%	53%	62%	24%
South East	25%	50%	61%	30%
South West	20%	47%	55%	23%
West Midlands	29%	52%	61%	26%
Yorkshire and the Humber	26%	51%	64%	30%

[74] https://www.kcl.ac.uk/policy-institute/assets/freedom-of-expression-in-uk-universities.pdf

Annex D: Methodology for assessing whether a HEP is a small or micro business

This annex provides a short description of the approach to assessing HEPs' business size. Given the diversity of the higher education sector, HEPs were divided into three distinct groups, namely, HEPs with university title, FE colleges and other HEPs that fall outside these two categories. The steps involved in the analysis are outlined below for each group.

Table A1: Number of HEPs by type, as at Oct 2021			
	Number of HEPs	% of all registered HEPs in England	Number of small/micro HEPs
HEPs with university title	119	28%	3
Further Education colleges	161	39%	1
Other HEPs	138	33%	*
Total	418	100%	-

Notes: * There are 138 'other' HEPs, of which 53 have HESA data available in 2019/20. 21 of these HEPs have academic staff numbers of less than 50. From 2019/20, it is not mandatory for HEPs in England and Northern Ireland to return information about non-academic staff, therefore it is not possible to say for certain that these HEPs are small or micro businesses. There are 85 'other' HEPs without data on staff.

University Title

HESA staff numbers for 2019/20 was used to match with HEPs with University Title. Of 119 HEPs with University Title, 109 had HESA data and academic staff numbers above 50, seven had no data recorded in HESA, and three had academic staff numbers at 50 or below. From a manual search, of the three HEPs with academic staff below 50, one was identified as a micro business (less than 9 employees). For the HEPs with no HESA data available, a manual search of company accounts and university websites found that two HEPs had staff numbers below 50. In summary, **of the 119 HEPs with University Title, two were identified as small businesses and one as a micro business.**

FE Colleges

For FE colleges, staff information is contained in College Accounts Data. All but five colleges had staff number data in 2019/20 with a value above the small business threshold definition (over 50). For the five colleges with zero staff recorded in the data, 2018/19 data was used to plug the gaps. It was found that two colleges had staff data in the 2018/19 record, both of which were above 50. For the remaining three colleges, a search for accounts information found that **one college would be classified as a small business with less than 50 staff in 2020.**

Annex E: Transparency around overseas funding: registered HEPs

What is the problem under consideration? Why is government action or intervention necessary?

The transparency around overseas funding impact assessment is an amendment to the Higher Education Freedom of Speech Bill impact assessment published in May 2022.

The government is seeking to increase the transparency and granularity of information on overseas income at HEP and SU level, to be broken down by country. Overseas income and its associated arrangements can give rise to an association that is perceived to be inappropriate or unethical, with the overseas counterparty potentially seen as having undue influence or financial leverage. Seeking greater transparency about different sources of overseas income will provide the OfS with information on the scale of overseas influence that, whether alone or combined, could potentially influence HEP behaviour (including by posing a threat to academic freedom). This is unlikely to be a threat to the financial sustainability of the whole institution but could be a threat to particular members, staff or students or a department, research programme or infrastructure project.

What are the policy objectives and the intended effects?

The purpose of the measure is to allow the OfS to monitor overseas funding received by HEPs, colleges, members and staff, and also SUs, and assess the risk to freedom of speech and academic freedom. As a secondary aim, we anticipate that a requirement for more granular reporting to the regulator will encourage HEPs to maintain a cumulative risk assessment of international funding (as requested in Universities UK security guidelines). However, the government want HEPs to go further and conduct full due diligence before entering into international contracts, satisfying themselves that the financial arrangements they are entering into do not infringe their duties to uphold freedom of speech and academic freedom.

The effect will be that HEPs and SUs must provide specified information to the OfS regarding certain transactions over a threshold amount to be set out in regulations, with the OfS required to monitor and report on it in its annual report.

What policy options have been considered, including any alternatives to regulation?

Do nothing: We also considered if the objectives could be achieved utilising existing HESA data returns. Some information is published by HESA, but not at a granular level e.g. by individual transaction or a breakdown by domicile. The information reported does not enable the monitoring of any trends or consideration of how the funding could affect freedom of speech and academic freedom within the sector.

Option 1: Voluntary reporting. The government considered the utility of writing to the sector,

requesting that they publish their overseas income and associated arrangements on their websites. Given information would be published in different places online, it would be

difficult to assess the scale of influence that, whether alone or combined, could potentially influence HEP behaviour (including by posing a threat to academic freedom).

Option 2: Utilisation of existing OfS legislative framework. The government considered the utility of the OfS conditions of registration. These are the primary tool that the OfS uses to regulate individual HEPs and set the minimum requirements that registered HEPs must meet. We considered the following general ongoing conditions of registration that may be potentially or tangentially relevant policy objectives: Condition F3 – Information; Condition D – Financial viability and sustainability; and Conditions E1 and E2 – Public interest governance. There are limitations to the current registration conditions which mean they do not allow the OfS to collect the granular level of information that is required. We have considered the existing powers of the OfS and do not believe they have adequate reporting requirements to understand the strategic/cumulative risk, nor do we believe that the current system provides a basis to strengthen the current reporting requirements. In short, meeting our ambition through the current registration conditions would not be possible as they are not designed to tackle the risk to freedom of speech and academic freedom from overseas funding.

Option 3: An amendment to the Higher Education (Freedom of Speech) Bill to increase the transparency and granularity of overseas income at HEP and SU level, to be broken down by country.

Option 3 is the preferred option. By legislating in this way, the OfS will be able to obtain robust data sets, to increase the transparency of foreign income and better enable the OfS to understand the possible extent of financial leverage from a foreign source, which may influence behaviour to pose a threat to freedom of speech and academic freedom. This option will increase the transparency of overseas income by requiring information to be supplied to the regulator, but not the wider public. It will ensure that the scope of the reporting requirement is proportionate to the risk, recognising the importance of protecting commercial sensitivities.

The measure requires the reporting of “relevant funding” from a relevant overseas person, in relation to a registered HEP, to the OfS. Relevant funding in this case is defined as follows:

(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.

A “relevant overseas person” is defined as the government of an overseas country, a body incorporated, registered or headquartered in an overseas country, or a politically exposed person (“PEP”) (as defined) in relation to an overseas country – in each case, an overseas country other than a prescribed country. 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. Prescribed countries will be set out in

regulations. The current intention is for them to mirror the list of Academic Technology Approval Scheme (ATAS) countries.

The current intended threshold amount for reporting is £75,000 in a 12 month period. This will be set out in regulations.

This measure will apply to all registered HEPs, their constituent colleges and SUs of approved (fee cap) providers. As of 13 April 2022, there were 416 HEPs on the OfS register.

Rationale and evidence to justify the level of analysis used in the impact assessment rating (proportionality approach)

The DfE published an impact assessment for the information sharing and data transparency duty in 2017, part of HERA. This analysis estimated the costs to HEPs of providing information to the OfS and publishing data on student characteristics. This impact assessment builds on earlier analysis, drawing on the assumptions and cost-benefit where appropriate. The focus is primarily the impact on business, namely HEPs, constituent institutions and SUs.

Expected level of business impact

Businesses for the purposes of this impact assessment includes HEPs, their constituent colleges and SUs. There is an impact on the OfS, and these impacts have been monetised where possible, but not included in the business impact calculations.

There are two impacts on business 1) one off familiarisation costs and 2) the administrative time taken to submit data on overseas income to comply with the legislation.

Key risks and assumptions

The section sets out the data, assumptions and methodology used to provide the following:

1. Estimates of the number of HEPs, their constituent colleges and SUs affected
2. Familiarisation costs for HEPs, their constituent colleges and SUs affected
3. Compliance costs for HEPs, their constituent colleges and SUs affected

Impacts on the OfS have been quantified and included where possible.

Estimates of the number of HEPs, their constituent colleges and SUs of approved (fee cap) providers affected

Identifying the number of HEPs and constituent colleges affected

All registered HEPs, plus their constituent institutions, and SUs at approved (fee cap) providers, could be affected by this reporting requirement.

HESA publish information on the income of HEPs. This allows for the identification of HEPs with total income below £75,000 across the above funding sources to be removed

from the total number of potential HEPs affected, in a given year. In 2019/20 246 HEPs submitted data to HESA[75], of which 165 had "relevant funding" in excess of £75,000.

There are estimated to be 72 constituent institutions of collegiate universities. There is no centrally collected information on the constituent colleges of HEPs, therefore we have assumed a range (75%, 50% and 25% of the total number) had "relevant funding" in excess of £75,000. The present and future funding amounts and sources for each constituent college is not known, and there is an assumption that the distribution of colleges affected (in the high, central and low scenarios) remains constant over the 10 year appraisal period.

For the purposes of this measure, the following sources of income have been analysed for HEPs in England in 2019/20: Donations and endowments[7677], income from consultancy, facilities and equipment related services and contract research[78] and research grants and contracts[7980]. Data on the first two of these income sources are not available by source country, therefore the estimates of administrative burden could be overestimated if the sources were from exempt countries. It is important to note that the number of HEPs affected is based on 2019/20 data.

The future funding amounts and sources for each HEP is not known, and there is an assumption that the current distribution of HEPs affected remains constant over the 10 year appraisal period. For further information on HEP forecasts over the appraisal period, see Annex B.

Identifying the number of OfS registered FE colleges affected

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[75] Not all HEPs that are registered with the OfS have data available via HESA, therefore there are some missing data in this analysis.

[76] Table 1 - Consolidated statement of comprehensive income and expenditure 2015/16 to 2020/21 | HESA

[77] Donations are typically raised through fund-raising programmes under which the general use of the funds is specified, unless the intention of the grantor was for the institution to set up an endowment fund. An endowment fund is a form of charitable trust retained for the benefit of the institution. Donations can be with or without restriction and endowments can be permanent or expendable.

[78] Table 2a - Business and community services by HE provider 2014/15 to 2019/20 | HESA. **Contract research:** This includes income identifiable by the HEP as meeting the specific research needs of external partners, excluding any already returned in collaborative research involving public funding and excluding basic research council grants. **Consultancy:** This includes income associated with consultancy, that is advice and work crucially dependent on a high degree of intellectual input from the HEP to the client (commercial or non-commercial) without the creation of new knowledge. **Facilities and equipment related services** This includes the use and income associated with the use of the HEP's physical academic resources by external parties, and captures provision which can be uniquely provided by a HEP.

[79] Table 5 - Research grants and contracts - breakdown by source of income and HESA cost centre 2015/16 to 2020/21 | HESA

[80] Income from Non-EU-based charities (open competitive process), non-EU industry, commerce and public corporations, and non-EU other included. Non-EU-based charities (open competitive process) includes research grants or contracts income from non-EU bodies with exclusively charitable purposes that was available to more than one HEP through direct competition, awarded to the HEP that demonstrated the highest quality research proposal according to external peer review. It also includes grants where it can be shown that the charity took external expert advice on its choice of HEP, and either the charity had made it known that it was open to grant applications from other HEPs, even though an open invitation to bid for the particular grant was not issued; or the charity restricted the funding opportunity on a reasoned basis in that particular requirements of the project could only be met by a limited number of HEPs (i.e. where a project required highly specialist expertise or facilities, or a specific regional focus). Non-EU industry, commerce and public corporations includes all research grants and contracts income from industrial and commercial companies and public corporations (defined as publicly owned trading bodies, usually statutory corporations, with a substantial degree of financial independence) operating outside the EU. Non-EU other includes all research grants and contracts income from all non-EU-based non-competitive charities and any other non-EU income not otherwise specified.

College Accounts data from the ESFA[81] contains information on the income sources of HEPs, however this is not available by source country.

In 2019/20 160 OfS registered FE colleges submitted data to the ESFA, of which 10 had "relevant funding" in excess of £75,000.

For the purposes of this measure, the following sources of income have been analysed for OfS registered FE colleges in England in 2019/20: Endowments and gifts. Data on these two income sources are not available by source country. Other income streams in scope of this regulation including donations, research grants and contracts and commercial and education partnerships cannot be identified in the data. Without this data the estimates are likely to be significantly underestimated.

Identifying the number of SUs of approved (fee cap) providers affected

There is no centrally collected information on the number, or the funding sources, of SUs. If we assume 1 official/affiliated SU per HEP, given that there are 346 approved (fee cap) providers registered with the OfS (as of 13 April 2022), this policy could apply to 346 SUs. Given that SUs are smaller organisations and less likely to conduct research themselves, the relevant funding streams are smaller. Therefore, we have assumed a range (75%, 50% and 25% of the total number) had "relevant funding" in excess of £75,000.

The present and future funding amounts and sources for each SU is not known, and there is an assumption that the distribution of SUs affected (in the high, central and low scenarios) remains constant over the 10 year appraisal period.

Given the uncertainty around the number of SUs of approved (fee cap) providers and the number of constituent colleges, these have not been forecasted over the 10-year period.

Familiarisation costs – broad assumptions have been made on the time taken and staff required to familiarise themselves with this legislation, based on estimates in an impact assessment for the information sharing and data transparency duty in 2017, part of HERA. However, there remains uncertainty around the time required and the number of staff reviewing the legislation.

Compliance costs for HEPs, their constituent colleges and SUs affected - again, these calculations are based on estimates in an impact assessment for the information sharing and data transparency duty in 2017, part of HERA. Given the data returns are different, it is uncertain how long it would take to compile and supply data on overseas income to the OfS. It is assumed that each HEP with relevant funding in excess of the reporting threshold receives this in 3 separate payments, on average. There is uncertainty around this assumption, as a HEP with income significantly above the threshold may receive this in multiple payments.

[81] ESFA financial management: college accounts - GOV.UK (www.gov.uk)

Summary and preferred option with description of implementation plan

Government are introducing measures requiring the OfS to monitor the overseas funding of registered HEPs and their constituent institutions so that it can assess the risk which the funding poses to freedom of speech and academic freedom in the provision of higher education. The OfS will be required to also consider whether such funding is relevant to a breach of their duty to take steps to secure freedom of speech.

HEPs will be required to provide information on relevant funding to the OfS. Relevant funding is specified funding from a relevant overseas person where that exceeds a threshold (to be set in regulations) in a period of 12 months, as received by the HEP, a constituent institution, or a member or member of staff of the HEP or constituent institution (in their capacity as such). A relevant overseas person includes a government of an overseas country, a body headquartered in such a country, or a politically exposed person (as defined) in relation to such a country. The overseas country concerned excludes countries that will be prescribed in regulations.

The OfS will also be required to monitor the overseas funding of SUs at approved (fee cap) providers, so that it can assess the risk which the funding poses to freedom of speech for their members, students, staff etc. SUs will be required to provide similar information to the OfS as HEPs, as outlined above.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

Costs[82]

One-off familiarisation costs for HEPs, their constituent colleges and SUs affected; and the OfS

HEPs, their constituent colleges, FE colleges and SUs will face one off familiarisations costs. These are estimated using ASHE data. The hourly rate of a senior manager is £28.06[83], assuming that it would take a senior manager one day (8 hours) on average to read and understand the legislation/OfS guidance on data submissions, this costs £224 per HEP, constituent college and SU. **This is estimated to cost £0.2m in total, in the first year.**

The OfS will incur familiarisation costs. As with HEPs, constituent colleges and SUs, this is assumed to take a day on average to read and understand the legislation/OfS

[82] All costs include the non-wage uplift of 22% - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827926/RPC_short_guidance_note_-_Implementation_costs__August_2019.pdf

[83] ASHE data shows that the hourly wage for a senior manager is £23.00 - Occupation (2digit SOC 11) – ASHE: table 2.5a (2019) Earnings and hours worked, occupation by two-digit SOC: ASHE Table 2 - Office for National Statistics (ons.gov.uk) We then add the non-wage uplift of 22% to get £28.06.

guidance on data submissions. However published OfS salary data[84] is used to estimate a day rate of £276[85].

The OfS will also incur costs of setting out guidance documents for HEPs. This is assumed to take five days and estimated to cost around £1,400.

Ongoing compliance costs for HEPs, their constituent colleges and SUs affected; and the OfS

HEPs, their constituent colleges, FE colleges and SUs face ongoing compliance costs. These are estimated using ASHE data. The hourly rate of admin staff is £14.32. The time estimate for data collection is taken from the Transparency duty impact assessment[86], 15 minutes per data entry. It is assumed that each HEP with relevant funding in excess of the reporting threshold receives this in 3 separate payments, on average. Per HEP administrative staff costs are therefor £10.74[87]. It is assumed that a senior manager would take an hour to sign off the data collection costing £28.06. In total, per HEP, constituent college and SU, the annual ongoing cost is estimated to be £38.80. **The total cost is estimated at around £15,000 in the first year.**

The OfS incur ongoing compliance costs. It is assumed a member of staff with oversight, equivalent to 1.2 FTE, will spend 2 months collecting this new data. Using published OfS salary data[88] the annual ongoing cost is estimated to be around £14,000[89].

Benefits

Higher education is an area at risk of foreign interference. This measure will help to protect HEPs, their constituent colleges and SUs at approved (fee cap) providers from actors who may want to undermine these values to promote their own narratives, for example, through course curricula or limiting freedom of speech on campuses.

The OfS will have better and more complete information at its disposal about the different sources of overseas income that HE providers receive, enabling it to better understand the possible extent of financial leverage from a foreign source and encourage it to spot trends, patterns and pronounced risks within the sector at country level. This information is also vital in supporting the response to crises, where it may be important for the OfS (and government) to understand the granularity of overseas income transactions in the

[84] https://www.officeforstudents.org.uk/media/02da9637-2742-47c5-a5f3-28747b2c8865/office-for-students-annual-report-and-accounts-2019-20.pdf

[85] 58,888/52/5 = 226 which with the 22% non-wage costs uplift becomes £276

[86] https://www.legislation.gov.uk/ukia/2017/182/pdfs/ukia_20170182_en.pdf

[87] Assuming there are on average 3 payments per provider that need to be recorded, and each takes 15 minutes, then 45 minutes is needed in total per provider. 45 minutes is three quarters of an hour, 0.75 multiplied by the £14.32 hourly rate is £10.74.

[88] https://www.officeforstudents.org.uk/media/02da9637-2742-47c5-a5f3-28747b2c8865/office-for-students-annual-report-and-accounts-2019-20.pdf

[89] Multiply the average OfS salary (58,888*1.2= 70,665) to 1.2 FTE then work out the monthly rate (70,665/12=5,889) and multiply this by two for the central estimate (5,889*2= 11,778) and then uplift by 22% to include non-wage costs, 14,369.

higher education sector - for example in the case of the response to the war in Ukraine and the implementation of sanctions imposed on Russian individuals and entities.

Direct costs and benefits to business calculations

The EANDCB ranges from £0.02m to £0.03m with a central estimate of £0.03m.

The range reflects the sensitivity analysis conducted. To account for uncertainty a range was estimated around the proportion of SUs and constituent colleges that are expected to exceed the £75,000 reporting threshold. In the low scenario we model 25%, central 50% and high 75% of SUs and constituent colleges (through their HEPs) reporting data to the OfS. A range has also been applied to the time estimate for the OfS to collect and analyse this new data.

A breakdown of the costs can be seen in Table E1 below.

Table E1: The cost to HEPs, constituent institutions and SUs of familiarisation and compliance, 2019 prices, £ millions (not discounted) central estimate

	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33
One-off (HEPs)	0.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
One-off (SUs)	0.08									
One-off (constituent colleges)	0.02									
One-off (OfS)	0.00									
Ongoing (HEPs)	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Ongoing (SUs)	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Ongoing (constituent colleges)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ongoing (OfS)	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Total cost (excl OfS)	0.21	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02

Impact on small and micro businesses

An overview of the extent of small and micro HEPs, their constituent colleges and SUs of approved (fee cap) providers has been provided in the main Impact Assessment.

The reporting threshold of £75k may mean smaller HEPs with funding sources from the UK and prescribed countries would be largely unaffected. However, given that we are unable to

observe this in the data we have assumed the reporting requirements and therefore the cost of the proposals will not vary by type of institution e.g. small/micro-organisation.

Equalities and wider impacts

In the case of overseas income received from an individual, only income received from individuals considered to be Politically Exposed Persons (PEPs) of a country which is not included in a list of prescribed countries will be required to be reported to the OfS on an annual basis. PEPs are already an understood concept used in UK legislation, referring to those who are entrusted with prominent public functions by an international organisation or by a state.

The prescribed countries which are exempt as outlined above will be specified in regulations made by the Secretary of State. The current intention is that these countries will mirror the countries listed as part of an exemption to the Academic Technology Approval Scheme (ATAS)[90]. ATAS applies to international students and researchers who are subject to UK immigration control and are intending to study or research at postgraduate level in certain sensitive subjects (where knowledge could be used in programmes to develop Advanced Conventional Military Technology, weapons of mass destruction or their means of delivery). Students and researchers in these subjects must apply for an ATAS certificate before they can study or start research in the UK – unless they are nationals of specified countries. ATAS is therefore an existing and tested policy relating to the higher education sector.

Applying the provision in this way means that it is not based on race (including nationality), but rather in relation to where the individual is a PEP. The provisions therefore do not result in direct discrimination because of race.

However, this may make it more likely that the policy will affect a person of a particular nationality, if a person of that nationality is more likely to be a PEP of a particular country (e.g. it is where they were born). But such a policy is capable of justification, if it can be shown to be a proportionate means of achieving a legitimate aim. In this case, the legitimate aim is the protection of freedom of speech in higher education. The policy is proportionate in that it does not cover PEPs from all overseas countries, rather from those that have already been assessed in the context of ATAS. In any event, the requirement to report overseas funding to the regulator (with only a summary to be published by the OfS in its annual report) arguably does not put the sources of the funding at a particular disadvantage compared to others who provide funding which is not reported to the OfS.

[90] Academic Technology Approval Scheme (ATAS), which currently includes: Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, United States of America. These countries are identified in the Immigration Rules as part of an exemption to the ATAS, so it is already acknowledged within our regulatory system that there are fewer security concerns involving such countries.

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