

# Higher Education (Freedom of Speech) Bill

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AMENDMENTS  
TO BE MOVED  
IN GRAND COMMITTEE

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**Clause 1**

LORD SANDHURST

Page 2, line 7, leave out subsection (5) and insert –

“(5) A provider must:

- (a) take the steps set out at subsection (1) to secure the academic freedom of:
  - (i) academic staff, and
  - (ii) visiting speakers who are academic staff of any other higher education institution; and
- (b) not subject any member of academic staff to any detriment (including dismissal) through any act, or deliberate failure to act, done on any ground that the member of academic staff has exercised his or her academic freedom.”

***Member’s explanatory statement***

*This amendment seeks to extend academic freedom protection to academic visiting speakers, and to forbid outright any punishment of academics for lawful exercise of academic freedom.*

Page 3, line 17, at end insert –

- “(e) the procedure to be followed by decision-makers in order to dismiss vexatious, frivolous, malicious or politically motivated complaints made formally against any person mentioned at subsection A1(2).”

***Member’s explanatory statement***

*This amendment seeks to impose a ‘triage’ stage, to ensure staff and students do not undergo onerous investigation processes on the back of meritless complaints.*

**Clause 4**

LORD SANDHURST

Page 6, line 19, leave out “A person may bring civil proceedings against–” and insert –

- “(1) A person may bring civil proceedings against”

**Clause 4 - continued**

Page 6, line 27, at end insert –

- “(2) A civil court or an employment tribunal shall have jurisdiction to determine a complaint brought by a member of academic staff under paragraphs A7(a) or (b).
- (3) ‘Civil court’ has the meaning set out at subsection 194(10) of the Legal Services Act 2007.
- (4) A claim before an employment tribunal may include a claim for damages relating to dismissal.
- (5) A member of academic staff who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is any act or expression by the member of academic staff to which section A1 applies.”

***Member’s explanatory statement***

*This amendment seeks to allow the Employment Tribunals to determine claims brought by academic staff members under the new statutory tort, and to make dismissal for exercise of academic freedom automatically unfair.*

Page 6, line 28, at end insert –

**“A8 Staying court proceedings**

- (1) This section applies when a person brings civil proceedings before a civil court under section A7.
- (2) Where this section applies the defendant may at any time after acknowledgement of service, and before delivering any pleadings or taking any other step in the proceedings, apply to that court to stay the proceedings.
- (3) On an application under subsection (2) the court may make an order staying the civil proceedings if it is satisfied –
  - (a) that there is no sufficient reason why the matter should not be determined under the free speech complaints scheme; and
  - (b) that the applicant was at the time when the civil proceedings were commenced and still remains ready and willing to do all things necessary to the proper conduct of the investigation.”

***Member’s explanatory statement***

*This new clause gives the civil court the power to stay proceedings where it appears that the OfS scheme should be tried and costs and resources avoided.*

Page 6, line 28, at end insert –

**“A9 Academic staff: amendment to the Higher Education and Research Act 2017**

At section 121 of the Higher Education and Research Act 2017, before ““notice” means””, insert:

**Clause 4 - continued**

“academic staff” includes any academic staff (however engaged or employed), honorary, visiting and emeritus academic members of a provider and any other person held out as holding any academic position at the provider;”

**Member’s explanatory statement**

*This new clause seeks to extend the Bill’s protections to all academic staff, including those at junior level or those precariously employed or engaged.*

Page 6, line 28, at end insert –

**“A10 Academic staff: amendments to the Employment Rights Act 1996**

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) In section 108(3), insert –
  - “(s) subsection (5) of section A7 of the Higher Education and Research Act 2017 applies.”
- (3) In section 117, insert –
  - “(9) This section shall not apply to a dismissal contrary to subsection (5) of section A7 of the Higher Education and Research Act 2017.”
- (4) In section 124(1A), replace “or 105(6A)” with “, 105(6A) or subsection (5) of section A7 of the Higher Education and Research Act 2017”.
- (5) In section 128(1)(a), insert –
  - “(iii) section A7(5) of the Higher Education and Research Act 2017, or”

**Member’s explanatory statement**

*This is consequential on the amendment to A7. It removes the qualifying period for unfairly dismissed academics and the cap on the compensatory award; it allows the Tribunal to order interim relief.*

**Clause 8**

LORD SANDHURST

Page 11, line 9, at end, insert –

“(1A) A decision that a free speech complaint is justified includes a decision that, in the opinion of the OfS, a registered higher education provider has breached the duty at section A1 or has interfered unlawfully with the complainant’s right to freedom of speech.”

**Member’s explanatory statement**

*This amendment seeks to ensure that the Director’s power to determine rights and duties, which is essential to his or her role, is clear in the statute and not open to challenge by way of judicial review solely on jurisdictional grounds.*

**Clause 10**

LORD SANDHURST

Page 15, line 18, at end insert –

**“10A Amendment to the Counter-Terrorism and Security Act 2015**

In section 31 of the Counter-Terrorism and Security Act 2015, add new subsection 2A:

“(2A) The duty imposed by section 26(1) shall not apply to any decision made by a specified authority to which this section applies that directly concerns:

- a the content or delivery of the curriculum;
- b the provision of library or other teaching resources; or
- c research carried out by academic staff.”

***Member’s explanatory statement***

*This strengthens the academic freedom protections in the Counter-Terrorism and Security Act 2015 so that inappropriate application of the Prevent duty does not interfere with academic freedom”*

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*30 September 2022*

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