# Higher Education (Freedom of Speech) Bill

MARSHALLED

LIST OF AMENDMENTS

TO BE MOVED

IN GRAND COMMITTEE

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*The amendments have been marshalled in accordance with the Instruction of 28th June 2022, as follows –*

| | |
|---|---|
| Clauses 1 to 11 | Clauses 12 to 14 |
| Schedule | Title |

[*Amendments marked ★ are new or have been altered*]

**Amendment No.**

**Clause 1**

LORD WALLACE OF SALTAIRE

**1** Page 1, line 10, after "speech" insert "within the law"

***Member's explanatory statement***
*This amendment seeks to ensure that the definition of freedom of speech in section A1 is identical to that within A3.*

LORD HOPE OF CRAIGHEAD
LORD TRIESMAN

**2** Page 1, line 11, at end insert –

"(1A) "Freedom of speech" refers to the Convention right of freedom of expression set out in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as far as it consists of a right to impart ideas, opinions or information by means of speech, writing or images (including in electronic form)."

***Member's explanatory statement***
*This amendment seeks to avoid a possible inconsistency between the right to freedom of speech that this Bill seeks to protect and the right to free expression that is protected by Article 10.*

LORD COLLINS OF HIGHBURY

**3** Page 1, line 11, at end insert –

"(1A) "Freedom of speech" includes the freedom to –

(a) teach,

(b) conduct research,

**Clause 1** - *continued*

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

(1B) "Freedom of speech" does not include the freedom to espouse Holocaust denial."

LORD WALLACE OF SALTAIRE

**4** Page 1, leave out line 14

***Member's explanatory statement***
*This amendment is intended to probe the definition of "members" in this paragraph.*

LORD WILLETTS
LORD STEVENS OF BIRMINGHAM

**5** Page 1, line 17, leave out "securing that" and insert "not denying"

LORD MANN

**6** Page 1, line 18, leave out first "any"

LORD WILLETTS
LORD STEVENS OF BIRMINGHAM

**7** Page 1, line 18, leave out "any premises of the provider is not denied" and insert "premises of the provider"

**8** Page 2, leave out lines 1 and 2

***Member's explanatory statement***
*Along with other amendments in the name of Lord Willetts to this Clause, this amendment would allow universities flexibility to move events but not cancel them.*

LORD WALLACE OF SALTAIRE

**9** Page 2, line 4, leave out ", beliefs"

***Member's explanatory statement***
*This amendment is intended to probe the meaning of belief, and the compatibility of this with other areas of the law.*

**10** Page 2, line 5, leave out ", beliefs"

***Member's explanatory statement***
*This amendment is intended to probe the meaning of belief, and the compatibility of this with other areas of the law.*

LORD COLLINS OF HIGHBURY

**11** Page 2, line 6, at end insert—

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

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

***Member's explanatory statement***

*This amendment would ensure that non-disclosure or confidentiality agreements with higher education providers cannot obstruct a victim's freedom of speech, save where they are necessary to protect intellectual property.*

LORD SANDHURST
BARONESS FOX OF BUCKLEY

**12** Page 2, leave out lines 7 and 8 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.*

LORD MOYLAN
BARONESS FOX OF BUCKLEY

**13** Page 2, line 8, at end insert—

"(5A) For the purposes of subsection (1)—

(a) refraining from interfering with freedom of speech within the law is a reasonably practicable step in all circumstances where the speech in question is of a political, philosophical or academic nature;

(b) in all other circumstances, a step may be regarded as not reasonably practicable if and only if taking that step would prejudice the functioning of the provider.

(5B) "Speech of a political nature" includes speech that constitutes debate of any question of public interest."

***Member's explanatory statement***
*This amendment would compel providers to tolerate all lawful speech of a political, philosophical or academic nature, and clarify when a step is not reasonably practicable.*

LORD TRIESMAN

**14** Page 2, line 10, after "means" insert "the rights set out in paragraph 27 of Article VI of the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel and"

LORD WALLACE OF SALTAIRE

**15** Page 2, line 12, after "wisdom" insert "within all fields covered by their professional responsibilities"

***Member's explanatory statement***
*This amendment is to clarify the distinction between academic freedom, within the academic context, and freedom of speech for academics and other citizens within the wider public sphere.*

**16** Page 2, line 13, leave out "and controversial or unpopular opinions"

***Member's explanatory statement***
*This amendment is to probe whether "controversial or unpopular opinions" not based on evidence should be included in the protection of academic freedom.*

LORD STRATHCARRON
BARONESS FOX OF BUCKLEY

**17** Page 2, line 14, at end insert—

"(c) to express opinions about the registered higher education provider, including without limitation on opinions concerning its curriculums, governance, affiliations, and the teaching and research conducted at the provider,"

***Member's explanatory statement***
*This amendment seeks to protect an academic's freedom to criticise the institution at which they work.*

LORD STRATHCARRON
LORD TRIESMAN

**18** Page 2, line 15, leave out "placing themselves at risk of being adversely affected" and insert "being adversely affected (or being placed at risk of being adversely affected)"

***Member's explanatory statement***
*This amendment seeks to ensure that protection applies to actual as well as threatened adverse consequences.*

LORD STRATHCARRON

**19** Page 2, line 18, leave out "or privileges" and insert ", privileges, responsibilities or opportunities"

LORD WALLACE OF SALTAIRE

**20** Page 2, leave out lines 19 and 20

***Member's explanatory statement***
*This amendment is intended to probe the practicality and appropriateness of the intrusion into university promotion processes the paragraph would involve.*

LORD STRATHCARRON

**21** Page 2, line 20, at end insert—

"(7A) Subsections (6) and (7) apply irrespective of the provider's interest in protecting its reputation."

***Member's explanatory statement***
*This amendment seeks to remove subjective notions of disrepute as a ground to sanction or dismiss an academic in response to lawful exercise of academic freedom.*

LORD TRIESMAN

**22** Page 2, line 20, at end insert—

"(7A) In this Part, "academic staff" includes academic staff on full and part-time contracts, irrespective of whether they are employed on a permanent or temporary contract."

LORD WALLACE OF SALTAIRE
BARONESS BENNETT OF MANOR CASTLE

**23** Page 2, leave out lines 21 to 29

***Member's explanatory statement***
*This amendment is intended to probe the practicality and appropriateness of the intrusion into university appointment processes this would involve.*

**24** Page 2, leave out lines 30 to 34

***Member's explanatory statement***
*This amendment is to probe how the costs of the provision of security for controversial meetings should be distributed among appropriate bodies.*

LORD HUNT OF KINGS HEATH
BARONESS MORRIS OF YARDLEY

**25★** Page 2, line 34, at end insert—

"(10A) In achieving the objective in subsection (2), the governing body of a registered higher education provider may take no steps to secure any exercise of freedom of speech within the law which has the purpose, and might reasonably be expected to have the effect, of restricting another's right to freedom of speech within the law or academic freedom, and must take positive steps to mitigate the effects of any act or omission which has such a purpose and effect."

***Member's explanatory statement***
*This is a probing amendment to explore to what extent the Bill covers behaviour designed to drown out a speaker. It explicitly excludes attempts to silence the speech of others from the core duty under the Bill. It requires providers to take steps to mitigate the effects of those heckling without disproportionately affecting the right to lawful protest.*

LORD SANDHURST
BARONESS FOX OF BUCKLEY
LORD COLLINS OF HIGHBURY

**26** Page 2, line 35, at end insert—

"references to academic staff include 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 amendment seeks to extend the Bill's protections to all academic staff, including those at junior level or those precariously employed or engaged.*

LORD WALLACE OF SALTAIRE

**27** Page 2, line 37, leave out ", beliefs"

***Member's explanatory statement***
*This amendment is intended to probe the meaning of belief, and the compatibility of this with other areas of the law.*

LORD MOYLAN
LORD TRIESMAN
BARONESS FOX OF BUCKLEY

**28** Page 2, line 41, at end insert—

**"A1A Freedom of speech within the law**

(1) "Freedom of speech within the law" means the freedom of a person mentioned in subsection A1(2) to express any idea, belief or view (whether within or outside the premises of the provider) provided that such idea, belief or view, or the manner in which it is expressed—
  (a) is not prohibited by law,
  (b) is not contrary to any duty imposed on that person, or on the provider, by—
    (i) any enactment or rule of law,
    (ii) any confidentiality agreement, or
    (iii) the intellectual property rights of any person, or any agreement not to infringe such rights, and
  (c) does not constitute promotion of Holocaust denial.

(2) In applying section 26(4) of the Equality Act 2010 (harassment) to any expression or act to which this Part applies, particular regard must be had to—
  (a) the particular importance of freedom of speech,
  (b) the particular importance of academic freedom, and
  (c) any relevant duty under this Part."

***Member's explanatory statement***
*This amendment seeks to provide an enhanced statutory definition of freedom of speech within the law and clarifies the relationship between free speech and other legal obligations.*

LORD MANN

**29★** Page 3, line 13, at end insert—

"(ca) an explanation of how to guarantee freedom of speech while fulfilling the provider's duty of care for all students, academics and staff,"

LORD SANDHURST
LORD COLLINS OF HIGHBURY

**30** 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 section 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.*

LORD MOYLAN

**31** Page 3, leave out lines 32 to 36 and insert "have particular regard to the need to—

(a) eliminate unlawful interference with freedom of speech within the law and academic freedom,

(b) promote and prioritise the particular importance of freedom of speech within the law,

(c) promote and prioritise the academic freedom of academic staff of registered higher education providers and their constituent institutions, and

(d) foster a culture of free thought and open-mindedness,

in all decision-making concerning the provision of higher education and in conducting and managing research activities."

***Member's explanatory statement***
*This amendment seeks to clarify the steps providers will need to take in order to promote freedom of speech and academic freedom.*

LORD MANN

**32★** Page 3, line 35, at end insert—

"(c) guaranteeing freedom of speech while fulfilling the provider's duty of care for all students, academics and staff,"

LORD WILLETTS
LORD STEVENS OF BIRMINGHAM

**33** Page 3, line 36, at end insert ", having due regard for all other relevant legal duties"

***Member's explanatory statement***
*This amendment is to ensure – and make explicit – that the Bill does not impose duties on universities that are inconsistent with other legal duties that apply to them.*

LORD MOYLAN
BARONESS HOEY
THE EARL OF LEICESTER

**34** Page 3, line 36, at end insert—

**"A4 Duty to secure freedom of speech and academic freedom: funding and grants**

The governing body of a registered higher education provider must take reasonable steps to ensure that grants of funds by the provider for the purposes of academic research are not refused to—

(a) any individual member or group of members of staff of the provider,

(b) any member or group of members of the provider, or

(c) any student or group of students of the provider,

on the grounds, solely or inter alia, that such persons adhere to or propagate any particular lawfully-held principle or political opinion."

***Member's explanatory statement***
*This amendment prevents discrimination in the distribution of research funding by higher education providers based wholly or in part on the lawfully-held principles or political opinions of the potential recipient.*

**After Clause 2**

LORD MOYLAN
BARONESS FOX OF BUCKLEY

**35** Insert the following new Clause—

**"Amendment to the Equality Act 2010**

In section 149 of the Equality Act 2010 (public sector equality duty), at the end insert—

"(10) In complying with the duties in this section a public authority must have particular regard to the duty—

(a) to take steps to secure freedom of speech imposed by section 43(1) of the Education (No. 2) Act 1986 if the authority is subject to that duty;

(b) to take steps to secure freedom of speech and academic freedom imposed by section A1(1) of the Higher Education and Research Act 2017 if the authority is subject to that duty.""

***Member's explanatory statement***
*This new Clause seeks to ensure that the duties imposed by the Bill are consistent with, and not overridden by, the Equality Act public sector equality duty.*

BARONESS BENNETT OF MANOR CASTLE

**36★** Insert the following new Clause—

**"Harassment**

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

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

**After Clause 2** - *continued*

(i) the importance of freedom of speech and academic freedom, as provided for under Part A1 of the Higher Education and Research Act 2017 (as inserted by section 1 of the Higher Education (Freedom of Speech) Act 2022), and
(ii) whether A intended to harass B, or was reckless as to whether A's conduct constituted harassment towards B.""

***Member's explanatory statement***
*This amendment would prevent freedom of speech from being used as a defence against behaviour that amounts to harassment.*

**Clause 3**

LORD WALLACE OF SALTAIRE

**37** Page 4, line 29, leave out "and members"

***Member's explanatory statement***
*This amendment is intended to probe the definition of "members" in this paragraph.*

LORD WILLETTS
LORD STEVENS OF BIRMINGHAM

**38** Page 4, line 32, leave out "securing that" and insert "not denying"

***Member's explanatory statement***
*Along with other amendments in the name of Lord Willetts to this Clause, this amendment would allow student unions flexibility to move events but not cancel them.*

**39** Page 4, line 33, leave out "any premises occupied by the students' union is not denied" and insert "premises occupied by the students' union"

***Member's explanatory statement***
*Along with other amendments in the name of Lord Willetts to this Clause, this amendment would allow student unions flexibility to move events but not cancel them.*

**40** Page 4, leave out lines 36 and 37

***Member's explanatory statement***
*Along with other amendments in the name of Lord Willetts to this Clause, this amendment would allow student unions flexibility to move events but not cancel them.*

**41** Page 4, line 38, leave out "is not denied"

***Member's explanatory statement***
*Along with other amendments in the name of Lord Willetts to this Clause, this amendment would allow student unions flexibility to move events but not cancel them.*

LORD WALLACE OF SALTAIRE

**42** Page 4, line 43, leave out ", beliefs"

***Member's explanatory statement***
*This amendment is intended to probe the meaning of belief, and the compatibility of this with other areas of the law.*

**43** Page 5, leave out lines 1 to 7

***Member's explanatory statement***
*This amendment is to probe how the costs of the provision of security for controversial meetings should be distributed among appropriate bodies.*

LORD MANN

**44★** Page 5, line 43, at end insert—

"(ca) an explanation of how to guarantee freedom of speech while fulfilling its duty of care for all its staff and its members who are students or academics of the registered higher education provider,"

LORD MOYLAN

**45** Page 6, line 13, at end insert—

**"A6A Duties relating to funding from UK Research and Innovation**

Where any funding or support having a direct or indirect financial benefit is made to any registered higher education provider by any research council of UK Research and Innovation—

(a) the grantor, and

(b) the registered higher education provider,

must not abridge in any manner the right to freedom of speech of any person, whether natural or legal, who carries out work or research under the benefit."

***Member's explanatory statement***
*This amendment is intended to ensure that UK Research and Innovation must act to protect free speech in higher education in the discharge of their duties.*

LORD MOYLAN
BARONESS FOX OF BUCKLEY

**46** Page 6, line 13, at end insert—

**"A6A Duties relating to donations**

Where any donation or sponsorship is given to any registered higher education provider by any person, whether natural or legal, other than by way of commercial contract for goods or services—

(a) the person, and

(b) the registered higher education provider,

must not abridge in any manner the right to freedom of speech of any person, whether natural or legal, who carries out work or research under the benefit."

***Member's explanatory statement***
*This amendment is to ensure that donations to registered higher education providers may not carry conditions that abridge freedom of speech.*

BARONESS GARDEN OF FROGNAL
LORD WALLACE OF SALTAIRE

**47★** Leave out Clause 3 and insert the following new Clause—

**"Duties of students' unions**

(1) Section 22 of the Education Act 1994 is amended as follows.

(2) In subsection (1), at end insert "and secures freedom of speech within the law for members of the students' union, students of the provider, staff of the students' union, staff and members of the provider and of its constituent institutions, and visiting speakers."

(3) In subsection (2), at end insert—

"(o) the use of any premises occupied by the students' union is not denied to any individual or body on grounds in relation to an individual or society or other body's ideas, beliefs or views;

(p) the terms on which such premises are provided are not to any extent based on such grounds;

(q) affiliation to the students' union is not denied to any student society on such grounds;

(r) use by any individual or body of premises occupied by the students' union is not on terms that require the individual or body to bear some or all of the costs of security relating to their use of the premises."

(4) After subsection (3) insert—

"(3A) The code of practice shall set out—

(a) the students' union's values relating to freedom of speech and an explanation of how those values uphold freedom of speech;

(b) the procedures to be followed by its staff and its members who are students of the registered higher education provider in connection with the organisation of—

(i) meetings which are to be held on the premises occupied by the students' union and which fall within any class of meeting specified in the code, and

(ii) other activities which are to take place on those premises and which fall within any class of activity so specified;

(c) the conduct required of such persons in connection with any such meeting or activity; and

(d) the criteria to be used by the students' union in making decisions about the union's support and funding for events and activities to which the duties in this section are relevant, and whether to allow the use of premises and on what terms.""

***Member's explanatory statement***

*This amendment suggests an alternative method for placing duties on students' unions by amending the Education Act 1994, and along with the proposed removal of clause 7 seeks to probe whether the OfS should directly regulate SUs or whether they should be regulated via the relevant provider.*

**Clause 4**

LORD ETHERTON

**48★** Page 6, line 19, after "person" insert "who is within one of the categories specified in section A1(2) and has suffered loss caused by a breach of the duties in (a), (b) or (c) in this section"

***Member's explanatory statement***
*This amendment narrows and provides certainty as to those entitled to enforce the statutory tort by limiting enforcement to a person for whose benefit there is a duty to secure freedom of speech and, consistent with the Explanatory Notes, only if that person has suffered loss caused by breach of the duty.*

LORD SANDHURST

**49** 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 section A7(1)(a) or (b).

(3) "Civil court" has the meaning set out at section 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.*

**50** Page 6, line 27, 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.*

**51** Page 6, line 27, at end insert—

**"A8 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—

""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.*

**52** Page 6, line 27, at end insert—

**"A8 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), for "or 105(6A)" substitute ", 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 tabled by Lord Sandhurst. It removes the qualifying period for unfairly dismissed academics and the cap on the compensatory award; it allows the Tribunal to order interim relief.*

LORD STEVENS OF BIRMINGHAM
LORD WILLETTS
LORD WALLACE OF SALTAIRE
LORD COLLINS OF HIGHBURY

*The above-named Lords give notice of their intention to oppose the Question that Clause 4 stand part of the Bill.*

***Member's explanatory statement***
*This would prevent the creation of a new statutory tort, which risks duplicating functions of the Office for Students and imposing unnecessary additional costs on universities.*

**After Clause 4**

LORD SIKKA

**53** Insert the following new Clause—

**"Duty on providers of grants**

After section A7 of the Higher Education and Research Act 2017 (inserted by section 4) insert—

"*Research grants*

**A8 Duty on providers of grants**

(1) Providers of grants of funds must take reasonable steps to ensure that they do not interfere with the freedom of speech of academics applying for research grants.

(2) In fulfilling the duty under subsection (1), providers must not require changes to academic research as a condition for a grant, in relation to the following—

(a) research design,

(b) data collection, or

(c) distribution of the research.""

**Clause 5**

LORD WILLETTS
LORD STEVENS OF BIRMINGHAM

**54** Page 7, line 11, leave out "may" and insert "must"

**55** Page 7, line 12, leave out "identify" and insert "consult on and publish guidance on"

**56** Page 7, line 14, after "practice" insert "in a timely manner"

***Member's explanatory statement***
*Along with other amendments to this Clause in the name of Lord Willets, this amendment would ensure that universities and others know what their free speech duties require of them at any one time and can consult the OfS for advice where this is not clear.*

**Clause 7**

BARONESS GARDEN OF FROGNAL
LORD WALLACE OF SALTAIRE

*The above-named Lords give notice of their intention to oppose the Question that Clause 7 stand part of the Bill.*

***Member's explanatory statement***
*Removing Clause 7, along with the proposed new Clause 3 in the name of Baroness Garden of Frognal, seeks to probe whether the OfS should directly regulate SUs or whether they should be regulated via the relevant provider.*

**Clause 8**

LORD WALLACE OF SALTAIRE

**57** Page 9, line 27, leave out first "member"

***Member's explanatory statement***
*This amendment is intended to probe the definition of "member" in this paragraph.*

LORD WILLETTS
LORD STEVENS OF BIRMINGHAM

**58** Page 10, line 20, leave out "may" and insert "must"

***Member's explanatory statement***
*The purpose of this amendment is to specify the route through which complaints must go, i.e., the OfS cannot intervene until a university's own procedures, or those of the Office of the Independent Adjudicator, are exhausted.*

**59** Page 11, line 2, leave out "may allow" and insert "must require"

***Member's explanatory statement***
*The amendment will require the OfS to dismiss frivolous or vexatious complaints, which should reduce bureaucratic burden on the OfS and should make frivolous or vexatious complaints to universities less likely – so reducing bureaucratic burden on universities too.*

LORD SANDHURST

**60** Page 11, line 8, 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.*

LORD COLLINS OF HIGHBURY

**61** Page 11, line 12, at end insert—

"(2A) When assessing whether a free speech complaint is justified, the scheme must require the OfS to be mindful of—

(a) the right of students to feel safe on university campuses, and

(b) other legal duties of governing bodies and students' unions, specified in guidance which the Government must publish within three months of the passing of the Higher Education (Freedom of Speech) Act 2022."

***Member's explanatory statement***
*This amendment would ensure that free speech complaints are considered alongside other competing freedoms, such as the Equality Act 2010 and the Counter-Terrorism Act and Security Act 2015, which the Government must specify in guidance.*

LORD TRIESMAN

**62** Page 11, line 23, leave out from "may" to end of line 24 and insert "designate an officer of the OfS, to be known as the Free Speech and Academic Freedom Officer (FSAFO), on behalf of the OfS, to require anyone to do or not do anything found to be necessary as a result of an inquiry undertaken within the scope of the scheme, and to publish a report setting out the FSAFO's findings and reasons.

(5A) A constituent institution of a registered higher education provider or a student union must comply with any requirement of the FSAFO unless—

(a) it has reasons for not doing so which are compelling having regard to the importance of the matters mentioned in section 2(1)(aa) and (ab), and

(b) it has published those reasons and sent them to the Board of the OfS.

(5B) Upon receiving such reasons, the Board of the OfS must make immediate arrangements to consider them and make a binding decision in respect of the requirements on the higher education provider or students' union.

(5C) The registration of an institution as a public education provider must contain an obligation to act on a requirement made under this Schedule by the FSAFO or the Board of the OfS.

(5D) It is a condition for a students' union to comply with a requirement made under this Schedule for its financial support."

LORD WALLACE OF SALTAIRE

*Lord Wallace of Saltaire gives notice of his intention to oppose the Question that Clause 8 stand part of the Bill.*

***Member's explanatory statement***
*This is to probe why the existing Office of the Independent Adjudicator is not sufficient to respond to student complaints.*

**Clause 9**

LORD JOHNSON OF MARYLEBONE
LORD TRIESMAN

**63** Page 12, line 39, at end insert—

"(3A) The duty in subsection (1) includes a duty to consider whether a registered higher education provider or any constituent institution is overly reliant on overseas funding from a single country of origin."

***Member's explanatory statement***
*This amendment, together with the other amendment to this clause in Lord Johnson's name, would include income from international tuition fees in the definition of overseas funding and ensure that the Office for Students has a duty to monitor over-reliance on overseas funding from a single country.*

**64** Page 13, line 17, at end insert—

"(e) by way of tuition fees."

***Member's explanatory statement***
*This amendment, together with the other amendment to this clause in Lord Johnson's name, would include income from international tuition fees in the definition of overseas funding and ensure that the Office for Students has a duty to monitor over-reliance on overseas funding from a single country.*

LORD WILLETTS

**65★** Page 13, line 45, after "amount" insert ", no less than one per cent of the total income of a registered provider in the previous financial year,"

***Member's explanatory statement***
*This amendment would reduce the burden on providers by requiring them to report only the significant sums of overseas funding that might reasonably be believed to affect their behaviour.*

LORD WALLACE OF SALTAIRE

**66** Page 14, leave out lines 3 to 41

***Member's explanatory statement***
*This amendment is to probe what evidence there is of significant overseas funding of, or influence over, student unions.*

**Clause 10**

LORD COLLINS OF HIGHBURY

**67** Page 15, line 11, at end insert—

"(1A) A person may not be appointed as the Free Speech Director if the person has at any time within the previous three years made a donation to a political party registered under the Political Parties, Elections and Referendums Act 2000.

(1B) The person appointed as the Free Speech Director may not while in office make any donation to a political party registered under the Political Parties, Elections and Referendums Act 2000.

(1C) The appointment for the Free Speech Director must be made by an independent advisory panel to be established by regulations made by the Secretary of State.

(1D) The appointment of the Free Speech Director is subject to a confirmatory resolution of the relevant Select Committee of the House of Commons.

(1E) A statutory instrument containing regulations under sub-paragraph (1C) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

***Member's explanatory statement***
*This would ensure that the Free Speech Director has not recently and cannot while in office donate to a political party, and that they are only appointed subject to confirmation of an independent advisory panel, a Select Committee of the House of Commons and a resolution of each House of Parliament.*

LORD WALLACE OF SALTAIRE
LORD COLLINS OF HIGHBURY

**68** Page 15, line 17, at end insert—

"(3) The Free Speech Director is to be nominated by the Secretary of State, after consultation with Universities UK and subject to the approval of the House of Commons Select Committee for Education."

***Member's explanatory statement***
*This amendment is intended to ensure the independence of those appointed to the position of Director for Freedom of Speech.*

**After Clause 10**

LORD SANDHURST
BARONESS FOX OF BUCKLEY
BARONESS BENNETT OF MANOR CASTLE

**69** Insert the following new Clause—

**"Amendment to the Counter-Terrorism and Security Act 2015**

In section 31 of the Counter-Terrorism and Security Act 2015, insert—

"(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.*

**After Clause 11**

LORD COLLINS OF HIGHBURY
BARONESS BENNETT OF MANOR CASTLE

**70** Insert the following new Clause—

**"Expiry**

(1) This Act expires at the end of the period of three years beginning with the day on which it is passed, subject to subsection (4).

**After Clause 11** - *continued*

(2) A Minister of the Crown may by regulations made by statutory instrument repeal any of the provisions of this Act after one year from the day on which it is passed if the Minister is not satisfied that the provision is working as intended.

(3) Before the end of the period of three years beginning with the day on which this Act is passed a Minister of the Crown must lay before Parliament a written report on the effectiveness of the provisions of the Act.

(4) A Minister of the Crown may by regulations made by statutory instrument—

(a) provide that this Act does not expire in accordance with subsection (1), in full or in part, subject to approval by resolution of both Houses of Parliament, or

(b) make transitional, transitory or saving provision in connection with the expiry of any provision of this Act.

(5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

**The Schedule**

LORD SANDHURST

**71** Page 19, line 40, at end insert—

"(ca) references to academic staff have the same meaning as in Part A1 (see section A1(11));"

***Member's explanatory statement***

*This amendment is consequential on the amendment to section A1(11) tabled by Lord Sandhurst. It applies the new definition of "academic staff" to the OfS's regulatory duties regarding freedom of speech and academic freedom as set out in Part 1 of the Higher Education and Research Act 2017.*

# Higher Education (Freedom of Speech) Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

*27 October 2022*