

# Higher Education (Freedom of Speech) Bill

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MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
ON REPORT

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*The amendments have been marshalled in accordance with the Order of 30th November 2022, as follows –*

Clauses 1 to 11  
Schedule

Clauses 12 to 14  
Title.

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

**Amendment  
No.**

**Clause 1**

LORD HOPE OF CRAIGHEAD  
LORD COLLINS OF HIGHBURY

- 1** 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 expression which this Bill seeks to protect and the right to freedom of expression in Article 10 which is the subject of other legislation which may come before the House.*

EARL HOWE

- 2** Page 2, line 4, leave out “, beliefs or views” and insert “or opinions”

***Member’s explanatory statement***

*This amendment is consequential on the Minister’s proposed new definition of “freedom of speech” (see the amendment to Clause 1, page 2, line 36 in the Minister’s name).*

- 3** Page 2, line 5, leave out “, beliefs or views” and insert “or opinions”

***Member’s explanatory statement***

*This amendment is consequential on the Minister’s proposed new definition of “freedom of speech” (see the amendment to Clause 1, page 2, line 36 in the Minister’s name).*

## BARONESS FOX OF BUCKLEY

4★ Page 2, line 14, at end insert –

- “(c) to express opinions about the registered higher education provider, including opinions concerning –
- (i) the content of any curriculum adopted by the provider, and any decision taken by the provider regarding such content, and
  - (ii) any affiliation between the provider and a third-party organisation that concerns teaching and research at the provider, or questions of public interest,”

***Member’s explanatory statement***

*This amendment seeks to ensure that the Bill upholds international standards of academic freedom by protecting academics’ freedom to express freely their opinion about the institution or system in which they work (UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel in 1997 and Russia v Kharlamov).*

## LORD WALLACE OF SALTIRE

5 Page 2, leave out lines 19 and 20

***Member’s explanatory statement***

*Paragraph (b) would allow academic staff to seek redress if they felt the likelihood of their securing promotion or different jobs at a provider had been reduced as a result of them exercising their free speech. In removing this paragraph this amendment seeks to probe the workability of this provision.*

## LORD COLLINS OF HIGHBURY

BARONESS THORNTON

BARONESS BARRAN

6★ Page 2, line 34, at end insert –

- “(10A) In order to achieve the objective in subsection (2), the governing body of a registered higher education provider must secure that the provider does not enter into a non-disclosure agreement with a person referred to in that subsection in relation to a relevant complaint made to the provider by the person (and if such a non-disclosure agreement is entered into it is void).

(10B) In subsection (10A) –

“non-disclosure agreement” means an agreement which purports to any extent to preclude the person from –

- (a) publishing information about the relevant complaint, or
- (b) disclosing information about the relevant complaint to any one or more other persons;

“relevant complaint” means a complaint relating to misconduct or alleged misconduct by any person;

“misconduct” means –

- (a) sexual abuse, sexual harassment or sexual misconduct, and
- (b) bullying or harassment not falling within paragraph (a).”

**Member's explanatory statement**

*This requires the governing body of a registered higher education provider to secure that the provider does not enter into certain non-disclosure agreements (and as a result of new section A4 of the Higher Education and Research Act 2017 inserted by section 2 of the Bill this will also apply to the governing body of constituent institutions).*

EARL HOWE

- 7 Page 2, line 36, leave out from “speech” to end of line 38 and insert “are to the freedom to impart ideas, opinions or information (referred to in Article 10(1) of the Convention as it has effect for the purposes of the Human Rights Act 1998) by means of speech, writing or images (including in electronic form);”

**Member's explanatory statement**

*This amendment proposes a new definition of “freedom of speech” referring to the European Convention on Human Rights, as it has effect for the purposes of the Human Rights Act 1998.*

- 8 Page 2, line 38, at end insert –  
 ““the Convention” has the meaning given by section 21(1) of the Human Rights Act 1998;”

**Member's explanatory statement**

*This amendment defines “the Convention” for the purposes of the Minister’s proposed new definition of “freedom of speech” (see the amendment to Clause 1, page 2, line 36 in the Minister’s name).*

- 9 Page 2, line 38, at end insert –  
 ““member”, in relation to a registered higher education provider, does not include a person who is a member of the provider solely because of having been a student of the provider;”

**Member's explanatory statement**

*This amendment excludes those who are members of the provider, solely due to having been a student of the provider, from being a “member” of the provider for the purposes of Part A1 of the Higher Education and Research Act 2017.*

LORD HOPE OF CRAIGHEAD

LORD MOYLAN

LORD COLLINS OF HIGHBURY

- 10 Page 2, line 41, at end insert –  
 ““within the law” means that the exercise of this freedom is subject to the duty to respect the rights of others and not to do or say anything that is prohibited by any enactment or rule of law.”

**Member's explanatory statement**

*This amendment seeks to provide a definition of the expression “within the law”, which qualifies the right to freedom of speech that lies at the heart of this bill, in the interests of clarity and legal certainty.*

LORD HUNT OF KINGS HEATH  
BARONESS MORRIS OF YARDLEY

- 11 Page 3, line 13, after “activity,” insert “including measures to be taken to ensure that a person is not prevented from speaking by attempts to drown out or silence a speaker,”

***Member’s explanatory statement***

*This amendment, which relates to the code of practice to be maintained by governing bodies, is designed to ensure that in their duty to take steps to secure freedom of speech the code of practice must cover measures to be taken to ensure that a person is not prevented from speaking by attempts to drown out or silence a speaker.*

**Clause 2**

EARL HOWE

- 12 Page 4, line 14, at end insert –  
““member”, in relation to a constituent institution of a registered higher education provider, does not include a person who is a member of the institution solely because of having been a student of the institution.”

***Member’s explanatory statement***

*This amendment excludes those who are members of a constituent institution (eg a college), solely due to having been a student of the institution, from being a “member” of a constituent institution for the purposes of Part A1 of the Higher Education and Research Act 2017.*

**Clause 3**

EARL HOWE

- 13 Page 4, line 41, leave out “, beliefs or views” and insert “or opinions”

***Member’s explanatory statement***

*This amendment is consequential on the Minister’s proposed new definition of “freedom of speech” (see the amendment to Clause 1, page 2, line 36 in the Minister’s name).*

- 14 Page 4, line 43, leave out “, beliefs or views” and insert “or opinions”

***Member’s explanatory statement***

*This amendment is consequential on the Minister’s proposed new definition of “freedom of speech” (see the amendment to Clause 1, page 2, line 36 in the Minister’s name).*

LORD HUNT OF KINGS HEATH  
BARONESS MORRIS OF YARDLEY

- 15 Page 5, line 43, after “activity,” insert “including measures to be taken to ensure that a person is not prevented from speaking by attempts to drown out or silence a speaker,”

**Member's explanatory statement**

*This amendment, which relates to the code of practice to be maintained by student unions, is designed to ensure that in their duty to take steps to have regard to the importance of freedom of speech the code of practice must cover measures to be taken to ensure that a person is not prevented from speaking by attempts to drown out or silence a speaker.*

LORD COLLINS OF HIGHBURY  
BARONESS THORNTON  
LORD BLUNKETT  
LORD WALLACE OF SALTIRE

16★ Page 6, line 13, at end insert—

**“A6A Guidance for students’ unions**

- (1) The Secretary of State must, within three months of the passing of the Higher Education (Freedom of Speech) Act 2022, publish guidance on how students’ unions can comply with Part A1.
- (2) This guidance must be written in plain English, comprehensible to young people with no legal training.”

**Clause 4**

EARL HOWE

17 Page 6, line 22, after “A1” insert “that causes the person to sustain loss”

**Member's explanatory statement**

*This ensures that only persons who have sustained loss can bring civil proceedings under the new section A7 inserted into the Higher Education and Research Act 2017 by the Bill.*

18 Page 6, line 25, after “A1” insert “that causes the person to sustain loss”

**Member's explanatory statement**

*This ensures that only persons who have sustained loss can bring civil proceedings under the new section A7 inserted into the Higher Education and Research Act 2017 by the Bill.*

19 Page 6, line 27, after “A5” insert “that causes the person to sustain loss”

**Member's explanatory statement**

*This ensures that only persons who have sustained loss can bring civil proceedings under the new section A7 inserted into the Higher Education and Research Act 2017 by the Bill.*

20 Page 6, line 27, at end insert—

- “(2) A person may bring proceedings under subsection (1) only if—
  - (a) the person has brought a complaint relating to the same subject-matter as the proceedings under a relevant complaints scheme, and
  - (b) a decision has been made under that scheme as to the extent to which the complaint was justified.
- (3) Each of the following is a “relevant complaints scheme”—
  - (a) the scheme provided by virtue of Schedule 6A (the free speech complaints scheme), and

**Clause 4 - continued**

- (b) the scheme for the review of qualifying complaints (within the meaning of section 12 of the Higher Education Act 2004) that is provided by the designated operator (within the meaning of section 13(5)(b) of that Act).”

***Member’s explanatory statement***

*This provides that a person must first have recourse to a complaints scheme before bringing civil proceedings under the new section A7 inserted into the Higher Education and Research Act 2017 by the Bill.*

LORD MOYLAN  
BARONESS FOX OF BUCKLEY  
LORD STRATHCARRON

**21** 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.*

LORD WILLETTS  
LORD COLLINS OF HIGHBURY  
LORD WALLACE OF SALTAIRE  
BARONESS SHAFIK

**22★** Leave out Clause 4

**After Clause 4**

LORD SIKKA  
LORD MOYLAN  
THE EARL OF LYTTON  
BARONESS BENNETT OF MANOR CASTLE

23 Insert the following new Clause—

**“Research grant funding and academic integrity**

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

**“A8 Research grant funding and academic integrity**

- (1) The provision of grant funding for research shall not be used as a means of interfering with the freedom for academics—
  - (a) to publish and disseminate their research; or
  - (b) to decide on the final form and academic integrity of such research.
- (2) Unless the conditions in subsection (3) apply, no contractual or other provision in a funding agreement that gives editing or publishing control to the funder shall be enforceable by law.
- (3) The conditions referred to in subsection (2) are—
  - (a) that a court finds the full publication of the research would threaten national security, public safety, or health; or
  - (b) the contracting parties to a research funding arrangement agree confidentiality of results in advance.”

***Member’s explanatory statement***

*This amendment reduces the ability of public, private or philanthropic funders of academic research to infringe upon academic integrity and the freedom to publish results. Contractual attempts at interference with academic expression will be unenforceable, unless confidentiality of research was agreed in advance or where a court finds a national security, public safety or health justification for preventing publication.*

**Clause 5**

EARL HOWE

24 Page 7, line 12, leave out “the promotion of” and insert “how to support”

***Member’s explanatory statement***

*This clarifies that the new function conferred on the OfS enabling it to identify good practice in freedom of speech matters and to give advice about such practice is not directed at giving guidance to providers about how to discharge their new duty to promote the importance of freedom of speech.*

LORD HUNT OF KINGS HEATH  
BARONESS MORRIS OF YARDLEY

25 Page 7, line 15, at end insert—

- “(2A) Advice given under subsection (2)(b) must include guidance on measures to be taken to ensure that a person is not prevented from speaking by attempts to drown out or silence a speaker.”

**Member's explanatory statement**

*This amendment is aimed at the general functions of the OfS relating to freedom of speech and academic freedom to ensure that good practice guidance and advice to registered higher education providers and their constituent institutions include measures to be taken to ensure that a person is not prevented from speaking by attempts to drown out or silence a speaker.*

**Clause 9**

LORD COLLINS OF Highbury  
BARONESS THORNTON

- 26 Page 12, line 41, after “provider” insert “or the governing body of a constituent institution”

**Member's explanatory statement**

*This amendment would make provision for collegiate universities, making clear that a governing body of a college – rather than their overarching provider – should report information under Clause 9.*

LORD COLLINS OF Highbury  
BARONESS THORNTON  
LORD BLUNKETT

- 27 Page 13, leave out lines 6 and 7 and insert –  
“(4A) Information may only be required under this section where the OfS considers there to be reasonable grounds to suspect a breach of the governing body’s or students’ union’s freedom of speech duties under section A1 (duty to take steps to secure freedom of speech: registered higher education providers), A4 (duties of constituent institutions) or A5 (duty to take steps to secure freedom of speech: students’ unions).”

**Member's explanatory statement**

*This amendment is intended to make the OfS' power to gather information more proportionate, and prevent commercially sensitive information becoming subject to freedom of information requests through the regulator having requested it.*

LORD COLLINS OF Highbury  
BARONESS THORNTON

- 28 Page 13, line 16, leave out “or commercial”

**Member's explanatory statement**

*This amendment would prevent universities having to disclose sensitive commercial information to the OfS, and independent trading entities (e.g. a University Press) being forced to violate commercial contracts not governed by UK law.*



**Clause 10**

LORD COLLINS OF HIGHBURY  
 BARONESS THORNTON  
 LORD BLUNKETT  
 BARONESS BENNETT OF MANOR CASTLE

- 29 Page 15, line 11, at end insert –
- “(1A) The appointment of the Free Speech Director is subject to a confirmatory resolution of the relevant Select Committee of the House of Commons.
  - (1B) The person appointed as the Free Speech Director must present a report to Parliament no later than 31 December 2023, and once a year thereafter.
  - (1C) The report must include an assessment of –
    - (a) the impact the role is having,
    - (b) the implementation of the Higher Education (Freedom of Speech) Act 2022, and
    - (c) the state of freedom of speech at the providers encompassed by that Act.”

LORD WALLACE OF SALTAIRE

- 30★ Page 15, line 11, at end insert –
- “(1A) The Free Speech Director is to be nominated by the Secretary of State and the appointment is subject to the approval of the House of Commons Education Committee.
  - (1B) Before nominating the Free Speech Director the Secretary of State must consult with Universities UK on the criteria and expertise required for the role.”

***Member’s explanatory statement***

*This amendment is intended to ensure the independence of those appointed to the position of Director for Freedom of Speech, and that the role is filled by someone with the appropriate expertise.*

**The Schedule**

EARL HOWE

- 31 Page 19, line 40, at end insert –
- “(ca) after the definition of “the institutional autonomy of English higher education providers” insert –
    - ““member”, in relation to a registered higher education provider or a constituent institution of such a provider, has the same meaning as in Part A1 (see sections A1(11) and A4(4));
    - “member”, in relation to a students’ union which is a representative body and not an association (see section 20(1)(b) of the Education Act 1994), means those whom it is the purpose of the union to represent, excluding any student who has signified that they do not wish to be represented by it;”

***Member's explanatory statement***

*This amendment ensures that "member" (of a registered higher education provider, of a constituent institution of such a provider and of a students' union) means the same in Part A1 and Part 1 of the Higher Education and Research Act 2017.*

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*5 December 2022*

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