

Higher Education (Freedom of Speech) Bill

RUNNING LIST OF ALL AMENDMENTS IN GRAND COMMITTEE

Tabled up to and including

26 September 2022

[Sheets HL Bill 30(a) to (f)]

Clauses 1 to 11
Schedule

Clauses 12 to 14
Title

Clause 1

LORD HOPE OF CRAIGHEAD

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 MOYLAN

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.

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.

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 MOYLAN
BARONESS HOEY
THE EARL OF LEICESTER

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 1

LORD MOYLAN

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.

Clause 3

LORD MOYLAN

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 –

Clause 3 - continued

- (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.

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.

Clause 4

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.

Clause 9

LORD JOHNSON OF MARYLEBONE

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.

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.