



# Higher Education (Freedom of Speech) Act 2023

## 2023 CHAPTER 16

### *Duties to protect freedom of speech*

#### **1 Duties of registered higher education providers**

In the Higher Education and Research Act 2017, before Part 1 insert—

#### **“PART A1**

#### **PROTECTION OF FREEDOM OF SPEECH**

#### *Duties of registered higher education providers*

#### **A1 Duty to take steps to secure freedom of speech**

- (1) The governing body of a registered higher education provider must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to achieve the objective in subsection (2).
- (2) That objective is securing freedom of speech within the law for—
  - (a) staff of the provider,
  - (b) members of the provider,
  - (c) students of the provider, and
  - (d) visiting speakers.
- (3) The objective in subsection (2) includes securing that—
  - (a) the use of any premises of the provider is not denied to any individual or body on grounds specified in subsection (4), and

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*Status: This is the original version (as it was originally enacted).*

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- (b) the terms on which such premises are provided are not to any extent based on such grounds.
- (4) The grounds referred to in subsection (3)(a) and (b) are—
- (a) in relation to an individual, their ideas or opinions;
  - (b) in relation to a body, its policy or objectives or the ideas or opinions of any of its members.
- (5) The objective in subsection (2), so far as relating to academic staff, includes securing their academic freedom.
- (6) In this Part, “academic freedom”, in relation to academic staff at a registered higher education provider, means their freedom within the law—
- (a) to question and test received wisdom, and
  - (b) to put forward new ideas and controversial or unpopular opinions, without placing themselves at risk of being adversely affected in any of the ways described in subsection (7).
- (7) Those ways are—
- (a) loss of their jobs or privileges at the provider;
  - (b) the likelihood of their securing promotion or different jobs at the provider being reduced.
- (8) The governing body of a registered higher education provider must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to achieve the objective in subsection (9).
- (9) That objective is securing that, where a person applies to become a member of academic staff of the provider, the person is not adversely affected in relation to the application because they have exercised their freedom within the law to do the things referred to in subsection (6)(a) and (b).
- (10) In order to achieve the objective in subsection (2), the governing body of a registered higher education provider must secure that, apart from in exceptional circumstances, use of its premises by any individual or body 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.
- (11) 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).
- (12) In subsection (11)—
- “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—

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

(13) In this Part—

references to freedom of speech 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);

“the Convention” has the meaning given by section 21(1) of the Human Rights Act 1998;

“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;

“registered higher education provider” and “governing body”, in relation to such a provider, have the same meanings as in Part 1 of this Act.

## **A2 Code of practice**

- (1) The governing body of a registered higher education provider must, with a view to facilitating the discharge of the duties in section A1(1) and (10), maintain a code of practice setting out the matters referred to in subsection (2).
- (2) Those matters are—
  - (a) the provider’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 staff and students of the provider and any students’ union for students at the provider in connection with the organisation of—
    - (i) meetings which are to be held on the provider’s premises 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 provider in making decisions about whether to allow the use of premises and on what terms (which must include its criteria for determining whether there are exceptional circumstances for the purposes of section A1(10)).
- (3) The code of practice may deal with such other matters as the governing body considers appropriate.
- (4) The governing body of a registered higher education provider must take the steps that are reasonably practicable for it to take (including where appropriate the initiation of disciplinary measures) in order to secure compliance with its code of practice.
- (5) The governing body of a registered higher education provider must, at least once a year, bring—
  - (a) the provisions of section A1, and

(b) its code of practice under this section,  
to the attention of all of its students.

**A3 Duty to promote the importance of freedom of speech and academic freedom**

The governing body of a registered higher education provider must promote the importance of—

- (a) freedom of speech within the law, and
  - (b) academic freedom for academic staff of registered higher education providers and their constituent institutions,
- in the provision of higher education.”