

Consultation

**Office for
Students**

OfS

Consultation on proposed regulatory advice and other matters relating to freedom of speech

This consultation runs from **26 March 2024** to **26 May 2024**.

Reference OfS 2024.11

Enquiries to regulation@officeforstudents.org.uk

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The Office for Students is the independent regulator for higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

Our four regulatory objectives

All students, from all backgrounds, and with the ability and desire to undertake higher education:

- are supported to access, succeed in, and progress from, higher education
- receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure
- are able to progress into employment or further study, and their qualifications hold their value over time
- receive value for money.

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About this consultation

The Office for Students (OfS) is implementing new freedom of speech functions. This consultation seeks views on proposals relating to:

- guidance on the new free speech duties imposed on registered higher education providers, on their constituent institutions and on relevant students' unions
- amendments to the OfS regulatory framework to make reference to the OfS's new general functions and general duties
- the OfS's recovery of costs in connection with the new free speech complaints scheme and regulation of students' unions.

Timing

Start: **26 March 2024**

End: **26 May 2024**

Who should respond?

We welcome responses from anyone with an interest in freedom of speech in English higher education.

We are particularly (but not only) interested in hearing from **students, staff, students' union representatives and leaders at providers** that will be engaging in the new arrangements. We welcome views from all types and size of provider and students' union.

We also welcome the views of **schools, employers, third sector organisations, policy bodies** and others with an interest in freedom of speech in English higher education.

How to respond

Please respond by **26 May 2024**.

Please use the online response form available at <https://survey.officeforstudents.org.uk/s/free-speech-duties/>

How we will treat your response

We will summarise and/or publish the responses to this consultation on the OfS website (and in alternative formats on request). This may include a list of the providers and organisations that respond, but not personal data such as individuals' names, addresses or other contact details.

If you want the information that you provide to be treated as confidential, please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

The OfS will process any personal data received in accordance with all applicable data protection laws (see our privacy policy).¹

We may need to disclose or publish information that you provide in the performance of our functions, or disclose it to other organisations for the purposes of their functions. Information (including personal data) may also need to be disclosed in accordance with UK legislation (such as the Freedom of Information Act 2000, Data Protection Act 2018 and Environmental Information Regulations 2004).

Next steps

We will publish a summary of responses to this consultation in summer 2024. We will explain how and why we have arrived at our decisions, and how we have addressed any concerns raised by respondents. We will then set out next steps in the policy and implementation process.

Enquiries

Email regulation@officeforstudents.org.uk

Alternatively, call our public enquiry line on 0117 931 7317.

Consultation events are planned for 2024. These events will provide an opportunity for you to discuss these proposals.

Details are available on our website

www.officeforstudents.org.uk/news-blog-and-events/events/freedom-of-speech-guidance-consultation-webinars/.

If you require this document in an **alternative format**, or you need assistance with the online form, contact regulation@officeforstudents.org.uk. (**Please note:** this email address should **not** be used for submitting your consultation response.)

For more information about our work to date on freedom of speech, please visit the OfS website: www.officeforstudents.org.uk/advice-and-guidance/quality-and-standards/freedom-of-speech/

¹ Available at www.officeforstudents.org.uk/ofs-privacy/.

Executive summary

New free speech legislation

Freedom of speech and academic freedom are essential to higher education. The core mission of universities and colleges is the pursuit of knowledge, and the principles of free speech and academic freedom are fundamental to this purpose. They provide an environment to advance new ideas, encourage productive debate and challenge conventional wisdom. All staff and students are entitled to teach, learn and research in a culture that values vigorous debate, including in relation to difficult, contentious or uncomfortable topics.

Under existing legislation, universities and colleges are required to take reasonably practicable steps to secure free speech on campus. New legislation was passed in May last year which imposes new free speech duties on universities and colleges, their constituent institutions and some students' unions. Those new duties, expected to come into force on **1 August 2024**, include a similar duty to take reasonably practicable steps to secure free speech on campus.²

The new legislation will also give the Office for Students (OfS) more powers and duties to regulate universities and colleges, and their students' unions, on free speech issues. We expect some of these provisions to come into force on 1 August 2024 and others to come into force on 1 September 2025. You can read more about this on our website.³

Consultation proposals

This consultation is an opportunity for students, staff, students' union representatives and leaders at providers to tell us what they think about our proposals on the following:

- a. Proposed guidance on the duties related to freedom of speech and academic freedom. This will help providers, constituent institutions and students' unions to navigate the new free speech duties that the OfS expects to regulate from 1 August 2024.
- b. Amendments to the regulatory framework to reflect the OfS's new general duties and general functions.
- c. Recovery of OfS costs in connection with the new free speech complaints scheme and the imposition of monetary penalties on students' unions.

We are proposing to include in our draft guidance examples designed to help a provider, constituent institution or relevant students' union understand how the guidance should be applied. In all of the proposed examples we have been clear that the decision about any similar case would depend on the particular circumstances of the case.

² See <https://www.legislation.gov.uk/ukpga/2023/16/enacted>.

³ See www.officeforstudents.org.uk/advice-and-guidance/quality-and-standards/freedom-of-speech/changes-to-regulation/.

Regulatory advice 24: Guidance related to freedom of speech

In this consultation we have set out proposals for draft guidance, which includes examples of steps that it may be reasonably practicable for a provider, constituent institution or students' union to secure free speech within the law. The examples cover the following areas:

- a. admissions, appointments, employment and promotion
- b. codes of conduct
- c. complaints and investigation processes
- d. free speech code of practice
- e. free speech complaints scheme
- f. governance
- g. research
- h. speaker events
- i. teaching
- j. training and induction.

What is reasonably practicable may vary from institution to institution.

Changes to the regulatory framework

In this consultation we have set out how we propose to amend the OfS regulatory framework to make reference to our new general duties and general functions in relation to freedom of speech and academic freedom.⁴

Cost recovery

We have also set out proposals relating to the OfS's approach to the recovery of costs incurred in relation to the free speech complaints scheme and to the imposition of monetary penalties on relevant students' unions

Who should provide feedback on our proposals

We are particularly (but not only) interested in hearing from students, staff, students' union representatives and leaders at providers that will be engaging in the new arrangements. We welcome views from all types and size of provider and students' union. We also welcome the views of schools, employers, third sector organisations, policy bodies and others with an interest in freedom of speech in English higher education.

⁴ See www.officeforstudents.org.uk/publications/regulatory-framework-for-higher-education-in-england/.

Feedback on the proposals can be given via the online survey⁵ or you can find out more at one of the consultation events.⁶

Next steps

There will be many opportunities for engagement during the consultation period. Institutions, sector bodies, students and students' unions will be invited to join a series of events.

The consultation will close on **Sunday 26 May 2024**. We will then analyse and consider the consultation responses and make decisions in respect of these proposals.

We have published an indicative timeline of the next phases of work in preparation for the new legislation over the next few months.⁷

⁵ See <https://survey.officeforstudents.org.uk/s/free-speech-duties/>.

⁶ See www.officeforstudents.org.uk/news-blog-and-events/events/freedom-of-speech-guidance-consultation-webinars/.

⁷ See www.officeforstudents.org.uk/advice-and-guidance/quality-and-standards/freedom-of-speech/changes-to-regulation/.

Introduction

1. Freedom of speech and academic freedom are fundamental to higher education. The core mission of universities and colleges is the pursuit of knowledge. The principles of free speech and academic freedom are fundamental to this purpose. They provide a necessary context for advancing new ideas, encouraging productive debate and challenging conventional wisdom.⁸
2. All staff and students are entitled to teach, learn and research in a culture that values vigorous debate. This is especially true in relation to difficult or contentious or discomfiting topics.
3. As the statutory regulator for higher education in England, the OfS aims to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their life and career. In March 2022, we published our strategy for 2022 to 2025. There we described the two key areas of focus for this period that will inform our regulatory activity: quality and standards; and equality of opportunity.
4. Students will not have a high quality education if that education is not grounded in freedom of speech. That includes freedom of speech for themselves, for fellow students, for those who teach or supervise them and for visiting speakers.
5. As a priority for our activities focusing on quality and standards, we have set a goal that ‘providers secure free speech within the law for students, staff and visiting speakers’.⁹

Existing requirements

6. Most of the universities and colleges that are registered with the OfS are ‘public bodies’ for the purposes of the Human Rights Act 1998. It is unlawful for them as public bodies to act incompatibly with the European Convention on Human Rights (the ‘ECHR’). Article 10 of the ECHR relates to freedom of expression.¹⁰
7. Section 43 of the Education (No 2) Act 1986 requires universities and colleges to ‘take such steps as are reasonably practicable’ to ensure that freedom of speech within the law is secured for their members, students, employees and visiting speakers.¹¹
8. Universities and colleges must comply with the requirements of equality law. The relevant provisions relate to a set of ‘protected characteristics’ set out in the Equality Act 2010. These are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Among other things the Act requires universities, and their employees when acting as such, not to discriminate against or harass someone because of a protected characteristic, including religion or belief.¹²
9. Currently, the OfS regulates providers on matters relating to free speech through relevant ‘public interest governance principles’. These underpin the initial and ongoing conditions of

⁸ In this consultation, we use the terms ‘free speech’ and ‘freedom of speech’ interchangeably.

⁹ See www.officeforstudents.org.uk/publications/office-for-students-strategy-2022-to-2025/.

¹⁰ See <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/9>.

¹¹ See <https://www.legislation.gov.uk/ukpga/1986/61/section/43>.

¹² See <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

registration relating to management and governance (the 'E conditions') that providers registered with the OfS must meet. You can read more about these requirements in our regulatory framework.¹³

10. New legislation will replace section 43 of the Education (No 2) Act 1986 for providers and will strengthen the OfS's regulatory role on free speech matters. We explain this below.

New legislation

11. New legislation will strengthen the legal requirements on providers and introduce new requirements for their constituent institutions and for some students' unions, relating to freedom of speech. For providers and their constituent institutions, this will include requirements relating to academic freedom. A 'constituent institution' means any constituent college, school, hall or other institution of the provider. For example, the individual colleges of the University of Cambridge are constituent institutions of that university.¹⁴
12. The new legislation will also strengthen the OfS's regulatory role in relation to freedom of speech and academic freedom.
13. The new legislation is the Higher Education (Freedom of Speech) Act 2023 (the 'Act').¹⁵ The Act received Royal Assent on 11 May 2023. However, most of the provisions of the Act are not yet in force. They will come into force through secondary legislation. We expect this implementation to be phased over 2024 and 2025, although the precise dates are a matter for the Secretary of State for Education.
14. The Act amends the Higher Education and Research Act 2017 ('HERA') to incorporate new provisions relating to freedom of speech and academic freedom. In this document, we refer to the sections of the amended version of HERA rather than to the corresponding sections of the Act.

Freedom of speech within the law

15. The Act protects freedom of speech within the law. Unlawful speech is not protected. This means that speech that amounts to unlawful harassment, victimisation or discrimination is not protected. Similarly, unlawful incitement of religious or racial hatred, or speech that is otherwise unlawful, is not protected.

Definitions of freedom of speech and academic freedom

16. 'Freedom of speech' is defined in the Act as:

¹³ Throughout this document, 'providers' and 'registered providers' refers to registered higher education providers as specified on the OfS's Register www.officeforstudents.org.uk/register/. To see the regulatory framework, visit www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/. A summary of the public interest governance principles is available at www.officeforstudents.org.uk/advice-and-guidance/regulation/registration-with-the-ofs-a-guide/public-interest-governance-principles/.

¹⁴ See section A4(4) of Part A1 of HERA.

¹⁵ The Higher Education (Freedom of Speech Act) 2023 is available at <https://www.legislation.gov.uk/ukpga/2023/16/enacted>.

Part A1 of HERA

Section A1 (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 [European Convention on Human Rights] as it has effect for the purposes of the Human Rights Act 1998) by means of speech, writing or images (including in electronic form)[.]

17. Academic freedom is defined in the Act as:

Part A1 of HERA

Section A1 (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).

Section A1 (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.

Free speech duties of providers and constituent institutions

18. The Act will impose new duties on providers in relation to freedom of speech and academic freedom, and on their constituent institutions.

19. In brief, the new duties will require the governing body of each provider and constituent institution:

- a. To take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to secure freedom of speech within the law for its staff, members, students and visiting speakers; this includes, in relation to academic staff, securing their academic freedom (section A1 and section A4 of Part A1 of HERA).
- b. To maintain a code of practice setting out matters relating to freedom of speech (section A2 and section A4 of Part A1 of HERA).

- c. To promote the importance of freedom of speech within the law and of academic freedom for academic staff, in the provision of higher education (section A3 and section A4 of Part A1 of HERA).

20. These duties are expected to come into force on 1 August 2024. They are set out in full in the Act.¹⁶ In this document and in the annexed guidance, we refer to the duty described in paragraph 19a as the ‘secure’ duty for providers and constituent institutions. We refer to the duty described in paragraph 19b as the ‘code’ duty for providers and constituent institutions. We refer to the duty described in paragraph 19c as the ‘promote’ duty for providers and constituent institutions.

Free speech duties of relevant students’ unions

21. The Act will also impose new duties on some students’ unions. A ‘students’ union’ is defined in the Act as:

Part A1 of HERA

Section A5(6) In this Part—

[...]‘students’ union’, in relation to any institution, has the same meaning as it has in Part 2 of the Education Act 1994 in relation to establishments to which that Part applies (see section 20 of that Act).

Section A5(7) In this Part, references to a students’ union for students at a registered higher education provider that is eligible for financial support do not include a students’ union for students at a constituent institution of such a provider.

Education Act 1994

Section 20 (1) In this Part a ‘students’ union’ means—

(a) an association of the generality of students at an establishment to which this Part applies whose principal purposes include promoting the general interests of its members as students; or

(b) a representative body (whether an association or not) whose principal purposes include representing the generality of students at an establishment to which this Part applies in academic, disciplinary or other matters relating to the government of the establishment.

(2) References in this Part to a students’ union include an association or body which would fall within subsection (1) if for the references to the generality of students at the establishment there were substituted a reference to—

(a) the generality of undergraduate students, or graduate students, at the establishment; or

(b) the generality of students at a particular hall of residence of the establishment.

¹⁶ See www.legislation.gov.uk/ukpga/2023/16/enacted.

(3) References in this Part to a students' union include an association or body which consists wholly or mainly of—

(a) constituent or affiliated associations or bodies which are themselves students' unions within subsection (1) or (2), or

(b) representatives of such constituent or affiliated associations,

and which fulfils the functions of a students' union within subsection (1) or (2) in relation to students at an establishment to which this Part applies.

(4) An association or body may be a students' union within the meaning of this Part in relation to more than one establishment but not in relation to establishments generally in the United Kingdom or a part of the United Kingdom.

(5) References in this section to an association of the generality of students, or of any description of students, include—

(a) any association which the generality of students, or of students of that description, may join, whether or not it has in membership a majority of them, and

(b) any association which would fall within paragraph (a) if the references there to students were confined to full-time students;

and references to a representative body whose principal purposes include representing the generality of students, or of any description of students, shall be similarly construed.

Section 21 (1) The establishments in England and Wales to which this Part applies are—

(za) any registered higher education provider of a description prescribed by regulations made for the purposes of section 39(1) of the Higher Education and Research Act 2017;

(a) any university receiving financial support under section 65 of the Further and Higher Education Act 1992;

(b) any institution in Wales conducted by a higher education corporation or further education corporation within the meaning of that Act;

(ba) any sixth form college;

(c) any institution designated under section 129 of the Education Reform Act 1988 as eligible to receive support from funds administered by a higher education funding council;

(d) any institution designated under section 28 of the Further and Higher Education Act 1992 as eligible to receive support from funds administered by a further education funding council;

(e) any institution substantially dependent on financial support under section 6(5) of that Act (certain institutions providing facilities for part-time, or adult, further education);

(f) any institution designated, or of a description designated, by order of the Secretary of State;

(g) any college, school or hall in an establishment within any of the above paragraphs.

22. The new duties will apply only to students' unions of providers that are registered in the Approved (fee cap) category of the OfS Register.¹⁷ Higher education providers registered with the OfS, are registered in one of two categories: Approved and Approved (fee cap). Providers registered in the Approved (fee cap) category are eligible for certain benefits. See our website for more detail.¹⁸ In this document, we refer to those students' unions as 'relevant students' unions'.
23. The new duties for relevant students' unions will require each relevant students' union:
- a. To take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to secure freedom of speech within the law for its members and staff, for students of the associated provider(s), for members of staff of the associated provider(s) and of its constituent institutions and for visiting speakers (section A5 of part A1 of HERA); and
 - b. To maintain a code of practice setting out matters relating to freedom of speech (section A6 of part A1 of HERA).
24. These duties are expected to come into force on 1 August 2024. They are set out in full in the Act. In this document and in the annexed guidance, we refer to the duty described in paragraph 23a as the 'secure' duty for relevant students' unions. We refer to the duty described in paragraph 23b as the 'code' duty for relevant students' unions.

New duties and functions for the OfS

25. The Act will also strengthen the OfS's regulatory role in relation to freedom of speech and academic freedom. This will include:
- a. New general duties for the OfS, under section 2 of HERA, relating to freedom of speech and academic freedom.
 - b. New general functions for the OfS relating to freedom of speech and academic freedom.
 - c. A new complaints scheme, operated by the OfS, to review and determine free speech complaints about providers, constituent institutions or relevant students' unions, from present or former students, members, members of staff, applicants for academic posts or (actual or invited) visiting speakers.
 - d. An extension of the OfS's regulation on free speech matters to apply directly to relevant students' unions.

¹⁷ This is because section A5(1) of Part A1 of HERA states that these duties apply to 'a students' union for students at a registered higher education provider that is eligible for financial support'. For more about the OfS's categories of registration, see www.officeforstudents.org.uk/advice-and-guidance/regulation/registration-with-the-ofs-a-guide/.

¹⁸ See www.officeforstudents.org.uk/advice-and-guidance/regulation/registration-with-the-ofs-a-guide/benefits-of-registration/.

- e. New conditions of registration for providers relating to free speech and academic freedom. These will include conditions requiring providers to comply with their new free speech duties referred to above. This will give the OfS a direct role in determining whether providers are meeting those statutory duties.
- f. Powers for the OfS to monitor overseas funding received by providers, constituent institutions and relevant students' unions, with a view to assessing the extent to which that funding may present a risk to free speech and academic freedom.

Timescales for implementation

- 26. The provisions relating to the OfS's new general duties and general functions (a. and b. in paragraph 25 above) are expected to come into force on 1 August 2024. This consultation sets out proposals on these matters.
- 27. The provisions relating to the new free speech complaints scheme and the extension of the OfS's regulation on free speech matters to relevant students' unions (c. and d. in paragraph 25 above) are expected to come into force on 1 August 2024. We published our consultations¹⁹ relating to the proposals for the new free speech complaints scheme and the regulation of students' unions on free speech matters in December 2023.
- 28. The provisions relating to the new conditions of registration and the OfS's monitoring of overseas funding (e. and f. in paragraph 25 above) are expected to come into force on 1 September 2025.
- 29. The expected timings referred to in paragraphs 26-28 are subject to the Secretary of State for Education making commencement regulations.

Our proposals

- 30. Our proposals in this consultation relate to the following:
 - a. Guidance on the duties related to freedom of speech academic freedom.
 - b. Amendments to the regulatory framework to reflect the OfS's new general duties and general functions.
 - c. The OfS's recovery of costs in connection with the new free speech complaints scheme and the imposition of monetary penalties on students' unions.
- 31. We are proposing to include in our guidance examples designed to help a provider, constituent institution or relevant students' union understand how the guidance should be applied. In all of the proposed examples we have been clear that the decision about any similar case would depend on the particular circumstances of the case.

Matters to which we have had regard in developing our proposals

- 32. When developing our proposals, we have carefully considered the matters to which we must have regard, including: our general duties in section 2 of HERA, the Regulators' Code, the

¹⁹ See www.officeforstudents.org.uk/consultations-on-free-speech/.

Public Sector Equality Duty and statutory guidance issued by the Secretary of State. Our assessment of these matters is set out in Annex D.

Feedback and consultation questions

33. We welcome responses from anyone with an interest in freedom of speech in English higher education. We are particularly (but not only) interested in hearing from students, staff, students' union representatives and leaders at providers that will be engaging in the new arrangements. We welcome views from all types and size of provider and students' union. We also welcome the views of schools, employers, third sector organisations, policy bodies and others with an interest in freedom of speech in English higher education.

34. The consultation questions are listed in full in Annex A.

Documents referred to in this consultation

In this consultation we refer to the following documents:

Education Act 1994

<https://www.legislation.gov.uk/ukpga/1994/30/contents>

Education (No. 2) Act 1986

<https://www.legislation.gov.uk/ukpga/1986/61/contents>

Equality Act 2010

<https://www.legislation.gov.uk/ukpga/2010/15/contents>

Higher Education and Research Act 2017

<https://www.legislation.gov.uk/ukpga/2017/29/contents/enacted>

Higher Education (Freedom of Speech) Act 2023

<https://www.legislation.gov.uk/ukpga/2023/16/enacted>

Human Rights Act 1998

<https://www.legislation.gov.uk/ukpga/1998/42/contents/42/contents>

Regulatory advice 19: The OfS's approach to determining the amount of a monetary penalty

<https://www.officeforstudents.org.uk/media/d294841a-befa-4919-8292-a00cf531819f/regulatory-advice-19-approach-to-determining-the-amount-of-a-monetary-penalty.pdf>

Securing student success: Regulatory framework for higher education in England

<https://www.officeforstudents.org.uk/publications/regulatory-framework-for-higher-education-in-england/>

Proposal A: Guidance relating to new free speech duties

Summary

Proposal to publish guidance relating to new free speech duties

What are we proposing?

35. We are proposing to publish the document in Annex B. The title of the document is ‘Regulatory advice 24: Guidance related to freedom of speech.’
36. Some of the subject matter in the proposed guidance overlaps with that of recent consultations. Those consultations cover the freedom of speech complaints scheme and our approach to regulating relevant students’ unions on free speech matters.²⁰ This includes material in the glossary and on our criteria for determining ‘reasonably practicable steps’. These overlaps are inevitable because the consultations deal with largely the same duties. Where relevant, we will consider comments on those issues made in response to those other consultations, when making decisions in relation to this consultation and vice versa. We will also ensure that our decisions are consistent.
37. The proposed document provides guidance to governing bodies of registered higher education providers and their constituent institutions, and to relevant students’ unions, about their free speech duties under the Higher Education (Freedom of Speech) Act 2023.²¹ It covers duties relating to:
- a. securing freedom of speech within the law (the ‘secure’ duties)
 - b. the freedom of speech code of practice (the ‘code’ duties’).²²
38. The guidance starts by explaining ‘freedom of speech within the law’ and ‘reasonably practicable steps’. Freedom of speech is defined by statute.²³ Whether a step is reasonably practicable will depend on the specific circumstances. However, the guidance sets out some examples of steps which may, depending on the specific circumstances, be reasonably practicable for a provider, constituent institution or relevant students’ union to take.
39. The steps and examples cover the following subjects:
- admissions, appointments, employment and promotion

²⁰ See www.officeforstudents.org.uk/consultations-on-free-speech/.

²¹ A ‘constituent institution’, in relation to a registered higher education provider, means any constituent college, school, hall or other institution of the provider. See HERA Part A1 section A4(4). A ‘relevant’ students union is a students’ union at a registered higher education provider that is eligible for financial support. This does not include a students’ union for students at a constituent institution of such a provider. See HERA Part A1 section A5(6).

²² See (a) HERA Part A1 section A1, A4, A5; (b) HERA Part A1 section A2, A4, A6.

²³ See HERA Part A1 section A1(13).

- codes of conduct
- complaints and investigation processes
- free speech code of practice
- free speech complaints scheme
- governance
- research
- speaker events
- teaching
- training and induction.

40. The core overarching aims and effect of the Higher Education (Freedom of Speech) Act 2023 include increasing the protection for, and the importance placed on, freedom of speech and academic freedom within the law in higher education. It is our firm view that the legislation has the following important practical effects for higher education providers and other relevant organisations:

- a. They will always need to place significant weight on securing freedom of speech and academic freedom within the law.
- b. They cannot change what speech is unlawful or illegal and therefore what is, or is not, within English law.

41. However, we recognise that for providers and other relevant organisations to manage their affairs in respect of teaching and research effectively, there must be some (extremely limited) scope to place proportionate restrictions or constraints on free speech and academic freedom where there are compelling reasons to do so. Article 10(2) of the European Convention on Human Rights provides a sensible legal framework to enable this and places a ceiling on any such restriction, although in practice there may be less scope to interfere with free speech.²⁴

42. It is our firm view that significant weight will always need to be placed on freedom of speech and academic freedom. In practice, this sets a very high hurdle and there will be very limited room for a provider, constituent institution, or relevant students' union to create restrictions on lawful speech. In particular it is likely to be extremely difficult, if not impossible, for higher education providers and other relevant organisations to comply with their free speech duties if they seek directly or indirectly to restrict the particular content of speech. For instance, a provider, constituent institution or relevant students' union may wish to restrict or prohibit speech because it has made a negative value judgement about the content of the speech. There is likely to be very little scope to restrict or prohibit lawful speech in this way.

²⁴ See <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>.

43. However, there may be some scope for limited restrictions in respect of the time, place and manner of expression, provided that:
- a. There is a compelling justification for the restriction, and it is the least intrusive of all the available options.
 - b. The restriction does not amount to a de facto restriction on particular content of speech in practice.
 - c. Freedom of speech and academic freedom otherwise remain meaningful and effective rights in practice.

Why are we proposing this?

44. The proposed guidance is designed to help providers and others to navigate their free speech duties although it does not remove the requirement for them to make their own judgements about compliance with those duties. The proposed guidance will also provide transparency about the issues that the OfS may consider when making decisions about free speech matters.
45. From 1 August 2024 we expect to be operating a free speech complaints scheme. This scheme will consider individual complaints from students, academics and others.²⁵ These complaints will relate to possible breaches of the secure duties for universities, colleges and relevant students' unions. In every case that it reviews, the OfS will make a decision as to whether the complaint is justified. In each case the OfS will make a decision on the basis of the law and the facts of that case. From 1 August 2024 the OfS will also separately regulate compliance with the secure and code duties for relevant students' unions.
46. Whether a provider, constituent institution or relevant students' union is meeting its secure duty will depend on the particular circumstances. This means that we cannot provide guidance that covers every scenario that may arise. It also means that we cannot state in advance exactly what view we will take of any particular case. Our view of any case will always be sensitive to the particular facts of that case.
47. We have also discussed, in section 3 of the proposed guidance, the criteria for 'exceptional' circumstances. These are the circumstances in which providers, constituent institutions and relevant students' unions may pass on security costs to an individual or body that is using their premises (for instance for a speaker event). HERA places a duty on providers, constituent institutions and relevant students' unions to specify what counts as an 'exceptional' circumstance.²⁶ We have stated that it may be a reasonably practicable step to securing freedom of speech for providers, constituent institutions and relevant students' unions to use criteria that are clear, objective and neutral as to content.
48. We also considered including guidance on the duty on the governing bodies of providers, and of their constituent institutions, to promote the importance of freedom of speech and academic freedom (the 'promote' duty).²⁷ Our consideration of free speech complaints and of regulating

²⁵ See www.officeforstudents.org.uk/consultations-on-free-speech/consultation-on-the-ofs-s-new-free-speech-complaints-scheme/.

²⁶ HERA Part A1 section A2(2)(d), section A4, section A6(2)(d)(ii).

²⁷ See HERA Part A1 section A3.

students' unions may inform our views on, for example, the interplay between the 'secure' duty and the 'promote' duty. We may decide to develop guidance on the 'promote' duty in the future. It remains the case that providers and constituent institutions must comply with their 'promote' duty from 1 August 2024.

Question 1: Do you have any comments on the guidance in our proposed Regulatory advice relating to section 1 on the 'secure' duties and the 'code' duties?

Question 2: Do you have any comments on the guidance in our proposed Regulatory advice relating to section 2 on free speech within the law?

Question 3: Do you have any comments on the guidance in our proposed Regulatory advice relating to section 3 on what are 'reasonably practicable steps'? If you disagree with any of the examples in this section, please state reasons for thinking that the relevant legal duties do not apply to that example in the way that we have set out.

Question 4: Do you have any comments on the guidance in our proposed Regulatory advice relating to section 4 on steps to secure freedom of speech? If you disagree with any of the examples in this section, please state reasons for thinking that the relevant legal duties do not apply to that example in the way that we have set out.

Question 5: Do you have any other comments on our proposed Regulatory advice?

Proposal B: Amendments to the regulatory framework

Summary

Proposals to revise the OfS's regulatory framework to make reference to its new general duties and general functions

What are we proposing?

49. Section 2 of HERA sets out the general duties to which the OfS must have regard in performing its functions. The Higher Education (Freedom of Speech) Act 2023 amends section 2 of HERA to include two additional general duties. These are:

- a. The need to promote the importance of freedom of speech within the law in the provision of higher education by English higher education providers.
- b. The need to protect the academic freedom of academic staff at English higher education providers.²⁸

50. The Higher Education (Freedom of Speech) Act 2023 also amends HERA to insert a new section 69A.

Subsections (1) and (2) of new section 69A set out new general functions for the OfS. These are:

The OfS must promote the importance of—

freedom of speech within the law, and

academic freedom for academic staff of registered higher education providers and their constituent institutions,

in the provision of higher education by registered higher education providers and their constituent institutions.

The OfS may—

identify good practice relating to how to support freedom of speech and academic freedom, and

give advice about such practice to registered higher education providers and their constituent institutions.²⁹

²⁸ See HERA section 2(1)(aa) and 2(1)(ab).

²⁹ See HERA section 69A(1) and 69A(2).

51. We are proposing to amend the OfS regulatory framework to make reference to these new general duties and general functions.³⁰ The proposed amendments are:

- a. An addition to the text of paragraph 10 setting out new general duties.
- b. New paragraphs 54A and 54B making reference to the OfS's new general functions as they are stated in new section 69A of HERA.

52. The text of the proposed amendments is as set out in Annex C.

Why are we proposing this?

53. The OfS regulatory framework constitutes the regulatory framework for higher education in England required under section 75 of HERA. It states how the OfS intends to perform its various functions and provides guidance for registered higher education providers on the ongoing conditions of registration. The OfS is required to have regard to the regulatory framework when exercising its functions.³¹

54. We therefore consider that it is necessary to update this document to reflect the new general duties and general functions for the OfS to be introduced by the Higher Education (Freedom of Speech) Act 2023. The proposed addition to paragraph 10 of the regulatory framework makes reference to the OfS's new general duties.

55. The proposed amendments to paragraph 10 of the regulatory framework would add the two new general duties, relating to free speech and academic freedom, to the list of general duties stated in that paragraph. As a result, the following text in paragraph 11:

'In making decisions, the OfS will take all of these general duties into account, weighing one against the others as it deems appropriate.'

would then make reference to those new duties in addition to those already within its scope. Paragraph 11 of the amended regulatory framework would therefore state how the OfS would take account of these general duties: namely (and in broad terms) in the same way as it takes account of its other general duties.

56. We considered proposing to include, in addition to new paragraphs 54A and 54B, a more detailed statement of how the OfS intends to perform its general functions. We discounted that option. This is because the OfS's approach may depend on future experience in this area of regulation, including experience gained through operating the free speech complaints scheme. We therefore consider that our stated approach to these general functions should allow for flexibility.

Question 6: Do you have any comments on our proposed amendments to the OfS regulatory framework?

³⁰ See www.officeforstudents.org.uk/publications/regulatory-framework-for-higher-education-in-england/.

³¹ See HERA section 75(2) and 75(3).

Proposal C: Cost recovery

Summary

Proposals related to the OfS's recovery of costs incurred in relation to the free speech complaints scheme and to the imposition of monetary penalties on relevant students' unions

What are we proposing?

57. We have published guidance about our approach to recovering costs in relation to the imposition of a sanction on a registered provider, where we are empowered to do so under section 73 of HERA.³²
58. The Act will amend section 73 of HERA to empower the OfS to recover, from a registered provider, a constituent institution or a relevant students' union, the OfS's costs in relation to making a decision that a complaint under the OfS free speech complaints against that body is justified or partly justified. We have recently consulted on our approach to making decisions about free speech complaints.³³
59. The Act will also amend section 73 of HERA to empower the OfS to recover its costs in relation to the process that results in the imposition of a monetary penalty on a relevant students' union in relation to a breach of any of its free speech duties. We have recently consulted on our approach to imposing a monetary penalty on relevant students' unions.³⁴
60. The Act will also amend schedule 7 of HERA to include references to a relevant students' union and the governing body of a constituent institution where appropriate. Schedule 7 of HERA sets out the processes by which the OfS can impose a requirement to pay costs under section 73.
61. We expect these amendments to section 73 and schedule 7 of HERA to take effect from 1 August 2024.
62. We propose to apply the policy position set out in our published guidance on the recovery of costs (set out in Regulatory advice 19, paragraphs 46-53), to our recovery of costs in the circumstances set out in paragraphs 58 and 59 above. This guidance addresses what the OfS will include in the calculation of costs, refers to the processes for recovering costs in schedule 7 of HERA, and sets out considerations in deciding whether cost recovery is appropriate and what amount of cost recovery is appropriate.

³² See www.officeforstudents.org.uk/publications/regulatory-advice-19-the-ofs-s-approach-to-determining-the-amount-of-a-monetary-penalty/.

³³ See www.officeforstudents.org.uk/consultations-on-free-speech/consultation-on-the-ofs-s-new-free-speech-complaints-scheme/.

³⁴ See www.officeforstudents.org.uk/consultations-on-free-speech/consultation-regulating-relevant-students-unions/.

Why are we proposing this?

63. The ability of the OfS to recover its costs in the circumstances set out in paragraphs 58 and 59 will be provided for in HERA. Therefore, we are seeking views in this consultation only in relation to matters of clarity about our proposed application of the policy position set out in Regulatory advice 19.
64. We consider that our proposal to apply the policy position set out in Regulatory advice 19 would ensure that our approach to the recovery of costs is consistent and clear across providers, constituent institutions and relevant students' unions

Question 7: Do you have any comments on our proposed approach to recovery of costs?

What would be the effect of these proposals?

65. Our proposal to publish Regulatory advice, giving guidance on the duties related to freedom of speech is designed to help providers and others to navigate their free speech duties although it does not remove the requirement for them to make their own judgements about compliance with those duties. The proposed guidance will also provide transparency about the sorts of issues that the OfS may consider when making decisions about free speech matters.
66. Our proposal to amend the regulatory framework will update that document to reflect the OfS's new general duties and general functions.
67. Our proposal to apply the policy position set out in Regulatory advice 19 to recovering our costs where we are empowered to do so under section 73 of HERA, as amended by the Act, will ensure that our approach to the recovery of costs is consistent and clear across providers, constituent institutions and relevant students' unions.

Annex A: List of consultation questions

Question 1: Do you have any comments on the guidance in our proposed Regulatory advice relating to section 1 on the 'secure' duties and the 'code' duties?

Question 2: Do you have any comments on the guidance in our proposed Regulatory advice relating to section 2 on free speech within the law?

Question 3: Do you have any comments on the guidance in our proposed Regulatory advice relating to section 3 on what are 'reasonably practicable steps'? If you disagree with any of the examples in this section, please state reasons for thinking that the relevant legal duties do not apply to that example in the way that we have set out.

Question 4: Do you have any comments on the guidance in our proposed Regulatory advice relating to section 4 on steps to secure freedom of speech? If you disagree with any of the examples in this section, please state reasons for thinking that the relevant legal duties do not apply to that example in the way that we have set out.

Question 5: Do you have any other comments on our proposed Regulatory advice?

Question 6: Do you have any comments on our proposed amendments to the OfS regulatory framework?

Question 7: Do you have any comments on our proposed approach to recovery of costs?

Question 8: Are there aspects of the proposals you found unclear? If so, please specify which, and tell us why.

Question 9: In your view, are there ways in which the objectives of this consultation could be delivered more efficiently or effectively than proposed here?

Question 10: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Question 11: Do you have any comments about any unintended consequences of these proposals, for example, for particular types of provider, constituent institution or relevant students' union or for any particular types of student?

Annex B: Regulatory advice on freedom of speech

The document containing the proposed text of our Regulatory advice on freedom of speech can be found here: www.officeforstudents.org.uk/consultations-on-free-speech/consultation-on-proposed-regulatory-advice-and-other-matters-relating-to-freedom-of-speech/annex-b-regulatory-advice-on-freedom-of-speech/

Annex C: Proposed amendments to the regulatory framework

1. In paragraph 10, after ‘a. The need to protect the institutional autonomy of English higher education providers’, add:

(aa) The need to promote the importance of freedom of speech within the law in the provision of higher education by English higher education providers. (This general duty applied from 1 August 2024.)

(ab) The need to protect the academic freedom of academic staff at English higher education providers. (This general duty applied from 1 August 2024.)

2. After paragraph 54 add the following:

Promoting the importance of freedom of speech and academic freedom

54A Under HERA section 69A the OfS 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 by registered higher education providers and their constituent institutions.

54B Under HERA section 69A the OfS may —

- (a) identify good practice relating to how to support freedom of speech and academic freedom, and
- (b) give advice about such practice to registered higher education providers and their constituent institutions.

Annex D: Matters to which we have had regard in developing our proposals

1. In formulating these proposals, we have had regard to the matters set out below.

The OfS's general duties

2. The OfS's general duties are set out in section 2 of the HERA. In performing our functions, we are required to have regard to:

- a. The need to protect the institutional autonomy of English higher education providers;
- b. The need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers;
- c. The need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers;
- d. The need to promote value for money in the provision of higher education by English higher education providers;
- e. The need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers;
- f. The need to use the OfS's resources in an efficient, effective and economic way, and
- g. So far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be—
 - i. Transparent, accountable, proportionate and consistent, and
 - ii. Targeted only at cases in which action is needed.

3. We have carefully considered each of our general duties. We consider that the proposals set out in this consultation are particularly relevant to general duties (a), (b), (e), (f) and (g): institutional autonomy; quality, choice and opportunity for students; equality of opportunity; efficient, effective and economic use of the OfS's resources; and best regulatory practice.

4. We have placed significant weight on our general duty relating to institutional autonomy (general duty (a)). HERA currently defines 'institutional autonomy' to include 'the freedom within the law of academic staff at English higher education providers—

- i. To question and test received wisdom, and
- ii. To put forward new ideas and controversial or unpopular opinions,

without placing themselves in jeopardy of losing their jobs or privileges they may have at the providers.³⁵

5. The proposed guidance in the Regulatory advice document is designed to help providers to navigate their statutory free speech duties. The proposed guidance sets out a number of steps which may be reasonably practicable for providers to take to secure free speech within the law. Whether a step is reasonably practicable, may depend on the individual circumstances of the provider. This means that providers will be able to, and will need to, exercise judgement in how they achieve compliance with their free speech duties.
6. HERA also, currently, defines 'institutional autonomy' to include the freedom of English higher education providers to conduct their own management and to determine their own approach to teaching and their own criteria for admissions and appointments. In developing our proposals, we gave weight to this aspect of institutional autonomy. However, we have balanced the need to protect this aspect of institutional autonomy against the legal requirement to protect academic freedom for individual members of academic staff.
7. The OfS must have regard to the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers (general duty (b)). We consider that students will not have a high quality education if that education is not grounded in freedom of speech. In formulating our proposals relating to the guidance in the Regulatory advice document, we have taken the view that freedom of speech and academic freedom provide a necessary context for advancing new ideas, encouraging productive debate and challenging conventional wisdom, and that these are essential characteristics of quality higher education provision. The proposed guidance is designed to help providers, constituent institutions and relevant students' unions to navigate their free speech duties. We therefore consider that the proposed guidance would promote quality in the provision of higher education.
8. The OfS must also have regard to the general duty (e): the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers. Without free speech within the law being secured for all students, they will not have equal opportunity to participate fully in higher education or research. This may be especially important for those who could otherwise suffer harassment or discrimination on account of their protected characteristics, including their religious or philosophical beliefs.
9. We have also had regard to the need to use our resources in an efficient, effective, and economic way (general duty (f)). Providing guidance and illustrative examples in the Regulatory advice document is intended to help providers to navigate their new free speech duties. Improved compliance across the sector may enable the OfS to use its resources more efficiently and effectively by targeting areas of non-compliance.

³⁵ HERA 2017 2(8)(c). The Act will amend HERA to omit 2(8)(c): see Schedule para 2(4)(c) of the Higher Education (Freedom of Speech) Act 2023. However, the Act will also add two additional general duties to section 2 of HERA, of which one will be '(ab) the need to protect the academic freedom of academic staff at English higher education providers'. See section 5(1) of the Act. The Act will also introduce a definition of academic freedom into HERA.

10. In making decisions about what guidance and examples to include in the Regulatory advice document, we have had regard so far as relevant, to the principles of best regulatory practice (general duty (g)). These include the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. Providing guidance and illustrative examples is intended to help providers to navigate their free speech duties and improve the transparency and accountability of the OfS's regulation of those duties. Improved compliance across the sector may enable the OfS to target its activities more effectively at specific areas of non-compliance. In framing the proposed guidance and examples, we sought to provide an appropriate level of detail to provide transparency without prejudicing decisions that we will need to make on compliance with the free speech duties in individual cases.
11. We have also had regard to general duty (g) in formulating our proposals in relation to the recovery of costs. We consider that proposing to apply the same policy position on the recovery of costs across providers, constituent institutions and relevant students' unions will provide clarity and consistency in respect of the OfS's approach.
12. We have also had regard to our general duty (g) in making proposals about revisions to the regulatory framework to reflect changes to the OfS's general duties and general functions required by the new legislation. These revisions will provide transparency about our new general duties and general functions.
13. We consider duties (c) and (d), which relate to competition where this is in the interests of students and value for money, to be important. However, in formulating these proposals we have given more weight to our other general duties.
14. The OfS is required to have regard to the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers.
15. Competition could be encouraged by allowing providers to determine the extent to which they comply with their free speech duties, without regulatory intervention. However, this would not reflect the new statutory duties on providers, and on the OfS, in relation to free speech. In addition, we consider that this form of competition would not be in the interests of students. We therefore consider that other general duties, such as the duty relating to quality, outweigh this general duty in this instance.
16. The OfS must have regard to the need to promote value for money in the provision of higher education by English higher education providers. We consider that freedom of speech within the law and academic freedom are essential conditions for higher education that is high quality and accessible. It follows that securing free speech is also a prerequisite of value for money for students.

The Regulators' Code

17. We have had regard to the Regulators' Code³⁶ in developing these proposals.

³⁶ See <https://www.gov.uk/government/publications/regulators-code>.

18. Provision 1 of the Code states that regulators should carry out their activities in a way that supports those they regulate to comply and grow. We have framed our proposals in a way that will help providers, constituent institutions, and relevant students' unions to navigate their duties to take steps to secure free speech within the law, which will be subject to OfS regulation. For instance, we are proposing to include in the Regulatory advice examples of 'reasonably practicable steps' including relating to the free speech code of practice. We consider that publication of the Regulatory advice will help providers, constituent institutions and relevant students' unions to navigate their free speech duties.
19. Provision 2 of the Code states that regulators should provide simple and straightforward ways to engage with those they regulate and hear their views. We have sought to explain both our proposals and our policy intention in making them throughout this consultation document and related Regulatory advice document. The proposed Regulatory advice provides guidance to support providers, constituent institutions and relevant students' unions to navigate their duty to take reasonably practicable steps to secure free speech within the law. Within the consultation, where relevant, we have also explained the alternatives we have considered and discounted. We will run several consultation events during the consultation period to enable stakeholders to discuss our proposals.
20. Provision 3 of the Code states that regulators should base their regulatory activities on risk. The proposed Regulatory advice provides guidance on key areas which may present the greatest regulatory risk.
21. Provision 4 of the Code states that regulators should share information about compliance and risk. The proposed Regulatory advice sets out a number of examples in which (depending on the particular facts) a provider, constituent institution or relevant students' union may or may not have complied with its relevant free speech duties. We consider that the proposed guidance will help providers, constituent institutions and relevant students' unions to navigate their free speech duties.
22. Provision 5 of the Code states that regulators should ensure that clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply. The proposed Regulatory advice will help providers, constituent institutions and relevant students' unions to navigate their new free speech duties and to understand the processes involved in cost recovery.
23. Provision 6 of the Code states that regulators should ensure that their approach to their regulatory activities is transparent. Our proposals provide transparency through the provision of guidance to help providers, constituent institutions and relevant students' unions to navigate their new free speech duties, about which the OfS will be making regulatory decisions. Our proposals to revise the regulatory framework to refer to our new general duties and general functions, and our proposals relating to the recovery of costs, also provide transparency about our regulatory activities.

Public Sector Equality Duty

24. We have had regard to the Public Sector Equality Duty set out in section 149 of the Equality Act 2010. This duty states that the OfS must, in the exercise of its functions, have due regard to the need to:

- a. Eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010.
 - b. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
 - c. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
25. Our proposals are intended to ensure that individuals in English higher education both feel free and are in fact free to express their views within the law. The proposed Regulatory advice may support the lawful expression of views that others may find offensive. Some groups who share protected characteristics may consider that they will be negatively affected by the lawful expression of views that they find offensive.
26. However, the proposed guidance may support those groups to put forward their counter views (within the law), and that may be a positive effect. Moreover, we consider that open, tolerant discussion of controversial matters may be more likely to promote good relations between such groups than censorship or silencing. Censorship or silencing risks concealing tensions without going any way to resolving them.
27. Moreover, one of the relevant protected characteristics is 'religion or philosophical belief'. The proposed guidance may disincentivise unlawful discrimination or harassment directed at persons who share this characteristic. This may be a positive effect.
28. Our proposals may result in providers, constituent institutions and relevant students' unions incurring costs. This may divert funds from other activities which might themselves have brought benefits for groups who share protected characteristics. However, that would be a choice made by the relevant organisation, rather than a direct causal effect of the proposals.
29. This consultation gives stakeholders an opportunity to inform the development of our proposals. Through this consultation we are seeking views on any unintended consequences of our proposals, for example on particular types of provider or student. We are also seeking views about the potential impact of our proposals on individuals on the basis of their protected characteristics. Responses to this consultation will inform our assessment of the impact of our proposals on different groups.

Guidance issued by the Secretary of State

30. We have a duty to have regard to statutory guidance issued by the Secretary of State under section 2(3) of HERA. Guidance issued in March 2022³⁷ set out the government's view that it is essential for the higher education sector to uphold freedom of speech and for the OfS to regulate in relation to free speech matters:

'Freedom of speech and academic freedom are fundamental principles which underpin our HE sector. Without action to counter attempts to discourage or even silence unpopular views,

³⁷ See www.officeforstudents.org.uk/media/6937/ofs-strategic-guidance-20220331_amend.pdf.

intellectual life on campus for both staff and students may be unfairly narrowed and diminished.'

31. We consider that freedom of speech and academic freedom are fundamental and that steps should be taken to secure free speech in higher education. Our proposals are designed to ensure that our implementation of the new free speech requirements is effective in upholding those fundamental principles. It is our view that the proposed Regulatory advice will help providers navigate their free speech duties and will support effective OfS regulation of those duties.
32. The Secretary of State's guidance welcomed the efforts of the OfS to date in identifying ways to ensure that regulatory burden is proportionate. It also asked the OfS to consider ways in which it can work with the sector to communicate more clearly its expectations. We have proposed guidance that will provide additional clarity about our regulation of providers', constituent institutions' and relevant students' unions' compliance with their free speech duties. Greater clarity may help to minimise the regulatory burden of complying with our requirements. The proposed guidance notes that the steps that are reasonably practicable for an organisation to take to secure free speech, will depend upon the individual circumstances of the case.



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