

Annex H: Matters to which we have had regard

The OfS's general duties in relation to section 2(1)

1. In formulating these proposals, we have had regard to the matters set out in section 2(1) of HERA.¹ These are:
 - a. the need to protect the institutional autonomy of English higher education providers,
 - 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,
 - ab. the need to protect the academic freedom of academic staff at 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.
2. In formulating these proposals, we have given careful consideration to each of these matters. We consider that our general duties relating to institutional autonomy (a), freedom of speech (aa), academic freedom (ab), quality, choice and opportunity for students (b), equality of opportunity (e), efficient use of resources (f) and best regulatory practice (g) are the most relevant to our proposals within this consultation.

Institutional autonomy, freedom of speech and academic freedom

3. We have placed significant weight on our duties to protect institutional autonomy, promote the importance of freedom of speech within the law and protect academic freedom in developing these proposals.

¹ See [Higher Education and Research Act 2017 - GOV.UK - section 2](#).

4. Part A1 of HERA imposes duties on registered higher education providers to secure, and promote the importance of, freedom of speech and academic freedom for their students, staff, members and visiting speakers.² Our proposals are designed to secure compliance with these duties for providers on the register and for new providers seeking to join our register. Section 8A of HERA will require us to introduce mandatory conditions of registration for this purpose.³ We have adopted wording aligned with the statutory wording of these conditions and are not proposing any additional requirements to reduce additional burden on compliant providers.
5. We have taken care to design our proposed approach to regulation so that it is principles-based. The conditions of registration require providers to ensure that they are compliant with their free speech duties, that their governing documents are consistent with this compliance and that their management and governance arrangements are adequate and effective to secure it. However, we have been clear that what this means in practice 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. We have balanced providers' autonomy to manage their affairs with our ability to intervene where providers have not complied with their duties.

Quality, greater choice and opportunities for students

6. We consider that students will not have a high quality education if that education is not grounded in freedom of speech. Students benefit from being able to engage with a wide range of lawful views, ideas and perspectives, including those that may be controversial or unpopular.
7. We consider 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. We therefore consider that in securing freedom of speech and academic freedom, our proposals would contribute to the quality of higher education and to students' opportunities to learn, discuss and test ideas.
8. Higher education offers good value for money when it is of high quality. As we consider that the ability of students and staff to engage freely in lawful speech and open academic debate is a fundamental element of a high quality education, it follows that our proposals also promote value for money for students (relevant to our general duty (d)).

Equality of opportunity

9. We consider that students and staff should be able to participate fully in higher education regardless of their protected characteristics, beliefs or viewpoints. 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. Our proposals support this objective by supporting a culture in which protected beliefs can be expressed through lawful speech and ensuring that we have a mechanism to take regulatory action,

² See [Higher Education and Research Act 2017 - GOV.UK - Section A1](#).

³ See [Higher Education \(Freedom of Speech\) Act 2023- GOV.UK - Section 6](#).

should registered providers not secure lawful freedom of speech in line with their statutory duties.

Efficient, effective and economic use of resources

10. We have had regard to the need to use the OfS's resources in an efficient, effective and economic way. Where possible in designing our proposals, we have aligned our approach with our existing regulatory systems, such as our approach to monitoring and enforcement. This will enable us to integrate our regulation in this space efficiently within our operations and prioritise our resources across our activities. We have also provided guidance and illustrative examples that we expect will improve the ability of providers to comply with the new conditions, enabling us to target our resources on areas of non-compliance.
11. We are moving Regulatory advice 24 into the regulatory framework as Annex D: Free speech guidance. This reduces the use of resources internally at the OfS and for providers by expanding on an existing and well-known resource. Moving Regulatory advice 24 into the regulatory framework reduces the complexity and length of conditions E11 and E12, and retains a sector-wide recognised resource independently available for providers, constituent institutions and users of the free speech complaints scheme.

Best regulatory practice

12. We have had regard, so far as relevant, to the principles of best regulatory practice in developing these proposals. This includes the principle that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
 - a. By providing guidance and illustrative examples within the condition guidance and annex we intend 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 conditions in individual cases.
 - b. We have also been transparent in our approach to monitoring and enforcement of the conditions, applying our existing published approaches within our regulatory framework. In following this approach, we will provide clarity and transparency about what regulatory decisions we make, how we make them and the factors we consider to ensure consistency. This will support the sector's ability to comply.
 - c. We have sought to ensure that our proposed guidance is proportionate and framed in a way that aligns with the existing statutory duties on registered providers. Our risk-based approach to monitoring and enforcement will ensure that our regulatory activities are targeted only at instances where we identify increased risk of non-compliance, without imposing significant additional burdens on compliant providers.

The Public Sector Equality Duty

13. We have had due regard to the aims of the Public Sector Equality Duty set out in section 149 of the Equality Act 2010.⁴ This requires the OfS to have due regard to the need to eliminate unlawful discrimination, foster good relations between groups and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
14. The free speech duties (and the statutory conditions) 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. Under existing legal and regulatory requirements, providers must comply with any relevant free speech duties and equality law duties, including the Public Sector Equality Duty where it applies. The free speech duties do not protect prohibited conduct under the Equality Act 2010 (e.g. unlawful discrimination or harassment), nor do they require providers to do something that is unlawful (including where securing speech would unlawfully interfere with a person's rights under the European Convention on Human Rights).
15. Some groups who share relevant protected characteristics may consider that they will be negatively affected by the lawful expression of views that they find offensive. On the other hand, the duties may support those or other groups to express their views (within the law). Some groups sharing relevant protected characteristics may be less likely to self-censor as a result.
16. The proposals on which we are consulting, namely the guidance to the statutory conditions of registration, do not change the underlying legal duties on providers. We consider that these proposals will support providers in complying with their legal duties towards their staff, students, members and visiting speakers, including those with relevant protected characteristics.
17. 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. We are also seeking views about the potential impact of our proposals on groups or individuals sharing relevant protected characteristics. Responses to this consultation will inform our assessment of the impact of our proposals on different groups.

The Regulators' Code

18. We have had regard to the Regulators' Code in developing these proposals.⁵
19. 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 provided guidance on compliance with the free speech duties within our proposals (Annex D of the regulatory framework). The

⁴ See [Equality Act 2010 - GOV.UK - section 149](#).

⁵ See [Regulators' Code - GOV.UK](#).

proposed guidance is intended to support and enable providers to comply with both the conditions of registration and their underlying free speech duties.⁶

20. 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 intentions throughout this consultation document. We will promote and run several consultation events during the consultation period to engage with potential respondents.
21. Provision 3 of the Code states that regulators should base their regulatory activities on risk. We are proposing using the same risk-based approach to monitoring the conditions of registration as we do for our wider regulatory framework. Generally, we will engage with providers, and consider whether any further regulatory action is necessary, only when intelligence suggests that they are breaching, or at increased risk of breaching, the conditions. While the statutory duties and the conditions apply to all registered providers, this approach will enable us to target activity at areas of greatest regulatory risk.
22. Provision 4 of the Code states that regulators should share information about compliance and risk. The detail of the proposed guidance contains information about potentially compliant and non-compliant behaviours.
23. Provision 5 of the Code states that regulators should ensure that clear information, guidance and advice are available to help those we regulate meet their responsibilities to comply. Our proposed guidance is intended to enable providers to comply with the conditions of registration. We have set out guidance (and are proposing to expand this guidance) about compliance with providers' statutory duties in proposed Annex D: Free speech guidance.
24. Provision 6 of the Code states that regulators should ensure that their approach to their regulatory activities is transparent. Our proposals provide transparency about our regulatory activities in this policy area by clearly setting out our regulatory approach and how we will make regulatory decisions. We have also set out how the new conditions are incorporated into our existing regulatory activities and provided guidance to help providers navigate the conditions and their free speech duties.

Deregulation Act 2015

25. We have also had regard to the duty in section 108 of the Deregulation Act 2015, and the statutory guidance on the growth duty issued by the Secretary of State in May 2024.⁷ This Act requires regulators, when exercising applicable regulatory functions, to have regard to the desirability of promoting economic growth. In doing so, regulators must consider the importance of ensuring that regulatory action is taken only where needed and that any action taken is proportionate.
26. There is strong evidence that academic freedom contributes positively both to quantity and quality of innovation and to economic growth. Innovation drives economic growth and itself

⁶ See [Regulatory advice 21: Publication of information - Office for Students](#).

⁷ See [Deregulation Act 2015 - GOV.UK](#) section 108; [Statutory guidance: Growth duty - GOV.UK](#).

arises most vigorously in an atmosphere of unconstrained intellectual exploration.⁸ For instance, one recent study of 157 countries over 116 years suggests that a one standard deviation increase in academic freedom increases the average number of patent applications two to five years later.⁹ Another study, of up to 127 countries over 55 years, shows that there is a positive relationship between academic freedom and productivity growth in countries with high quality legal systems.¹⁰

27. In developing these proposals, we have been mindful of the important contribution that higher education providers make to economic growth through teaching, research, innovation, knowledge exchange and the development of a highly skilled workforce. Freedom of speech, and in particular academic freedom, play a fundamental role in this.
28. We have also designed our approach to be targeted and proportionate. Our proposed monitoring and enforcement approach relies as far as possible on our existing mechanisms and sources of regulatory intelligence. We consider that this design will ensure that we have the regulatory tools to safeguard freedom of speech and academic freedom where this is required, with minimal additional impact on providers who are already compliant with the statutory regime.

Guidance issued by the Secretary of State

29. We have a duty to have regard to statutory guidance issued by the Secretary of State under section 2(3) of HERA.¹¹ In developing these proposals, we have had regard to the guidance issued to the OfS on strategic priorities (published March 2022) and guidance on free speech commencement (published June 2025).¹²
30. In particular, the March 2022 letter 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, intellectual life on campus for both staff and students may be unfairly narrowed and diminished.'
31. The June 2025 letter set out the government's plans to commence the provisions of the HEFSA in relation to the free speech duties for registered providers and the OfS's duty to promote freedom of speech and share best practice.

⁸ Aghion, P., Dewatripont, M. and Stein, J.C. (2008) 'Academic freedom, private-sector focus, and the process of innovation', The RAND Journal of Economics, 39: 617-635.

⁹ Audretsch DB, Fisch C, Franzoni C, Momtaz PP, Vismara S (2024) 'Academic freedom and innovation.', PLoS ONE 19(6): e0304560. <https://doi.org/10.1371/journal.pone.0304560>.

¹⁰ Berggren, N. and Bjørnskov, C. (2022) 'Academic freedom, institutions and productivity.' Southern Economic Journal, 88(4), 1313-1342. <https://doi.org/10.1002/soej.12561>.

¹¹ See Higher Education and Research Act 2017 - GOV.UK - Section 2.

¹² See Guidance from government - Office for Students.

32. The March 2022 guidance asked the OfS to find ways to communicate our expectations more clearly and ensure that regulatory burden is proportionate. Our proposed regulatory guidance gives registered providers and their constituent institutions clarity on:
- a. the nature and importance of their legal duties relating to freedom of speech and academic freedom
 - b. how they may comply with these duties, highlighting different areas and scenarios they may need to consider, as well as discussing other legal duties alongside this e.g. the Equality Act 2010, the Prevent duty, and areas where HERA does not impose a duty to secure freedom of speech
 - c. how we will assess and monitor against the new conditions and take regulatory decisions.