

October 2022

# HIGHER EDUCATION (FREEDOM OF SPEECH) BILL

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A Policy Exchange Briefing Paper

## Purpose of Briefing

The Higher Education (Freedom of Speech) Bill is due for its first day of Committee stage in the House of Lords on 31 October 2022.

This briefing sets out the background to the Bill and what it will achieve, as well as highlighting key evidence from Policy Exchange that reinforces why the Bill is needed.

## Policy Exchange Research

Policy Exchange has published two reports on Academic Freedom in the UK that support the need and rationale for the Bill:

- **Academic Freedom in the UK<sup>1</sup>** (November 2019)  
*by Thomas Simpson and Eric Kaufmann*
- **Academic Freedom in the UK<sup>2</sup>** (August 2020)  
*by Remi Adeloja, Eric Kaufmann and Thomas Simpson*

## Facts and Statistics

The Policy Exchange reports referred to above found that:

- Just 2 in 10 British academics in the social sciences and humanities (SSH) who voted Leave in the 2016 referendum said they would share these views with colleagues, compared to nearly 9 in 10 Remain-supporting academics who would share their views.
- Over 1 in 3 academics surveyed admitted that they would discriminate against a Leave supporter when hiring.
- Fewer than 4 in 10 academics were willing to sit down to lunch with a gender-critical feminist who opposes the right of trans people to enter women's shelters.
- Around half of those reviewing a grant proposal with a right-wing perspective would rank it lower because of its political orientation.

This is in addition to high profile cases of visiting speakers or academics being no platformed or having to leave their jobs, such as politician Amber Rudd or Professor Kathleen Stock. Furthermore, the Free Speech Union has intervened in over 200 cases in universities since 2020.

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<sup>1</sup> <https://policyexchange.org.uk/wp-content/uploads/2019/11/Academic-freedom-in-the-UK.pdf>

<sup>2</sup> <https://policyexchange.org.uk/wp-content/uploads/2022/10/Academic-freedom-in-the-UK.pdf>

Other studies, including those by the Higher Education Policy Institute and the Policy Institute at King's College London have confirmed that a growing number of students consider that free speech is under threat, or believe those who cause offence should be fired or prevented from speaking.

## Purpose of Bill

The Bill was introduced to implement the Government policy set out in Higher Education: Free Speech and Academic Freedom (February 2021)<sup>3</sup>. It will:

- Expand the duty on higher education providers to 'secure free speech' from the Education Act (No. 2) 1986 into a duty to also actively 'promote the importance of free speech'.
- Extend free speech duties to students' unions.
- Exerts explicit protections to prevent higher education providers or students' unions from denying access to premises on the grounds of a person's or groups views, or charging security costs (other than in exceptional circumstances).
- Establish a Director for Freedom of Speech and Academic Freedom within the Office for Students (OfS), with responsibility for overseeing the OfS's functions in this area (including its ability to impose fines upon higher education providers).
- Establish a complaints scheme, operated by the Director, for students and staff to receive personal redress for wrongs suffered if their right to free speech is impinged, such as by being unfairly dismissed, demoted or suspended from study.
- Enable a tort to be brought against a higher education provider or student union, to allow individuals to receive redress.

These provisions will rectify several important gaps in the Education Act (No. 2) 1986 protections by:

- a) **Providing an effective means of enforcement and individual redress.** The current duties have no effective means of being enforced, meaning they can easily be ignored.
- b) **Extending the free speech duties to students' unions.** Students' unions are independent of universities and not covered by free speech duties. There is no current way to prevent students' unions from no-platforming, denying meeting rooms or otherwise blocking the free speech of students or student societies who hold views the student union disagree with.
- c) **Preventing 'no-platforming by the back door'.** The specific provisions on security costs and premises prevent providers or students' unions 'no-platforming by the back door', by making it harder for some groups than others to hold events or invite speakers.

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<sup>3</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/961537/Higher\\_education\\_free\\_speech\\_and\\_academic\\_freedom\\_web\\_version\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961537/Higher_education_free_speech_and_academic_freedom_web_version_.pdf)

## Potential Amendments

Overall, Policy Exchange considers that the Bill is strongly needed and will effectively address the concerns raised in its reports. There are, however, two areas where amendments could be considered.

- a) **Equality Act interactions.** The Bill does not sufficiently clarify the interaction between itself and the Equality Act (2010). As recommended in our reports, we recommend that the Bill should make it explicit in law that, in fulfilling both the public sector equality duty and the harassment provisions of the Equality Act 2010, higher education providers are to have particular regard to free speech.
- b) **Statutory tort.** Concerns have been raised over frivolous cases being brought under the new tort. The tort is an essential backstop; however, we recognise these concerns are legitimate. Amendments to ensure the tort could (a) only be used once the Office for Students scheme has been exhausted; and (b) introducing a minimum threshold for damages, would prevent misuse of this important remedy. The Russell Group has also suggested similar amendments to the statutory tort provisions<sup>4</sup>.

### About the Education Unit at Policy Exchange

Policy Exchange is an independent, non-partisan educational charity which seeks new policy ideas to deliver better public services, a stronger society, and a more dynamic economy. The Education unit has a successful of driving ground-breaking work across all parts of the education system, including our pioneering work on free schools and the role of Ofsted, to more recent work on behaviour, free speech and technical education.

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<sup>4</sup> <https://russellgroup.ac.uk/media/6074/he-freedom-of-speech-briefing.pdf>