



The Higher Education (Freedom of Speech) Act 2023

Ensuring your institution is compliant



What is the Higher Education (Freedom of Speech) Act 2023?

The Higher Education (Freedom of Speech)

Act applies to all higher education providers registered with the Office for Students (“OfS”), and their constituent colleges, schools, halls and similar institutions.

It states a range of duties for providers with respect to free speech on campus and academic freedom, as well as conditions of registration to be monitored by an OfS director, and a complaints scheme similar to the Office of the Independent Adjudicator scheme.

The compliance impact is wide-ranging and complex in terms of both issues and documentation, and adjustments may be required to facilitate proper compliance.

HOW TO ENSURE COMPLIANCE

In terms of the practicalities, compliance with the Act will require (among other things):

- Up to date free speech codes of practice and policies, including a statement of values; relating to free expression and conditions as to when security costs may be charged to event organizers;
- A review of the “Academic Staff” statute, related bye-laws or ordinances and HR policies; and
- Steps to comply with the duty to promote the importance of free speech and academic freedom.

ISSUES	DOCUMENTATION
<ul style="list-style-type: none">• Organisation of speaking events• How employment arrangements are managed<ul style="list-style-type: none">– Recruitment– Promotion– Discipline; and– Dismissal of academic staff	<ul style="list-style-type: none">• Management arrangements• Governing documents<ul style="list-style-type: none">– Statutes, ordinances, bye-laws etc.• Free speech policies and codes• Recruitment policies• Harassment and disciplinary policies• Settlement agreements• Funding arrangements

WHY IS COMPLIANCE WITH THE ACT IMPORTANT?

The most impactful aspects of the Act are the enforcement mechanisms which it contains. These materially increase the risk profile around free speech and academic freedom issues, both in terms of costs and potential reputational damage, if an institution gets things wrong. In particular, please note:

The complaints scheme

This enables the new OfS Free Speech Director to issue recommendations if the new rules are broken by institutions, which could include paying compensation, causing events to go ahead or re-instating dismissed academics;

The statutory tort

This allows individuals to directly sue institutions if they suffer loss because the new free speech rules have been broken

The general regulatory powers of the OfS

These can lead to sanctions, including significant fines and, in the worst cases, ultimately deregistration, if an institution fails to comply with the new regulatory conditions imposed by the Act.

As such, the implications of non-compliance could be severe.

HOW CAN WE HELP?

The Act will likely take full effect in Summer 2024, ready for the next academic year. As such, now is the time to start preparing so that the relevant documentation and training can be put in place in good time.

To get institutions started, we offer a fixed-price starter pack of advice, which includes the following:

1. Our detailed advice note on the new requirements of the Act, and compliance with it
2. A short, easy-to-understand overview of the Act, which can be distributed more widely to staff
3. An audit of existing governing documents, free speech policies / codes, template settlement agreement, and key relevant employment policies (recruitment, grievance, harassment, disciplinary and whistleblowing)
4. A tailored report which sets out the findings of the audit and identifies what needs to be amended or re-drafted for compliance
5. A meeting with senior stakeholders at your institution to discuss the audit and the report.

WHY OUR CLIENTS WORK WITH US

Our team regularly provides advice on free speech and academic freedom matters for both individuals and institutions, including in relation to compliance with the Act. We have particular expertise on the law around academic freedom and free expression on campus, on which we have advised institutions, academics, think tanks, politicians and the Government, often on complex employment and free expression issues, including both disputes and compliance matters.

Our specialists have published multiple articles on academic freedom, in addition to submissions of evidence to the Special Rapporteur on Freedom of Expression, the UK Parliament's Joint Committee on Human Rights, and the House of Commons Public Bill Committee in relation to the Act. The team has also published several academic papers on the law concerning academic freedom and free expression on campus.

We provide a high-quality service which is highly rated by our clients and recognized externally, with The Legal 500 and Chambers and Partners ranking us highly, both at a team and individual level.



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