# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# HIGHER EDUCATION (FREEDOM OF SPEECH) BILL

*Twelfth Sitting*

*Wednesday 22 September 2021*

*( Afternoon )*

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**not later than**

**Sunday 26 September 2021**

**The Committee consisted of the following Members:**

*Chairs:* Sir Christopher Chope, † Judith Cummins

† Bacon, Gareth *(Orpington)* (Con)
Britcliffe, Sara *(Hyndburn)* (Con)
† Bruce, Fiona *(Congleton)* (Con)
† Buchan, Felicity *(Kensington)* (Con)
† Donelan, Michelle *(Minister for Universities)*
† Glindon, Mary *(North Tyneside)* (Lab)
† Hardy, Emma *(Kingston upon Hull West and Hessle)* (Lab)
† Hayes, Sir John *(South Holland and The Deepings)* (Con)
† Holden, Mr Richard *(North West Durham)* (Con)
† Jones, Mr Kevan *(North Durham)* (Lab)
† McDonnell, John *(Hayes and Harlington)* (Lab)
† Nichols, Charlotte *(Warrington North)* (Lab)
† Russell-Moyle, Lloyd *(Brighton, Kemptown)* (Lab/Co-op)
† Simmonds, David *(Ruislip, Northwood and Pinner)* (Con)
† Tomlinson, Michael *(Lord Commissioner of Her Majesty's Treasury)*
† Webb, Suzanne *(Stourbridge)* (Con)
† Western, Matt *(Warwick and Leamington)* (Lab)

Kevin Maddison, Seb Newman, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Wednesday 22 September 2021*

*(Afternoon)*

[Judith Cummins *in the Chair*]

## Higher Education (Freedom of Speech) Bill

### Clause 8

Director for Freedom of Speech and Academic Freedom

*Amendment proposed (this day)*: 85, in clause 8, page 11, line 23, at end insert—

"(1A) A person may not be appointed as the Director for Freedom of Speech and Academic Freedom if the person has at any time within the last three years made a donation to a political party registered under the Political Parties, Elections and Referendums Act 2000.

(1B) The person appointed as the Director for Freedom of Speech and Academic Freedom may not whilst in office make any donation to a political party registered under the Political Parties, Elections and Referendums Act 2000.".—*(Matt Western.)*

*This amendment would ensure that the Director of Freedom of Speech and Academic Freedom had not donated to any political party in the last three years and that they may not make any further donations to political parties for the duration of his tenure.*

2.8 pm

*Question again proposed,* That the amendment be made.

**The Chair:** I remind the Committee that with this we are discussing the following:

New clause 9—*Appointment of the Director for Freedom of Speech and Academic Freedom—*

"(1) The appointment of the Director for Freedom of Speech and Academic Freedom shall be subject to a confirmatory resolution of the relevant Select Committee of the House of Commons.

(2) The Secretary of State shall when appointing the Director for Freedom of Speech and Academic Freedom have regard to the views of an Independent Advisory Body.".

*This new clause would require the appointment of the Director for Freedom of Speech and Academic Freedom to be confirmed by the Education Select Committee, and for the Secretary of State to consult the Independent Advisory Body when appointing the Director for Freedom of Speech and Academic Freedom.*

New clause 11—*Review of the appointment process for the Director for Freedom of Speech and Academic Freedom—*

"(1) The Secretary of State must conduct a review of the appointment process for the Director for Freedom of Speech and Academic Freedom within six months following the calling of a new Parliament.

(2) Any review conducted under subsection (1) must assess the suitability of the appointment process for selecting politically impartial candidates.

(3) The Secretary of State must lay the report of the review before Parliament.".

*This new clause would require the Secretary of State to review the appointment process for the Director for Freedom of Speech within six months following the calling of a new Parliament, and lay the report of this review before Parliament. The review must include an assessment of the suitability of the appointment process for selecting politically impartial candidates.*

**Matt Western** (Warwick and Leamington) (Lab): I will just finish off my remarks on amendment 85 and new clauses 9 and 11. I remind the Committee that we believe there is a need for some other body to be involved in the process. We suggested that the Education Committee could be well disposed to carry out that role.

Our critical point is that maintenance of and alignment to the Nolan principles are important in the appointment of the director for freedom of speech. The approach of the Office of the Independent Adjudicator for Higher Education was raised, with its emphasis on skills and experience. I sense there is a bit of clear blue water between that approach and what has been proposed for the position at the OfS, which might align more with principles and values.

The key thing throughout has been the importance of credibility in this appointment. Many in the sector have questioned the trust, and that is something my right hon. Friend the Member for Hayes and Harlington addressed. Credibility is important; there is real concern across the sector—not just on the Opposition Benches—about this legislation, and particularly about the intent behind the appointment of the director of free speech.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 7, Noes 9.

**Division No. 22]**

**AYES**

| | |
|---|---|
| Glindon, Mary | Nichols, Charlotte |
| Hardy, Emma | Russell-Moyle, Lloyd |
| Jones, rh Mr Kevan | |
| McDonnell, rh John | Western, Matt |

**NOES**

| | |
|---|---|
| Bacon, Gareth | Holden, Mr Richard |
| Bruce, Fiona | Simmonds, David |
| Buchan, Felicity | Tomlinson, Michael |
| Donelan, rh Michelle | |
| Hayes, rh Sir John | Webb, Suzanne |

*Question accordingly negatived.*

*Question proposed,* That the clause stand part of the Bill.

**Matt Western:** We have discussed this clause at some length. It causes us great concern and concern across the entire sector—to the universities, the University and College Union and the National Union of Students, as well as to existing bodies, such as the Office of the Independent Adjudicator, and to the Charity Commission. All our amendments to the clause have sought to ensure that the director is best equipped to deal with the difficult task that awaits them.

The chief executive of the Office for Students, Nicola Dandridge, likened the director of free speech and academic freedom to the director for fair access and participation. I am not convinced they are the same. This position is so important to the future direction of

our campuses, although the director for fair access and participation is of course important, and we have had a person in post since the inception of the Higher Education and Research Act 2017 and the establishment of the OfS, so that person predates the Prime Minister, his Government and the direction in which he is clearly taking us. However, while I appreciate the similarities and very much hope that the director of free speech has an equally positive effect and an impartial position, the clause as it stands creates a framework that favours the centralisation of power in one person, potentially with a lack of participation from the sector, which will remain silent on the appointment of the director. We tabled those constructive amendments to get the engagement and buy-in from the sector, which as colleagues have so eloquently said is absolutely needed now. We have heard that the Association of Colleges, for example, has not been consulted at all. There are many flaws in the approach that the Government have followed.

2.15 pm

The debate has made it clear that the director will not be subject to a review mechanism, that the appointment of the director is subject to no political constraints and that the OfS and the director will be under no duty to promote good practice, making it increasingly likely that the role will be one of heavy-handed arbiter. It would seem, from the debate we have had, that there is to be no parliamentary oversight of, or accountability for, the role and that the director would be able to act solely of his or her own volition.

Professor Nigel Biggar confirmed all the Opposition's fears, and it worth repeating what he said:

"I guess the Government do, given the legislation",

want

"a director who has a certain partiality of that kind."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 22, Q40.]

That is one of the most important sentences in all the evidence that we heard a couple of weeks ago. Voting for the clause begins the process of widespread and determined political interference in the regulation of the higher education sector. Lord Wharton's appointment was just the beginning.

The clause will also be a large drain on the finances of higher education providers. The Government's own impact assessment says:

"It is unclear how many staff would be required to support the OfS Director for Freedom of Speech and Academic Freedom and their renumeration package."

The impact assessment goes on to detail the costs and benefits of the director, and claims an administration cost for the recruitment of a supporting team will be between £0.5 million and £0.8 million. Then, of course, there is the cost to students of not knowing whether to go down the route of the Office of the Independent Adjudicator or the Office for Students.

Although the costs may be considerable, the benefits are difficult to quantify, which is to say that the entire clause is a gamble that, following the Government's rejection of all our amendments, is subject to no political accountability.

**The Minister for Universities (Michelle Donelan):** We have already discussed the clause extensively, so I will keep my remarks very tight.

The new complaints scheme provided for by clause 7 will be overseen by the new director for freedom of speech and academic freedom within the Office for Students, and that director will oversee the free speech functions of the OfS. That means that there will be an individual within the OfS who has an undivided focus on those fundamental values in our higher education system, and they will play a public role in championing the value of free speech and academic freedom across the higher education sector.

That new high-profile role will demonstrate the importance of free speech and academic freedom in higher education and will empower individuals and providers to ensure that universities and colleges in England are places where freedom of speech can thrive for all staff, students and visiting speakers, contributing to a culture of open and robust intellectual debate.

**Matt Western:** Will the Minister confirm that the role will be a full-time appointment, and what will the tenure of the contract be?

**Michelle Donelan:** As we heard in evidence, the role will be akin to the director for fair access and participation. The job description and all the terms will be published in due course—it would be premature to do that before the Bill becomes an Act.

*Question put*, That the clause stand part of the Bill.

*The Committee divided:* Ayes 9, Noes 7.

**Division No. 23]**

**AYES**

| | |
|---|---|
| Bacon, Gareth | Holden, Mr Richard |
| Bruce, Fiona | Simmonds, David |
| Buchan, Felicity | Tomlinson, Michael |
| Donelan, rh Michelle | Webb, Suzanne |
| Hayes, rh Sir John | |

**NOES**

| | |
|---|---|
| Glindon, Mary | Nichols, Charlotte |
| Hardy, Emma | Russell-Moyle, Lloyd |
| Jones, rh Mr Kevan | Western, Matt |
| McDonnell, rh John | |

*Question accordingly agreed to.*

*Clause 8 ordered to stand part of the Bill.*

**Clause 9**

MINOR AND CONSEQUENTIAL AMENDMENTS

*Question proposed,* That the clause stand part of the Bill.

**Michelle Donelan:** Clause 9 gives effect to the schedule to the Bill that makes minor and consequential amendments to other legislation. These consequential amendments are necessary to give effect to the main provisions of the Bill and to make all the legislation work together seamlessly and consistently.

Part 1 of the schedule provides for a number of amendments to be made to part 1 of the Higher Education and Research Act 2017. For example, amendments to section 75 of the 2017 Act allow for the regulatory

*[Michelle Donelan]*

framework of the Office for Students, which gives guidance on how it will regulate, to include provision on student unions. That is a consequence of the new duties for student unions that are imposed under clauses 2 and 6 of the Bill.

Part 2 of the schedule makes amendments to the Counter-Terrorism and Security Act 2015. Paragraph 13 makes consequential amendments. Paragraphs 14 and 15 make minor changes that are not consequential, but are technical corrections. The effect of the amendments is to match those providers that are monitored for compliance with the Prevent duty under section 32 of the 2015 Act to those listed in schedule 6 of that Act that are subject to the duty. That makes no difference in practice; it is simply to fix inconsistencies in wording.

Part 3 of the schedule amends section 43 of the Education (No. 2) Act 1986, which sets out the current freedom of speech duties on universities and colleges. It removes registered higher education providers from scope, since they will now be covered by this Bill. Part 3 also amends the Higher Education Act 2004 to ensure that the scheme operated by the Office of the Independent Adjudicator for Higher Education, which considers student complaints against providers, takes account of the new freedom of speech complaints scheme to be operated by the Office for Students.

The clause and schedule therefore contain amendments to other legislation that are necessary for the operation of the Bill.

**Matt Western:** I do not have any points to make on this clause.

*Question put and agreed to.*

*Clause 9 accordingly ordered to stand part of the Bill.*

**Schedule**

MINOR AND CONSEQUENTIAL AMENDMENTS

*Amendments made:* 17, in schedule, page 13, line 25, leave out from "subsection (1)," to end of line and insert—

"for 'a provider' substitute 'a registered higher education provider, or a students' union,'".

*This amendment is consequential on Amendment 18.*

Amendment 18, in schedule, page 13, line 27, leave out "provider," and insert—

"registered higher education provider or of a constituent institution of such a provider,".

*This enables costs recovery from constituent institutions in connection with the complaints scheme.*

Amendment 19, in schedule, page 14, line 6, after "provider" insert ", constituent institution".

*This amendment is consequential on Amendment 18.*

Amendment 20, in schedule, page 14, line 43, at end insert—

"(aa) after the definition of 'a fee limit condition' insert—

'"constituent institution", in relation to a registered higher education provider, has the same meaning as in Part A1 (see section A3A(4));';".

*This defines "constituent institution" for the purposes of Part 1 of the Higher Education and Research Act 2017.*

Amendment 21, in schedule, page 15, line 46, leave out sub-paragraphs (2) to (4) and insert—

"(2) In paragraph 1, for the words from 'in relation' to the end substitute 'where under section 73 the OfS imposes a requirement to pay costs on—

(a) the governing body of a registered higher education provider,

(b) the governing body of a constituent institution of a registered higher education provider, or

(c) a students' union.'

(3) In paragraph 2—

(a) in sub-paragraph (1)— in sub-paragraphs (3) and (5), after 'governing body' insert 'or students' union'.

(i) after 'governing body' insert 'or students' union';

(ii) for '73(1)' substitute '73';

(4) In paragraph 3(1) for 'of a provider' substitute 'or students' union'.".

*This amendment is consequential on Amendment 18.*

Amendment 22, in schedule, page 16, line 15, at end insert—

"(1A) In subsection (1)—

(a) in paragraph (b), omit the final 'or';

(b) after paragraph (b) insert—

'(ba) a constituent college, school or hall or other institution in England or Wales of an institution within paragraph (b), or'.".

*This amendment aligns section 31(1)(b) of the Counter-Terrorism and Security Act 2015 with the concepts used in the Higher Education and Research Act 2017, in order to facilitate the Minister's other amendments to Part 2 of the Schedule.*

Amendment 23, in schedule, page 17, line 4, leave out from "provider" to end of line 7 and insert—

"or a constituent institution of such a provider has the meaning given by section 85(6) of the Higher Education and Research Act 2017;".

*This amendment and the Minister's remaining amendments to Part 2 of the Schedule clarify how section 31 of the Counter-Terrorism and Security Act 2015 applies in relation to constituent institutions of registered higher education providers.*

Amendment 24, in schedule, page 17, line 13, at end insert—

"'constituent institution', in relation to a registered higher education provider, has the same meaning as in Part A1 of the Higher Education and Research Act 2017 (see section A3A(4) of that Act);".

*See the explanatory statement to Amendment 23.*

Amendment 25, in schedule, page 17, line 22, leave out from "provider" to end of line 24 and insert—

"(aa) a constituent institution of such a provider, and".

*See the explanatory statement to Amendment 23.*

Amendment 26, in schedule, page 17, line 28, at end insert—

"(e) after the definition of 'qualifying institution' (inserted by paragraph (d)) insert—

'"registered higher education provider" has the meaning given by section 3(10)(a) of the Higher Education and Research Act 2017.'".*—(Michelle Donelan.)*

*See the explanatory statement to Amendment 23.*

**Sir John Hayes** (South Holland and The Deepings) (Con): I beg to move amendment 70, in schedule, page 17, line 36, at end insert—

"14A After section 32, insert—

'32A Section 26(1) duty: exception for higher education providers

For the purposes of section 26(1) of this Act, the obligation to have due regard to the need to prevent people from being drawn into terrorism shall not apply to any decision made by a registered higher education provider that directly concerns:

(a) the content or delivery of the curriculum;

(b) the provision of library or other teaching resources; or

(c) research carried out by academic staff.'".

We have had a useful debate on the principles of the Bill. A difference between us has emerged during that debate, which is essentially the difference between those of us who think the Bill is essential, because we think there is a prevailing problem that we need to address—that was reflected to some degree in the evidence we received from Professor Biggar, Dr Ahmed, Professor Kaufmann, Professor Goodwin and so on—and those who take the opposite view, that there is not a problem and, if there is, it can be dealt with by existing means.

My anxiety in all of these matters is to bring clarity to the Government's intentions. I have made that point throughout. We have been reassured by the Minister a number of times that she is listening to the Committee and will go back and reflect further on the points that have been raised. We have also heard that much will be made clearer in guidance. That is not uncommon in this place. Over many years, as a shadow Minister and Minister, I have encountered many occasions where the implementation of a Bill, particularly when breaking new ground, has required that guidance be issued. It is right and important—if I were the Opposition, I would be making this point—that that guidance is made available at a time that allows it to be scrutinised. I understand that argument, and it is a perfectly reasonable one.

However, equally, from the point of view of good governance, it is important that the guidance—based on the discussions and consultations that will no doubt take place, as the Minister has assured us, between the sector and Government—is iterative and that it reflects those discussions and marks those consultations. I am not as concerned about that as some, because I assume a degree of good will in that respect.

My view about the Bill and the Committee is that, as was said by Members from across the House, our task is to improve the legislation during its passage. That is precisely what I have tried to do in the amendment. For me, it is about certainty and clarity and about establishing an environment where universities and others will be confident that the new regime is one that will deliver the outcomes we want, which is to facilitate and, indeed, to guarantee free speech on campuses across the country.

I am a supporter of the Bill, and the amendment, as hon. Members will see, is a helpful one. It is not designed to do anything other than to improve the legislation. I am also mindful that all Acts are rather different from the Bills they begin as. No Act of Parliament is quite like the Bill that is published; they all metamorphosise during their passage and improve as a result of that metamorphosis. So, the amendment, which is straightforward, is designed to provide greater clarity, build the certainty I have described and also mark the progress of the Bill. Once the Bill becomes an Act we need to measure its effect. I have argued throughout the Committee for greater clarity, for greater certainty and for more information to be provided.

**Lloyd Russell-Moyle** (Brighton, Kemptown) (Lab/Co-op): The amendment talks about the Prevent obligations, which are not an Act in themselves so are subordinate to Acts, not being applied for purposes of research, delivery of the curriculum or teaching. Can the right hon. Gentleman give some examples of how he would want this to be applied? We are not quite yet clear on this side of the Committee about whether that is something we would be positively happy with because we are not clear on how the he sees it being implemented.

**Sir John Hayes:** The hon. Gentleman has not only anticipated fully my preliminary remarks, but the essence of my amendment and my speech. I was about to say that my efforts are to improve the legislation and ease its passage to create the certainty and clarity I described. The hon. Gentleman will not necessarily know this, but as Minister for Security at the Home Office, I introduced the Prevent duty. Prevent was a long-standing part of our strategy to deal with counter-terrorism, as he will know, but I introduced the change to oblige local authorities, schools, the health service, community organisations and others to identify, where they might, people who were vulnerable to the overtures of terrorists or who were possibly dangerous already in those terms. We are talking here about potential terrorists and the hon. Gentleman will know that the way the Prevent duty works is that when those people are identified, a process begins, which may end up in them being referred to the Channel programme. The Channel programme is designed to counter the activities of extremists and others who wish to groom those individuals.

2.30 pm

I emphasise this for the sake of clarity. The process by which terrorists are recruited, either directly or, especially these days, through the internet, is a grooming process. I use that word advisedly. It is not unlike the process employed by sexual predators; lonely individuals are often identified and, through the activities of those who seek to corrupt them, are drawn into activities that can be so serious that they end in terrorist violence. The Prevent duty was designed to identify those people.

There is some evidence that it is being interpreted very differently by different organisations. There was a very recent case, and I shall not comment too much on it because it is still sub judice in an employment tribunal, of a school chaplain who preached a sermon and amazingly—extraordinarily—was referred to the Prevent programme by the school management. He may have had contentious views; he may indeed have even caused offence. I talked at the very early stages of our consideration about the right to cause offence, to alarm, to disturb. That is an important part of freedom. It is not something we would necessarily want to do ourselves, but it is an important part of a free society. However, he certainly was not a potential terrorist by any means or measure.

The matter was taken no further, I hasten to add, because Prevent co-ordinators are well equipped to gauge and judge whether such a reference is appropriate or mischievous. Nonetheless, it is really important that we are clear that the Prevent duty should not be used in that way, and that we separate—as this amendment does—the provisions of this Bill from any misunderstanding, and that we are absolutely clear about the parallel legal imperatives associated with the provisions of this Bill and the Prevent duty.

As I said, I hope to improve the legislation. This is largely a probing amendment, so I do not anticipate dividing the committee, as the Front Bench will be pleased to know.

**The Lord Commissioner of Her Majesty's Treasury (Michael Tomlinson)** *indicated assent.*

**Sir John Hayes:** I see the Whip is nodding. It is important that we are clear about how the Prevent duty operates in practice; the intent of that duty; and the relationship between that and the provisions of this Bill.

We have already spoken about the necessary consistency in the application of these provisions. We have also spoken about the interaction, the interface between these new legal responsibilities and existing law, particularly in respect of the Equality Act 2010. More generally, it is important that this fits with other legislation when it becomes law. That is always a challenge for the Government because Ministers and Governments inherit a statutory landscape not of their making. That is not always a straightforward process. However, by improving legislation in this metamorphosis we can address that issue. That is what I am trying to do with the amendment. I do not know whether it is perfectly worded; I do not know whether it could be improved.

**Lloyd Russell-Moyle:** The right hon. Gentleman has clarified his thinking for me, which is very useful. I am not sure about some of the detailed wording, but that is the point of a probing amendment, is it not? I wonder if he would like to reflect on the interesting contradiction that the Prevent duty does not apply to student unions, but it does apply to the institutions. This amendment applies to both. When the right hon. Gentleman was Minister, did he consider why the Prevent duty was only on the institutions? Why did he not extend that duty to the student unions, and why is he now supporting this Bill, which does the opposite?

**Sir John Hayes:** I spend a good deal of my time contemplating what I think now, and I occasionally contemplate what I thought once. However, the longer one has lived, the harder that becomes. I could not say with absolute conviction that I recall the considerations I made in years gone by. It is complicated, in my case, by the fact that I have held a lot of different ministerial offices, and dealt with a lot of legislation over a lot of years. I said to the Labour spokesman that I have sat many times where he sits today, and, while it is tough being a Minister, it is pretty tough being a shadow Minister too.

I hope I have made it clear that my intention is positive; good Committees are about responsible progress being made—to that end I do not want to delay the Committee any further. This is a probing amendment to clarify, and make straightforward, the relationship between these legislative imperatives, so that the universities know precisely what is to be done. Finally, I send this signal out again: the Prevent duty is not about curbing free speech, it is about identifying potential terrorists. It is no more or less than that. It should not be under-interpreted, because we need to find those people before they do harm. However, it should not be over-interpreted as a backdoor means of closing down free and open debate.

**Matt Western:** I thank the right hon. Member for South Holland and The Deepings for the clarification in the points he has put forward. I found reading what he was proposing a bit troubling, but I understand much more, having now listened to him and to the responses that have been made by colleagues. The right hon. Gentleman had already alluded to the fact that, under Prevent duties, specified authorities are required to have a due regard to the need to prevent individuals being drawn into terrorism. This applies to higher education institutions, local authority schools and further education institutions, as well as the health sector, prisons, probation and police services. I may have got this wrong, but my understanding was that there was a provision prior to the coalition Government's introduction of the Prevent duty, and it was an enhancement of this that came in through the office of the right hon. Gentleman.

**Sir John Hayes:** The difference was the statutory basis of what we did. I think there was a provision prior. Prevent is a longstanding part of the Contest strategy, which is the means by which counter-terrorism efforts are delivered. We specified in statute a new duty—that is the difference.

**Matt Western:** I thank the right hon. Gentleman for the clarification. As he has said, in essence this was a policy introduced by the coalition Conservative Government. I am interested to hear what the Minister's view is in response to this amendment.

I have read that, in the view of Corey Stoughton, director of advocacy at the human rights organisation Liberty, the tactics of the strategy for monitoring campus activism has had a

"'chilling effect' on black and Muslim students, provoking self censorship for fear of being labelled extremist."

We have to be very careful here, because blanket exemption is just as bad as blanket application. I have looked through the responsibilities of universities, which already have done very well to balance freedom of speech with the Prevent duty. My hon. Friend the Member for Brighton, Kemptown and I have discussed how the Nottingham Two incident—the right hon. Gentleman may be familiar with it—played out, and how such situations can be avoided. There must be an obvious method of ensuring that academics can research these subjects, whether it be the cultural impact of drugs or the impact of certain political movements, without the police knocking on the door. I would have thought that an obvious way of avoiding problems and difficult situations on campus would be to introduce processes to allow academics to make their governing bodies and departments aware of their work.

**Emma Hardy:** I believe I understand what the right hon. Member for South Holland and The Deepings is trying to do with this amendment, but I return to our previous point that the big problem with this Bill is how it interacts with other pieces of legislation, and what impact it will have. That is why we talked about putting into the Bill the other pieces of information that we have mentioned. I am sure the Minister will refer us to guidance that is coming shortly to deal with this. The Bill does not exist on its own, so, as my hon. Friend says, the implementation will be incredibly complex. That goes back to the points we made this morning about who the person will be who has to try to decipher this very complicated piece of additional legislation.

**Matt Western:** Exactly that—it is about how this Bill will play with existing legislation and how the responsibilities will be balanced. The fact, and the overriding argument, is that institutions in the higher education sector have done an amazing job of balancing the obligations and the competing freedoms that exist on our campuses,

and they have done so with very few problematic exceptions. It will be interesting to see how this individual and their department will handle that. I do not hold out a huge amount of confidence and hope in what they will do, but I will be interested to see what the Minister says in response to the amendment, and we will hold fire until we have heard her words.

**Mr Kevan Jones** (North Durham) (Lab): I have a problem with the amendment, because I think there is a lot of misunderstanding around the Prevent agenda. It is one of the four p's—prevent, pursue, protect and prepare—which are, as the right hon. Member for South Holland and The Deepings has just said, part of the Government's Contest counter-terrorism strategy. The principles that underpin it are democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs, and of those who hold none. I do not understand how it would be a problem for the director or any other institution to have to take into account issues surrounding Prevent.

It would be problematic if we started to take people out of legislation. Prevent is clearly designed to identify individuals who are at risk, and having met—in another role—the people who co-ordinate Prevent, I know that they are very skilled at ensuring that only those who need the programme are put through it. I accept what the right hon. Gentleman said about the vicar, but I am not sure that the amendment would prevent him—pardon the pun—from being referred anyway; that is more about training and ensuring that those whose duty it is to operate Prevent actually understand it. Will we get the odd case of people being referred when they should not be? Possibly, but that does not mean that those cases will be taken any further. I am sure the vicar was not taken any further just because somebody thought that he had failed in the Prevent duties.

I do not think there is any need for the amendment. The principles underpinning Prevent go to the core of the Bill, which talks about freedom of speech, democracy and everything else.

2.45 pm

If we were to try to carve this out, I would not want to weaken the Prevent programme in any way. It has its many critics—some who do not understand it, and others who, for their own reasons, want it to be undermined—but there should clearly be a duty for institutions to train staff and ensure that they know their duties under Prevent, so that people do not get referred wrongly. I do not think the amendment would help, and I cannot see any problem at all with keeping the existing Prevent regulations alongside the Bill.

The amendment is unnecessary and would create problems, because people would have to interpret whether someone should be referred to Prevent, and that would be difficult. I have met individuals who run Prevent programmes in different guises, and they are experts. If someone is referred but does not meet the criteria, they will soon not be part of the Prevent programme. I do not think there is any danger of people being put forward in error.

In the light of the example that the right hon. Member used, I suggest that he stops reading certain newspapers. We have a tendency whereby if someone says X, suddenly it is a huge problem. Well, perhaps it was for the poor vicar who was referred, but it did not actually end anywhere. It is like when we read sensationalist stories about people taking stupid cases to court for compensation. The cases have no foundation in law and are thrown out, but the headline is about someone taking the council to court over some spurious claim; rarely does the story explain the background of the case or the fact that the court threw it out. The same would be the case for many of the referrals. In my experience of speaking with the people who run Prevent, people who are referred but who do not meet the criteria do not go any further, so I do not see any need for the amendment.

**Lloyd Russell-Moyle:** I declare my usual interests with the University of Bradford, the University of Sussex, and the University and College Union.

When I first saw the amendment, I was slightly confused —*[Interruption.]*

2.48 pm

*Sitting suspended for a Division in the House.*

3.3 pm

*On resuming—*

**Lloyd Russell-Moyle:** When I first saw the amendment, I was slightly confused about its purpose. The idea that the Bill ought to refer to contradicting or overlapping—however one might phrase it—legislation and sets of guidelines is something that we have proposed in previous amendments, which I feel were slightly better worded.

I put it to the Minister that we need in the Bill a recognition that there are contradictory guidelines and that there will be guidelines to explicitly outline how duties and laws at universities will interact. That would relieve of a lot of pressure. We want surety that the guidelines will have that element to them in perpetuity, so that whatever new Government or office comes in, the guidelines will always outline how the Acts and duties interact with each other.

In that sense, I understand and agree with the spirit of the amendment, but the Bill probably needs something that goes further and has more detailed wording. I also understand that there have sometimes been cases in which either the Prevent duty as it is now, or the Prevent programme as it was, was used and had a chilling effect. We have heard that from different organisations. The Nottingham Two have been mentioned; that was a case of a PhD student researcher and a lecturer at the University of Nottingham. The university felt that it was its duty to report them to the police; they were arrested for downloading and disseminating the al-Qaeda manual and were refused bail for a period of time. There has been a lengthy court case on that. Compensation was paid to the two individuals because they were researching how terrorists radicalise people—the very thing we need researchers to be working on.

The law has helped to correct itself through the court process. I am not diminishing the awful effect it must have had on the two researchers, but they have received compensation and to some extent, unfortunately, these things do happen. Most institutions have already corrected their reporting mechanisms to ensure that that kind of thing does not happen. I am sure the example right hon. Member for South Holland and The Deepings gave us of the chaplain will be a one-off example that will help

*[Lloyd Russell-Moyle]*

us to correct in the other direction as well. Those correction moments are sometimes needed, rather than using statute or legislation to do it.

One thing that should perhaps be included in guidelines is some idea of a process for when you are dealing with contradictory things, such as something that might breach the Equality Act but is necessary to talk about difficult issues that are discriminatory, or that might breach the Prevent programme in a literal reading, rather than its intended spirit. It is the same in universities when dealing with issues that might trigger a safeguarding process; a lecturer or researcher would write to the university to explain what they plan to do in order to get prior authorisation.

**Mr Jones:** There are no key principles for how somebody gets referred to Prevent; it is actually about assessing someone's vulnerabilities and a pattern of behaviour. There may be an example raising one issue that would automatically get people put into Prevent, but I think the structure is already there.

**Lloyd Russell-Moyle:** I totally agree. However, an example might be if a lecturer wishes to run a course about Islamic radicalisation. They might say to the university, "I need some extra safeguards put around this course because of the students it might attract and the topics we might be dealing with. It is important to teach this course for academic rigour, it is important to understand these issues, but it might attract people to join the course for undue reasons." That is not to stop them from doing it; it is just to make sure there is a safeguarding approach. All of that kind of stuff needs to be in the guidelines, not here. I hope that that is what the Minister will say. I think a safeguarding, prior notification approach is what is needed here.

I did want to touch on the interesting contradiction brought up by this amendment. Prevent—although there is debate about its understanding and its use, I do not think that is relevant here—is an important programme to try to safeguard and stop the radicalisation of people in our country. However, it applies to the institutions, and the institutions cascade to bodies that work within them, such as student unions. It does not apply directly to student unions in terms of the duty. This does, which is an example of where this Bill overreaches.

If the Bill is going to have a deeper, more intrusive reach than the Prevent programme, we need either to revisit the Prevent duty or to say that this Bill is a bit of an overreach, that it is not necessary for it to be regulating as deep down as student unions and student clubs. This amendment helps to highlight that. That is an argument I have made many times in this Committee, so I will not go any further on that point.

**Michelle Donelan:** Under amendment 70, higher education providers would not have to comply with certain academic decisions such as those concerning delivery of curriculum or research in relation to the Prevent duty. The Government are clear that the Prevent duty should be used not to suppress freedom of speech but to require providers, when exercising their functions, to have due regard for the need to prevent people from being drawn into terrorism. There is no prescription from Government or the Office for Students on what actions providers should take once they have that due regard.

Specific guidance has been published by the Home Office on how higher education providers should comply with the Prevent duty. The legislation imposing the Prevent duty in higher education already specifically requires that providers have particular regard to the duty to ensure freedom of speech and the importance of academic freedom. That means that providers already have special provisions on the application of the Prevent duty to enable them to take proper account of academic freedom, so there is no need for this amendment to go further.

The Government have commissioned an independent review of the Prevent duty and are looking at how effective the statutory the Prevent duty is, to make recommendations for the future. I hope that reassures the Committee.

**Sir John Hayes:** I find the Minister perpetually reassuring, so that is a good starting point. The anxiety is that research is curbed, materials that might be accessed by students are in some way constrained and activities on campus are curtailed, particularly around research and new courses that, by their nature, are contentious. We have heard some examples so I will not repeat them. There are fears in universities that the authorities will not allow academics to run a course in a controversial area or commission research that might be deemed by some to be awkward or embarrassing. That is not in the spirit of academic freedom that I think we all want to engender in our universities. My intention with the amendment was to protect that academic freedom.

There is a problem with Prevent; I am a great supporter of it, as is the right hon. Member for North Durham, but there is an issue on which the review of Prevent might focus. It is the number of referrals and whether all those referrals are appropriate. That is a different debate for a different place, with different people.

On the basis of the Minister's reassurance, the healthy debate we have had on the subject and that we need to make progress, with my mission to clarify and bring certainty to this legislation, I happily beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Question proposed,* That the schedule, as amended, be the schedule to the Bill.

**Michelle Donelan:** The schedule contains minor and consequential amendments to other legislation and is brought to effect by clause 9. As we discussed, the consequential amendments are necessary to give effect to the main provisions of the Bill and make all the legislation work together seamlessly and consistently. Therefore, it will contain amendments to other legislation that are necessary for the operation of the many measures of the Bill.

*Question put and agreed to.*

*Schedule, as amended, accordingly agreed to.*

**Clause 10**

EXTENT

*Question proposed,* That the clause stand part of the Bill.

**Michelle Donelan:** The clause is a technical provision setting out the extent of the provisions of the Bill. The majority of the Bill extends to England and Wales, but part 2 of the schedule makes a minor technical correction and consequential amendment to the Counter-Terrorism and Security Act 2015, the relevant part of which extends to England, Wales and Scotland and. As a result, certain provisions in the Bill extend to England, Wales and Scotland. The clause is a necessary technical provision.

*Question put and agreed to.*

*Clause 10 accordingly ordered to stand part of the Bill.*

## Clause 11

COMMENCEMENT

*Question proposed,* That the clause stand part of the Bill.

**Michelle Donelan:** The clause sets out the commencement provisions for certain clauses. It provides that clause 6 and related provisions will come into force on the day the Act is passed, to allow the Secretary of State to make regulations under new section 69B(3) and (4) of the Higher Education and Research Act 2017 in respect of the amount of the penalties that the Office for Students may impose on student unions for breach of freedom of speech duties, and the matters to which the OfS must or must not have regard when imposing such penalties.

Paragraph 7 of the schedule will come into force two months after the legislation has passed, to allow the OfS to consult on changes to its regulatory framework, as required by section 75 of the Higher Education and Research Act 2017. The early commencement of those provisions will allow time for preparation in advance of the main provisions of the Act coming into force. The other provisions will come into force in accordance with regulations made by the Secretary of State. Different days may be appointed for different purposes. Such regulations may include transitional provision and savings.

The clause is a necessary technical provision to allow suitable dates for the commencement of various provisions of the legislation when it is passed.

*Question put and agreed to.*

*Clause 11 accordingly ordered to stand part of the Bill.*

## Clause 12

SHORT TITLE

*Question proposed,* That the clause stand part of the Bill

**Michelle Donelan:** New clause 2 seeks to requires providers to take steps to ensure that student unions have sufficient resource to carry out their duties—

**The Chair:** Order. We are discussing clause 12.

**Michelle Donelan:** I apologise, Mrs Cummins. I am one ahead.

**Matt Western:** I have a minor point relating to the title. It appears pretty straightforward, but there seems to be a variance in how it is listed. The Education Act 1986 included further and higher education. Perhaps it should be the further and higher education (freedom of speech) Bill. Is that something that the Minister would consider?

**Michelle Donelan:** We believe that the title of the Bill is correct.

*Question put and agreed to.*

*Clause 12 accordingly ordered to stand part of the Bill.*

## New Clause 1

DUTIES OF CONSTITUENT INSTITUTIONS

"After section A3 of the Higher Education and Research Act 2017 (inserted by section 1) insert—

"Duties of constituent institutions

A3A Duties of constituent institutions

'(1) Sections A1 to A3 apply in relation to the governing body of a constituent institution of a registered higher education provider as they apply in relation to the governing body of the provider.

(2) Accordingly, in the application of those sections by virtue of subsection (1), references to "the provider" are to be read as references to the constituent institution.

(3) The duties of the governing body of a constituent institution of a registered higher education provider under sections A1 to A3 do not affect the application of any initial or ongoing registration conditions imposed on the provider under Part 1.

(4) In this Part—

"constituent institution", in relation to a registered higher education provider, means any constituent college, school, hall or other institution of the provider;

"governing body", in relation to a constituent institution of a registered higher education provider, has the same meaning as in Part 1 of this Act.'"—*(Michelle Donelan.)*

*This new clause secures that the new duties relating to freedom of speech apply to colleges and other constituent institutions of registered higher education providers in England.*

*Brought up, read the First and Second time, and added to the Bill.*

## New Clause 2

PROVIDERS' DUTY TO ENSURE ADEQUATE RESOURCES FOR STUDENTS' UNIONS

"After section A5 of the Higher Education and Research Act 2017 (inserted by section 2) insert—

'A5A Resourcing of students' unions

The provider must take steps to ensure that students' unions have sufficient resources to carry out their duties under sections A4 and A5 of this Act.'"—*(Matt Western.)*

*Brought up, and read the First time.*

**Matt Western:** I beg to move, That the clause be read a Second time.

This important provision is all about having sufficient resources. As we have debated at some length, student unions will bear a considerable burden of cost and resource to make the duties work on campuses. It is an administrative burden that hitherto they have managed to cope with, but this greatly exceeds what they would have done in the past.

We have to remind ourselves that we are talking about the full plethora of institutions from larger universities to smaller higher education institutions and further education colleges. The Department for Education's impact assessment quotes a cost to student unions of £800,000

*[Matt Western]*

a year to implement and update the code of practice. The impact assessment also makes it clear that student unions will face the heaviest burden because of their unfamiliarity with the new administrative requirements; most universities already have in place good codes of practice on freedom of speech.

The Bill disproportionately affects a variety of SUs, such as those at FE colleges. The Association of Colleges points out in its briefing that 165 FE colleges are registered higher education providers on the Office for Students' list. The recent submission by Durham University, which I am sure is of particular interest to two Committee members, makes it clear that clause 6 could represent a significant additional administrative burden on organisations. Jim Dickinson of Wonkhe highlighted in his submission that

"the funding and resultant capacity and capability of an SU to undertake these duties is usually wholly dependent on a negotiation between the SU and the provider. Without a duty on the provider to resource the SU appropriately to carry out the duty there is a material risk that they will be unable to. Vexatious complaints surrounding, for example, SU elections may not succeed but would cause an SU committee to need to seek costly legal advice which it may not be funded to obtain."

Given that the Government have voted down all our attempts to amend the Bill in a satisfactory manner, the new clause is a form of backstop to ensure that the legislation will not challenge the viability of SUs up and down the country through the need to withstand these costs and the potential for vexatious litigants. The new clause is yet another constructive amendment that we want included in the Bill to recognise the immense financial burden and responsibility faced by student unions in the wide mix of institutions and colleges that the measures will affect. We think it important that the Government recognise that student unions will face that burden, which could seriously affect their viability.

**Lloyd Russell-Moyle:** In local government, the health service, education and other areas, there is a doctrine known as the new burden doctrine. It is a sensible doctrine whereby if a new burden is put upon a body—particularly in local government and in educational bodies under local government—the Government shall make provision to pay for that new burden, or they will provide for that body to be able to raise revenue to cover the new burden.

Higher education institutions have income-raising capacity, although I am sure they would say that the cap should be lifted or the funding formula should be changed. They can make that an argument to the Chancellor at the spending review, and I know that many of them have. I desperately hope that the burden is not put on poorer students, as we are reading in the papers. Personally, I would move to a proper graduate tax, or even free education. A new graduate tax could be introduced for the young, and an old-age social care tax for those who are older, so we could have one joint intergenerational tax that allows a bit of intergenerational solidarity—but I digress.

Despite my desire for free education or a proper graduate tax that does not put people in debt, universities can go and make their case to the Chancellor. They have powers to raise revenue, either by seeking research funding or through student fees. They can get more students in, in fact—they could squeeze two or three more students into lecture halls. Student unions have none of those abilities. They do not, on the whole, raise revenue. Some, which are now the exception, still run some commercial businesses, but that is a rarity in higher education—even in campus universities. Most campus university student unions do not even run their own bars now.

Government Members who think that student unions can raise the money need to look again at student union finances, the vast majority of which come from the good will of the institution. The problem is that if the institution deprives the student union of money, the financial penalty for that student union and its duty do not transfer back to the institution; the liability is not reduced. I suspect that the liability will be covered by the student union's paying basic insurance, but if it is deprived of money it will have no ability to pay for that, while still having the liability.

The new clause does not specify an amount; all it says is that the institution, in appointing the student union—because it appoints the body that is the student union; its job is to say, "This is our registered student union"—has to make sure that the student union has sufficient resources. If the student union has bars and commercial services, the institution can say, "We've ensured that you have the right resources because we can see that you have an income. No problem." If the student union has none of those resources, all the new clause requires is that the institution takes steps to ensure that it has. Perhaps it will give a bar over to the student union to run, so that it generates the resources, or perhaps it will give over an amount of money. The new clause requires that to happen. The guidelines will explain how that happens, of course, but without this provision I am deeply worried that we will be imposing a new burden.

**Mr Richard Holden** (North West Durham) (Con): I have been reading the impact assessment and I can quite understand where the hon. Gentleman is coming from. It suggests that the annual enforcement costs would be around £400,000 a year and that the total ongoing costs directly applying to student unions would be £1.2 million a year nationwide. However, there are over 100 academic institutions and many student unions across the country; if we divide that cost by 100 academic institutions, we are not talking about a huge amount of money per institution. Does the hon. Gentleman not think that student unions should be able to deal with the small extra costs?

**Lloyd Russell-Moyle:** I go back to my point. This is not a huge burden on institutions, but we should require institutions to ensure that there are those resources, given that some student unions have almost zero resources—only a few hundred pounds in the bank account. For many student unions there will be no problem, but provision will be needed for others. The new clause just says to the institution, "Check that your student union can do this." It might just be a matter of a few hundred pounds for the insurance premium. It is fair for the institution to be required to do that. I hope the Minister will take that on board, either in the guidelines or in Lords amendments.

**Emma Hardy:** I try not to get cross, Mrs Cummins, but I am going to get a little bit cross now, and then calm down again.

As I have said many times, this whole Bill has been written with Oxford, Cambridge and all the Russell Group universities in mind. The intervention on my hon. Friend the Member for Brighton, Kemptown by the hon. Member for North West Durham reinforces that view. I keep going back to the 165 FE colleges that are affected by the Bill. How is a small FE college with no full-time student union representatives or independent income going to pay the insurance costs? The assumption is that all will need insurance to cover themselves against any liability. How will they be able to afford that and keep going if all the Bill applies to them?

The Minister says that the provision has to apply to FE colleges because they are higher education institutions, but it does not directly apply to junior common rooms. I will not repeat the long debate that we had about that, but if there is one rule for JCRs, why not look again at further education colleges? All the new clause does is say that there must be adequate resources. I said on Monday that the outcome of the Bill could be the creation of shell-like structures of student unions outside all the ones that can afford it—those of the Russell Group and Oxford and Cambridge. Beyond that, student unions would not exist in any meaningful way, which would be a travesty.

3.30 pm

The Minister now has responsibility for further education and higher education, and the Government have spoken about parity and the importance of both. I believe in the importance of both, and in colleges and higher education institutions such as Hull College having just as good a student union as the University of Hull. However, the student union of the University of Hull has more resources than that of Hull College. All the amendment is saying is they should be given enough resources so that both student unions can abide by the rules that the Government are putting on them, and both can afford to keep going. If the Minister rejects the amendment, which sadly I think she will, she needs to look again at the affordability of the Bill for some of those smaller institutions—in particular further education colleges.

**Michelle Donelan:** Earlier, I was too eager to get to new clause 2. The new clause would require providers to take steps to ensure that student unions have sufficient resources to carry out their duties under proposed new sections A4 and A5 of the Higher Education and Research Act 2017.

There is universal agreement about the importance of freedom of speech in university life. We saw that in the evidence sessions. There is also broad consensus about the important role that student unions play in protecting freedom of speech on campuses. Many student unions do fantastic work in that area, including having their own codes of practice, which often involve collaborative relationships with the provider. We fully expect that to continue, and for providers and student unions to work together, hand in hand, in relation to freedom of speech. That may include, where appropriate, a provider taking steps to ensure its student union is adequately resourced to carry out its duties. It may also involve the sharing of good practice, or a provider assisting the student union with the development of its own code of practice.

The measures are about protecting fundamental principles, not creating more red tape. There is huge diversity among student unions in the ways they are established and funded, reflecting the huge variety in the higher education sector as a whole and in further education. It is important that we reflect that variety in the Bill and do not seek to regulate the relationship between providers and student unions with a one-size-fits-all policy. Some student unions are heavily reliant on funding from their university; others may be more financially independent. Many have developed innovative portfolios as a way to generate income to contribute to a fulfilling university experience for students. The amendment does not reflect that variety or the differing, often complex arrangements that exist between providers and their student unions.

It is also important to note that the duties in proposed new sections A4 and A5 apply only to student unions of approved fee cap providers. Student unions of small, specialist providers that are not approved fee cap providers are not in scope of the Bill. In that way, we are ensuring that the Bill's measures are not overly bureaucratic and follow the approach in the Education Act 1994, which sets out regulatory requirements relating to student unions at a number of institutions, including approved fee cap providers, but not other providers. In contrast, new clause 2 would place an additional, unnecessary regulatory requirement on providers in relation to student unions. In addition, we expect that there will be guidance from the Office for Students in due course that will help student unions to understand how to comply with their duties and assist them in drafting their code of practice.

**Lloyd Russell-Moyle:** If the student union has nothing more than a petty cash box and no staff or sabbatical officers—there are some such student unions—how does the Minister suggest that they draft a professional code of conduct without the institution ensuring that they have the resources to do so? The new clause does not talk about cash; it could be secondment of staff.

**Michelle Donelan:** I thank the hon. Member for that very good point. While not wanting to predetermine the work of the new director, I fully anticipate that they will look at drawing up templates of such codes of practice to assist.

I trust that I have been able to reassure the Committee that we are taking appropriate and proportionate actions to ensure that student unions can address freedom of speech in a way that is not overly bureaucratic and that reflects the variety in their composition, size and financial arrangements.

**Matt Western:** I hear the Minister, but the Opposition believe that it will lead to considerable red tape, even if there are templates to be adopted and so on. I just do not believe that many student unions would be able to cope. There will be associated stresses and certainly great costs, such as the insurance we picked up on the other day. The right hon. Lady talks about there being many student unions that have developed innovative revenue raising. Perhaps there are a number of such cases—I would be interested to know how many there have been among the hundreds we are talking about—but we will press the clause to a vote, because we think there is serious concern about the viability of student unions.

*Question put*, That the clause be read a Second time.

*The Committee divided:* Ayes 7, Noes 9.

**Division No. 24]**

**AYES**

| | |
|---|---|
| Glindon, Mary | Nichols, Charlotte |
| Hardy, Emma | Russell-Moyle, Lloyd |
| Jones, rh Mr Kevan | |
| McDonnell, rh John | Western, Matt |

**NOES**

| | |
|---|---|
| Bacon, Gareth | Holden, Mr Richard |
| Bruce, Fiona | Simmonds, David |
| Buchan, Felicity | Tomlinson, Michael |
| Donelan, rh Michelle | Webb, Suzanne |
| Hayes, rh Sir John | |

*Question accordingly negatived.*

## New Clause 3

SELECT COMMITTEE REVIEW

"(1) The Secretary of State must, at least once every calendar year, invite a select committee of the House of Commons to carry out a review into the effectiveness of the provisions of this Act.

(2) The Secretary of State must invite the select committee to carry out its first review within one year of this Act being passed."—*(Matt Western.)*

*Brought up, and read the First time.*

**Matt Western:** I beg to move, That the clause be read a Second time.

**The Chair:** With this it will be convenient to discuss new clause 6—*Sunset clause*—

"(1) This Act expires at the end of the period of 3 years beginning with the day on which it is passed.

(2) A Minister of the Crown may by regulations made by statutory instrument remove any of the provisions of this Act after one year from the day on which it is passed if he is not satisfied that the provision is working as intended.

(3) Before three years from the day on which this Act is passed a Minister of the Crown must present to Parliament a written report on the effectiveness of the provisions of the Act.

(4) A Minister of the Crown may by regulations made by statutory instrument renew this Act, subject to parliamentary approval in full or in part, or make transitional, transitory or saving provision in connection with the expiry of any provision of this Act.

(5) Regulations under this section shall be subject to the affirmative procedure."

*This new clause would mean the legislation would have to be renewed by Parliament after a period of three years.*

**Matt Western:** The purpose behind new clause 3 is straightforward: it is to ensure that the effectiveness of the legislation is formally reviewed, certainly within a year of it's being passed. Professor Jonathan Grant said in his evidence:

"What I wait to see—I cannot answer this; I am speculating—is whether the legislation will have an impact on that 25% of people who feel that they cannot say what they want to and whether it will change the behaviours of lecturers in the classroom to get more balanced reading lists. I hope that is the case, but we do not know at this stage. If this legislation leads to that, then it has been successful."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 122, Q264.]

There are pretty substantial markers of success. Barring Dr Harris's absurd belief that

"all this Bill needs to do to be successful is to cause a momentary pause. It needs to cause a degree of reflection."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 82, Q175.],

which I would suggest is a marker of success so low that, on this basis, the legislation ought to be passed continually to allow moments of self-reflection, we need to monitor the progression of the , how it is going to work and how it may work once it is, we assume, passed.

If the Government are, as the Committee is saying they are, so keen on the promotion of free speech, surely they would be inclined to allow annual monitoring and to tweak the Bill as necessary—for example, if there is vexatious litigation or confusion among students about which body they should complain to. New clause 3 simply seeks a review by the Education Committee looking into the effectiveness of the Bill's provisions.

New clause 6, which stands in my name and that of my right hon. Friend the Member for Hayes and Harlington, is a straightforward sunset clause of the type that much legislation includes. It states that this legislation should expire after three years beginning on the day it is passed, in view of our belief that it will not work. We are doing our best to be constructive about how it could work better and to mitigate its worst impacts, but we believe it is important to include this sunset clause. It would also give the Minister the power to remove provisions that were acting against the interest of free speech. I am reminded of how my right hon. Friend the Member for North Durham described the chilling effect as a blancmange. If that is so, why not embed the equivalent amount of flexibility in the Bill?

**John McDonnell** (Hayes and Harlington) (Lab): I put my name to the new clause as a point of principle, because I believe that we accumulate legislation—it builds up—but we never really review it properly to see whether it is effective enough and whether it needs proper amendment. This is basically a pragmatic administrative clause that, as my hon. Friend said, appears in many pieces of legislation.

I do not believe the Bill is necessary in this form—I think other actions should be taken—but if we are to pass legislation such as this, an awful lot of the issues will be addressed by regulation and guidance. The new clause gives the opportunity for a review within three years to see whether the legislation as a whole is working effectively, which parts of if are working effectively, and which parts are not and need to be dropped or amended. It is a straightforward administrative mechanism that I believe should be contained in most legislation, to prevent the pile-up of unnecessary burdens.

**Michelle Donelan:** As we have heard, new clause 3 would require the Secretary of State to invite a Select Committee of the House of Commons to review the effectiveness of the provisions of the Bill at least once a year, whereas new clause 6 would make the Bill subject to a sunset clause, so it would expire three years after

the date of enactment unless a report is made to Parliament and regulations are made to renew the Act. It would also Ministers to remove provisions of the Bill one year after enactment if they are not working as intended.

On new clause 3, I can assure Members that the Department for Education will work with the sector to ensure that the measures are properly implemented, and we will review the legislation in the usual way with a post-implementation review. There are also provisions in the Bill as drafted that will help to measure its effectiveness once it comes into force.

Clause 4 provides that the Secretary of State may require the Office for Students to report on freedom of speech and academic freedom matters in its annual report or a special report. The report must be laid before Parliament, so that Parliament and the sector can scrutinise it. Equally, paragraph 12 of new schedule 6A to the 2017 Act and clause 7 of the Bill provide that the Secretary of State may request the OfS to conduct a review of the complaints scheme or its operation, and to report on the results. We therefore do not think it necessary to add yet more provision in the Bill to include a requirement for a Select Committee to conduct an annual review of the effectiveness of the Bill. It is worth noting that the current freedom of speech duties in section 43 of the Education (No. 2) Act 1986 do not have such a requirement, and nor does the Higher Education and Research Act 2017, which is being amended by the Bill, so there is no precedent in this context.

**Emma Hardy:** May we return to the issue of the Select Committee and whether it will have a pre-appointment hearing for the freedom of speech director? Will the Select Committee be able to call the director to give evidence and to have scrutiny, as it did with the leader of Ofsted, Amanda Spielman?

**Michelle Donelan:** A pre-appointment scrutiny hearing is the prerogative of the Government. The Government could decide that, but it does not need to be on the face of the Bill. As for whom the Select Committee calls, I fully anticipate that once the new director is in office, the Select Committee will want to speak directly to them.

Turning to new clause 6, we do not think it would be right or appropriate to set a sunset clause in the Bill. Equally, it would not be right to allow Ministers to remove provisions in the Bill by way of regulations only one year after Parliament had approved the Act, when there has not been enough time for the Act to bed in. A sunset clause for a whole Act would be extremely unusual and considered appropriate only in very particular circumstances. We see no reason why the Bill should be treated differently from the majority of other primary legislation.

The Government believe that the Bill is important and necessary. It must be allowed to take effect in the sector to deal with the issues, so that we no longer have cases of freedom of speech and academic freedom being wrongly restricted. If we do have instances of that, those affected must be able to seek redress. We must have a change of culture on our campuses and create a climate of accountability for decision making, to ensure that our universities are places where debate can thrive. I trust that the Committee will agree with me that these amendments are not necessary and the Bill should be allowed to do its work once it is enacted.

3.45 pm

**Matt Western:** As my right hon. Friend the Member for Hayes and Harlington said, we believe that the amendments are quite straightforward. We should be trying to avoid the piling up of legislation The point has been made many times by my right hon. Friend the Member for North Durham that, for decades, Conservative Governments have claimed that they are reducing red tape and ridding this country of legislation, but here we are again. We seem to be living under what is perhaps the most authoritarian Conservative Government ever. They are introducing more and more legislation and burdens on those who can ill afford it.

We thought that a sunset clause was a very straightforward suggestion. We believe that the Select Committee should have more of a role to play, and why not? Surely the purpose of having a Select Committee is to conduct scrutiny of the work of the Department and agents within the sector; and surely the director of free speech should be part of the scrutiny by that Committee. We will therefore wish to press new clause 6 to a vote.

*Question put and negatived.*

**New Clause 4**

OTHER STUDENT BODIES

"After section A4 of the Higher Education and Research Act 2017 (inserted by section 2) insert—

"A4A Application of students' union provisions to other student bodies

(1) In this Part, where a provision applies to a students' union, it should also be taken to apply to any other student body.

(2) For the purposes of this section "other student body" means—

(a) any Junior Common Room or Middle Common Room of a constituent institution; and

(b) any club or society made up of students at a higher education institution, whether or not the club or society is affiliated to the students' union.""—*(Matt Western.)*

*This amendment would expand the definition of a student body to include any Junior Common room or Middle Common room of a constituent institution or any club or society at a higher education institution, regardless of whether student union affiliation requirements have been complied with.*

*Brought up, and read the First time.*

*Question put,* That the clause be read a Second time.

*The Committee divided:* Ayes 7, Noes 9.

**Division No. 25]**

**AYES**

| | |
|---|---|
| Glindon, Mary | Nichols, Charlotte |
| Hardy, Emma | Russell-Moyle, Lloyd |
| Jones, rh Mr Kevan | Western, Matt |
| McDonnell, rh John | |

**NOES**

| | |
|---|---|
| Bacon, Gareth | Holden, Mr Richard |
| Bruce, Fiona | Simmonds, David |
| Buchan, Felicity | Tomlinson, Michael |
| Donelan, rh Michelle | Webb, Suzanne |
| Hayes, rh Sir John | |

*Question accordingly negatived.*

**New Clause 5**

UNFAIR DISMISSAL

"After section A6 of the Higher Education and Research Act 2017 (inserted by section 3) insert—

"A7 Unfair dismissal

An employee who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is any act or omission which contravenes the duty in section A1.""—*(Fiona Bruce.)*

*This new clause ensures that employment tribunals have jurisdiction to hear claims relating to the duty in section A1.*

*Brought up, and read the First time.*

**Fiona Bruce** (Congleton) (Con): I beg to move, That the clause be read a Second time.

**The Chair:** With this it will be convenient to discuss new clause 13—*Unfair dismissal in violation of academic freedom*—

"(1) A member of academic staff of a higher education provider who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is any act or omission by the provider which contravenes the duty in Section A1.

(2) For the purposes of dismissals under subsection (1), Section 108(1) of the Employment Rights Act 1996 (Qualifying period of employment) shall not apply.

(3) Notwithstanding Section 124 of the Employment Rights Act 1996 (Limit of compensatory award etc.), there shall be no limit on the level of compensation that can be awarded in cases of unfair dismissal in violation of academic freedom.

(4) Section 128 of the Employment Rights Act 1996 (Interim relief pending determination of complaint) shall apply in cases of dismissals under subsection (1)."

*This new clause would render a violation of clause 1 in employment practice as unfair dismissal, regardless of the period of employment at a higher education provider, with no cap on the level of compensation. Interim relief would be available to complainants in such cases.*

**Fiona Bruce:** New clause 5 would ensure that employment tribunals had jurisdiction to hear claims relating to the duty in new section A1 of the Higher Education and Research Act 2017. This Bill has been introduced in part because of the high-profile instances of academics being dismissed. Many of the controversial examples have involved extramural speech rather than research or teaching, which again emphasises the importance of our earlier discussion grappling with the proper ambit of protection of academic freedom

The Committee will recall that Kathleen Stock, who gave oral evidence, faced calls for her dismissal due to her gender critical views. In 2019, we heard about Sarah Honeychurch, a lecturer who was sacked as editor of the academic journal *Hybrid Pedagogy* after signing an open letter to *The Sunday Times* criticising LGBT training in universities. What legal remedy do such academics currently have? One may argue that higher education providers, as public authorities, could be judicially reviewed, but judicial reviews are often prohibitively expensive, particularly for junior academics. Moreover, judicial review does not ordinarily review the merits of an decision, but more usually involves consideration of whether the correct procedures have been followed, which may still not capture some of the mischiefs identified by the Government before introducing the Bill.

Crucially, there is a real risk that, even if they were able to pursue a claim in the High Court, a dismissed academic may not be able to claim dismissal-related losses if they were dismissed due to an exercise of their lawful free speech and academic freedom. In the case of Johnson *v.* Unisys Ltd, the House of Lords took the view that the clear intent of Parliament was that dismissal-related cases and claims of a similar nature

"should be decided by specialist tribunals, not the ordinary courts of law."

That is why I have tabled this modest but hugely significant amendment. We must ensure that those who have been dismissed due to the exercise of academic freedom have an appropriate route of challenge in the employment tribunal—a venue that has the relevant specialisms to deal with dismissal claims, recognising the spirit of and understanding the letter of the law the Bill will introduce. Employment tribunals also have appropriate procedures to simply and significantly reduce the cost burden of claims, especially when compared with the complexity and expense of claims in other proceedings, such as judicial review proceedings.

It may be argued that employment tribunals already deal with claims concerning free speech and that is correct, but invariably such claims must be linked to a protected characteristic, in particular freedom of religion or belief, which has a very specific meaning in equality and discrimination law. I anticipate that most academics would not ordinarily be able to argue that their academic viewpoint springs from their philosophical or religious beliefs, and nor should they have to. Academic freedom is there to ensure that academics have the space to rigorously test and develop new ideas. Dismissal on that basis ought to qualify for specific and special protection with meaningful remedies.

The amendment would address that problem and is consistent with evidence we heard, such as the recommendations from Tom Simpson, who said, for example,

"would seriously support considering introducing the employment tribunal as the first court to consider cases of dismissal in that situation, in addition to the existing measures in here."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 72, Q149.]

I spoke about the Bill to associate professor in the faculty of law at Oxford, Paul Yowell, and I thank him for his time. He particularly emphasised how important he considers such an amendment. I take the opportunity to refer colleagues to his Policy Exchange paper published in the last few days, "The Future of Equality".

In his evidence, Professor Goodwin astutely pointed out:

"If the current system with regard to sacking and dismissal were working, we would not be having this conversation. We would not have had dozens of academics appearing in the newspapers. There was another one this weekend from the University of Bristol who was accused of being Islamophobic. The university had ruled that he was not Islamophobic, but had none the less removed his course in response to student satisfaction."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 13 September 2021; c. 96, Q195.]

He said "satisfaction", but I think it might have been dissatisfaction. In any event, the academic's course was removed in response to comments from students.

**Mr Jones:** Like the right hon. Member for South Holland and The Deepings, the hon. Lady obviously reads a lot into individual cases that are highlighted in

the press. I have some sympathy with her new clause, but it would not prevent people from being appointed. People would find other reasons for debarring people from applying. Could she address the issue of tenure? Employment tribunals deal in contract law—contracts between individuals—but tenure is slightly different. Would the new clause require a change to the way tenure is given to academics?

**Fiona Bruce:** That may require some consideration, but as I am sure the right hon. Member knows, tenure is attained only after very many years of often insecure academic life on the part of academics, and that is one of the issues of which we need to be acutely aware when looking at the Bill.

**Mr Jones:** I am aware of that, but if somebody who has tenure is dismissed from a university because of their views, they would not actually be protected by new clause 5. Although I agree with what the hon. Lady is trying to achieve, it may be difficult to achieve because of the issues around tenure.

**Fiona Bruce:** I am not entirely taking the right hon. Gentleman's point—it probably requires some reflection on my part—but I thank him for raising it, and no doubt the Minister might do the same.

Professor Nigel Biggar noted that

"appeal to the courts is expensive and risky. It seems to me that academics who have lost their job ought to have readier access to lodge a complaint than through the courts."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 31, Q62.]

I hope the Minister will consider my comments.

**Matt Western:** I understand the points that have been made by the hon. Member for Congleton, and I appreciate the sentiment, but I disagree with how new clause 5 is worded, because implicit in its words is quite a narrow conception of unfair dismissal. New clause 13 is broader and affords greater protections, and I hope that the hon. Lady will support it.

Several witnesses underlined why the inclusion of employment law provisions in this conversation is so important. When questioned by my hon. Friend the Member for Brighton, Kemptown on whether employment law would be a better basis for defining some of these rights, Professor Stephen Whittle responded with a categorical yes. In her evidence, lawyer Smita Jamdar said:

"there are often cases where there is a very vigorous disagreement about whether something was an exercise of academic freedom or not when it relates to criticism of the institution."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 57, Q110.]

Employees need the full protection of the law, which is what new clause 13 seeks to provide. Employees would not have to conform to the stringent requirements for bringing an unfair dismissal claim—usually, a two-year qualification period and a range of reasonable responses test, which is construed broadly, often in favour of the employer. They also would not be subject to capped damages awards. There was cross-witness support for this, including from Thomas Simpson, who said:

"I would seriously support considering introducing the employment tribunal as the first court to consider cases of dismissal in that situation, in addition to the existing measures in here."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 72, Q149.]

On Second Reading, the hon. Member for Devizes (Danny Kruger) said:

"We should allow academics to appeal not just through the civil law but to an employment tribunal if their academic freedom is restricted."—[*Official Report*, 12 July 2021; Vol. 699, c. 76.]

New clause 13 is actually an extrapolation of new clause 5. We think that it is broader.

**Mr Jones:** I have a lot of sympathy with this, but will my hon. Friend address the issue of tenure, which is quite a unique employment status. Will it be covered by new clause 13?

**Matt Western:** I am not a lawyer. I would hope that it would be, but my hon. Friend may well be right that it may not be covered. That would be its intent. The concern is about the vulnerability of academics in terms of their tenure and whether they will have the protections that others already have.

I hope the amendment covers that. If it does not, then perhaps this is something we should revisit. I hope the hon. Member for Congleton will recognise that our new clause is an enhanced version of what she is proposing and vote with us.

4 pm

**Michelle Donelan:** New clauses 5 and 13 seek to provide that a dismissal and breach of the new section A1 duty is specifically to be treated as an automatically unfair dismissal under the Employment Rights Act 1996. New clause 13 further seeks to disapply the two-year qualifying period for unfair dismissal in these cases, removing the limit on the level of compensation that can be awarded and applying provisions allowing claimants to seek interim relief, pending determination of their claim.

Let me be clear that the Bill does not stop employees in higher education from taking their claims to employment tribunals. In doing so, employment tribunals may consider questions of freedom of speech and academic freedom and alleged breaches of the section A1 duty in that context, although the Bill does not give them the jurisdiction to hear freedom of speech cases.

The current two-year qualifying period for unfair dismissal is intended to strike the right balance between fairness for employees and flexibility for employers, to ensure that employers are not discouraged from taking on new staff.

**Mr Jones:** I am very interested in what the Minister just said. It is clear that an employment tribunal can be held on sex discrimination grounds or on other grounds, but could she point out in present employment law where it states that someone would be able to bring an industrial tribunal on the basis that they were discriminated against because of freedom of speech? I am not aware of such a law.

**Michelle Donelan:** As I said, tribunals cannot take a freedom of speech case per se, but if there were evidence of discrimination on the grounds of freedom of speech

*[Michelle Donelan]*

in the case that they were taking, that could be heard. I can come back to the right hon. Gentleman with the details of that after the Committee, but I cannot point out the exact line of the legislation on the spot.

**Mr Jones:** As I understand it, an industrial tribunal case could not be taken on the grounds that someone had been dismissed because their freedom of speech had been infringed. That is a problem that came out in the evidence. A tribunal could be brought on the basis of sex discrimination and for other reasons, but if the sole reason for a tribunal was that someone thought they were being dismissed because of their views and that their freedom of speech was being questioned, I am not sure such a tribunal would have jurisdiction over that, given present employment law. If the Minister does not know, I am happy that she writes to the Committee.

**Michelle Donelan:** The point I am trying to make is that an employment tribunal will determine whether a dismissal was fair or unfair, depending on the specific circumstances of the case. Therefore, it may take into account breaches of academic freedom of speech. The Bill does not amend employment law in this regard and we do not think it would be appropriate to make dismissal because of a breach of the new duties an automatic unfair dismissal.

The Bill does, however, give new protections to academic staff, including those who may not have employee status or who have been employed for less than two years. It therefore broadens the scope of the current provision section 43 of the Education (No. 2) Act 1986, to ensure that visiting fellows, for example, have the freedom to research and teach on issues that may be controversial or challenging, without the risk of losing their post.

The Bill provides new specific routes of redress for those without employee status, including a complaints scheme operated by the Office for Students and a statutory tort. I hope that Members are reassured that the Bill strengthens protections for academic staff and employees. It expands the range of available routes of complainants and ensures that a wide range of individuals are able to secure redress.

**Fiona Bruce:** I hear what the Minister says, as well as the comments from other Members, but there is still a lack of clarity. The Minister said that an employment tribunal will decide if a dismissal has been fair or not fair, and may take into account academic freedom.

**Sir John Hayes:** The emphasis here is on "may take into account", in my hon. Friend's words. The important thing is that those tribunals understand both the spirit and letter of the law that the Bill will become, and that the context that she set out is well understood by all concerned.

**Fiona Bruce:** The Government might want to continue to consider this issue as the Bill progresses.

**Mr Jones:** I am now a bit confused by what the Minister has said. Tribunal cases are done on case law. I am not aware of any case law in which unfair dismissal has been upheld on the basis of a freedom of speech issue, so I am at a loss as to what the Minister has said. However, I agree with the hon. Lady that this is something that needs to be looked at in detail on Report.

**Fiona Bruce:** I agree; the Government should consider the matter in the light of the nature of academic contracts, which have been discussed in the course of the Committee's proceedings.

I will not press new clause 5 to a vote, but I do ask the Minister to consider the matter carefully and to be aware that it is likely that colleagues in the House may want to revisit it as the Bill proceeds. I beg to ask leave to withdraw the motion.

*Clause, by leave, withdrawn.*

### New Clause 6

SUNSET CLAUSE

"(1) This Act expires at the end of the period of 3 years beginning with the day on which it is passed.

(2) A Minister of the Crown may by regulations made by statutory instrument remove any of the provisions of this Act after one year from the day on which it is passed if he is not satisfied that the provision is working as intended.

(3) Before three years from the day on which this Act is passed a Minister of the Crown must present to Parliament a written report on the effectiveness of the provisions of the Act.

(4) A Minister of the Crown may by regulations made by statutory instrument renew this Act, subject to parliamentary approval in full or in part, or make transitional, transitory or saving provision in connection with the expiry of any provision of this Act.

(5) Regulations under this section shall be subject to the affirmative procedure."*—(Matt Western.)*

*This new clause would mean the legislation would have to be renewed by Parliament after a period of three years.*

*Brought up, and read the First time.*

*Question put,* That the clause be read a Second time.

*The Committee divided:* Ayes 7, Noes 9.

**Division No. 26]**

**AYES**

| | |
|---|---|
| Glindon, Mary | Nichols, Charlotte |
| Hardy, Emma | Russell-Moyle, Lloyd |
| Jones, rh Mr Kevan | |
| McDonnell, rh John | Western, Matt |

**NOES**

| | |
|---|---|
| Bacon, Gareth | Holden, Mr Richard |
| Bruce, Fiona | Simmonds, David |
| Buchan, Felicity | Tomlinson, Michael |
| Donelan, rh Michelle | Webb, Suzanne |
| Hayes, rh Sir John | |

*Question accordingly negatived.*

### New Clause 7

INDEPENDENT ADVISORY BODY TO ADVISE THE DIRECTOR AND OFS ON THE OPERATION OF THE SCHEME

"(1) Following the passing of this Act, the Secretary of State shall establish an independent advisory body (IAB) to give independent advice to the Director and OfS on the operation of the Act.

(2) The independent advisory body shall comprise of representatives of Universities UK, the Universities and Colleges Union and the National Union of Students.

(3) The advice of IAB shall be public except where mutually agreed by the Director and the IAB."*—(Matt Western.)*

*This new clause would establish an advisory body of representative bodies within the sector to advise the Director and the OfS*

*Brought up, and read the First time.*

*Question put,* That the clause be read a Second time.

*The Committee divided:* Ayes 7, Noes 9.

**Division No. 27]**

**AYES**

| | |
|---|---|
| Glindon, Mary | Nichols, Charlotte |
| Hardy, Emma | Russell-Moyle, Lloyd |
| Jones, rh Mr Kevan | Western, Matt |
| McDonnell, rh John | |

**NOES**

| | |
|---|---|
| Bacon, Gareth | Holden, Mr Richard |
| Bruce, Fiona | Simmonds, David |
| Buchan, Felicity | Tomlinson, Michael |
| Donelan, rh Michelle | Webb, Suzanne |
| Hayes, rh Sir John | |

*Question accordingly negatived.*

## New Clause 8

GUIDANCE ON MAKING A COMPLAINT

"(1) Notwithstanding clause 11, this Act cannot come into force until the Secretary of State publishes guidance for students, university staff, and others setting out which complaint route each should pursue, through which regulatory bodies, and in which order, when making a complaint relating to freedom of speech."—*(Matt Western.)*

*This new clause would ensure that those engaging with universities knew which was the appropriate route to make complaints in the first instance, and how to escalate the process should that be necessary.*

*Brought up, and read the First time.*

*Question put,* That the clause be read a Second time.

*The Committee divided:* Ayes 7, Noes 9.

**Division No. 28]**

**AYES**

| | |
|---|---|
| Glindon, Mary | Nichols, Charlotte |
| Hardy, Emma | Russell-Moyle, Lloyd |
| Jones, rh Mr Kevan | Western, Matt |
| McDonnell, rh John | |

**NOES**

| | |
|---|---|
| Bacon, Gareth | Holden, Mr Richard |
| Bruce, Fiona | Simmonds, David |
| Buchan, Felicity | Tomlinson, Michael |
| Donelan, rh Michelle | Webb, Suzanne |
| Hayes, rh Sir John | |

*Question accordingly negatived.*

## New Clause 9

APPOINTMENT OF THE DIRECTOR FOR FREEDOM OF SPEECH AND ACADEMIC FREEDOM

"(1) The appointment of the Director for Freedom of Speech and Academic Freedom shall be subject to a confirmatory resolution of the relevant Select Committee of the House of Commons.

(2) The Secretary of State shall when appointing the Director for Freedom of Speech and Academic Freedom have regard to the views of an Independent Advisory Body."—*(Matt Western.)*

*This new clause would require the appointment of the Director for Freedom of Speech and Academic Freedom to be confirmed by the Education Select Committee, and for the Secretary of State to consult the Independent Advisory Body when appointing the Director for Freedom of Speech and Academic Freedom.*

*Brought up, and read the First time.*

*Question put,* That the clause be read a Second time.

*The Committee divided:* Ayes 7, Noes 9.

**Division No. 29]**

**AYES**

| | |
|---|---|
| Glindon, Mary | Nichols, Charlotte |
| Hardy, Emma | Russell-Moyle, Lloyd |
| Jones, rh Mr Kevan | Western, Matt |
| McDonnell, rh John | |

**NOES**

| | |
|---|---|
| Bacon, Gareth | Holden, Mr Richard |
| Bruce, Fiona | Simmonds, David |
| Buchan, Felicity | Tomlinson, Michael |
| Donelan, rh Michelle | Webb, Suzanne |
| Hayes, rh Sir John | |

*Question accordingly negatived.*

## New Clause 10

OFS GUIDANCE

"(1) Within six months of sections 1 and 2 of this Act coming into force, the OfS must publish guidance on how universities and students' unions are to carry out the duties under those sections.

(2) Guidance under subsection (1) must be produced in consultation with representatives from higher education providers and students' unions."—*(Emma Hardy.)*

*This new clause would require the OfS to publish guidance, within six months of the relevant clauses coming into effect, on how higher education providers and student unions are to carry out their new duties under clauses 1 and 2.*

*Brought up, and read the First time.*

**Emma Hardy:** I beg to move, That the clause be read a Second time.

I believe that we have debated the issue of guidance at length, so I am happy to beg to ask leave to withdraw the motion.

*Clause, by leave, withdrawn.*

## New Clause 12

HARASSMENT

"In section 26 of the Equality Act 2010, after subsection (4)(c) insert—

'(d) When the case concerns the conduct of academic staff of a registered higher education provider, the importance of freedom of speech and academic freedom, as provided for under Part A1 of the Higher Education and Research Act 2017 (as inserted by section 1 of the Higher Education (Freedom of Speech) Act 2021).'"—*(Matt Western.)*

*This new clause amends the Equality Act 2010 so that, in deciding whether the conduct of academic staff of a registered higher education provider constitutes harassment, the importance of freedom of speech and academic freedom must be taken into account.*

*Brought up, and read the First time.*

**Matt Western:** I beg to move, That the clause be read a Second time.

The former Secretary of State for Education, the right hon. Member for South Staffordshire (Gavin Williamson), said on Second Reading that

"the right to lawful free speech will remain balanced by the important safeguards against harassment, abuse and threats of violence as set out in the Equality Act 2010, the Prevent duty and other legislation, none of which we are changing."—[*Official Report*, 12 July 2021; Vol. 699, c. 49.]

We need to ensure that we embed that balance in harassment provisions in the Bill.

During the evidence sessions, Professor Biggar said:

"The tension arises around the definition of harassment. It is quite right that those with protected characteristics should be protected from harassment. The problem is that harassment is often interpreted by universities—not so much by courts—in such a fashion that dissent from, disagreement with and criticism of becomes harassment. That is obviously a dampener on free speech. The Bill will not resolve that".—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* Tuesday 7 September 2021; c. 30, Q59.]

New clause 12 seeks to harmonise the relationship between promoting academic freedom and freedom of speech with the legal concept of harassment in a way that could act as a counterweight to potentially expansive interpretations of harassment by universities and management. Professor Whittle said:

"The Equality Act provides little protection for anybody who feels that their rights are being disturbed by somebody else's freedom of speech."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 43, Q80.]

Dr Bryn Harris said that

"the explanatory notes of the 2010 Act, as enacted, quite clearly say that in making findings of harassment, courts should take into account academic freedom. I think there is a lot that can be done that would not substantially change the Equality Act, but that would clarify how it applies in the academic context."—[*Official Report, Higher Education (Freedom of Speech) Public Bill Committee,* 7 September 2021; c. 80, Q169.]

Once again, we are seeking to clarify and tighten the legislation on harassment, which is why we tabled new clause 12.

**Michelle Donelan:** New clause 12 seeks to amend the provisions relating to harassment in the Equality Act 2010, which defines it as

"unwanted conduct which is related to a relevant characteristic and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or of violating the complainant's dignity."

The new clause would provide that where a case concerns the conduct of an academic staff member of a registered higher education provider, in deciding whether the conduct has that effect, the importance of freedom of speech and academic freedom must be taken into account. The new clause would amend section 26 of the Equality Act—the general definition of harassment that applies to all areas covered by the Equality Act—rather than chapter 2 of part 6, which deals with further and higher education.

It is already the case that when considering a claim of harassment, courts and tribunals must balance competing rights on the facts of a particular case, which could include the right of freedom of expression, as set out in article 10 of the European convention on human rights, and academic freedom. The explanatory notes to the Equality Act state that specifically in relation to determining the effect of unwanted conduct. Guidance has made it clear that the harassment provision should not be used to undermine academic freedom.

It is also important to note that, under the Equality Act, harassment has both a subjective and an objective element. It is not just based on the views of the person making the complaint. The Act provides that, in deciding the effect of the unwanted conduct, the complainant's perception must be taken into account, but so too must the circumstances of the case and whether it is reasonable for the conduct to have that effect.

New clause 12 would potentially override that by adding a new factor that must be taken into account when deciding whether the conduct of a member of academic staff at a higher education provider constitutes harassment: the importance of freedom of speech and academic freedom. As a result, it could alter the balance that constitutes unlawful harassment and undermine existing protections from harassment in the Equality Act.

I believe that the terms of the Equality Act already address the concerns raised by the new clause, and it would not be appropriate to amend it in that way. It is, of course, vital that freedom of speech generates rigorous debate and advances understanding. To uphold freedom of speech in higher education, students and staff members must be able to express ideas within the law that may be controversial, unpalatable or even deeply offensive. As such, students' learning experience may well include exposure to course material, discussions or speakers' views that they find offensive or unacceptable, but that is unlikely to be considered harassment under the Equality Act.

I hope Members are reassured by that and agree that the new clause is not necessary. As ever, we have sought in the Bill to strike an appropriate balance between protecting individuals from harassment on the one hand and securing lawful freedom of speech on the other. Amending the Equality Act in this way would risk unsettling that balance.

*Question put,* That the clause be read a Second time.

*The Committee divided:* Ayes 6, Noes 8.

**Division No. 30]**

**AYES**

| | |
|---|---|
| Glindon, Mary | Nichols, Charlotte |
| Jones, rh Mr Kevan | Russell-Moyle, Lloyd |
| McDonnell, rh John | Western, Matt |

**NOES**

| | |
|---|---|
| Bacon, Gareth | Hayes, rh Sir John |
| Bruce, Fiona | Simmonds, David |
| Buchan, Felicity | Tomlinson, Michael |
| Donelan, rh Michelle | Webb, Suzanne |

*Question accordingly negatived.*

**New Clause 13**

UNFAIR DISMISSAL IN VIOLATION OF ACADEMIC FREEDOM

"(1) A member of academic staff of a higher education provider who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 as unfairly dismissed

if the reason (or, if more than one, the principal reason) for the dismissal is any act or omission by the provider which contravenes the duty in Section A1.

(2) For the purposes of dismissals under subsection (1), Section 108(1) of the Employment Rights Act 1996 (Qualifying period of employment) shall not apply.

(3) Notwithstanding Section 124 of the Employment Rights Act 1996 (Limit of compensatory award etc.), there shall be no limit on the level of compensation that can be awarded in cases of unfair dismissal in violation of academic freedom.

(4) Section 128 of the Employment Rights Act 1996 (Interim relief pending determination of complaint) shall apply in cases of dismissals under subsection (1)."*—(Matt Western.)*

*This new clause would render a violation of clause 1 in employment practice as unfair dismissal, regardless of the period of employment at a higher education provider, with no cap on the level of compensation. Interim relief would be available to complainants in such cases.*

*Brought up, and read the First time.*

*Question put,* That the clause be read a Second time.

*The Committee divided:* Ayes 6, Noes 8.

**Division No. 31]**

**AYES**

| | |
|---|---|
| Glindon, Mary | Nichols, Charlotte |
| Jones, rh Mr Kevan | Russell-Moyle, Lloyd |
| McDonnell, rh John | Western, Matt |

**NOES**

| | |
|---|---|
| Bacon, Gareth | Hayes, rh Sir John |
| Bruce, Fiona | Simmonds, David |
| Buchan, Felicity | Tomlinson, Michael |
| Donelan, rh Michelle | Webb, Suzanne |

*Question accordingly negatived.*

**Michelle Donelan:** On a point of order, Mrs Cummins. I will take this opportunity to thank you and our other Chair for your excellent chairing of this Committee. I also thank all the Clerks, who have facilitated our Committee, and all hon. Members for the very productive and extensive debate on each of the measures in the Bill.

**Matt Western:** Further to that point of order, Mrs Cummins. I will just add my thanks to you and to Sir Christopher Chope for your sterling work as Chairs of this Committee.

I also express thanks to both the Clerks for their great assistance in assembling the amendments; it was the first time I had to do that, so I greatly appreciated the support and direction that they gave me. I thank the Whips for putting all the work of the Committee together, and I thank all members of the Committee for the spirit of engagement that we have had.

**Sir John Hayes:** Further to that point of order, Mrs Cummins. The right hon. Member for Hayes and Harlington proposed me earlier as the spokesman of the ordinary members of this Committee, or something like that, so I thank the Minister and the shadow Minister for the way that they have performed in this Committee. It is always a challenge for both Ministers and shadow Ministers to maintain the attention of those of us who do not hold those great offices, but they have done so with style and aplomb.

*Bill, as amended, to be reported.*

4.23 pm

*Committee rose.*

## Written evidence reported to the House

HEFSB23 Professor John Heathershaw (Professor of International Relations, University of Exeter); Dr Tena Prelec (Research Fellow, Department of Politics and International Relations at University of Oxford); Professor Alex Cooley (Professor of Political Science, Barnard College/Columbia University); Aleksandra Stankova (Project Manager, University of Exeter)

HEFSB24 Birkbeck Students' Union

HEFSB25 Durham Students' Union

HEFSB26 Association of Colleges

HEFSB27 HOPE not hate