

Higher Education (Freedom of Speech) (Wales) Bill

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Draft: Higher Education (Freedom of Speech) (Wales) Bill

An Act of Senedd Cymru to make provision in relation to freedom of speech and academic freedom in higher education institutions and in students' unions; and for connected purposes.

Having been passed by Senedd Cymru and having received the assent of His Majesty, it is enacted as follows:

Duties to protect freedom of speech

1 Duties of Welsh higher education providers

In the Tertiary Education and Research (Wales) Act 2022, before Part 1 insert:

“PART A1

PROTECTION OF FREEDOM OF SPEECH

Duties of Welsh higher education providers

A1 Duty to take reasonably practicable steps to secure freedom of speech

- (1) The governing body of a Welsh higher education provider must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to achieve the objective in subsection (2).
- (2) That objective is securing freedom of speech within the law for—
 - (a) members of staff of the provider,
 - (b) members of the provider,
 - (c) students of the provider, and
 - (d) visiting speakers.
- (3) The duty in subsection (2) includes, in particular, securing that—
 - (a) the use of any premises of the provider is not denied to any individual or body on the grounds in subsection (4), and
 - (b) the terms on which such premises are provided are not to any extent based on those grounds.

- (4) The grounds are—
 - (a) in relation to an individual, their ideas or opinions;
 - (b) in relation to a body, its policy or objectives or the ideas or opinions of any of its members.
- (5) The objective in subsection (2), so far as relating to academic staff, includes securing their academic freedom.
- (6) In this Part, “academic freedom”, in relation to academic staff at a Welsh higher education provider, means their freedom within the law—
 - (a) to question and test received wisdom, and
 - (b) to put forward new ideas and controversial or unpopular opinions,without placing themselves at risk of being adversely affected in any of the ways described in subsection (7).
- (7) Those ways are—
 - (a) loss of their jobs or privileges at the provider;
 - (b) the likelihood of their securing promotion or different jobs at the provider being reduced.
- (8) The governing body of a Welsh higher education provider must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to achieve the objective in subsection (9).
- (9) That objective is securing that, where a person applies to become a member of academic staff of the provider, the person is not adversely affected in relation to the application because they have exercised their freedom within the law to do the things referred to in subsection (6)(a) and (b).
- (10) In order to achieve the objective in subsection (2), the governing body of a Welsh higher education provider must secure that, apart from in exceptional circumstances, use of its premises by any individual or body is not on terms that require the individual or body to bear some or all of the costs of security relating to their use of the premises.
- (11) In order to achieve the objective in subsection (2), the governing body of a Welsh higher education provider must secure that the provider does not enter into a non-disclosure agreement with a person referred to in that subsection in relation to a relevant complaint made to the provider by the person (and if such a non-disclosure agreement is entered into it is void).

(12) In subsection (11)—

“non-disclosure agreement” means an agreement which purports to any extent to preclude the person from—

- (a) publishing information about the relevant complaint, or
- (b) disclosing information about the relevant complaint to any one or more other persons;

“relevant complaint” means a complaint relating to misconduct or alleged misconduct by any person;

“misconduct” means—

- (a) sexual abuse, sexual harassment or sexual misconduct, and
- (b) bullying or harassment not falling within paragraph (a).

(13) In this Part—

references to freedom of speech are to the freedom to impart ideas, opinions or information (referred to in Article 10(1) of the Convention as it has effect for the purposes of the Human Rights Act 1998) by means of speech, writing or images (including in electronic form);

“the Convention” has the meaning given by section 21(1) of the Human Rights Act 1998;

“member”, in relation to a Welsh higher education provider, does not include a person who is a member of the provider solely because of having been a student of the provider;

“Welsh higher education provider” means, in accordance with section 144(1), a tertiary education provider in Wales that provides higher education;

“governing body” has the meaning given by section 144(1).

A2 Code of practice

(1) The governing body of a Welsh higher education provider must, with a view to facilitating the discharge of the duties in section A1(1) and (10) maintain a code of practice setting out the matters referred to in subsection (2).

(2) Those matters are—

- (a) the provider’s values relating to freedom of speech and an explanation of how those values uphold freedom of speech,

- (b) the procedures to be followed by staff and students of the provider and any students' union for students at the provider in connection with the organisation of—
 - (i) meetings which are to be held on the provider's premises and which fall within any class of meeting specified in the code, and
 - (ii) other activities which are to take place on those premises and which fall within any class of activity so specified,
 - (c) the conduct required of such persons in connection with any such meeting or activity, and
 - (d) the criteria to be used by the provider in making decisions about whether to allow the use of premises and on what terms (which must include its criteria for determining whether there are exceptional circumstances for the purposes of section A1(10)).
- (3) The code of practice may deal with such other matters as the governing body considers appropriate.
- (4) The governing body of a Welsh higher education provider must take the steps that are reasonably practicable for it to take (including where appropriate the initiation of disciplinary measures) in order to secure compliance with its code of practice.
- (5) The governing body of a Welsh higher education provider must, at least once a year, bring—
- (a) the provisions of section A1, and
 - (b) its code of practice under this section,
- to the attention of all its students.

A3 Duty to promote the importance of freedom of speech and academic freedom

The governing body of a Welsh higher education provider must promote the importance of—

- (a) freedom of speech within the law, and
- (b) academic freedom for academic staff of Welsh higher education providers and their constituent institutions,

in the provision of higher education.”

2 Duties of constituent institutions

After section A3 of the Tertiary Education and Research (Wales) Act 2022 (inserted by section 1) insert—

“Duties of constituent institutions

A4 Duties of constituent institutions

- (1) Sections A1 to A3 apply in relation to the governing body of a constituent institution of a Welsh 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 Welsh 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 2 of this Act.
- (4) In this Part—

“constituent institution”, in relation to a Welsh 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 Welsh higher education provider, has the meaning given by section 144(1);

“member”, in relation to a constituent institution of a Welsh higher education provider, does not include a person who is a member of the institution solely because of having been a student of the institution.”

3 Duties of students’ unions

After section A4 of the Tertiary Education and Research (Wales) Act 2022 (inserted by section 2) insert—

“Duties of students’ unions

A5 Duty to take steps to secure freedom of speech

- (1) A students’ union for students at a Welsh higher education provider that is eligible for financial support must take the steps that, having particular regard

to the importance of freedom of speech, are reasonably practicable for it to take in order to achieve the objective in subsection (2).

- (2) That objective is securing freedom of speech within the law for—
 - (a) members of the students’ union,
 - (b) students of the provider,
 - (c) staff of the students’ union,
 - (d) staff and members of the provider and of its constituent institutions, and
 - (e) visiting speakers.
- (3) The objective in subsection (2) includes securing that—
 - (a) the use of any premises occupied by the students’ union is not denied to any individual or body on grounds specified in subsection (4),
 - (b) the terms on which such premises are provided are not to any extent based on such grounds, and
 - (c) affiliation to the students’ union is not denied to any student society on grounds specified in subsection (4)(b).
- (4) The grounds referred to in subsection (3) are—
 - (a) in relation to an individual, their ideas or opinions;
 - (b) in relation to a society or other body, its policy or objectives or the ideas or opinions of any of its members.
- (5) In order to achieve the objective in subsection (2), a students’ union for students at a Welsh higher education provider that is eligible for financial support must secure that, apart from in exceptional circumstances, use by any individual or body of premises occupied by the students’ union is not on terms that require the individual or body to bear some or all of the costs of security relating to their use of the premises.
- (6) In this Part—

“member”, in relation to a students’ union which is a representative body and not an association (see section 20(1)(b) of the Education Act 1994), means those whom it is the purpose of the union to represent, excluding any student who has signified that they do not wish to be represented by it;

“Welsh higher education provider that is eligible for financial support” means a Welsh higher education provider that is an eligible higher education provider for the purposes of section 65 of the Further and Higher Education Act 1992;

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

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

A6 Code of practice

- (1) A students’ union to which section A5 applies must, with a view to facilitating the discharge of its duties under that section, maintain a code of practice setting out the matters referred to in subsection (2).
- (2) Those matters are—
- (a) the students’ union’s values relating to freedom of speech and an explanation of how those values uphold freedom of speech,
 - (b) the procedures to be followed by its staff and its members who are students of the Welsh higher education provider referred to in section A5(1) in connection with the organisation of—
 - (i) meetings which are to be held on the premises occupied by the students’ union and which fall within any class of meeting specified in the code, and
 - (ii) other activities which are to take place on those premises and which fall within any class of activity so specified,
 - (c) the conduct required of such persons in connection with any such meeting or activity, and
 - (d) the criteria to be used by the students’ union in making decisions about—
 - (i) the union’s support and funding for events and activities to which the duties in section A5 are relevant, and
 - (ii) whether to allow the use of premises and on what terms (which must include its criteria for determining whether there are exceptional circumstances for the purposes of section A5(5)).
- (3) The code of practice may deal with such other matters as the students’ union considers appropriate.

- (4) A students' union to which section A5 applies must take the steps that are reasonably practicable for it to take (including where appropriate the initiation of disciplinary measures) in order to secure compliance with its code of practice.
- (5) A students' union to which section A5 applies must, at least once a year, bring—
 - (a) the provisions of section A5, and
 - (b) its code of practice under this section,to the attention of all of its members who are students of the provider.”

4 Civil claims

After section A6 of the Tertiary Education and Research (Wales) Act 2022 (inserted by section 3) insert—

“Civil proceedings

A7 Civil claims for breach of duty

- (1) A person may bring civil proceedings, including for injunctive relief, against—
 - (a) a Welsh higher education provider, in respect of a breach by the governing body of the provider of any of its duties under section A1 that causes the person to sustain loss,
 - (b) a constituent institution of a Welsh higher education provider, in respect of a breach by the governing body of the institution of any of its duties under section A1 that causes the person to sustain loss, or
 - (c) a students' union, in respect of a breach by it of any of its duties under section A5 that causes the person to sustain loss.
- (2) In subsection (1), “loss” means loss of any kind (pecuniary or non-pecuniary).”

Functions of the Commission for Tertiary Education and Research

5 General functions

After the words ‘*The Commission’s strategic duties*’ at section 2 of the Tertiary Education and Research (Wales) Act 2022 insert—

“1A Freedom of speech

- (1) In performing its functions, the Commission must have regard to—
 - (a) the need to promote the importance of freedom of speech within the law in the provision of higher education by Welsh higher education providers, and
 - (b) the need to protect the academic freedom of academic staff at Welsh higher education providers,
- (2) The Commission must promote the importance of—
 - (a) freedom of speech within the law, and
 - (b) academic freedom for academic staff of Welsh higher education providers and their constituent institutions,in the provision of higher education by Welsh higher education providers and their constituent institutions.
- (3) The Commission may —
 - (a) identify good practice relating to how to support freedom of speech and academic freedom, and
 - (b) give advice about such practice to Welsh higher education providers and their constituent institutions.
- (4) The Welsh Ministers may, by direction, require the Commission to report to the Welsh Ministers—
 - (a) in its annual report under paragraph 16 of Schedule 1, or
 - (b) in a special report,on such matters relating to freedom of speech and academic freedom as may be specified in the direction.
- (5) Where the Welsh Ministers are provided with a special report, the Welsh Ministers must lay it before Senedd Cymru.
- (6) See paragraph 16 of Schedule 1 for the laying of the Commission’s annual reports.”

6 Regulation of duties of Welsh higher education providers

After section 31 of the Tertiary Education and Research (Wales) Act 2022 insert—

“31A Mandatory conditions relating to freedom of speech

- (1) The Commission must ensure that the initial registration conditions applicable to an provider and its ongoing registration conditions include a condition requiring that—
 - (a) the provider’s governing documents are consistent with compliance by the governing body of the provider with its duties under sections A1 to A3, and
 - (b) the provider has in place adequate and effective management and governance arrangements to secure compliance by the governing body of the provider with those duties.
- (2) The Commission must ensure that the ongoing registration conditions of each Welsh higher education provider include a condition requiring that the governing body of the provider complies with its duties under sections A1 to A3.
- (3) The Commission must ensure that the ongoing registration conditions of each Welsh higher education provider that is eligible for financial support include a condition requiring that the governing body of the provider keeps the Commission informed of the associations or bodies which are students’ unions for students at that provider.”

7 Regulation of duties of students’ unions

After section 1A of the Tertiary Education and Research (Wales) Act 2022 (inserted by section 5) insert—

“1B Functions of the Commission in relation to students’ unions

- (1) The Commission must monitor whether students’ unions to which sections A5 and A6 apply are complying with their duties under those sections.
- (2) The Commission may impose a monetary penalty on a students’ union if it appears to the Commission that it is failing or has failed to comply with any of its duties under those sections.
- (3) A “monetary penalty” is a requirement to pay the Commission a penalty of an amount determined by the Commission in accordance with regulations made by the Welsh Ministers.
- (4) The Welsh Ministers may by regulations make provision about matters to which the Commission must, or must not, have regard in exercising its power under subsection (2).

- (5) The Commission must maintain a list of the students' unions to which, according to the information held by the Commission, sections A5 and A6 apply.
- (6) The Commission must make the list maintained under subsection (5) publicly available by such means as it considers appropriate.
- (7) A students' union to which sections A5 and A6 apply must provide the Commission, or a person nominated by the Commission, with such information for the purposes of the performance of the Commission's functions under this section as the Commission may require it to provide.
- (8) If a students' union fails to comply with a requirement under subsection (7) and does not satisfy the Commission that it is unable to provide the information, the Commission may enforce the duty to comply with the requirement in civil proceedings for an injunction."

8 Complaints scheme

- (1) After section 1B of the Tertiary Education and Research (Wales) Act 2022 (inserted by section 7) insert—

“1C Complaints scheme

- (1) Schedule 1A contains provision for a scheme for the making and investigation of complaints relating to the duties of Welsh higher education providers, their constituent institutions and students' unions in respect of freedom of speech and academic freedom.”
- (2) After Schedule 1 to that Act insert—

“SCHEDULE 1A

FREE SPEECH COMPLAINTS SCHEME

Introductory

- 1 (1) The Commission must provide a scheme under which the Commission is to review and determine free speech complaints (in this Schedule called “the scheme”).
- (2) In this Schedule “free speech complaint” means—
 - (a) a HEP free speech complaint (see paragraph 2), or
 - (b) a students' union free speech complaint (see paragraph 3).
- 2 (1) A HEP free speech complaint is a complaint made by an eligible person to the Commission which—

- (a) claims that the person has suffered adverse consequences as a result of action or inaction of the governing body of a Welsh higher education provider or of a constituent institution of such a provider, and
 - (b) claims that, or gives rise to a question as to whether, the action or inaction was a breach of a duty of the governing body under section A1.
 - (2) In sub-paragraph (1), “eligible person” means—
 - (a) a person who is or was a student, member or member of staff of the provider or constituent institution (as the case may be),
 - (b) a person who has applied to become a member of academic staff of the provider or constituent institution (as the case may be), or
 - (c) a person who was, or was at any time invited to be, a visiting speaker.
 - (3) A HEP free speech complaint may include claims other than those described in sub-paragraph (1).
 - 3 (1) A students’ union free speech complaint is a complaint made by an eligible person to the Commission which—
 - (a) claims that the person has suffered adverse consequences as a result of action or inaction of a students’ union for students at a Welsh higher education provider that is eligible for financial support, and
 - (b) claims that, or gives rise to a question as to whether, the action or inaction was a breach of a duty of the students’ union under section A5.
 - (2) In sub-paragraph (1), “eligible person” means—
 - (a) a person who is or was—
 - (i) a member or member of staff of the students’ union,
 - (ii) a student of the provider, or
 - (iii) a member or member of staff of the provider or of any of its constituent institutions, or
 - (b) a person who was, or was at any time invited to be, a visiting speaker.
 - (3) A students’ union free speech complaint may include claims other than those described in sub-paragraph (1).
- 4 In this Schedule, references to the “parties” to a free speech complaint are to—
 - (a) the person making the complaint (“the complainant”), and

- (b) the governing body of a Welsh higher education provider or constituent institution or students' union about which the complaint is made.

Scope of scheme

- 5 (1) The scheme must provide that every free speech complaint is capable of being referred under the scheme.
- (2) But the scheme may include provision that—
- (a) free speech complaints must be referred under the scheme within a time limit specified in, or determined in accordance with, the scheme;
 - (b) a free speech complaint is not to be referred under the scheme until the complainant has exhausted any internal procedure for the review of complaints which is provided by the Welsh higher education provider, constituent institution or students' union about which the complaint is made;
 - (c) a free speech complaint is not to be referred under the scheme if proceedings relating to the subject-matter of the complaint, to which the complainant is or was a party, are being, or have been, dealt with by a court or tribunal;
 - (d) a free speech complaint is not to be referred under the scheme if a complaint brought by the complainant and relating to the same subject-matter is being, or has been, dealt with under the student complaints scheme.
- (3) In sub-paragraph (2)(d), the “student complaints scheme” means the scheme for the review of qualifying complaints (within the meaning of section 12 of the Higher Education Act 2004) that is provided by the designated operator (within the meaning of section 13(5)(b) of that Act).

Decisions and recommendations

- 6 (1) The scheme must require the Commission to—
- (a) to make a decision as to the extent to which a free speech complaint which is referred under the scheme and not withdrawn is justified, and
 - (b) to make that decision as soon as reasonably practicable.
- (2) But the scheme may allow the Commission to dismiss a free speech complaint without consideration of the merits of it if the Commission considers the complaint to be frivolous or vexatious.
- 7 (1) The scheme must provide that, where the Commission considers a free speech complaint to be justified (wholly or partly), it may make a recommendation to the governing body or students' union about which the complaint is made.

- (2) A complaint may be partly justified if, for example, the Commission considers that the governing body or students' union has breached a duty under section A1 or A5 but the complainant did not suffer adverse consequences as a result of the breach.
 - (3) A recommendation for which the scheme may provide is a recommendation—
 - (a) to do anything specified in the recommendation (which may include the payment of sums specified in the recommendation), or
 - (b) to refrain from doing anything specified in the recommendation.
 - (4) But the scheme may not provide for recommendations arising from claims included in a free speech complaint which are not claims described in paragraphs 2(1) and 3(1).
 - (5) The scheme may not authorise the Commission to require anyone to do or not do anything.
 - (6) The powers of the Commission to make recommendations under the scheme do not affect any of its other powers.
- 8 The scheme must require the Commission to notify the parties to a free speech complaint in writing of—
- (a) its decision and its reasons for making it, and
 - (b) any recommendation it has made and its reasons for making it.

Fees

- 9 The scheme may not require complainants to pay any fees in connection with the operation of the scheme.

Publication

- 10 The Commission must publish the latest version of the scheme in such manner as it thinks fit.

Duty to comply

- 11 (1) The Commission, a Welsh higher education provider, a constituent institution of such a provider and a students' union must comply with any requirements that the scheme imposes on it.
- (2) If a Welsh higher education provider, a constituent institution or a students' union fails to comply with a requirement imposed by the scheme, and does not satisfy the Commission that it is unable to comply, the Commission may enforce the requirement in civil proceedings for an injunction.

Review

- 12 (1) This paragraph applies if the Welsh Ministers request the Commission to—
- (a) conduct a review of the scheme or its operation (or any aspect of either of those matters), and
 - (b) report the results of the review to the Welsh Ministers.
- (2) The Commission must comply with the request within such time as may be specified by the Welsh Ministers.
- (3) In conducting the review, the Commission must comply with any particular requirements imposed by the Welsh Ministers.

Power for the Commission to publish decisions, recommendations and reports

- 13 (1) The Commission may publish decisions, recommendations and reports given or made in the performance of its functions under this Schedule.
- (2) Subsection (1) does not affect any other power of the Commission to publish such a matter.
- (3) Publication under this section does not breach—
- (a) an obligation of confidence owed by the Commission, or
 - (b) any other restriction on the publication or disclosure of information (however imposed).
- (4) But nothing in this Schedule authorises the Commission to publish information where doing so contravenes the data protection legislation. For this purpose “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).
- (5) In deciding whether to publish a notice, decision or report under subsection (1), the Commission must, in particular, consider—
- (a) the interests of—
 - (i) students on higher education courses provided by Welsh higher education providers,
 - (ii) people thinking about undertaking, or who have undertaken, such courses, and
 - (iii) Welsh higher education providers,
 - (b) the need for excluding from publication, so far as practicable, any information which relates to the affairs of a particular body or individual, where publication of that information would or might, in the opinion of the Commission, seriously and prejudicially affect the interests of that body or individual, and

(c) the public interest.

(6) For the purposes of this section—

(a) a reference to a decision includes a reference to the reasons for it, and

(b) any decision made in the course of exercising, or for the purposes of enabling the Commission to exercise, any of the Commission's functions under this Schedule (including making any other decision) is made "in the performance of its functions under this Schedule".

Defamation

14 For the purposes of the law of defamation, absolute privilege attaches to the publication under paragraph 13 of—

(a) any decision or recommendation made by the Commission under the scheme, and

(b) any report under paragraph 12 (1)(b)."

9 Overseas funding

(1) The Tertiary Education and Research (Wales) Act 2022 is amended as follows.

(2) After section 1C (inserted by section 8) insert—

“1D Overseas funding: Welsh higher education providers

(1) The Commission must monitor the overseas funding of Welsh higher education providers and their constituent institutions with a view to assessing the extent to which the funding presents a risk to the matters in subsection (2).

(2) The matters are—

(a) freedom of speech within the law, and

(b) the academic freedom of academic staff of Welsh higher education providers and their constituent institutions,

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

(3) The duty in subsection (1) includes a duty to consider, in a case where the Commission has found that a Welsh higher education provider or any constituent institution of a Welsh higher education provider is in breach of

its duty under section A1, whether overseas funding was relevant to the breach.

- (4) The information which the governing body of a Welsh higher education provider may be required to provide under the condition under section 31(1)(j), in relation to the function of the Commission under subsection (1), is—
 - (a) information as to relevant funding from a relevant overseas person, where the funding from that person exceeds the threshold in any period of 12 months specified by the Commission, and
 - (b) if the Commission considers it appropriate in any circumstances, such other information as the Commission may reasonably require.
- (5) In this section “relevant funding” from a relevant overseas person, in relation to a Welsh higher education provider, means amounts which are received by the provider or a connected person—
 - (a) by way of endowment, gift or donation from the relevant overseas person,
 - (b) by way of research grant from the relevant overseas person,
 - (c) pursuant to a research contract with the relevant overseas person, or
 - (d) pursuant to an educational or commercial partnership with the relevant overseas person.
- (6) In subsection (5) “connected person”, in relation to a Welsh higher education provider, means—
 - (a) the governing body of the provider,
 - (b) a constituent institution of the provider, or
 - (c) a member or member of staff of the provider or of a constituent institution, in their capacity as such.
- (7) For the purposes of subsection (5), treat receipt of anything that is not money as receipt of an amount equal to the value of the thing to the recipient at the time of receipt.
- (8) In this section “relevant overseas person” means—
 - (a) the government of an overseas country, other than a prescribed country,
 - (b) a body which is incorporated or registered in, or has its headquarters in, an overseas country other than a prescribed country, or

(c) an individual who is a politically exposed person in relation to an overseas country other than a prescribed country.

(9) In this section—

“overseas country” means any country or territory outside the United Kingdom, but not including the Channel Islands, the Isle of Man and any British overseas territory;

“politically exposed person” has the meaning given by regulation 35 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692);

“prescribed country” means a country or territory specified in regulations made by the Welsh Ministers.

(10) For the purposes of subsection (4)(a), “the threshold” means an amount specified in regulations made by the Welsh Ministers.

(11) Regulations under subsection (10) may include provision—

(a) as to how the amount specified is to be calculated;

(b) to treat amounts received from a person other than a relevant overseas person as received from the relevant overseas person.

1E Overseas funding: students’ unions

(1) The Commission must monitor the overseas funding of students’ unions at Welsh higher education providers that are eligible for financial support with a view to assessing the extent to which the funding presents a risk to the matter in subsection (2).

(2) The matter is freedom of speech within the law for—

(a) members of the students’ unions,

(b) students of the providers,

(c) staff of the students’ unions,

(d) staff and members of the providers and of their constituent institutions,
and

(e) visiting speakers.

- (3) The duty in subsection (1) includes a duty to consider, in a case where the Commission has found that a students' union is in breach of its duty under section A5, whether overseas funding was relevant to the breach.
- (4) For the purpose of the function of the Commission under subsection (1), a students' union referred to in that subsection must provide to the Commission at such times, and in respect of such periods, as the Commission may reasonably request—
- (a) information as to any amounts received from a relevant overseas person, where the amounts exceed the threshold in any period of 12 months specified by the Commission, and
 - (b) if the Commission considers it appropriate in any circumstances, such other information as the Commission may reasonably require.
- (5) If a students' union fails to comply with its duty under subsection (4), the Commission may enforce the duty in civil proceedings for an injunction.
- (6) The following provisions of section 1D apply for the purposes of this section—
- (a) subsection (7) (things other than money);
 - (b) subsections (8) and (9) (meaning of “relevant overseas person”);
 - (c) subsections (10) and (11) (meaning of “threshold”).”
- (3) In Schedule 1, in paragraph 16 (annual reports), after sub-paragraph (1)(f) insert—
- “(fa) includes:
- (i) a summary of information received by the Commission pursuant to sections 1D and 1E for that year, and
 - (ii) a summary of conclusions drawn by the Commission for that year, from its monitoring under sections 1D(1) and 1E(1), regarding relevant patterns, trends or other matters which it has identified and which are of concern to the Commission.”

10 Director for Freedom of Speech and Academic Freedom

In Schedule 1 to the Tertiary Education and Research (Wales) Act 2022, after paragraph 2 insert—

“The Director for Freedom of Speech and Academic Freedom

2A (1) The Director for Freedom of Speech and Academic Freedom (“the Free Speech Director”) is responsible for—

- (a) overseeing the performance of the Commission’s free speech functions,
 - (b) performing, in accordance with paragraph 18, any of those functions, or other functions, of the Commission which are delegated to the Free Speech Director under that paragraph, and
 - (c) reporting to the other members of the Commission on the performance of the Commission’s free speech functions.
- (2) For the purposes of this Schedule, the Commission’s “free speech functions” are—
- (a) its functions relating to monitoring and enforcing the registration conditions of Welsh higher education providers under section 31A, and
 - (b) its functions under sections 1A to 1E and Schedule 1A.”

General

11 Minor and consequential amendments

The Schedule to this Act contains minor and consequential amendments.

12 Commencement

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
- (a) section 7, so far as is necessary for enabling the exercise on or after the day on which this Act is passed of the powers to make regulations conferred by section 1B(3) and (4) of the Tertiary Education and Research (Wales) Act 2022 (inserted by section 7);
 - (b) section 9, so far as is necessary for enabling the exercise on or after the day on which this Act is passed of the powers to make regulations conferred by section 1D of the Tertiary Education and Research (Wales) Act 2022 (inserted by section 9);
 - (c) this section;
 - (d) section 13;
 - (e) paragraph 6 of the Schedule.
- (2) Paragraph 5 of the Schedule comes into force at the end of the period of two months beginning with the day on which this Act is passed.

- (3) The other provisions of this Act come into force on such day as the Welsh Ministers may by regulations made by statutory instrument appoint.
- (4) Different days may be appointed for different purposes.
- (5) Regulations under subsection (3) may include transitional provision and savings.

13 Short title

This Act may be cited as the Higher Education (Freedom of Speech) (Wales) Act 2026.

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS TO THE TERTIARY EDUCATION AND RESEARCH (WALES) ACT 2022

- 1 The Tertiary Education and Research (Wales) Act 2022 is amended as follows.
- 2 At section 17(1) omit “and the Commission”.
- 3 At section 20, before “In exercising its functions” insert “(1)” and after “Welsh Ministers” insert—
 - “(2) In giving such guidance, the Welsh Ministers must have regard to the need to protect and the academic freedom of academic staff at such providers.
 - (3) Guidance given by the Welsh Ministers to the Commission which relates to students’ unions must apply to students’ unions generally or to a description of them.”
- 4 After subsection 86(5) insert—
 - “(5A) In determining the terms and conditions under section 85 relating to the provision of financial resources by the Commission under section 88 or 89 (higher education), or relating to the provision of financial resources by the Commission under section 105 (research and innovation), the Welsh Ministers must have regard to the need to protect the academic freedom of academic staff at Welsh higher education providers.”
- 5 (1) Section 50 (quality assurance frameworks) is amended as follows.

(2) After paragraph (2)(a) insert—

- “(aa) systems, processes, governing documents and policies for achieving compliance with sections A1 to A3;
- (ab) systems, processes, governing documents and policies for achieving compliance with sections A5 and A6.”

(3) After subsection (2) insert—

- “(3B) Any guidance relating to subsection (2)(aa) must include guidance for the purpose of helping to determine whether or not Welsh higher education providers are complying with their duties under sections A1 to A3.
- 3C The guidance relating to subsection (2)(aa) may in particular specify—
 - (a) what the Commission considers Welsh higher education providers need to do to comply with their duties under sections A1 to A3;
 - (b) factors which the Commission will take into account in determining, for the purposes of section 31A, whether or not a Welsh higher education provider is complying with its duties under those sections.
- 3D Any guidance relating to subsection (2)(ab) must include guidance for the purpose of helping to determine whether or not students’ unions are complying with their duties under sections A5 and A6.
- 3E The guidance relating to subsection (2)(ab) may in particular specify—
 - (a) what the Commission considers students’ unions need to do to comply with their duties under sections A5 and A6;
 - (b) factors which the Commission will take into account in determining, for the purposes of section 1B, whether or not a students’ union is complying with its duties under those sections.”

(4) After subsection (4) insert—

- “(4A) In publishing a framework (or any revised framework) or withdrawing a framework under this section, the Commission must have particular regard to:

- (a) the need to promote the importance of freedom of speech within the law in the provision of higher education by Welsh higher education providers; and
 - (b) the need to protect the academic freedom of academic staff at Welsh higher education providers.”
- 6 (1) Section 84 (Interpretation of Part 2) is amended as follows.
- (2) Before the definition of “academic year” insert—

““academic freedom” has the meaning given by section A1(6) and (7);”
 - (3) After the definition of “Chief Inspector” insert—

““constituent institution”, in relation to a Welsh higher education provider, has the same meaning as in Part A1 (see section A4(4));”
 - (4) Before the definition of “governing body” insert—

“references to freedom of speech have the same meaning as in Part A1 (see section A1(13));”
 - (5) After the definition of “governing body” insert—

““member”, in relation to a Welsh higher education provider or a constituent institution of such a provider, has the same meaning as in Part A1 (see sections A1(13) and A4(4));

“member”, in relation to a students’ union which is a representative body and not an association (see section 20(1)(b) of the Education Act 1994), means those whom it is the purpose of the union to represent, excluding any student who has signified that they do not wish to be represented by it;”
 - (6) After the definition of “relevant academic year” insert—

““students’ union”, in relation to any provider, has the same meaning as it has in Part 2 of the Education Act 1994 in relation to establishments to which that Part applies (see section 20 of that Act);”
 - (7) After the definition of “students’ union” (inserted by subsection (6) above) insert—

“Welsh higher education provider that is eligible for financial support” has the same meaning as in Part A1 (see sections A5(6));”

PART 2

AMENDMENTS TO THE EDUCATION (NO 2) ACT 1986

7 Section 43 of the Education (No 2) Act 1986 is amended as follows.

8 At subsection (5)—

- (a) omit paragraphs (a) and (aa); and
- (b) omit the words “higher or” from paragraph (b).

9 At paragraph (6)(b) omit the words “the higher education sector or”.

PART 3

AMENDMENTS TO THE COUNTER-TERRORISM AND SECURITY ACT 2015

10 The Counter-Terrorism and Security Act 2015 is amended as follows.

11 (1) Section 31 (freedom of expression in universities etc) is amended as follows.

(2) In subsection (2), after subparagraph (ii) insert—

“(iii) to take steps to secure freedom of speech imposed by section A1(1) of the Tertiary Education and Research (Wales) Act 2022, if it is subject to that duty”

(3) In subsection (3), after subparagraph (ii) insert—

“(iii) to take steps to secure freedom of speech imposed by section A1(1) of the Tertiary Education and Research (Wales) Act 2022, in the case of authorities that are subject to that duty;”

(4) In subsection (4), after subparagraph (ii) insert—

“(iii) to take steps to secure freedom of speech imposed by section A1(1) of the Tertiary Education and Research (Wales) Act 2022, in the case of authorities that are subject to that duty;”

(5) In subsection (5), for the definition of “academic freedom”—

(a) after subparagraph (b)(a) insert—

“(aa) in relation to a Welsh higher education provider or a constituent institution of such a provider has the meaning given by section 84 of the Tertiary Education and Research (Wales) Act 2022;”

(b) at subparagraph (b)(b), omit the words “an institution in Wales or”;

(c) at the definition of “constituent institution” after the words “(see section A4(4) of that Act)” insert—

“, and in relation to a Welsh higher education provider, has the same meaning as in Part A1 Tertiary Education and Research (Wales) Act 2022 (see section A4(4) of that Act);”

(d) omit the definition of “institution in Wales”;

(e) for the definition of “qualifying institution” substitute—

““qualifying institution” means any of the following—

(a) a registered higher education provider,

(b) a Welsh higher education provider,

(c) a constituent institution of a provider under paragraph (a) or (b),
and

(d) an institution in Scotland which is a qualifying institution for the purposes of section 202 of the Education Reform Act 1988;”;

(f) after the definition of “registered higher education provider” insert—

““Welsh higher education provider” has the meaning given by section A1(13) of the Tertiary Education and Research (Wales) Act 2022.”

PART 4

AMENDMENTS TO THE HIGHER EDUCATION (WALES) ACT 2015

12 After section 16 insert—

“Freedom of speech and academic freedom

16A Freedom of speech and academic freedom

(1) A fee and access plan must be compatible with an institution’s duties under sections A1 to A3 of the Tertiary Education and Research (Wales) Act 2022.”

PART 5

AMENDMENTS TO THE HIGHER EDUCATION ACT 2004

13 In Schedule 2 to the Higher Education Act 2004 (conditions to be met by student complaints scheme), after the words “the Higher Education and Research Act 2017” at paragraph 3(2)(d) insert—

“, or dealt with by the Commission for Tertiary Education and Research under the scheme provided by virtue of Schedule 1A to the Tertiary Education and Research (Wales) Act 2022”

PART 6

MINOR AMENDMENTS

- 14 The Welsh Ministers may by regulations make further consequential, supplementary, incidental, transitional or saving provision in connection with this Act.