



## **Revocation of the coming into effect of the main provisions of the Higher Education (Freedom of Speech) Act 2023: AFFS' thoughts**

Bridget Phillipson, the new Secretary of State for Education, revoked the coming into effect of the main provisions of the Higher Education (Freedom of Speech) Act 2023 (HEFOSA) on 26 July. The HEFOSA was due to bring in important new protections for free speech at English universities on 1 August. This is a highly unusual procedural move, and an act of legislative vandalism in relation to a statute which was carefully considered and amended in its progress through Parliament, in part to meet concerns raised by and to reflect input from the higher education sector.

This looks like an own goal. To appear to be not a friend of free debate so early in your term as Education Secretary, of all things, is extraordinary.

What is interesting, though, is that the existing duties to protect free speech under the Education Act are not much less onerous than much of the contents of HEFOSA, a point Ms Phillipson acknowledges. What is more, the requirements under the Equality Act to prevent discrimination and harassment against people with protected viewpoints remain in full force. Universities will continue under their regulatory conditions of registration to be required to work to protect free speech. Best Free Speech Practice - <https://bfsp.uk/universities-and-free-speech> - has prepared a statement (attached) indicating the legal origins of the requirements in practice to protect free speech at English universities. This shows that the effective repeal of the much of HEFOSA actually has little effect on what universities are required to do in practice.

The main effect of this revocation is that the new OfS complaints scheme and right to sue for losses caused by free speech failures will not come into effect. Less careful universities may kid themselves that they are back to being unaccountable. This is, though, emphatically not the case. Better universities, which are already a long way down the road with preparations for the new regime, will, we hope, continue with the greater urgency they have shown for free speech protection in recent months.

So, in this context, why has Ms Phillipson actually taken this peculiar step? It is not going to contribute to her stated aim to *“ensure a stable future for higher education, with strong regulation that means students can thrive”* if important protections for dissenters are being removed. We feel sorry for the feminists and other challenges of orthodoxy. If this move was for a delay to allow universities more time to prepare, that would have had some coherence: but she surely would have made this clearer, and implemented it less destructively. Her actions therefore appear hostile to free speech. Has a proper risk analysis been done? Or has she capitulated to the demands of the universities' lobbyists without sufficient consideration of the evidence about the problems at our universities which caused the HEFOSA to be required in the first place?

Where was Jacqui Smith, the new Universities Minister? One would have hoped that a more experienced head might have counselled against such a step. Was she even consulted?

## **Alumni for Free Speech**

**29 July 2024**

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