

## **Labour's revocation of the main provisions of the Higher Education (Freedom of Speech) Act 2023: AFS' 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. There was nothing about this in Labour's recent manifesto, so the Government has no mandate for revoking the HEFOSA. It is also constitutionally wrong for a minister to overrule the will of Parliament without even informing the Commons in person. We would very much hope that a senior lawyer (and a human rights specialist) like Sir Keir Starmer would see why this step is wrong. Which makes one wonder if he was informed. This looks like an inexperienced minister going on a frolic of her own.

This is a reputational own goal, and perhaps Labour's first big unforced error, made in haste and with a display of arrogance and disregard for parliament. To appear to be not a friend of free debate, or indeed human rights, 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 ([here](#)) indicating the legal origins of the requirements in practice (as identified by BFSP) to protect free speech at English universities. This shows that the effective repeal of much of HEFOSA actually has little effect on what universities are required to do in practice.

The main effect for free speech 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 dissidents from enforced orthodoxy. If this move was for a delay to allow universities and students' unions more time to prepare, that would have had some coherence: but she surely would have made this clearer, and implemented it less destructively. Her action can therefore only be construed as 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?

Ms Phillipson has adopted with approval *Fit for the Future*, an independent review of the Office for Students, led by Sir David Behan and published in July 2024, referring specifically to the key priorities

of ensuring quality and regulating in the interests of students. How will this be achieved if legitimate debate is prevented, and academics and students cowed into silence, as has been shown is happening. This is not credible.

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?

There have been a number of excellent articles on this. For those interested, we point you to:

Julius Grower's at: <https://dailysceptic.org/2024/07/30/bridget-phillipson-is-wrong-about-the-higher-education-freedom-of-speech-act/>

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With best wishes

William Mackesy, Andrew Neish KC and Bill Charlwood

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