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Exploring options for future primary legislation and frameworks for managing freedom of speech moving forward

[Slide 1] I want to talk about the development of the legislation and subsequent stages, suggestions of what higher education providers (HEPs) should do now, then some further suggestions for how such legislation might be extended in the future. As I am not a lawyer, so I would prefer to leave detailed legal questions to others

[Slide 2] This first chart shows the different sections of HEFOSA (as I call it), including indications of those things which are implemented from when the Act received royal assent.

Then there is a timeline of the key events from Royal Assent onwards. [Slide 3] There have been four statutory instruments. The main one was issued in April 2024, bringing most of the act into force on 1 August 2024. This was revoked by the new statutory instrument invoked at the eleventh hour by Bridget Phillipson in July 2024. [Slide 4] The fourth, on 28 April this year, brought in a more limited number of the provisions, not the statutory tort, nor new regulations on registered HEPs, nor on student unions, nor the complaints scheme, nor the overseas funding, though some of these will be dealt with by subsequent primary legislation.

The OfS draft guidance was issued in March 2024, and following a consultation, a much-expanded and enhanced final guidance was issued last week, a really major document. But true enforcement requires the remaining primary legislation to be sorted, and I hope the government will not drag their feet on this. Also, more information is needed on the ‘promote’ duty.

[Slide 5] It is a big ask for institutions to implement everything in the new Regulation 24 in a period of just 6 weeks, and the ‘reasonably practicable’ qualification enables some leniency, but I believe full implementation ought to take place through the 2025-26 academic year.

[Slide 6] I have laid out my own idea of a three-stage strategy for providers. This will be a lot of work, but if the sector was able over a few months to undertake the far more arduous task of implementing online teaching delivery during lockdown, this should be possible.

The first thing I advocate in Stage 1 is to remove all required pledges of allegiance to *contested* aspects of EDI and other ideologies from admissions, appointments, promotions, and so on [please note this doesn’t mean abandoning wider legal EDI duties]. Then, straight away, all ongoing processes should be documented - including what I think is a key stage, shortlisting of applicants for positions.

Furthermore, appointments with highly politicised job titles, discriminatory by their nature, should be stopped or modified if they have already been advertised, and ideally existing such positions should be renamed.

I would urge something close to institutional neutrality on issues not directly related to HE, so that support for the right of individual academics to express their own positions is not compromised.

Then institutions should draw up provisional free speech codes in line with the regulations, and distribute these for the autumn, making clear how they break with previous practice, then final versions drawn up by the spring.

[Slide 7] Stage 2 involves appointment of an institutional director of free speech/academic freedom. This is not mandatory according to the guidance, but much to be recommended. There could also be associated 'leads' in different schools and faculties. Then a time-limited internal process for dealing with staff or student FS/AF complaints should be drawn up, as well as guidance for dismissing trivial complaints threatening free speech.

Stage 3, perhaps the most labour-intensive, is the institution of training for all relevant staff (including professional staff). Then there should be processes to filter FS/AF into all committees and governance, to audit professional accreditation and make representations where appropriate. Finally, institutions should think further on teaching, and how to give individual academics maximum freedom but without this being exploited at odds with the purpose of teaching.

[Slide 8] As far as the remaining legislation is concerned, all committed to FS/AF should lobby their MP and other politicians to urge that the complaints procedure, registration conditions and overseas funding provision are made really strong, as these will enable proper enforcement of HEFOSA. [New statement issued this morning, not had chance to read yet, but seems to reintroduce some regulations on SUs]

[Slide 9] Finally, notwithstanding the detailed OfS guidance, there remain other 'soft' ways in which free speech and academic freedom can be curtailed – through discrimination by external organisations to which academics are beholden, by wider internal processes which can be exclusionary – assessment of outputs, collaborations, delegation of teaching, and so on. I propose that in time aspects of HEFOSA could be extended to apply to research councils and other funding bodies, journals, through further changes to the REF after 2029, and through further thought on how to ensure wider academic requirements do not disadvantage those of heterodox but scholarly views.