

Universities and the Counter-Terrorism and Security Bill
million+ Parliamentary Briefing: House of Lords Committee Stage
28 January 2015

Background

1. Universities will be directly affected by clauses 21-27 and 38 of the [Counter-Terrorism and Security Bill](#) and by [draft statutory guidance](#) issued by the Home Office. A number of Peers, as well as a [report](#) from the Joint Committee on Human Rights, have raised concerns both on the inclusion of the higher education sector in the Bill as a whole and also on the manner in which any new duty will be imposed on universities. million+ shares these concerns which were also outlined in our detailed [briefing](#) on the contents of the Bill on 13 January prior to Second Reading.
2. This briefing for Committee Stage highlights the types of amendments that would be beneficial for universities, provides information as well as including some additional information on the likely costs incurred by the education sector should the legislation and guidance pass in its current form.

Amendments

3. million+ favours amendments to:
 - remove universities from the scope of the Bill
 - remove or limit the ability of the Secretary of State to intervene in the governance and management of universities
 - ensure Parliamentary or judicial oversight and review of any use of such powers by the Secretary of State
 - ensure academic functions of universities are excluded from the scope of the duty
 - give clarity to how this new duty will sit alongside universities' responsibilities under the Education (No. 2) Act 1986 c61 Part IV Section 43
 - ensure Parliamentary scrutiny of any guidance put on a statutory basis as a result of this Bill passing, preferably through an affirmative procedure.
 - remove or limit the Secretary of State's powers to make consequent provision on significant aspects of the Bill that are not subject to affirmative Parliamentary procedure.
4. million+ urges caution on amendments that:
 - fundamentally change the nature and purpose of sector agencies such as the Higher Education Funding Council for England (as specifically proposed in the draft guidance¹) the Scottish Funding Council or the Higher Education Funding Council for Wales, prior to

¹ The guidance proposes that HEFCE would also be the regulator for private institutions

parliamentary oversight and scrutiny of the Bill's statutory guidance and agreement about its date of implementation

- increase the scope of the Clause 21 duty from “terrorism” to “non-violent extremism” or any other wording that is not already clearly defined in criminal law

Government consultation on Prevent Duty Guidance

5. million+ has [responded](#) to the Government consultation on Prevent duty guidance (see Appendix). As indicated in the response and like many others across the sector we have serious concerns about the guidance in its present draft form.
6. As drafted, this statutory guidance is extremely proscriptive in nature and entirely unsuitable for use in the higher education sector. If implemented in its current form universities would be likely to incur significant costs that have not been taken into account in the Government's impact assessment (see below).
7. As the consultation deadline closes on 30 January after the close of Committee stage in the upper house, and no indication has been given as to when final guidance will be published, it is unclear how Peers can reassure themselves that any resulting statutory guidance will be fit for purpose unless amendments are adopted to ensure formal parliamentary scrutiny.

Financial impact of proposals on universities

8. The Government impact assessment on the Prevent section of the Bill² states, “We assume each institution will need resource to coordinate a response to the duties detailed in the legislation... a week of a junior officer's time (costing £537),” with the Government estimating a total cost of £1.146m per annum to the education sector. Although it is difficult to estimate the administrative burden of this new duty the assumption that the cost to individual institutions will be £537 a year seems a gross underestimate. In 2013 the Higher Education Better Regulation Group (now defunct) undertook an analysis of the cost of immigration regulation on universities. The report³ estimated a total annual compliance cost to the HE sector alone of over £66 million, including governance costs of nearly £19 million, with a mean average cost to an institution of £357,948.
9. Although it is not possible to directly compare compliance responsibilities as a Tier 4 sponsor with duties under this bill, it is clear that many of the processes are common with any kind of new high-risk duty. Clause 21 places a new and extremely serious duty on universities: it is reasonable to assume the university sector will face significant additional costs as governing bodies of institutions take steps to manage this new area of risk.

About million+

million+ is a university think-tank. We use rigorous research and evidence-based policy to address and provide solutions to complex problems in higher education. For further information about this briefing or about million+ please visit www.millionplus.ac.uk or contact: Nick Entwistle, Senior Policy and Parliamentary Officer nick.entwistle@millionplus.ac.uk 020 7717 1659 or 07527 336 990.

² <http://www.parliament.uk/documents/impact-assessments/IA14-22C.pdf>

³ http://www.universitiesuk.ac.uk/highereducation/Documents/2013/HEBRG_ImmigrationRegulation.pdf

Appendix

million+ response to HM Government consultation on Prevent duty guidance

million+

1. million+ is a university think-tank which works with a number of universities and stakeholder organisations but also undertakes and publishes research with sector-wide analysis and implications.

Overview

2. Our overarching position is that universities should be excluded from the scope of the Counter-Terrorism and Security Bill and accordingly, should not be subject to this statutory guidance. This position is reflected by the Joint Committee on Human Rights in their fifth report, "Legislative Scrutiny: Counter-Terrorism and Security Bill."
3. Universities already co-operate with appropriate authorities on matters of security, most notably with the Prevent programme. million+ has concerns that new duties in this Bill would move the role of universities from one of co-operation with appropriate authorities to one of co-option. Liberty has also stated these provisions will "create a bureaucratic nightmare for hundreds of public bodies now presumably required to have counter-terrorism prevention policies regardless of their suitability or relevance to law enforcement⁴." A number of briefings circulated by million+ at different points in the Parliamentary process go into some detail on these overarching concerns; they are not repeated in this response except where they directly relate to the Prevent duty guidance consultation.
4. However, should the Bill pass with universities named as specified authorities, the guidance as currently drafted would be inappropriate, disproportionate and unworkable. As it stands the proposed Prevent Duty Guidance is also factually incorrect in some of its assertions as to the responsibilities of universities.

General

1. Are there any other general points that should be addressed in this guidance?

Universities' legal obligation to ensure freedom of speech

5. It is accepted there is no "absolute" freedom of speech: universities seek to create safe and inclusive environments for their staff, students and guests. However, higher education in the United Kingdom not only has a long and proud history of providing space for debate, institutions have a legal duty to provide that space:

Education (No. 2) Act 1986 c61 Part IV Section 43: Freedom of speech in universities, polytechnics and colleges.

(1) Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.

⁴ <https://www.liberty-human-rights.org.uk/sites/default/files/Liberty's%20Second%20Reading%20Briefing%20on%20the%20Counter-Terrorism%20%26%20Security%20Bill%20in%20the%20House%20of%20Commons.pdf> (Sections 48-53)

*(2)The duty imposed by subsection (1) above includes (in particular) the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with—
(a) the beliefs or views of that individual or of any member of that body; or (b) the policy or objectives of that body.*

6. Meeting this legal duty is not always easy but universities take it extremely seriously. Unless statutory guidance is clear, there is a strong possibility that third parties will take legal action challenging decisions made by universities balancing obligations to both Education Act (1986) and the Counter-Terrorism and Security Bill. Guidance must explicitly outline how new duties in the Counter Terrorism and Security Bill will sit alongside the statutory duties to not use “beliefs or views” as grounds to refuse access to premises as specified in the Education (No 2.) 1986 Act.

Financial and administrative burdens of new responsibilities

7. It is not clear what the additional costs of these duties will be to individual universities and the higher education sector more broadly, or where additional funding to support monitoring activity will come from. However, in 2013 the Higher Education Better Regulation Group (HEBRG) estimated the annual cost to UK universities of compliance with Home Office regulations on student immigration was £67 million⁵.
8. The final guidance document should be very clear about the limits of universities’ responsibility for meeting this new duty in order to avoid “creep” in monitoring arrangements and the heavy financial cost that can cause.

Detailed nature of the guidance

9. It is understandable that the Government might wish to share good practice on issues of such a serious nature. However, it is entirely inappropriate for statutory guidance on such a diverse sector to be so proscriptive in nature. Any statutory guidance that is agreed, should be clear, concise and at a high level, with the higher education sector left to develop appropriate best practice.

Specific comments on the guidance

[Paragraph numbers as per the ‘Prevent duty guidance: a consultation’ document.]

The expectation that universities would be ‘delivering in the following areas’ (para 55)

10. Universities take their responsibilities seriously and are already involved in voluntary compliance with the Prevent strategy. The detail of the expectations set out in the draft statutory guidance is inappropriate for statutory guidance and in any case disproportionate. The proposals would create significant additional burdens on universities which are not justified.

Management by ‘an internal cross-departmental committee’ (para 55)

11. It is inappropriate for statutory guidance to set-out an expectation as to how a university manages any implementation that might be required. This level of detail should be removed from any statutory guidance.

Risk assessment – non-violent extremism (para 57)

⁵ http://www.universitiesuk.ac.uk/highereducation/Documents/2013/HEBRG_ImmigrationRegulation.pdf

12. We have serious concerns about placing a duty to assess where and how students might be at risk of being drawn into terrorism through 'non-violent extremism'. The concern is in relation to defining 'an atmosphere conducive to terrorism' and how non-violent extremism views create that atmosphere.
13. An additional concern is that including non-violent extremism within statutory guidance will pose a serious threat to securing freedom of speech within the law and the ability to explore controversial, and sometimes offensive views. Universities should be excluded from this requirement, or the reference to non-violent extremism should be removed.

Staff training (para 60)

14. The proposals are far too detailed and wide in scope. This guidance should not be specifying all, or indeed which, staff require specific training. Requiring all staff to undergo Prevent training would be a serious and disproportionate cost.

Welfare, pastoral and chaplaincy support (para 63)

15. Universities do not have legal "responsibility to care for their students." It is a matter for institutions as to whether or not they offer chaplaincy services and how they offer pastoral support, and deeply inappropriate for any statutory guidance to specify the nature of such arrangements.

Speakers and events (paras 64-66)

16. The expectations outlined in para 66 are wholly disproportionate and the detail should be withdrawn. If implemented, the administrative burden of these requirements would undermine the core teaching and research activity of the university sector.

Safety on-line (paras 68-69)

17. Universities are aware of their responsibilities in respect of IT policies. It is not clear how these proposals would add to current practice.

Students' unions and societies (para 70 – 71)

18. It is inappropriate for universities to be held responsible for the actions of students' unions, which in most cases are separate legal entities with independent governance arrangements. In particular "We would expect student unions and societies to work closely with their institution and cooperate with the institutions' policies" is inappropriate to include in statutory guidance as the overarching primary legislation does not include students' unions. This guidance needs to clearly distinguish between duties on universities and separate duties on students' unions.

Prayer and faith facilities (para 72)

19. It is unclear why these types of facilities are particularly singled out, and the level of detail in this guidance is completely inappropriate.

Higher Education

8. Are there other institutions, not listed here, which ought to be covered by this duty?

20. It is unclear why providers on the HEFCE register are covered by this guidance whilst some private providers are not. No justification is given to exclude providers with less than 250 students from the duty proposed.

21. The wording should make clear that franchise and validation arrangements with a third party that are not covered by the guidance, cannot be used to infer a universities' responsibility for compliance with this duty by the third-party.

9. Are there other areas of activity, or examples of good practice, that should be covered in this guidance?

22. As referred to above, it is entirely inappropriate for statutory guidance for such a diverse sector to be so proscriptive in nature. The statutory guidance, should it come into being, should be clear, concise and at a high level, with the higher education sector left to develop appropriate best practice.

10. Do you agree that the Higher Education Funding Council for England is the appropriate body to monitor compliance with this duty?

23. As an organisation HEFCE exists to "promote and fund high quality, cost-effective teaching and research." It does not have experience of monitoring for compliance with this type of legislation, nor is it resourced to do so. However, HEFCE is experienced in working with the university sector and is better placed than other agencies to understand the distinct nature of the sector.

24. If HEFCE does take on this role it should be resourced to do so, and this activity should not be funded from teaching, research or higher education capital and revenue budgets.

11. Are there other higher education regulatory bodies that should be involved in monitoring compliance?

25. No.