

million+ response

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 enforcement¹.” 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.

(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—

¹ <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)

(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 million².
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)

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.

² http://www.universitiesuk.ac.uk/highereducation/Documents/2013/HEBRG_ImmigrationRegulation.pdf

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.

Nick Entwistle Senior Policy and Parliamentary Officer
nickentwistle@millionplus.ac.uk www.millionplus.ac.uk
T: 020 7717 1659 M: 07527 336990