

## Counter-Terrorism and Security Bill: House of Lords Committee Stage

26 January 2015

### Summary

This briefing covers a number of amendments to Part 5 of the Counter-Terrorism and Security Bill which have been tabled for debate at Committee Stage in the House of Lords.

In particular, Universities UK supports amendments which seek to increase scrutiny and oversight of ministerial powers introduced by the Bill (such as Amendments 112C, 115B and 112E), and which would provide an increased recognition of the particular duties of universities in securing freedom of speech and academic freedom within the law (such as Amendments 105 and 112B).

### Background

1. Universities and their representative bodies have been engaged with *Prevent* as one element of broader work to ensure that universities remain safe places of study. Universities UK, for example, hosts [www.safecampuscommunities.ac.uk](http://www.safecampuscommunities.ac.uk) which includes case studies and guidance for universities on issues relevant to countering terrorism and violent extremism.
2. Universities vary considerably in size, location, demographics of student body, and mission. What is appropriate for one may not be so for another.
3. Similarly, what is appropriate or possible in schools or colleges may not be so in a university setting. Universities are large communities of independent adult learners, most of whom live off campus and will have links to the local community which are not mediated by the university.
4. Universities have a particular duty and mission to promote freedom of speech and academic freedom within the law, including a duty under the Education (No 2) Act 1986 to ensure that use of university premises is not denied to any person or group on the basis of their 'beliefs or views'.

## **Lack of scrutiny and oversight**

5. Universities UK is concerned about the lack of scrutiny and oversight of the powers given to the Home Secretary by the Bill, and supports amendments that seek to address this.

### *Statutory guidance issued under Clauses 24 and 28*

6. The Bill makes no requirement that guidance on the statutory duty issued under Clauses 24 or 28, or revisions of this guidance, be subject to parliamentary scrutiny. Universities UK asks peers to support amendments that would increase scrutiny, such as Amendments 112C and 115B tabled by Baroness Brinton and Baroness Sharp of Guildford. We would also seek reassurances that any substantive revisions of the guidance would be subject to consultation with the sector and its representative bodies.

### *Power to direct institutions in their performance of their duty under Clause 21*

7. The Bill gives the Home Secretary the power to direct a university in their performance of their duty under Clause 21 if she/he is satisfied that it has failed to discharge this duty. Any direction under this power is potentially enforceable by court order.
8. Any use of this power would constitute a significant incursion into the running of an independent and autonomously governed institution. Universities UK supports amendment 112E tabled by Baroness Brinton and Baroness Sharp of Guildford which would ensure that any use of the power was subject to appropriate scrutiny by Parliament, through requiring a report be issued by the Home Secretary to Parliament.
9. The report required by the amendment would cover the way in which the Home Secretary deemed the institution to have failed in its duty, what action she/he took to correct that failing prior to a direction being given, and address the extent to which the directed action was compatible with other statutory responsibilities and the 'fundamental aims and nature' of the institution concerned.

### *Local panels to support those at risk of being drawn in to terrorism*

10. The Home Secretary will issue guidance, and universities will be mandated to have regard to this guidance in their co-operation with local panels.
11. As with statutory guidance relating to the *Prevent* duty, we think that this guidance should be subject to a high degree of parliamentary scrutiny and consultation with the sector. While it is likely that this guidance will be published together with guidance on the performance of the *Prevent* duty (as appears to be the case in the draft guidance published), any requirement for scrutiny in the Bill would have to apply to both sets of guidance.

### **Monitoring regime**

12. Universities UK does not oppose that the Higher Education Funding Council for England (HEFCE) be a 'monitoring authority' for higher education institutions, as suggested in Amendment 113 tabled by the Minister.
13. However, we do not think it appropriate that HEFCE be given direction by the Home Secretary in monitoring the performance of universities in the performance of their duties, as the amendment seems to suggest. We suggest that HEFCE should be given direction instead by ministers in the Department for Business, Innovation and Skills.
14. We would also seek clarification on what monitoring regime HEFCE would be required to undertake, which is not specified in the amendment. The nature of the monitoring regime would determine, to a large extent, the responsibilities of universities in complying with the Bill. However, as the direction would be given in a letter from a minister it would not be subject to parliamentary approval.

### **Comments on draft guidance**

15. Universities UK considers the current form of the draft guidance to be unworkable. While we will be submitting a comprehensive response to the consultation on the draft guidance by the deadline of 30 January, it is unlikely that a final version of the guidance will be published prior to the passage of the Bill being completed. We therefore are asking peers to seek reassurances from the minister on a number of broad areas.

### *Freedom of speech and 'non-violent extremism'*

16. Any statutory guidance applying to universities needs to appreciate the particular freedoms of speech appropriate to an academic context. These allow students and staff to speak freely on controversial issues including terrorism (and even play 'devil's advocate'). These freedoms need to be maintained such that students and staff can have open discussions without fear of being referred to counter-terrorism panels, or feeling they have to refer others. In drafting the guidance, particular attention should be paid to the potential of a 'chilling effect' whereby academic staff are wary of discussing difficult or controversial issues with students.
17. We oppose the use of the phrase 'non-violent extremism' in the sections of the draft guidance applicable to higher education institutions. Non-violent extremism, which is not generally unlawful, might include 'vocal or active opposition to fundamental British values'. It is not appropriate for a university setting to exclude such views, however controversial they may be considered.
18. We do not think it is helpful to blur terrorism and non-violent extremism, as the draft guidance currently does. The clear legal distinction between violent and non-violent extremism is helpful to universities in developing appropriately robust responses to those who seek to espouse violent extremism.
19. Universities are also, rightly, places where controversial and extreme views can be heard, considered, debated and contested. This is a central element of the purpose of a university, and is enshrined in primary legislation in the form of a duty to secure freedom of speech for academics *and for visiting speakers on campus*.
20. Section 43 of the Education (No 2) Act 1986 specifically states that universities have
  - '...a 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.'
21. Universities UK does not think that universities' particular legal duties in securing freedom of speech within the law have been sufficiently acknowledged by the draft guidance. We ask peers to support Amendment 105 tabled by Baroness Lister of Burtersett, Baroness O'Loan and Baroness Buscombe, and/or Amendment 112B tabled by Baroness Brinton and Baroness Sharp of Guildford.

### *Lack of risk-based approach*

22. We favour an approach that is risk-based, taking into account the risk profile of the institution and individual events taking place on campus.
23. Some requirements in the draft guidance are overly-burdensome. For example, paragraph 66 suggests that universities have a policy that they have sight of all presentations from external speakers before events take place. While this might be appropriate for speakers or events identified as being high risk, it would not be appropriate to require this of all visiting speakers. Paragraph 60 suggests that all staff might require training on ‘the factors that make people support terrorist ideologies or engage in terrorist-related activities’.
24. Other requirements are overly-prescriptive, requiring policies that may not be appropriate to all institutions. For example, a requirement for a cross-department group in paragraph 55 may not be helpful in a small institution which has a low risk profile.

### *Off-campus events*

25. The guidance as drafted would require universities to have a ‘mechanism for managing incidents or instances where off-campus events of concern are promoted on campus’ (paragraph 66). This might be taken to include events that are promoted via social media if this happens through the social media accounts of student societies, for example.
26. While it is reasonable to expect universities to have a policy to deal with complaints about on-campus promotion of events taking place elsewhere, it is not clear how universities could reasonably be expected to know about all instances of events being promoted on campus – less still be expected to ‘manage’ those instances.

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