

The Counter-Terrorism and Security Act and the new “Prevent” duty: implications for students’ unions

Introduction

As a result of the Counter Terrorism and Security Act 2015, both higher and further education institutions will soon be legally obliged to comply with the new Prevent statutory duty. The new duty requires institutions to produce risk assessments and develop action plans.

It also requires they ensure cohesive partnership working with relevant external organisations such as the police, local authorities and community groups.

In higher education in England and Wales, the duty is also expected to include reference to robust external speaker protocols, but the exact text in relation to this is still to be published. Crucially, both in relation to external speakers and more generally, it requires institutions to take steps in relation to their students’ union. Universities will be working on their plans and risk assessments this summer, with added impetus provided by a UUK event on 22 June.

In further education in England and Wales, the relevant guidance does not mention external speakers or students’ unions directly, but the broad expectations are the same and it can be assumed that FE institutions will be making similar plans.

In Scotland, a similar duty applies to higher and further education institutions, but the guidance is the responsibility of the Scottish Government and its version makes only passing references to students’ unions. Again, however, institutions will be responding to the new duty

and working on risk assessments over the summer.

This briefing is to give members a background and understanding of the policy context as its likely institutions will make contact with students’ unions to discuss their new obligations and we want you to equip you with the knowledge to respond to that.

The new law

The Counter-Terrorism and Security Act 2015 received Royal Assent earlier this year; you can find NUS’ response to it at the time [here](#). As well as measures that bolster existing powers for passport removal and measures that allow police to “disrupt” individuals who are suspected of leaving the country to join terror cells abroad, it also imposes a duty upon public bodies including police, schools and universities to address individuals they believe are at risk of being drawn into terrorism.

As such all higher education institutions must, “in the exercise of [their] functions, have due regard to the need to prevent people from being drawn into terrorism”. Following considerable debate in the Lords, when carrying out the duty, an institution must simultaneously “have particular regard to the duty to ensure freedom of speech, if it is subject to that duty”.



This is a reference to a university's freedom of speech duties under the Education Act No. 2 1986. It must also "have particular regard to the importance of academic freedom". This is a cross reference to the academic freedom as defined in the Education Reform Act 1988.

The Counter-Terrorism and Security Act sets up a monitoring authority, which is either the Secretary of State, or a person to whom the Secretary of State delegates the function- which at the time of writing for HEIs in England is widely expected to be HEFCE. In FE the monitoring authority is expected to be OFSTED.

Guidance

These duties are then fleshed out in Prevent duty guidance recently released which is available here, with FE specific guidance from p13 and HE specific guidance from p16 onwards:

<https://www.gov.uk/government/publications/prevent-duty-guidance>

The Scottish guidance is at the same link, with guidance on FE from p14 and HE from p16.

Given the specific reference to students' unions in England and Wales the rest of this section of the briefing discusses the issues relating to that aspect of the guidance. Note that the guidance is not yet complete in relation to higher education in England and Wales, as outlined above. Nevertheless, we would advise a read of the section on HE, and of particular note are the following extracts. First, the guidance for higher education institutions in England and Wales says, as extracted from the government's guidelines:

- *Radicalisation on campus can be facilitated through events held for extremist speakers.*
- *There will be further guidance issued on the management of external speakers and events, including on the interaction of the Prevent duty with universities' existing duties to secure freedom of speech and have regard to the importance of academic freedom*
- *Compliance with the Prevent duty requires that properly thought through procedures and policies are in place.*

- *In complying with this duty we would expect active engagement from senior management of the university (including, where appropriate, vice chancellors) with other partners including police and BIS regional higher and further education institutions.*
- *We would expect institutions to seek to engage and consult students on their plans for implementing the duty.*
- *Universities will be expected to carry out a risk assessment for their institution which assesses where and how their students might be at risk of being drawn into terrorism.*
- *This includes not just violent extremism but also non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists exploit.*
- *We would also expect risk assessment to assess the physical management of the university estate including policies and procedures for events held by staff, students or visitors and relationships with external bodies and community groups who may use premises, or work in partnership with the institution.*
- *We would expect the institution to have clear and widely available policies for the use of prayer rooms and other faith-related facilities. These policies should outline arrangements for managing prayer and faith facilities (for example an oversight committee) and for dealing with any issues arising from the use of the facilities.*

Secondly, there is a dedicated section on "student unions and societies" as follows:

"Institutions should have regard to the duty in the context of their relationship and interactions with student unions and societies. They will need to have clear policies setting out the activities that are or are not allowed to take place on campus and any online activity directly related to the university. The policies should set out what is expected from the student unions and societies in relation to Prevent including making clear the need to challenge extremist ideas which risk drawing people into terrorism.

We would expect student unions and societies to work closely with their institution and co-operate with the institutions' policies.

Student unions, as charitable bodies, are registered with the Charity Commission and subject to charity laws and regulations, including those that relating to preventing terrorism. Student Unions should also consider whether their staff and elected officers would benefit from Prevent awareness training or other relevant training provided by the Charity Commission, regional Prevent co-ordinators or others."

Legal Issues for Trustees

As is the case with the freedom of speech duty in the Education Act 1986, the Counter Terrorism and Security Act does not directly apply to students' unions. Rather, it places duties on HE institutions that influence SU activities by (in practical terms) using partnership relationships and the control and use of grant funding, rooms and student behavioural codes.

This duty is less explicit in Scotland, but across England, Scotland and Wales charity law does directly apply to almost all higher education students' unions. The Charity Commission in England and Wales and OSCR in Scotland would expect that HE students' unions (or associations), and specifically their trustees, will take into account the expectations of the HE institution alongside other factors given role of the HE institution as principal funder and landlord. It would also expect the students' union to manage risk and would expect that they may curtail speakers when they infringe rights of others, discriminate, commit an offence, or act in a way contrary to rights of individuals.

The charity law issues and wider legal framework are well rehearsed in the first section of [NUS' guidance on external speakers](#).

Charity Commission guidance is available [here](#).

OSCR guidance is available [here](#).

NUS "Hate Speech" Guidance

For a number of years, NUS has produced guidance on managing the risks of external speakers in the context of wider laws. We will be considering the impact of the new Act on this guidance but the most recent versions for England and Wales and for Scotland are available [here](#):

It's important to emphasise that the Charity Commission would expect that a students' union would come to its own view on risk for its organisation. The previous practice of some SUs which was to simply refer external speaker requests to their HEI has been criticised by the Commission who take the view that an SU should reach its own judgement. This does mean that in some cases an SU may ban or regulate a speaker that a University wouldn't; or vice versa; or that an SU may wish to regulate a guest speaker event in a way that their HEI disagrees with given their context and duties under the 1986 Act.

Political issues

Many of the procedures established by students' unions to handle external speakers that build on external speaker guidance flow from work carried out by NUS in pursuit of refining "No Platform", opposing hate speech and protecting student welfare. In 2010, NUS Conference resolved to develop support for students' unions to make informed decisions about controversial and contentious external speakers who are invited to campus by societies and officers. Currently, most SUs have robust policies and procedures in place and manage this issue well.

NUS' policy position on Prevent is to publicly oppose the Counter Terrorism and Security Act and lobby the government for its repeal, as resolved by the National Executive Council in [June](#). It also resolves to support students' unions in non-compliance of Prevent, should they wish to do so. The University and College Union (UCU) has also passed policy opposing the provisions of the Act and encourages its

members not to comply with the duties to monitor and report students. Students' unions may wish to discuss with their local UCU branch how they intend to respond.

In practical terms, while the political motivation for the "Prevent" agenda is under question, and there is significant concern about the narrative on this issue and the way it demonises certain communities, it remains the case that some external speakers would cause concern from a welfare and discrimination perspective and SUs will wish to manage that risk appropriately.

External Speakers

At the time of writing detailed guidance for higher education institutions in England and Wales on external speakers has yet to be published from the government. In draft form it was highly prescriptive but the sector expects the final form to be less detailed and more adaptable to the context of SU society events within a wider institution. The guidance will be issued by ministers shortly and will have a likely commencement date of September 1.

Additional issues to consider

Dialogue with the institution

Whilst SUs will themselves have varying policy on Prevent and the Act, it will be important to understand – and to influence where possible – the response of the institution and how it may affect the SU. Therefore we would encourage dialogue with the appropriate individuals on the issue to find out how they intend to act.

What about students themselves?

Whilst procedures for external speakers are well understood, little work has been carried out on activity from students and the interplay between union codes of behaviour and university codes of behaviour.

Focus of SU on issues such as far-right extremism

The focus of those implementing in HEs may be narrower than is desirable but in pursuit of welfare objectives many SUs will in particular consider racist/fascist groups and individuals as ongoing concerns and should continue to do so.

What is an "SU event"

Increasingly club/society events are held off campus. This does not mean that they are not an SU event and unions should consider appropriate management of such events.

Websites

Society websites, Facebook pages, Twitter accounts and so on should also be considered as "part" of the SU. What are the rules and arrangements? We do not encourage attempts to discourage or censor online discussion but suggest considering how you approach this issue.

Further education

Whilst the broad duties in the Counter-Terrorism and Security Act in regard to FE institutions, and FE students' unions will be similar, there are some important differences, especially as FE students' unions are not generally subject to charity law. FE students' unions can get in touch with NUS for support.

Support from NUS

More generally, NUS would be happy to discuss with any SU any further questions or queries.

Staff lead: Sukhi Kainth, Project Manager for Campus Cohesion, Faith and Belief-
sukhi.kainth@nus.org.uk

Officer lead: Colum McGuire, Vice President (Welfare) – colum.mcguire@nus.org.uk