

## China and the Higher Education (Freedom of Speech) Act

03/10/2024

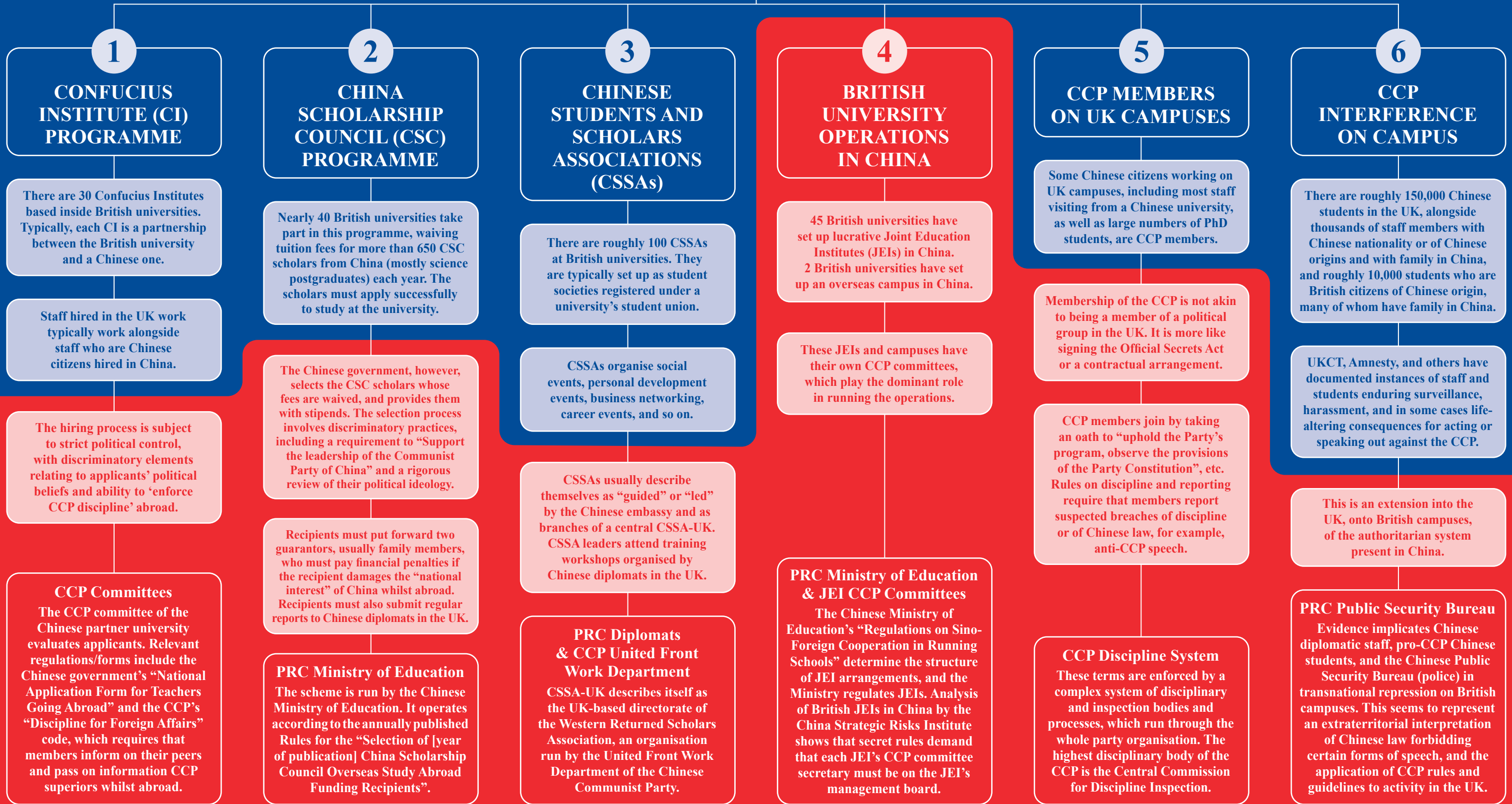
### Key points:

- As part of the Office for Students' consultations about the Higher Education (Freedom of Speech) Act, UK-China Transparency (UKCT) submitted evidence that programmes at UK universities which are co-governed by the Chinese government and Chinese Communist Party involve discrimination, restrictions on free speech, obligations on Chinese university members to inform on their peers whilst in the UK, and other elements inimical to academic freedom and the protection of free expression.
- UKCT's evidence was based on translations of the Mandarin-language official documentation published by the Chinese government and Chinese Communist Party.
- Draft guidance advising universities on compliance with the Act and produced by the Office for Students appeared to reflect the evidence submitted by UKCT, indicating that this evidence was robust and relevant to the proper implementation of the Act.
- The guidance recommended demanding universities take certain steps with respect to UK-China programmes, including the termination of two flagship programmes highly valued by the Chinese government, namely the Confucius Institutes and China Scholarship Council programmes. The guidance also suggested that universities should take a stronger public stance against CCP interference in academia. These measures would have constituted a sea-change for the higher education sector.
- Industry bodies such as the Russell Group lobbied against these measures, specifically arguing against termination of the Confucius Institutes and China Scholarship Council programmes on the basis that this "would likely have a negative impact on UK/foreign relations". This echoes claims made by former Foreign Secretary James Cleverly that termination of the Confucius Institutes programme would be detrimental due to potential retaliation (against the British Council) by the Chinese government.
- A UK government letter sent in response to a legal challenge against the 'pausing' of the Act's implementation indicates that part of the recorded rationale for the pause was concern about the Act's impact on relationships with China.
- UKCT is investigating whether decisions about the Act and about UK-China programmes in universities have been made based on concern about retaliation by the Chinese government, instead of concern for academic freedom, free speech, the integrity of UK academia and good governance of universities.
- UKCT has also asked the Office for Students to clarify whether it will produce guidance on the relevance to UK-China programmes of the provisions of the Education (No 2) Act 1986, which the government has stated it supports, and which remains in force. The OfS could not provide an answer.

# UK-China Higher Education Collaboration: Potential Legal Issues

## IN BRITAIN

## BRITISH UNIVERSITIES



## Overview

[UK-China Transparency](#) (UKCT) is a registered charity that conducts research on ties between the UK and China and works to promote education and transparency about those ties.

UKCT has conducted extensive research on ties between the UK and China in higher education. Our research is based on open-source investigations, including extensive analysis of Mandarin-language sources, including official Chinese-government documentation.

As well as looking at UK universities' research collaboration with the Chinese military, aspects of our research relevant to the Higher Education (Freedom of Speech) Act (HEFOSA) include the following:

- [Confucius Institutes](#): these are Chinese government sponsored centres within British universities. Our research looked at the Institute's hiring practices and the nominal responsibilities of staff from China to follow CCP rules while abroad. UKCT has previously suggested the Institutes may be operating unlawfully.
- [The China Scholarship Council \(CSC\) programme](#): through this programme, UK universities award hundreds of scholarships to Chinese students every year. However, the selection and monitoring processes are run by the Chinese government and contain discriminatory elements that would be illegal in the UK.
- [Chinese Students & Scholars Associations \(CSSAs\)](#): these student societies, which exist at most UK universities, are "guided" by CCP officials. UKCT published data on CSSAs in support of a research report on CSSAs by a separate think-tank.
- [British universities' operations in China](#): comprising dozens of Joint Educational Institutes and two overseas campuses set up by UK universities in China. UKCT published data in support of a research report by a separate think-tank on these.
- Chinese Communist Party (CCP) membership: unpublished research on Chinese Communist Party membership and the requirements it imposes on CCP members who come to the UK as visiting scholars or in other capacities.
- [CCP interference](#): UKCT runs a public information campaign about CCP interference in UK universities, including the [account](#) of a Chinese student which exemplifies how the CCP uses security officials to silence Chinese citizens on campus.
- Academic freedom survey: an ongoing survey of the state of academic freedom amongst China studies scholars in the UK.
- Financial dependence study: a planned study of the extent to which UK universities are dependant on Chinese student fees.

## The Higher Education (Freedom of Speech) Act

HEFOSA itself contains various clauses that might impinge on programmes and dynamics such as those listed above. For example, the legislation begins as follows:

*"All Duty to take steps to secure freedom of speech*

*(1) The governing body of a registered higher education provider must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to achieve the objective in subsection (2).*

*(2) That objective is securing freedom of speech within the law for—*

*(a) staff of the provider,*

*(b) members of the provider,*

*(c) students of the provider, and*

*(d) visiting speakers.*

*(3) The objective in subsection (2) includes securing that—*

*(a) the use of any premises of the provider is not denied to any individual or body on grounds specified in subsection (4), and*

*(b) the terms on which such premises are provided are not to any extent based on such grounds.*

*(4) The grounds referred to in subsection (3)(a) and (b) are—*

*(a) in relation to an individual, their ideas or opinions;*

*(b) in relation to a body, its policy or objectives or the ideas or opinions of any of its members.*

*(5) The objective in subsection (2), so far as relating to academic staff, includes securing their academic freedom.*

*(6) In this Part, “academic freedom”, in relation to academic staff at a registered higher education provider, means their freedom within the law—*

*(a) to question and test received wisdom, and*

*(b) to put forward new ideas and controversial or unpopular opinions, without placing themselves at risk of being adversely affected in any of the ways described in subsection (7).*

*(7) Those ways are—*

*(a) loss of their jobs or privileges at the provider;*

*(b) the likelihood of their securing promotion or different jobs at the provider being reduced.*

*(8) The governing body of a registered higher education provider must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to achieve the objective in subsection (9).*

*(9) That objective is securing that, where a person applies to become a member of academic staff of the provider, the person is not adversely affected in relation to the application because*

*they have exercised their freedom within the law to do the things referred to in subsection (6)(a) and (b).”*

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In December 2023, the Office for Students (OfS) launched a [consultation](#) on the complaints scheme provided for by HEFOSA. UKCT took this as an opportunity to send a consultation [submission](#) to the OfS.

In March 2024, the OfS published its draft [guidelines](#) on proposed regulatory advice and initiated a further [consultation](#) about these guidelines. The draft guidelines [clearly reflected](#) consideration of UKCT’s first submission in three important respects:

- Although not mentioning ‘China’ or ‘Confucius Institutes’, the guidelines described an institute with hiring practices identical to those of a typical Confucius Institute and suggested that a British university “must terminate or amend these arrangements.” The draft guidelines thus recommended the termination of arrangements of exactly the kind that are essential to a typical Confucius Institute.
- Although not mentioning the ‘CSC programme’ or ‘China’, the guidelines described a programme identical to the CSC programme, whereby “University A accepts international students on visiting scholarships funded by the government of country B. Scholars must accept the principles of the ruling party of country B, and direction from country B’s government via consular staff.” In the circumstances described, the guidelines stated that the British university “is likely to have to terminate or amend the scholarship agreement.” The guidelines thus recommended the termination (or amendment, but this is in effect not an option) of the CSC programme in the UK.
- Although not mentioning ‘China’, the guidelines described a situation where the government of a foreign country pressurises a university not to promote a scholar critical of that government and denies that scholar a visa. The guidelines suggested that, in such circumstances, “supporting Dr A’s application, and protesting or taking other action when Dr A’s visa was revoked, are likely to have been reasonably practicable steps that University B should have taken.” This was to indicate that universities ought always to take steps to protect university members (staff and students) targeted by the Chinese regime and criticise the Chinese regime whenever it undermines university members in any way.

These guidelines would have represented a sea-change for universities in their relationship with China. This would have had political ramifications for the Chinese regime.

1. The Confucius Institute programme is a flagship Chinese government programme highly valued by the CCP. The CCP treats Confucius Institutes as a stepping stone for universities to build broader relationships with Chinese entities. Some Confucius Institutes have been involved in setting up other collaborative programmes and even in student marketing.
2. The China Scholarship Programme, likewise, is a flagship programme highly valued by the CCP for strategic reasons. Somewhat counterintuitively, this programme



involves UK universities waiving fees for Chinese scholars – not receiving money. But it is understood that that is part of the broader relationship with the Chinese government from which universities benefit financially on the whole.

3. Chinese state action against scholars (visa denial, other forms of pressure) is reportedly not uncommon – although UKCT has yet to establish how common it is, hence the survey we are conducting. Regardless, the chilling effect of such actions impacts the academic community as a single whole. Universities do not have a strong record rebuking the Chinese government where a person is threatened or interfered with – indeed, in one high-profile case in the last ten years, the university was the direct enabler of such interference. Being forced to speak out on behalf of members affected would have represented a major change for universities.

The overall thrust of the draft guidelines' provisions was to raise serious questions about the legality of any UK-China collaborative programmes in higher education that involve CCP governance or oversight either on paper or in practice.

This would in principle also affect initiatives not mentioned in UKCT's submissions to the OfS, but raised in public since, such as Joint Educational Institutes.

### Context

The critical context is that UK universities are dependent on Chinese student fees to the extent that a significant number of institutions would cease to be commercially viable and go bankrupt without these fees.

Following the government's [announcement](#) of a pause to HEFOSA in late July 2024 – the announcement did not mention China – UKCT received information to the effect that there had been lobbying against HEFOSA because of universities' concerns about how it might affect their business dealings with Chinese entities and relationships with the Chinese government. The government has since admitted in legal correspondence with the Free Speech Union that there were concerns about how HEFOSA might affect these dealings and relationships.

UKCT has since sent FOIs to the OfS about the consultation process, draft guidelines, etc. Our aim is to gather and publish information about potential lobbying against HEFOSA that was motivated by, and mentioned, the perceived threat to relationships with the Chinese government/market. This work is ongoing.

The Russell Group, in an abridged summary of its consultation submission to the OfS which was published on its website, [argued](#):

“ 1.4 It remains unclear how the duty to secure free speech is to be applied to transnational education. It would be a concern if the OfS were to expect institutions to take steps that could limit the ability of institutions to provide advice and guidance to staff and students abroad intended to help those individuals act in accordance with local laws. We urge the OfS to provide clarification on how it understands free speech 'within the law' in this context, with a

clearer acknowledgment of a provider and constituent institution's responsibility to take reasonably practicable steps within the law of the country in which it is operating.

“1.5 Guidance relating to international student scholarships and academic appointments does not adequately account for a university conceding that a foreign government may make in-country decisions about which citizens are eligible for financial support. Termination of these contracts, as suggested in the guidance, would likely have a negative impact on UK/foreign relations, and we question whether such a response would be proportionate. As an alternative, we would suggest a reasonably practicable step would be for universities to publish its free speech policy and communicate this to recipients once in the UK.”

The first part of this excerpt (1.4) is clearly a reference to joint institutes, including in China, where the law forbids many forms of speech that are protected by UK law. The second part (1.5) relates to the China Scholarship Council and Confucius Institute programmes. The position of the Russell Group is that termination of these programmes “as suggested in the guidance, would likely have a negative impact on UK/foreign relations”. In other words, the Russell Group argued that the fate of these programmes should be determined not by their impact on or relevance to free speech, academic freedom, the integrity of academia and proper university governance, but by their effect on the UK's relationships with China.

This echoes claims [made](#) in October 2023 by then Foreign Secretary James Cleverley that the termination of the Confucius Institute programme would result in “losing the ability of the British Council to work in China”.

### Other legislation

There has been no test in the courts, as far as UKCT is aware, of whether schemes involving discrimination, such as the Confucius Institute and China Scholarship Council programmes, may contravene UK equality legislation.

The Education (No. 2) Act 1986 contains clauses relating to academic freedom and freedom of speech:

*“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—*

*(a) the beliefs or views of that individual or of any member of that body; or*

*(b) the policy or objectives of that body.*

*(3) The governing body of every such establishment shall, with a view to facilitating the discharge of the duty imposed by subsection (1) above in relation to that establishment, issue and keep up to date a code of practice setting out—*

*(a) the procedures to be followed by members, students and employees of the establishment in connection with the organisation—*

*(i) of meetings which are to be held on premises of the establishment and which fall within any class of meeting specified in the code; and*

*(ii) of other activities which are to take place on those premises and which fall within any class of activity so specified; and*

*(b) the conduct required of such persons in connection with any such meeting or activity;*

*and dealing with such other matters as the governing body consider appropriate.”*

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In its message (shared with UKCT) to a journalist inquiring about aspects of the Act, the government specifically stated that “We recognise and support the existing duty on higher education providers to secure lawful freedom of speech, set out in section 43 of the Education (No 2) Act 1986. This duty remains in force.”

Key provisions of HEFOSA and the 1986 Act are nearly identical. Both Acts demand that “the use of any premises” of universities is not “denied to any individual or body” because of that individual or body’s beliefs, views, opinions (various language is used). This may be relevant to both the Confucius Institute programme and the China Scholarship Council programme, both of which involve an explicit policy whereby individuals with certain views are to be denied work (in the first case) or a scholarship (in the second) at a British university.