**[Teaching terrorism: the impact of the Counter-Terrorism and Security Act 2015 on academic freedom](http://www.tandfonline.com/doi/full/10.1080/03069400.2017.1377025)**

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**Abstract:**

On 21 September 2015, Section 26 of the Counter-Terrorism and Security Act 2015 (CTSA 2015) came into force in England and Wales. The legislation imposes a duty on specified authorities, including colleges and universities, to have “due regard to the need to prevent people from being drawn into terrorism”. The provision is the latest in a series of measures introduced as part of the UK Government’s overall counter-terrorism strategy, CONTEST, which seeks to “stop people becoming terrorists or supporting terrorism”. The Prevent duty has been met with significant opposition from within the Higher Education (HE) sector. At its 2015 Congress, the lecturers’ trade union, the University and College Union (UCU), passed a motion which condemned the Prevent duty as posing a serious threat to academic freedom. UCU has raised concerns that the Government’s broad definitions of ‘terrorism’ and ‘extremism’ will have the effect of stifling campus activism and freedom of speech. Concerns have also been raised by the National Union of Students (NUS) that in focusing disproportionately on Islamic-inspired ‘terrorism’ and ‘extremism’, the Prevent duty is inherently discriminatory towards Muslim students, and will sever the relationship of trust and confidence between staff and students, legitimise Islamophobia and lead to the normalisation of racist views. This article will consider the extent to which the Prevent duty undermines academic freedom in UK Higher Education. Drawing on the author’s own experience teaching counter terrorism law, the article will discuss the implications of the duty for HE teaching practice.

**Keywords: Counter-Terrorism, Prevent, Counter Terrorism and Security Act 2015, Academic Freedom**

**Introduction**

On 21 September 2015, Section 26 of the Counter-Terrorism and Security Act 2015 (CTSA 2015) came into force in England and Wales. The legislation imposes a duty on specified authorities, including colleges and universities, to have “due regard to the need to prevent people from being drawn into terrorism”.[[1]](#footnote-1) The provision is the latest in a series of measures introduced as part of the UK Government’s overall counter-terrorism strategy, CONTEST[[2]](#footnote-2), which seeks to “stop people becoming terrorists or supporting terrorism”.[[3]](#footnote-3) The Prevent duty has been met with significant opposition from within the Higher Education (HE) sector. At its 2015 Congress, the lecturers’ trade union, the University and College Union (UCU), passed a motion which condemned the Prevent duty as posing a serious threat to academic freedom.[[4]](#footnote-4) UCU has raised concerns that the Government’s broad definitions of ‘terrorism’ and ‘extremism’ will have the effect of stifling campus activism and freedom of speech.[[5]](#footnote-5) Concerns have also been raised by UCU and the National Union of Students (NUS) that in focusing disproportionately on Islamic-inspired ‘terrorism’ and ‘extremism’, the Prevent duty is inherently discriminatory towards Muslim students, and will sever the relationship of trust and confidence between staff and students, legitimise Islamophobia and lead to the normalisation of racist views.[[6]](#footnote-6) This article will consider the extent to which the Prevent duty undermines academic freedom in UK Higher Education. Drawing on the author’s own experience teaching counter terrorism law, the article will discuss the implications of the duty for HE teaching practice.

**Academic freedom**

One of the key purposes of HE is to serve the public interest through the advancement of knowledge and understanding.[[7]](#footnote-7) The 1997 Dearing Report into Higher Education stressed the importance of universities in “the development of our people, our society, and our economy”.[[8]](#footnote-8) Central to the proper functioning of universities is the concept of ‘academic freedom’. The university is traditionally considered an environment in which critical thinking in staff and students can be fostered and nurtured, free from undue interference and restriction. Although it is often regarded as a fundamental principle of academic practice, the term ‘academic freedom’ is difficult to define. There is no single agreed definition of the term within the academic community[[9]](#footnote-9) and there is significant variation in the protection of academic freedom between EU countries.[[10]](#footnote-10) Whilst Article 13 of the EU’s Charter of Fundamental Rights states that “[t]he arts and scientific research shall be free of constraint. Academic freedom shall be respected”[[11]](#footnote-11), it omits to provide a clear definition of what constitutes academic freedom, nor any guidance on how it can be protected. As Felt[[12]](#footnote-12) has noted, “[e]ven though we would very quickly agree on the importance of ‘academic freedom’ for the development of contemporary societies, the meaning of this notion remains extremely vague”.

Legislative protection of academic freedom in the UK can be found in Section 202 of the Education Reform Act 1988, which establishes a legal right for academic staff “to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs or the privileges they may have”[[13]](#footnote-13). Yet, as Karran[[14]](#footnote-14) notes, this provision does not afford the same constitutional protections for academic freedom as other comparable EU countries. Introduced by a Conservative Government under Margaret Thatcher, the purpose of the provision as a whole was to weaken, rather than strengthen academic freedom in the UK, by removing ‘tenure’ for academic staff, which had previously given protection against dismissal on the grounds of redundancy or financial necessity. Moreover, the provision does not apply to academic staff working in the post-1992 sector.[[15]](#footnote-15) Thus for Court[[16]](#footnote-16), whilst the 1998 Act for the first time made specific reference to the protection of academic freedom, “there must be doubt that staff engaged now in teaching and research at UK universities have the same liberty that existed in earlier times”. Indeed, a comparative study of academic freedom in Europe found the in the absence of clear constitutional support, the UK has one of the lowest protections for academic freedom of the EU nations.[[17]](#footnote-17)

Despite an absence of effective constitutional protection, academic freedom undoubtedly remains a foundational concept in UK HE. The UCU promotes academic freedom, including freedom to research and advocate new ideas, as essential to the expansion of knowledge and understanding and “the development of a civilised democracy”.[[18]](#footnote-18) It is recognised within teaching and learning scholarship that such protections are important not only to those working and studying in HE, but for wider society. For Bergan, academic freedom is “the heart of democratic society”[[19]](#footnote-19), enabling the public to hold governments and powerful corporations to account for their actions.[[20]](#footnote-20) In a similar vein, Rochford has suggested that:

Academic freedom is not for the benefit of the academic, or even the institution. It is for the benefit of society at large, and society’s failure to provide the environment in which this freedom can flourish will result in the loss of a valuable asset.[[21]](#footnote-21)

Whilst the concept of academic freedom is traditionally associated with the freedom for academic staff to conduct research and express opinions freely, several scholars have highlighted the importance of such protections for students. Macfarlane, for example, suggests that since both groups are members of the same academic community engaged in independent and intellectual enquiry, it follows that the claims of academic freedom should apply to staff and students equally.[[22]](#footnote-22) Advocating a renewed focus on ‘integrity’ in HE teaching, Macfarlane suggests that the protection of students’ academic freedom “is one, if not the first, academic duty of teachers in Higher Education”.[[23]](#footnote-23) Support for this broader conception of academic freedom can be found in the 1997 Dearing report into Higher Education, which identifies freedom of thought and expression as being something which “is shared throughout higher education”.[[24]](#footnote-24) For Nelson, academic freedom, including the freedom to study, learn, teach and express ideas “is the most significant concept a teacher can embrace”[[25]](#footnote-25). To this end, Nelson and Watt propose a more inclusive definition of academic freedom as “the principle which gives both students and faculty in the classroom the right to say whatever they believe is pertinent to the subject at hand”.[[26]](#footnote-26)

Central to academic freedom is the enhancement of learning through engagement in critical thought and expression. For Bowden and Marton, learning is “the defining element of the university”[[27]](#footnote-27), engaged by both students, though individual studying, and staff, through academic research. The development of critical thinking is both a hallmark of academic rigour and a foundation of good pedagogy.[[28]](#footnote-28) Boyer’s conception of to ‘active learning’ stresses the importance of fostering spaces for critical thinking in the development of good teaching practices:

Great teachers create a common ground of intellectual commitment. They stimulate active, not passive, learning and encourage students to be critical, creative thinkers, with the capacity to go on learning after their college days are over.[[29]](#footnote-29)

The contemporary emphasis on ‘research informed teaching’ reflects a recognition of the inherent relationship between teaching and research in a HE context.[[30]](#footnote-30) A report published in February 2016 by the House of Commons Business, Innovation and Skills Committee, in response to Government plans to introduce a ‘Teaching Excellence Framework’ in HE, stresses “the interdependencies between research and teaching within the higher education environment”.[[31]](#footnote-31) The unity of teaching and research requires that both staff and students are given an “intellectual space”[[32]](#footnote-32) to evaluate prevailing ideas and perspectives. The promotion and protection of academic freedom is thus essential to the enhancement of both teaching and research in UK HE.

**The Prevent duty**

With the above discussion in mind, the reforms introduced under the CTSA 2015 warrant careful scrutiny. By Section 26 of the Act, universities, as one of a number of “specified authorities”, are now under a statutory duty have “due regard to the need to prevent people from being drawn into terrorism”.[[33]](#footnote-33) The duty is a key part of the Government’s latest Prevent strategy[[34]](#footnote-34), which ostensibly seeks to “reduce the threat to the UK from terrorism by stopping people becoming terrorists or supporting terrorism”.[[35]](#footnote-35) Originally introduced by the New Labour Government in 2003, following the London bombings of 7 July 2005 Prevent became the focal point of the Government’s overall counter terrorism strategy, CONTEST, which aims to “reduce the risk to the UK and its interests overseas from terrorism”.[[36]](#footnote-36) The latest version of Prevent[[37]](#footnote-37), published by the Coalition Government in 2011, has three stated objectives: first, to “respond to the ideological challenge of terrorism and the threat faced from those who promote it”; second, to “prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support”; and third to “work with sectors and institutions where there are risks of radicalisation”[[38]](#footnote-38). According to the Government, Prevent is designed to address not only terrorism but also “non-violent extremism”, which “can create an atmosphere conducive to terrorism and can popularise views which terrorists exploit.”[[39]](#footnote-39) Preventing people becoming drawn into terrorism requires the challenge of “extremist ideas” and “intervening to stop people moving from extremist (albeit legal) groups into terrorist-related activity.”[[40]](#footnote-40)

Universities have been singled out by the Government as a key focal point in the propagation of “extremism”. The 2011 Prevent policy claimed that over thirty per cent of people convicted of Al Qaeda-related terrorist offences in the UK between 1999 and 2009 had previously attended university or a HE institution.[[41]](#footnote-41) Despite that this figure is significantly lower than the UK average of 47 per cent[[42]](#footnote-42), the Government appeared to draw a causal link between HE and terrorist atrocities, claiming that a number of convicted terrorists were influenced by “extremist ideology” whist studying at university. Although the Government provided no evidence to support this claim, it cited the case of Umar Farouk Abdulmutallab, convicted in the US of the attempted bombing of an aircraft in 2009 who had previously studied at University College London.[[43]](#footnote-43) The policy recognised the importance of universities and colleges in promoting and facilitating the exchange of opinions and facilitating debate, but went on to stress the “legal and moral obligation” on HE and FE institutions “to ensure that the place of work and study is a tolerant, welcoming and safe environment”.[[44]](#footnote-44) Making passing reference to the importance of academic freedom in further and higher education, the message to sector was clear:

Universities and colleges – and, to some extent, university societies and student groups – have a clear and unambiguous role to play in helping to safeguard vulnerable young people from radicalisation and recruitment by terrorist organisations.

Government guidance accompanying the CTSA 2015 sets out a number of far-reaching obligations on universities to ensure that the Prevent duty is met.[[45]](#footnote-45) This includes a requirement that there are adequate risk assessments in place to regulate external speakers, challenge “extremist views” and assess where and how students might be at risk of being drawn into terrorism and non-violent extremism. Universities should also have “robust procedures” in place for sharing information, both internally and externally, about “vulnerable individuals” and develop a “clear Prevent referral process with a single point of contact which is known to all staff and students.” Relevant university staff should be required to undertake “Prevent awareness training”, and policies and procedures should be in place for students and staff working on “sensitive or extremism-related research”, which includes identifying and addressing issues where online materials are accessed for “non-research purposes”. Finally, universities should have clear policies which set out “activities that are or are not allowed to take place on campus”, including setting out “what is expected from the student unions and societies in relation to Prevent.” Universities are required to have regard to this guidance in carrying out the Prevent duty[[46]](#footnote-46), and the Home Secretary has the power to issue directions to a university for the purpose of enforcing the duty[[47]](#footnote-47). Failure to discharge the duty can result in the Secretary of State seeking a mandatory order from the court which may, ultimately, hold the university in contempt of court.[[48]](#footnote-48)

Since the legislation was enacted, the provisions have provoked widespread condemnation. During a visit to the UK in 2016, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association found that the strategy had “created unease and uncertainty around what can be legitimately discussed in public” and risked “dividing, stigmatising and alienating segments of the population”.[[49]](#footnote-49) A report published in October 2016 by the Open Society Justice Initiative found that the strategy “creates a serious risk of human rights violations” and is potentially counterproductive.[[50]](#footnote-50) Despite these concerns, the Government is reported to be considering a major expansion of Prevent as part of an overall “refresh” of the Government’s “deradicalization” strategy[[51]](#footnote-51)

These developments have significant implications for staff and students in UK HE. Although Section 31 of the CTSA 2015 requires that the Prevent duty is balanced against a need to have “particular regard to the duty to ensure freedom of speech” and “to the importance of academic freedom”, no further guidance is given to as to how this balance should be struck. It is no surprise, therefore, that some education providers have had difficulty understanding and implementing the duty.[[52]](#footnote-52) The remainder of this article will consider the implications of the Prevent duty for HE teaching practice.

**Teaching terrorism: implications for teaching practice**

***Targeting ‘extremism’ - stifling debate***

There is a clear danger that the Prevent duty will have the effect of stifling debate and critical expression among university staff and students. Prevent is grounded in a ‘conveyor belt’ model of radicalisation, which assumes that ‘non-violent extremism’ is a precursor to terrorist violence.[[53]](#footnote-53) The Prevent strategy explains that individuals who have been radicalised to the point of involvement in terrorism have often previously gone through a “prior extremist phase”[[54]](#footnote-54), which the strategy ultimately seeks to disrupt. The term ‘extremism’ has no legislative definition but has been defined by the Government as “vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.”[[55]](#footnote-55) This ambiguous definition inherently includes the expression of political views which do not involve any invocation or support for violence. In December 2015 it was reported that police officers at a Prevent training event cited environmentalist activists and anti-fracking protesters as examples of potential ‘extremists’.[[56]](#footnote-56) The broad definition of ‘extremism’ opens up the possibility that Prevent could be used to target legitimate political dissent, threatening the “intellectual space” required for academic enrichment.

These definitions have particular implications for academics who, like the present author, are involved in the development and delivery of the growing number of undergraduate and postgraduate law modules which focus explicitly on ‘terrorism’ and ‘counter terrorism’ as a focus of inquiry.[[57]](#footnote-57) Such teaching can involve asking pertinent questions about the nature of ‘terrorism’ and the legitimacy of official counter terrorism responses. It can require students to analyse and discuss the effectiveness and proportionality of official responses to terrorist violence, such as extended pre-charge detention, shoot to kill and military led responses. It can introduce students to ideas which challenge existing orthodoxies and state-led definitions of terrorism. This could include, for example, researching and debating the concept of ‘state terrorism’, including arguments that the British state and its allies have been both complicit and directly involved in acts of terrorism. It can also involve subjecting the Prevent duty itself to academic scrutiny, taking into account the experiences of those who have found themselves under official suspicion. Such topics are also frequently integrated into ‘core’ law teaching, including Public Law, Criminal Law and Law and Society modules. This material does not sit comfortably with the nebulous definitions of ‘extremism’ and ‘British values’.

***Racial and religious profiling***

Since its inception, the Prevent strategy has been targeted disproportionately at Britain’s Muslim communities.[[58]](#footnote-58) In 2009 Sir Norman Bettison, former Association of Chief Police Officers (ACPO) Lead for Preventing Violent Extremism, stated that since the threat to the UK was of “Al Qaeda inspired terrorism”, terrorists in the UK “are, by definition, all of the Muslim faith”.[[59]](#footnote-59) Although the latest Prevent strategy makes reference to other forms of political violence, including “extreme right-wing terrorism”, it makes clear that Al Qaeda and other groups influenced by “violent Islamism” remain “the most significant terrorist threat we face”.[[60]](#footnote-60) This focus has influenced the way in which Prevent interventions have been operationalised. A study published by the Institute of Race Relations in 2009 found that local authorities were being allocated Prevent funding in direct proportion to the number of Muslim people living in the area.[[61]](#footnote-61) Moreover, despite making up less than 5 per cent of the overall population, Muslims made up some 67 per cent of those referred to the Prevent anti-radicalisation programme, Channel, between 2007 and 2010.[[62]](#footnote-62)

The official suspicion Prevent places on Muslims, and the explicit focus on the university as a source of radicalisation, has had damaging consequences for Muslim students. In 2008, a Muslim student and a staff member at the University of Nottingham were detained under the Terrorism Act 2000 after the police were alerted by university staff to the presence of an ‘Al Qaeda Training Manual’ on a university computer. The document, freely available on the US government websites, was used for research about terrorism in the context of a university course.[[63]](#footnote-63) More recently, a Muslim postgraduate counter terrorism student at Staffordshire University was questioned by university administrators about his views on terrorism and extremism after he was spotted reading a textbook entitled ‘Terrorism Studies’ in the University library.[[64]](#footnote-64) Predictably, these incidents have had lasting effects on the students in question. There is also a real danger that these examples will create a climate of fear and self-censorship among the Muslim staff and student population as a whole. Muslim students may become reluctant to select modules and conduct research projects which require engaging in materials which may provoke suspicion. Academic staff members may avoid introducing topics which could put students at risk of falling foul of the Prevent duty. University ethics committees could become increasingly reluctant to support research projects which might potentially come into conflict with Prevent obligations. Although the full impact of the CTSA 2015 remains to be seen, the potential for it to have destructive impact on the academic freedom of staff and students is significant.

**Defending academic freedom**

Despite the threats posed by the CTSA 2015, there are steps that those involved in the delivery of HE teaching can take to defend academic freedom. The following suggestions focus on the monitoring and implementation of the Prevent duty at three levels: the (i) university level; (ii) the departmental level; (iii) the level of individual staff members.

First, there is a need to closely monitor the implementation of the Prevent duty at the university level. At the time of writing, universities across the UK are in the process of finalising and publishing local Prevent policies in line with the new duty. As the recent experience of the Tier 4 immigration regulations demonstrates[[65]](#footnote-65), there is a danger that universities will go above and beyond the legal requirements in order to demonstrate compliance. In January 2017, reports emerged that Kings College London had warned students and staff that their emails were being “monitored and recorded” as part of the University’s Prevent policy.[[66]](#footnote-66) Although the University subsequently claimed that the university were not “actively” monitoring emails, that reports such as this are likely to exacerbate a climate of fear and self-censorship, particularly among Muslim students and staff who are most likely to bear the brunt of harmful Prevent interventions.

Staff working in HE institutions should therefore closely scrutinise these local policies and ensure that they do not go beyond what is required under the legislation. For example, a requirement that policies and procedures are in place relating to the use of IT equipment does not equate to a requirement that universities monitor the internet usage and electronic communications of staff and students. Similarly, a requirement that policies and procedures are in place for students and staff working on “sensitive or extremism-related research” does not necessitate a requirement that staff members submit reading lists to university management for notification or approval (which could suggest that material accessed beyond recommended reading lists is legitimate grounds for suspicion). Second, in order to mediate the harmful racialised effects of the Prevent duty, universities should carry out risk assessments on the impact of the local prevent policies on BME staff and students, in consultation with the local students’ union and campus trade unions. University departments should ensure that all staff responsible for the implementation of Prevent undertake anti-racist training. The subject choices of students from BME backgrounds should be closely monitored in order to ascertain whether there appear to be any changes in the progression of BME students following the implementation of the duty. At an individual level, staff members involved in the delivery of teaching should attempt to create a safe space for open discussion and debate in order to resist the harmful chilling effects of Prevent. This could include, for example, integrating a discussion of academic freedom at the beginning of a module which makes clear that respectful debate and discussion, and independent research beyond the set reading, is actively encouraged. Students should also be encouraged to discuss and debate the Prevent strategy in seminars and workshops, and interrogate the definitions of ‘extremism’ and ‘British values’ upon which the policy is based. This would require staff to introduce competing academic perspectives on Prevent in order to encourage students to express their own viewpoints and share experiences. Such measures, although limited, could go some way in defending the academic freedom of staff and students and prevent the type of overreaction seen in universities following the introduction of the Tier 4 regulations.

**Conclusion**

Academic freedom is a fundamental foundation of HE. The benefits are felt by staff, students and wider society, and such protections are essential for a well-functioning democracy. The CTSA 2015 represents one of the most significant threats to academic freedom in recent years. Although the real impact of the duty remains to be seen, the evidence to date of the implementation of the Prevent strategy as a whole should be cause for alarm across the HE sector. These developments are likely to have a direct impact on UK law schools, were ‘terrorism’ and ‘counter terrorism’ are increasingly embedded into undergraduate and postgraduate curriculums and a growing number of postgraduate research students are investigating these issues directly. Although, as the above discussion has attempted to demonstrate, there are steps academic staff can take to ensure that the damaging effects of the Prevent duty are mediated as much as possible, ultimately a strategy that is based on unsound evidence, encourages racial and religious profiling and which undermines the academic freedom of staff and students should have no place in HE.

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3. HM Government, *Prevent Strategy* (London, HMSO, 2011), p. 39. [↑](#footnote-ref-3)
4. UCU, *The Prevent Duty: A Guide for Branches and Members* (UCU, 2015). Available at <https://www.ucu.org.uk/media/7370/The-prevent-duty-guidance-for-branches-Dec-15/pdf/ucu_preventdutyguidance_dec15.pdf> (accessed 8 April 2016). [↑](#footnote-ref-4)
5. *Ibid*. [↑](#footnote-ref-5)
6. NUS Black Students (2015) *Preventing Prevent Handbook* (NUS,2015). Available at <http://www.nusconnect.org.uk/resources/preventing-prevent-handbook> (accessed 8 April 2016). [↑](#footnote-ref-6)
7. See the National Committee of Inquiry into Higher Education, *Higher Education in the Learning Society* (‘The Dearing Report’) (London, HMSO, 1997), para. 3.41. [↑](#footnote-ref-7)
8. *Ibid*., para. 1.1. [↑](#footnote-ref-8)
9. S. Jasper, “Britain's Education Reform Act: A Lesson in Academic Freedom and Tenure” (1990) 16(3) *Journal of College and University Law* 449, p.451. [↑](#footnote-ref-9)
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*Education Policy* 289. [↑](#footnote-ref-10)
11. Article 13. [↑](#footnote-ref-11)
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13. Section 202(2). [↑](#footnote-ref-13)
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15. *Ibid.*  [↑](#footnote-ref-15)
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17. T. Karran, *supra*, n.10. [↑](#footnote-ref-17)
18. See <https://www.ucu.org.uk/academicfreedom> (accessed 8 April 2016). [↑](#footnote-ref-18)
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23. *Ibid*., p.24 [↑](#footnote-ref-23)
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30. See e.g. <https://www.heacademy.ac.uk/heav/research-informed-teaching> (accessed 11 April 2016). [↑](#footnote-ref-30)
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33. CTSA 2015, s.26(1). [↑](#footnote-ref-33)
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36. HM Government, *CONTEST: The United Kingdom’s Strategy for Countering Terrorism* (London, HMSO, 2011), p.3. [↑](#footnote-ref-36)
37. HM Government, 2011, s*upra*, n.34. [↑](#footnote-ref-37)
38. *Ibid*, p.1. [↑](#footnote-ref-38)
39. HM Government, 2014, *supra*, n.35, p. 9. [↑](#footnote-ref-39)
40. *Ibid*, pp.17-18. [↑](#footnote-ref-40)
41. HM Government, 2011, s*upra*, n.34, p.72. [↑](#footnote-ref-41)
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44. *Ibid*., p.72. [↑](#footnote-ref-44)
45. HM Government, *Prevent Duty Guidance: For Higher Education Institutions in England and Wales* (London, HMSO, 2015). [↑](#footnote-ref-45)
46. CTSA 2015, s.29. [↑](#footnote-ref-46)
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