Step 1: Is the speech 'within the law'?

Speech is 'within the law' and 'lawful' if it is not prohibited by law.



Step 2: Are there any 'reasonably practicable steps' to secure the speech?

The particular circumstances will be important in considering whether a step is reasonably practicable. Reasonably practicable steps may include positive steps – doing something – and negative steps – refraining from doing something.



Step 3: Are any restrictions 'prescribed by law' and proportionate under the European Convention on Human Rights?

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Is the interference prescribed by law?

An interference is prescribed by law if:

- there is a specific domestic English legal rule or regime which authorises the interference;
- the person affected by the interference must have adequate access to the rule in question; and
- The rule is formulated with sufficient precision to enable the affected person to foresee the
 - which the

Is the interference proportionate?

To assess the proportionality of a measure to interfere in lawful speech, you must consider:

- whether the objective of the measure is sufficiently important to justify the limitation of a protected right,
- whether the measure is rationally connected to the objective,
- whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and
- whether, balancing the severity of

circumstances in which the law would or might be applied, and the likely consequences that might follow.

the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

See example 24 in the guidance

The proportionality test in Article 10(2) means that, in practice, it is difficult to restrict or regulate speech in a higher education context. This is because there is a high bar for limitation of a protected ECHR right in general terms, and the particular purpose of higher education is such that limitation of Article 10 rights would undermine that purpose.

Your restrictions are not consistent with your free speech obligations. You will need to revise your approach.

Your regulations or restrictions are likely to be consistent with your free speech obligations. Regulations or restrictions should:

- use legal definitions where these are available
- incorporate objective tests where appropriate, for instance in relation to harassment
- avoid vague language or undefined terms

Yes No

• include clear, adequate and effective 'safeguard' statements protecting academic freedom and freedom of speech within the law (for instance, to the effect that where a policy conflicts with academic freedom, the latter prevails).