

# UUK and UCEA

## DRAFT REVISED MODEL STATUTE

### NOTES ON CLAUSES (These notes refer to the Final Draft: 1 March 2002)

#### STATUTE XX Academic Staff: Dismissal, Discipline, Grievance Procedures and related matters

##### INTRODUCTORY NOTE

It will be for each institution wishing to adopt this Model Statute to ensure that it harmonises with their Charter and other existing Statutes. Definitions in particular need to be checked carefully.

We have used standard terms throughout, such as Vice-Chancellor, Secretary/Registrar, Senate, Council and so on. Institutions will substitute their own titles where appropriate.

##### PART I: GENERAL

#### 1. Application

- (1) This provides that the Statute will apply to all members of the academic staff (except for those appointed before 1987: see clause 5(1)). If “academic staff” is not defined elsewhere in the university’s statutes, it is possible that a definition may be required here.

Under (ii), other specific post-holders (e.g. Librarian) and academic-related staff can be brought within the scope of the Statute if the university wishes. All those covered by the Statute are referred to simply as “members of staff” hereafter.

- (2) This ensures that no-one may waive or contract out of the provisions of the Statute. But (i) just makes it clear that waivers, compromise agreements and the like which are permitted by law and affect matters outside the scope of the Statute as such are unaffected; and (ii) is to make it clear beyond any doubt that voluntary severance, early retirement or resignation are in no way prevented by the Statute.
- (3) The Model Statute (MS) is unclear as to whether its provisions on dismissal apply to the holders of various offices in the university in respect of those offices as distinct from their substantive academic posts, e.g. Pro-Vice-Chancellor or Dean. It is arguable that they are at present covered. Our view is that they should not be. It is for the university to determine which posts

should be included here and to establish procedures in respect of removal prior to the normal termination date. These procedures are not covered by clause 4(1).

- (4) The MS has an annex covering misconduct by the Vice-Chancellor. We regard this as inappropriate and therefore make provision, prospectively, for these matters not to be regulated by the Statute. They should instead be covered in the Vice-Chancellor's terms and conditions of service. We do not, however, think that it is possible to make this change in respect of any Vice-Chancellor in post at the time this Statute comes into force unless he and the Council agree to do so.

## **2. General principles of construction and application**

- (1) This is taken directly from the MS and the ERA 1988. We have made one change to the rubric in that we have added the word "applied" to the sole word "construed" in the MS. This strengthens the provision and makes it more significant.
- (2) This provision is also designed to strengthen the provision on academic freedom. We have no wish to allow universities to take action that would infringe this freedom and we think this reinforces 2(1)(i) appropriately. It is for the persons or body already dealing with the matter to consider the violation of academic freedom claim along with any other arguments.
- (3) This paragraph is designed to help over the academic freedom provisions by giving some substance to what is a general and abstract concept. It is only Sections VI and VII of the UNESCO Recommendation of 1997 which are covered, and only in relation to dismissal, disciplinary procedures and grievances under the Statute.
- (4) This provides that references to statutory provisions include any future amendments to those provisions.
- (5) This provides that reference should be made to these Notes in construing and interpreting the Statute.

## **3. Dismissal**

- (1) This is a straight reference to the relevant provision in the ERA 1996 so that "dismissal" in the Statute has the same meaning as in ordinary employment law.
- (2) The purpose of this clause is to ensure that universities have no less power to dismiss academic staff than they do any other staff or any other employer has to dismiss any employee.

- (3) This allocates the different kinds of dismissal to the different Parts of the Statute for the purposes of the internal procedures under the Statute, e.g. excluding non-renewal of a fixed-term contract from Part II (redundancy) regardless of how such non-renewal would be regarded by ordinary employment law.

#### **4. Hearing, appeal and grievance panels**

- (1); (3) This clause lays down general provisions (including the right to be legally represented) which apply to most hearing, appeal and grievance panels throughout the Statute in order to comply with the principles of fairness, due process and natural justice. It does not, however, apply to panels under clauses 1(3), 16 and 17 dealing respectively with removal of an office holder such as Dean, non-renewal of a fixed-term contract and non-confirmation of a probationary appointment, which we feel ought on practical grounds to attract a simpler process.
- (2) This allows for a larger panel with NHS representation for clinical academic staff. See notes on clauses 14 and 19 below.

### **PART II: REDUNDANCY**

#### **5. Application**

- (1) This is the statutory exclusion of staff appointed prior to 20 November 1987 and not subsequently promoted. However, it is necessary to provide that such staff shall continue to be treated in accordance with any provisions that applied to them prior to the existing MS (or as may have been modified since then), because many such staff did not enjoy tenure at that time and it is obviously not the intention that they should have acquired it. The precise wording of this requires further consideration.
- (2) This makes clear that non-renewal of a fixed-term contract is not to be considered as a redundancy under the Statute: see clause 16 below.

#### **6. Definition of “redundancy”**

This adopts the same meaning as in ordinary employment law under the ERA 1996, subject to the exclusion of fixed-term contracts.

#### **7. Procedure for dismissal by reason of redundancy**

- (1) The detailed procedure will be contained in an Ordinance made by the Council.
  - (i) The preliminary matters are in accord with those required by legislation.
  - (ii),(iii) This requires a formal procedure which is fair and complies with the requirements of due process.

- (iv) This makes it clear that the Ordinance can authorise the Vice-Chancellor or other officer to effect the dismissals.
- (2) This clause requires a resolution of the Council before the formal stages can be instituted and any member of staff selected for redundancy and dismissed. It is thought to be appropriate and desirable to involve the Council at this stage as a statutory requirement. In particular, it means that, following selection, matters can proceed without any reference back to the Council; it also makes it possible to remove from the appeal panel the point covered in clause 8(2) below. This reproduces the corresponding provision in the MS.

## **8. Appeal against dismissal by reason of redundancy**

No specific comments are necessary here, but see the note on clause 7(2) above.

### PART III: DISCIPLINARY PROCEDURES

## **9. Grounds for disciplinary action**

This clause is designed to give a sufficient degree of certainty as to what may give rise to disciplinary action while preserving some flexibility as appropriate in an employment situation. As the ACAS Code states (para 5, p 6): “It is unlikely that any set of disciplinary rules can cover all circumstances that may arise.”

## **10. Disciplinary procedures**

This distinguishes the less serious offences, for which warnings are an appropriate penalty, from the more serious cases where it is possible or likely that a dismissal will result. The clause sets out some of the fundamental features that the Ordinance should incorporate by virtue of the requirements of fairness and due process.

- (d) Permits arrangements to protect witnesses in sensitive cases such as sexual harassment.
- (e) This provides, for new members of staff, for penalties that are not currently available. It is believed that the addition of a range of penalties between warnings and dismissal will be fairer, as the panel would have available substantive penalties beyond a mere warning which could be a real alternative to dismissal in non-trivial cases.
- (g); (h) Incorporates provision for summary dismissal (i.e. without notice) in respect of “gross misconduct”, which may itself be appealed. See also clause 12.
- (h) The final sentence makes clear that the appeal will not be a re-run of the original hearing, but the appeal panel will be able to hear witnesses or do whatever is necessary to make good any deficiencies in the original hearing. This will be covered in the Ordinances.

## **11. Code of Practice**

This is a reference to the ACAS Code of Practice on Disciplinary Procedures which ought to be observed where appropriate both in drawing up the procedures and in taking any action thereunder.

## **12. Dismissal**

- (1) It will be for the hearing panel to take the decision as to the appropriate penalty, including dismissal (see clause 10(ii)(e)), not as in the MS where the Tribunal merely makes a recommendation to the Vice-Chancellor. The Secretary/Register will give immediate effect to a decision to dismiss, whether with notice, without notice or with pay in lieu of notice, as appropriate.
- (2) A decision to dismiss, with or without notice, will be implemented forthwith under sub-clause (1), but will be withdrawn or modified in the event of a successful appeal.

## **13. Relationship with Part IV**

It is important to have clarity on this point, namely, that the presence of a health condition is not a bar to proceedings under Part III.

## **14. Clinical staff**

This clause permits action to be taken by the university in respect of clinical work performed by a member of the clinical academic staff both under Part III (discipline) and Part IV (incapacity on health grounds). There may be cases where it would be more appropriate for the NHS to take the disciplinary action, but this possibility should be included in cases where, for example, the NHS is reluctant to act, the clinical misconduct arose in a teaching or research context, or there are other allegations of a non-clinical kind and it is sensible for one panel to hear all the allegations together.

## **PART IV: INCAPACITY ON HEALTH GROUNDS**

### **15. Dismissal on health grounds**

- (1) This is tersely worded, as it is believed that all the necessary detail can be included in the Ordinance.
- (2) The MS requires that these panels should be chaired by a medically qualified person. This paragraph requires only that an appropriately medically qualified person should be a member of the panel.

## PART V: OTHER DISMISSALS

The purpose of this Part is to preclude any argument either that the university has no power to effect dismissals other than on grounds of discipline, health and redundancy, or that such dismissals must be processed through one of those procedures. The MS is unclear on this point. It is highly desirable that this should now be clarified.

### **16. Non-renewal of a fixed-term contract**

It is particularly important that universities should be able to dismiss staff through non-renewal of a fixed-term contract without having to go through the more elaborate redundancy procedures contained in Part II of the Statute. The DTI consultation paper on *Fixed-Term Work* (March 2001) and the draft Statutory Instrument (The Fixed-Term Employees (Prevention of Loss Favourable Treatment) Regulations) have been taken into consideration, and we have taken independent legal advice. We believe this clause is compatible with the Directive and the draft Regulations as any differences in treatment arise exclusively in relation to the ending of the fixed period and can be objectively justified.

- (1) Allows for a simplified procedure, but consultation with unions will be required where the terminations constitute “redundancy” in law and the numbers invited trigger the statutory consultation procedures.
- (2) Attempts to set out, comprehensively, the grounds on which it is appropriate to allow the contract to terminate without renewal. (iv) is apt, for example, to cover a post where rotation is envisaged, such as for training purposes, e.g. clinical lectureships.
- (3) In view of the number of these cases in those universities which extend the Statute to academic-related staff (e.g. research staff), and the nature of the exercise, we propose a less elaborate procedure and therefore exclude these panels from the requirements of clause 4.

### **17. Probationary appointments**

This clause is designed to give effect to the decision of the Northern Ireland Court of Appeal in *Deman v Queen's University of Belfast* (1996). It is highly desirable to include this clause: otherwise, it would be arguable that non-confirmation in post should be considered under one of the other Parts of the Statute. The extreme position is that non-confirmation is not possible unless it is covered by one of those Parts; the less extreme position is that any matters relevant to those Parts must be dealt with under those procedures and not otherwise.

- (2) This procedure applies only at the end of a period of probationary service. Any earlier termination would have to be processed under other provisions of the Statute.

## **18. Dismissal on other grounds**

Section 98 of the ERA 1996 provides that a dismissal may be fair in certain circumstances that are not covered by the earlier Parts of the Statute, namely “some other substantial reasons” and statutory disqualification. It is not clear how these are treated under the existing MS and what powers a university has. This clause makes it clear that such dismissals are possible and there will be a procedure to deal with them.

## **19. Clinical staff**

This clause deals with an important point for universities with medical or dental schools which is not covered by the current MS. We have had regard to the *Review of Appraisal, Disciplining and Reporting Arrangements for Senior NHS and University Staff with Academic and Clinical Duties* (the Follett Report), (DfES, September 2001) and to the Scottish report of the Short-Life Working Group on suspension of Medical and Dental staff, *Suspensions – A New Perspective* (March 1999, NHS Circular PCS (DD) 1999/7). Clinical academic staff are usually required to engage in clinical work. Otherwise, their teaching duties (and often research too) cannot be discharged. In order to carry out clinical work, they need to be properly registered and to have an honorary contract with a relevant NHS trust (whether as consultant or community physician). If that registration, contract or status is revoked (on disciplinary or other grounds) by the NHS, the member of staff cannot carry out the duties attaching to his university post. The two are interdependent. This clause allows the Vice-Chancellor to terminate or suspend (as appropriate) the individual’s university employment without further procedures beyond representations. Where the member of staff has, for example, been suspended from the Medical Register as a substantive penalty, the Vice-Chancellor may suspend without pay for the same period. These provisions may also be extended to other groups of staff in cognate or similar areas.

The power is permissive only and should be exercised only where it is appropriate and necessary to do so.

## **PART VI: GRIEVANCE PROCEDURES**

**20.** The detail here is to be contained in the Ordinance. Clause 4 applies only to the final stage of the procedure.

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