

Gazette Supplement



Council of the University: Legislative proposal concerning Statutes XII, XI and XIV: Associated regulations

Changes in Regulations

Council has made the following changes in regulations, to come into effect on

2 December.

Explanatory Note

The legislative proposal concerning Statutes XII (Academic Staff and the Visitation Board), XI (University Discipline) and XIV (Employment of Academic and Support Staff by the University) was published on the agenda for Congregation on 3 May (Supplement (2) to *Gazette* No 5127, 24 March 2016), together with proposed regulation changes to be made if the statutes were approved. Six amendments to the legislative proposal were accepted by Congregation (Supplement (1) to *Gazette* No 5134, 26 May 2016). The amended legislative proposal was subsequently approved by Congregation on 31 May (see *Gazette* No 5136, 9 June 2016, p612).

Following consultation with the proposers of the amendments and the UCU, the proposed changes in associated regulations have now been revised to reflect the amendments made to the original legislative proposal. A tracked changes version of the regulation changes, which provides a comparison against the version published alongside the original legislative proposal, is available from Sarah Thonemann on request (sarah.thonemann@admin.ox.ac.uk).

Text of Regulations to be made by Council if the statutes approved by Congregation on 31 May 2016 are approved by Her Majesty in Council

1 Insert new Council Regulations as follows:

'Regulations for the Staff Employment Review Panel and University Appeal Panel

Staff Employment Review Panel

1. In these regulations, references to sections are to sections of Statute XII unless otherwise indicated.

2. (1) Where the Vice-Chancellor refers a complaint under section 29 (1) (d), the Registrar shall select by lot five members of Congregation to a Staff Employment Review Panel ("the panel") constituted in accordance with regulations governing the membership of panels convened under Parts B, D and H of Statute XII.

(2) The panel shall be provided with advice and assistance, including legal and/or medical advice as required, by Personnel Services. This shall include advice in relation to equality and diversity as appropriate where the panel or the member of academic staff who is the subject of the case for dismissal ("the member of staff") consider that a matter relating to a protected characteristic is material to the case. Appropriate records of its decision-making shall be kept.

(3) Personnel Services shall designate a secretary to coordinate all arrangements necessary for the hearing.

3. No case for dismissal shall be determined without an oral hearing at which the member of staff is entitled to be present and to be accompanied and represented by

a colleague employed by the University or trade union representative or, if given the nature of the case the Registrar so agrees, by a legally qualified person. If the Registrar does not agree, he or she shall submit to the panel both the application from the member of staff and the reasoning for the refusal. In such instances, the panel will bear in mind the absence of legal representation in its management of the case.

4. The Registrar shall appoint a suitable person to present the case for dismissal before the panel ("the presenter"). The intention is to avoid the need for legal representation before the panel. Only in cases where the Registrar has agreed to the use of legal representation by the member of staff, may the presenter be legally qualified.

5. In good time to allow the member of staff to produce his or her case in response in advance of the hearing, the designated secretary shall send the member of staff the written case for dismissal, which shall include:

(a) details of the allegation(s) or circumstance(s) relied upon in relation to the conduct, capability or performance of the member of staff concerned;

(b) an explanation of the basis on which these are said to constitute good cause for dismissal;

(c) any documents or other evidence, including witness statements, relied upon in support of the case for dismissal; and

(d) confirmation that the Vice-Chancellor or a Review Panel has determined that there is no reasonable prospect that the case for dismissal will or may involve an issue of academic freedom as defined in section 4 (2).

6. In good time to allow for consideration by the panel and the presenter before the hearing, the member of staff shall send to the secretary his or her written response which shall contain an explanation of his or her response to the case for dismissal, copies of any documents on which he or she wishes to rely, a list of his or her witnesses, and copies of their statements of evidence.

7. (1) Where the case for dismissal, or the member of staff's case in response, involves any issue of physical or mental incapacity or capability, Personnel Services shall, if requested by the panel, arrange for the panel to be provided with access to expert medical advice in relation to such incapacity or capability or to any steps which may be taken in mitigation of the same.

(2) Where Personnel Services have arranged for the panel to be provided with access to expert medical advice, the member of staff may be required to make himself or herself available for examination by such medical expert as may be appointed for this purpose and at the University's expense.

8. Subject to the provisions of Statute XII and these regulations, the panel shall have general power to manage its own proceedings, including to:

(a) postpone or adjourn a hearing, if it considers that there are reasonable grounds to do so;

(b) set time limits on the evidence given or representations made, consistent with providing a fair opportunity for each party to present its case at the hearing;

(c) determine the order of proceedings at the hearing, consistent with each party being given a fair opportunity to give evidence, call witnesses, question any person who gives evidence and make representations;

(d) permit the introduction of new evidence at the hearing, where there is good reason to do so, and, if so, to adjourn the hearing if the panel considers this is necessary to enable the other party to consider the proposed evidence or further evidence in response; and

(e) ensure that each step in the proceedings is taken as promptly as is reasonably practicable.

9. During preparation for the hearing and the hearing itself, the member of the academic staff has the right in strict confidence to discuss the situation with and obtain advice and moral support from colleagues in the

University and outside it, personal friends and family. Such communications must not impart more information, nor be made to more people, than is strictly necessary in order to obtain the necessary advice and moral support. In addition, the member of staff must not share any information that would or could prejudice the fair and proper conduct of the hearing, breach the confidentiality of others, make known information about the parties to the hearing that could be considered slanderous or libellous, or otherwise breach the member of staff's contractual or common law duties.

10. The member of staff and the presenter shall have the right to call witnesses and to ask questions of any witnesses called in support of the case for dismissal or the case in response respectively.

11. The panel may dismiss a case for undue delay.

12. The panel may remit any case to the Vice-Chancellor for further consideration, in particular, if an issue arises in the course of proceedings which in the panel's view requires the consideration of academic freedom.

13. The chair may, by an appropriate certificate in writing, correct any accidental errors in documents recording the decisions of the panel.

14. The panel shall hear representations on the appropriate sanction, if any, and any evidence or representations in mitigation, before deciding whether the complaint should be upheld and, if so, what sanction, if any, should be imposed.

15. The panel shall produce its decision in writing, together with a statement of its findings of fact, the reasons for its decision and its recommendations, if any, as to the appropriate sanction, as soon as is reasonably practicable after the hearing and send it to the Vice-Chancellor, the member of staff, the presenter, and Personnel Services. The panel shall try to come to a unanimous decision. However, a decision can be reached by a majority.

16. (1) Where any case for dismissal has been upheld and the panel has recommended dismissal, the Vice-Chancellor may dismiss forthwith or upon such terms as he or she considers fit.

(2) If the Vice-Chancellor decides not to dismiss, the actions he or she may take are as set out in section 39 (2).

(3) Any warning given under section 39 (2) (c) shall be recorded in writing and shall remain live for two years.

17. (1) By its decision under regulation 15 above, the panel shall notify the member of staff of his or her right of appeal under section 38 and shall enclose a copy of these regulations with its decision.

(2) If a member of staff wishes to appeal a panel's decision under section 38, he or she shall send written grounds of appeal to the Registrar within 14 days of receipt of the panel's decision.

(3) The Registrar shall refer any appeal under section 38 (b) to a Pro-Vice-Chancellor.

(4) The Registrar shall bring any appeal under section 38 (a) to the attention of the Vice-Chancellor who shall refer the appeal for determination to a University Appeal Panel constituted and acting in accordance with regulations 18–27 below.

University Appeal Panel

18. (1) A University Appeal Panel ("the appeal panel") shall be comprised of five members of Congregation selected by lot by the Registrar in accordance with regulations governing the membership of panels convened under Parts B, D and H of Statute XII.

(2) The appeal panel shall be provided with advice and assistance, including legal and/or medical advice as required, by Personnel Services. This shall include advice in relation to equality and diversity as appropriate where the panel or the member of staff consider that a matter relating to a protected characteristic is material to the case. Appropriate records of its decision-making shall be kept.

(3) Personnel Services shall designate a secretary to coordinate all arrangements necessary for the determination of the appeal.

19. (1) The appeal panel shall hear and determine an appeal from any decision as provided for by section 52.

(2) A notice of an appeal to the appeal panel shall be served on the Registrar within 28 days of the date on which the written notification under section 38 (a) was sent to the member of staff unless the Registrar considers it is in the interest of justice and fairness to allow a notice to be served outside of that period.

(3) There shall be no right of appeal from a finding of fact made by a Staff Employment Review Panel or by a Redundancy Panel under Part B of Statute XII except that, where the appeal panel is satisfied that it is necessary in

the interests of fairness, the appeal panel may consider new evidence from the member of staff which was not before the original panel and/or may conduct such further inquiries or investigations as it considers necessary.

(4) Subject to regulation 19 (3) above, the appeal panel shall consider the grounds of appeal raised by the member of staff and conduct an appeal by way of review rather than re-hearing.

20. (1) No appeal shall be determined without an oral hearing at which the member of staff is entitled to be present and to be accompanied and represented by a colleague employed by the University or trade union representative or, if given the nature of the case the Registrar so agrees, by a legally qualified person. If the Registrar does not agree, he or she shall submit to the appeal panel both the application from the member of staff and the reasoning for the refusal. In such instances, the panel will bear in mind the absence of legal representation in its management of the case.

(2) The Registrar shall appoint a suitable person to respond to the appeal ("the presenter"). The intention is to avoid legal representation before the appeal panel. Only in cases where the Registrar has agreed to the use of legal representation by the member of staff, may the presenter be legally qualified.

21. Subject to the provisions of Statute XII and these regulations, the appeal panel shall have general power to manage its own proceedings, including to:

(a) postpone or adjourn an appeal hearing, if it considers that there are reasonable grounds to do so;

(b) set time limits on the evidence given (if any) or representations made, consistent with providing a fair opportunity for each party to present its case at the appeal hearing;

(c) where the appeal panel is satisfied that it is necessary to do so, obtain expert medical evidence, or further or up-to-date expert medical evidence, in the circumstances set out in regulation 7 (1) above and where the member of staff has attended for medical examination as set out in regulation 7 (2) above.

(d) determine the order of proceedings at the appeal hearing, consistent with each party being given a fair opportunity to state their case on the appeal; and

(e) ensure that each step in the proceedings is taken as promptly as is reasonably practicable.

22. The appeal panel may remit any case to the Vice-Chancellor for further consideration, in particular, if an issue arises in the course of proceedings which in the panel's view requires the consideration of academic freedom.

23. The appeal panel may, by an appropriate certificate in writing, correct any accidental errors in documents recording its decisions.

24. Where the appeal concerns a decision to dismiss without notice, the member of staff shall be suspended without pay pending determination of the appeal.

25. (1) The appeal panel shall decide whether to confirm or revoke the decision of the original panel, or to impose a different sanction. The appeal panel shall try to come to a unanimous decision. However, a decision can be reached by a majority.

(2) If the appeal panel on an appeal from a decision of a Staff Employment Review Panel decides to revoke the decision to dismiss and impose a different sanction, it may recommend one of the steps set out in section 39 (2).

(3) Any warning given under section 39 (2) (c) shall be recorded in writing and shall remain live for two years.

26. The appeal panel shall produce its decision in writing as soon as is reasonably practicable after the appeal hearing and send it to the Vice-Chancellor, the member of staff, the presenter and Personnel Services.

27. The appeal panel's decision shall be final.

2 Insert new Council Regulations as follows:

'Regulations for the Redundancy Panel'

1. The Redundancy Panel ("the Panel") shall consider cases referred to it according to Statute XII sections 12 and 13 only after the University's personnel procedures applicable to potential redundancies in academic and academic-related staff on permanent, self-financing and open-ended contracts, and to early termination of academic and academic-related fixed-term contracts, have been followed up to and including full consideration of alternatives to compulsory redundancy.

2. The Panel shall be comprised of five members drawn from a pool elected from and by Congregation in accordance with regulations governing the membership of panels convened under Parts B, D and H of Statute XII.

3. The University and College Union (UCU) will be invited to provide a representative to attend the Panel meeting as an observer for the purpose of reporting to the joint consultative committee only, and on the basis that proceedings before the Panel shall remain confidential until notification of the decision reached by the Panel is communicated to the affected member or members of staff.

4. The Panel shall meet as and when required.

5. The Panel can only consider cases that meet the following definition of redundancy based on the Employment Rights Act 1996, section 139, as amended or re-enacted from time to time.

6. A dismissal is by reason of redundancy if the dismissal is attributable wholly or mainly to:

(1) the fact that his employer has ceased, or intends to cease,

(a) to carry on the activity for the purposes of which the employee was employed by it, or

(b) to carry on that activity in the place where the employee was so employed, or

(2) the fact that the requirements of the University

(a) for employees to carry out work of a particular kind, or

(b) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

7. The procedure to be adopted by the Panel will be as follows.

(1) The Panel will consider only formal proposals for redundancy forwarded by Divisional Boards or other appropriate authorities.

(2) The formal proposals should be submitted in the first instance to the Director of Human Resources, who will forward a copy to the UCU joint secretary.

(3) The Panel will be convened and supported by Personnel Services.

(4) All proposals submitted to the Panel must contain the following information:

(a) an explanation of why redundancy is proposed; this may, for example, include evidence showing that the source of funding for a particular activity is due to diminish or cease and that there is no alternative source of funding to support the continuation of that activity;

(b) details of the areas of activity affected and the numbers and descriptions of posts in those areas ("the redundancy pool"), including job title, grade, hours of work, job description, reporting structure, departmental organisational chart; also current source of funding and a copy of any relevant research contract(s);

(c) details of the selection criteria used and selection activities undertaken where it is not proposed that all the staff in the redundancy pool are to be made redundant, including CV and scoring against selection criteria;

(d) information on measures taken to try to avoid compulsory redundancy (eg efforts to seek redeployment and/or to achieve the necessary reductions in staffing through voluntary redundancy), including copies of correspondence, notes of meetings, etc;

(e) an equality impact assessment reporting whether staff groups who share a protected characteristic within the meaning of the Equality Act 2010 will be adversely affected and details of any actions that were taken or considered to mitigate these effects;

(f) information on consultation with affected individual(s) and employee representatives, including copies of correspondence, notes of meetings, etc.

(5) Where the proposal is to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the Panel will invite the appropriate representatives to participate in consultation about the proposed compulsory redundancies, including consultation about ways of avoiding compulsory redundancies, reducing the numbers of compulsory redundancies, and mitigating the consequences of compulsory redundancies. Such consultation shall be undertaken with a view to reaching agreement with the appropriate representatives. In this regulation

"establishment" and "appropriate representatives" shall be construed in accordance with sections 188 and 188A of the Trade Union and Labour Relations (Consolidation) Act 1992 as amended or re-enacted from time to time.

(6) The Panel will consider any written or oral representations from individual(s) directly affected by the proposals. Individuals potentially affected under the redundancy proposals shall be informed of the date of the Panel meeting at least two weeks before the Panel meet. They will be invited to submit any representations that they may wish to make to the Panel to a named person, which must be received one week in advance of the Panel meeting. They will also be invited to meet with the Panel, if they wish to do so, and may be accompanied by a colleague or a trade union representative.

(7) The Head of Department or his or her delegated nominee will provide information to the Panel and will attend the panel meeting to answer any questions in respect of the redundancy proposals.

(8) The Panel will carefully scrutinise each case referred to it and will consider whether:

(a) the proposal is based on objectively verifiable grounds which are covered by the University's definition of redundancy;

(b) the redundancy pool has been appropriately defined;

(c) the selection criteria and selection activities were objectively justifiable and appropriate to the circumstances;

(d) all appropriate options have been pursued to avoid compulsory redundancy, in particular efforts to seek redeployment where this is desired by the affected individual(s), and/or to achieve the necessary reductions in staffing through voluntary redundancy;

(e) there has been appropriate consultation at departmental and/or divisional level with the affected individual(s) and with their representatives, with a view to avoiding compulsory redundancy, reducing the number of compulsory redundancies, and mitigating the consequences of compulsory redundancies;

(f) all relevant requirements under current employment legislation, including the obligation to avoid unlawful discrimination and to inform and consult appropriate representatives where required, have been met.

If, in the opinion of the majority of the Panel, one or more of these conditions are not satisfied, the Panel will return the proposal to the originating division or appropriate authority for further consideration.

(9) Appropriate records of the Panel meeting will be kept.

(10) The Panel will provide a brief report of its considerations and recommendations to the relevant Head of Department and Head of Division. The Panel may authorise the relevant Head of Department to issue a notice of redundancy, which will include a brief summary of the Panel's considerations in relation to the affected post-holder, their notice period, details of redundancy payments and their opportunity to appeal.

8. After all notices of redundancy have been issued to individuals, and the deadline for any appeals has passed, a notice of the decision reached by the Redundancy Panel shall be placed in the *Gazette*.

9. Appeals against redundancy dismissal will be heard by the University's Appeal Panel for academic and academic-related staff.

10. An anonymised summary of the activity of Redundancy Panels shall be provided annually by the Director of HR to the Personnel Committee, and the Committee will publish that report to Congregation.'

3 Insert new Council Regulations as follows:

'Regulations for Constituting Panels convened under Statute XII Parts B, D and H

Election of members to the pool from which Panels are to be drawn

1. These procedures do not apply to a Review Panel constituted under section 28 of Statute XII.

2. Elections for membership of the pool from which members are drawn for Panels convened under Parts B, D and H of Statute XII ("the Pool") shall be conducted amongst members of Congregation as provided for by Statute IV and regulations made thereunder. There will be 24 persons in the Pool, with four members representing each

of the four academic divisions, the Gardens, Libraries and Museums, and the University Administration and Services.

3. Members of the Pool shall:

(1) be elected from members of Congregation to whom Statute XII applies by members of Congregation under the provisions of regulations for elections made under Statute IV;

(2) hold office for four years;

(3) be capable of re-election once.

4. Those who fill a casual vacancy in the Pool and hold office for less than four years shall subsequently be eligible to complete two full terms of office.

5. Each member of the Pool will be required to attend appropriate training, including on equality and diversity, before serving on a Panel.

Formation of a Panel

6. Members are appointed to serve on Panels on a case-by-case basis.

7. When a case is referred to a Panel, the Registrar (or a person appointed by the Registrar to act on his or her behalf) shall select by lot five members to serve on the Panel from amongst all such members of the Pool who are eligible to serve. Circumstances that would render a person ineligible to serve would include those where the person had a prior involvement in the case or a conflict of interest. If any person so selected considers they should have been considered ineligible, they should declare it at the earliest opportunity and step down. An alternate may be selected by lot and appointed to act in his or her place.

8. The first person selected by lot shall serve as chair of the Panel.

9. Should the selection by lot of the five members of a Panel result in five of those members being persons of the same sex, then, where the eligible members of the remaining Pool include a person or persons of the other sex, a further selection (by lot, if applicable) shall be made from amongst those persons and the person so chosen shall replace the fifth selected member of the Panel.

10. If any of the five members of the Panel so selected for the consideration of a case is unable to serve, a further person shall be selected by the same procedure to replace the member who is unable to serve.

11. The selected Panel members shall serve on the Panel for the duration of its consideration of that case whether or not

their period of office as a member of the Pool has expired in the interim.

12. No person who has served on a Panel previously constituted to consider a case shall be eligible to serve on any further Panel constituted to consider that case.'

4 In Council Regulations 5 of 2006, concerning Appeals to the Appeal Court, in Part 2 (Parties to Appeals and Representation) amend regulation 2.1 as follows (deleted text struck through):

'2.1. The parties to an ~~appeal against a decision of the Visitation Board or any other appeal~~ under Part H of Statute XII or against a decision of the Vice-Chancellor under section 5 of Statute XVII shall be:

(1) the appellant; and

(2) the University acting through the Registrar or a solicitor or another suitable person appointed by the Vice-Chancellor.'

5 Ibid, in Part 3 (Powers of the Court) amend regulation 3.1 as follows (new text underlined, deleted text struck through):

'3.1. (1) The powers of the Court in respect of ~~appeals made against decisions of the Visitation Board and other appeals arising~~ under Part H of Statute XII are specified in section ~~40~~ 52 of that statute.

(2) In these appeals the Court may make any of the orders mentioned in section ~~44~~ (3) 56 (2) of that statute.'

6 Ibid, in Part 7 (Decision) amend regulation 7.2 as follows (new text underlined, deleted text struck through):

'7.2. Decisions on ~~appeals against decisions of the Visitation Board and other appeals arising~~ under Part H of Statute XII shall be stated and communicated in accordance with the provisions of section ~~45~~ 57 of that statute.'

7 In Council Regulations 36 of 2002, concerning the Visitation Board, amend the title of the regulation as follows (new text underlined, deleted text struck through):

'Regulations for the Visitation Board made under Section ~~2233~~ of Statute XII'

8 Ibid, delete in all instances 'Chairman' and substitute 'chair'.

9 Ibid, delete in all instances 'charge' and substitute 'complaint'.

10 Ibid, delete in all instances 'charges' and substitute 'complaints'.

11 Ibid, delete in all instances 'charged' and substitute 'who is the subject of the complaint'.

12 Ibid, in regulation 3, delete reference to 'section 16' and substitute 'section 19'.

13 Ibid, in regulation 4, delete reference to 'section 7 (3)' and substitute 'section 9 (3)'.

14 Ibid, in regulation 10, delete reference to 'section 25' and substitute 'section 40'.

15 Ibid, in regulation 11, delete reference to 'section 19 (6) (d)' and substitute 'section 29 (1) (d)', and delete reference to 'section 20 (2)' and substitute 'section 31'.

16 Ibid, in regulation 20, delete reference to 'section 19 (4)' and substitute 'section 29 (1) (d)'.

17 Ibid, in regulation 34 (2), delete reference to 'section 5' and substitute 'section 6'.

18 Ibid, in regulation 41 (2), delete reference to 'section 24' and substitute 'section 39 (2)'.

19 Ibid, in regulation 41 (3), delete reference to 'section 24' and substitute 'section 39 (2) (c)'.

20 Ibid, insert new regulation 23 as follows and renumber existing regulations 23–42 accordingly:

'23. (1) Where the case for dismissal, or the member of staff's case in response, involves any issue of physical or mental incapacity or capability, the secretary may arrange for the board to be provided with access to expert medical advice in relation to such incapacity or capability or to any steps which may be taken in mitigation of the same.

(2) Where the secretary has arranged for the board to be provided with access to expert medical advice, the member of staff may be required to make himself or herself available for examination by such medical expert as may be appointed for this purpose and at the University's expense.'

21 In Council Regulations 40 of 2002, concerning Regulations for the Grievance Committee, amend the title of the regulation as follows (new text underlined, deleted text struck through):

'Regulations for the Grievance Committee made under Section ~~3447~~ of Statute XII'

22 Ibid, amend regulation 1 as follows (new text underlined, deleted text struck through):

'1. When reference has been made to the Grievance Committee under section ~~3245~~ of Statute XII the ~~chairman~~ of the committee

shall invite the aggrieved person, and any person against whom the grievance lies, to submit a written statement to the committee.'

23 Ibid, amend regulation 3 as follows (new text underlined, deleted text struck through):

'3. After due consideration, the Grievance Committee shall inform Council of its decision under the provisions of section ~~35~~48 of Statute XII.'

24 Repeal Council Regulations 38 of 2002 concerning the Medical Board made under Section 27 (5) of Statute XII.

25 Amend the title of Council Regulations 41 of 2002, concerning the Appointment of Alternates made under Section 7 (3) of Statute XII, as follows (new text underlined, deleted text struck through):

'Regulations for the Appointment of Alternates made under Section ~~9~~7 (3) of Statute XII'

26 These changes in regulations shall take effect on the date that the Statutes approved by Congregation on 31 May 2016 are approved by Her Majesty in Council.

