

# Gazette Supplement



## Legislative Proposal: Statute XIV: Employment of Academic and Support Staff by the University

### Congregation

2 May

#### Legislative Proposal: Statute XIV: Employment of Academic and Support Staff by the University

A legislative proposal and explanatory note on changes to Statute XIV (together with associated regulations) were published in *Gazette* No 5164, 23 March 2017. The text of the legislative proposal is reproduced at the end of this supplement.

A notice of opposition and two notices of amendment have been received to that legislative proposal as set out below.

The meeting of Congregation will be held at 2pm on Tuesday, 2 May in the Sheldonian Theatre. The proposed order of business for the meeting is set out below. If a second meeting is required, as set out below, it is expected that the business will be adjourned until the next scheduled meeting on 16 May.

#### Arrangements for the meeting

##### Attendance and timings

Attendance at the meeting is open to members of Congregation and to nominated representatives of the Oxford University Student Union (OUSU) as agreed in advance by the Vice-Chancellor. Admittance to the theatre will be on the production of a valid University card and will be on a first-come, first-served basis (places will be reserved for scheduled speakers). The doors of the Sheldonian Theatre will open at 1.45pm and will remain open throughout the meeting except when voting is taking place (see further the order of business below). The Vice-Chancellor has decided that the wearing of gowns shall be optional on this occasion.

##### Advance notice by speakers

The debate will include speeches by proposers and seconders as well as speeches for and against the proposed amendments and the legislative proposal (see further below).

Proposers and seconders will be contacted separately.

Other members of Congregation who wish to speak are asked to indicate this intention by emailing [congregation.meeting@admin.ox.ac.uk](mailto:congregation.meeting@admin.ox.ac.uk) **preferably by 3pm on Friday, 28 April, and at the latest by 9am on Tuesday, 2 May**. They are also asked to state whether they wish to speak to amendment (1) and/or amendment (2) and/or to the legislative proposal, and in each case whether in support or in opposition, as this will help to determine the order in which speakers are called. It would be helpful if members of Congregation intending to speak would explain in no more than 25 words what issues they wish to cover. Speakers will be expected to limit their contributions to four minutes. Owing to time constraints, it may not be possible to call all those who wish to speak. On the other hand, if time permits those who have not indicated in advance may have an opportunity to speak.

##### Order of business

The Vice-Chancellor will open the meeting at 2pm and set out the procedure and order of business to ensure that Congregation has the opportunity for full debate. The procedure and order of business will be as follows:

- The legislative proposal will be moved and seconded on behalf of Council.
- The notice of opposition will be moved and seconded.

- Each of the proposed amendments will then be considered in turn, as follows:
  - o The proposed amendment will be moved and seconded.
  - o The opposition will be moved and seconded.
  - o Further speeches will be invited in support of or in opposition to the proposed amendment as time permits.
  - o The mover will be given the opportunity to respond.
- The proposed amendments will be put to Congregation. Both amendments will be voted on simultaneously in one round of voting by paper ballot.
- *If neither amendment is approved by Congregation*, further speeches will be invited in support of or in opposition to the legislative proposal as time permits, the mover of the notice of opposition to the legislative proposal and the mover of the legislative proposal will be given the opportunity to respond to the debate, following which there will be a vote by paper ballot to pass or reject the legislative proposal.
- *In the event that both amendments are carried*, Congregation will be asked to determine by division which of the two amendments will amend the legislative proposal. *Following that vote, or in the event that only one of the amendments is carried*, further proceedings on the amended proposal will be postponed to a second meeting in accordance with Congregation Regulations 2 of 2002, 2.13–2.18. The legislative proposal will be republished in the *Gazette* so as to show the amendments made.

*The debate on the legislative proposal itself, the responses to that debate, and the voting on the legislative proposal will only be held at the meeting on 2 May if no amendments are carried. If the legislative proposal is amended, the debate on the legislative proposal itself, the responses to that debate, and the voting on the amended legislative proposal be held at a second meeting.*

#### *Voting*

The Vice-Chancellor and the Proctors have determined that voting at the meeting will take place by paper ballot with the exception of the vote to determine which of the amendments will amend the legislative proposal. That vote, if held, would take place by division.

*Voting papers.* The three voting papers will be handed out on arrival (for or against amendment (1), for or against amendment (2) and for or against the legislative proposal). The first two will be handed in and be counted at the end of all of the speeches on both amendments (1) and (2) (ie after both of the proposed amendments have been put to Congregation). The third voting paper will only be used if neither of the amendments are carried and a vote is held to pass or reject the legislative proposal.

Members of Congregation will be required to identify themselves on their voting slips by name and signature and by college/department or faculty and to deposit their own voting slips in ballot boxes at the doors of the House. Slips will be sorted and counted by the Proctors, and will subsequently be kept confidentially by the Proctors for six days, after which they will be destroyed.

*Voting by division.* If both amendments are carried, there will be a vote by division on which of the two amendments will amend the legislative proposal. In these circumstances, members of Congregation will be asked to leave through one of two doors depending on which of the two amendments they support.

#### *Transcript*

It is intended that a transcript of the meeting will be published in the *Gazette* of 11 May and, before then, on the Congregation website. As a result of time constraints, it will not be possible to check the report of the proceedings with individual speakers before publication. Speakers are asked to provide their written texts by email to congregation.meeting@admin.ox.ac.uk by **9am on Wednesday, 3 May**.

#### *Further information on the legislative proposal*

The EJRA consultation website and information on the conclusions of the Review Group can be found at [www.ox.ac.uk/staff/consultations/ejra-review](http://www.ox.ac.uk/staff/consultations/ejra-review).

Further information about the meeting can be found on the Congregation Meetings website at [www.admin.ox.ac.uk/councilsec/governance/congregation](http://www.admin.ox.ac.uk/councilsec/governance/congregation).

#### **Notices of Amendments**

Under regulations 2.6 and 2.9 of Congregation Regulations 2 of 2002, the Vice-Chancellor, in consultation with the Proctors, has reported the following amendments to Council as in her judgement being true amendments which are not inconsistent with or irrelevant to the principles of the proposal as set out in the preamble. Council now forwards these amendments to Congregation. The order of the amendments shown below is that in which they will be taken at the meeting.

#### **(1) Amendment to raise the age of retirement to 30th September immediately preceding the employee's 71st birthday**

##### *Explanatory Note*

This amendment to the Legislative Proposal seeks to raise the default age for retirement of members of Congregation to 70, that is, to the September before the employee's 71st birthday. The members of Congregation (Grade 8 and above) will in future be the majority of those subject to the EJRA. We believe that this is likely to be more acceptable to those affected than the published age of 68. It may save many the stress and potential expense of applying to be allowed to continue in their existing posts. Simple mathematics and the data provided by the Working Party indicate that this change will have a minimal effect on the rate at which vacancies are created (less than 2%).

##### *Text of Amendment*

In section 15 (1) of Statute XIV, delete '69th' and insert '71st'.

*Proposed by:* John Ball, Mathematical Institute

*Seconded by:* Paul Ewart, Physics

Under regulation 2.24 (c) of Congregation Regulations 2 of 2002, Council gives notice that it opposes the amendment.

#### **(2) Amendment to raise the age of retirement to 30th September immediately preceding the employee's 70th birthday and to further raise this to 30th September immediately preceding the employee's 71st birthday from the fifth year onwards**

##### *Explanatory Note*

The EJRA Review Panel accepted the concept that the EJRA should be reasonably tied to increases in life expectancy. However, the proposed one year increase is an entirely inadequate response, when viewed in the light of life expectancy increases measured against a fairly chosen baseline. In 1980, the retirement age at Oxford was 67, as it is now, and the short period during which it was temporarily reduced to 65 for some employees, in the face of rapidly increasing life expectancy, can only be seen as an aberration and does not justify taking a later year as a baseline. Between 1980–1982 and 2010–2012 (the most recent date for which government data is available) the UK life expectancy at age 65 increased 8 years for males and 5 years for females. There is no justification for factoring in the lesser increase for females given that females are inherently discriminated against by the EJRA in that they still live on average 4 years longer than men. Even if one could save for one more year of retirement for each additional year of work (which would be highly optimistic in the current financial environment and given recent reductions in the value of USS pensions) one would need an increase of the EJRA by 4 years to accommodate the increased life expectancy. In light of this, the 3 year increase, to age 70, which we propose in our Amendment seems a rather modest step toward fairness to retiring academics.

The proposed amendment constitutes a relatively minor variation on the recommendations of the EJRA Review Panel. The Panel recommends that the EJRA ultimately be extended to 69, so our amendment represents only a one year increase beyond the Panel recommendation. The Panel advises that the further extension be contingent on continued increase in life expectancy over the next 5 years, but we argue that natural statistical fluctuations and irrelevant influences render such a contingency statistically unreliable, and in any event unwarranted in view of the substantial increase in life expectancy already realized. We instead propose that the increase to 69 be immediate, and enshrined in Statute. The further increase to 70 is phased in after 5 years, to ameliorate whatever effect the

increase may have on short-term availability of vacancies that may be deployed in aid of the goals of the EJRA, and this too is enshrined in Statute, rather being left as a vague intention. This change makes departmental turnover planning easier, because it introduces more certainty into the process.

The proposed increase in the EJRA to some extent will further reduce uncertainty, by reducing the number of employees who apply for extensions of employment. We note also that the recent changes to the criteria for extension of employment – specifically the requirement for coverage of 100% of salary – drastically reduce the chances for extension, whereas previously extensions were very frequently granted; indeed, data presented by the EJRA review panel indicates that faculty in the Humanities division have virtually given up on applying for extensions. Thus, the EJRA has become much more of a firm limit, making it all the more important that it be set at a fair value.

#### *Text of Amendment*

In Statute XIV, concerning employment, the amendment to section 15 as proposed by Council is to be further amended by changing the phrase ‘preceding his or her 69th birthday’ to

‘preceding his or her 70th birthday, when such birthday is the employee’s next birthday following 30 September 2017, 2018, 2019 or 2020; employees whose 70th birthday falls after 30 September 2021 shall normally retire from employment not later than the 30th September immediately preceding his or her 71st birthday’.

The full text of the amended item (1) reads (Council-proposed new text underlined, Council-proposed deleted text struck through, further amendments and additions highlighted by italics):

‘(1) Every employee of the University who holds a post on, or assessed as equivalent to, grade 8 or above within section 3(1)(a) or (b) of Statute XII, other than the holder of a professorship to which a canonry is annexed who is exempt from membership of the appropriate pension scheme referred to in section 12 of this statute, shall normally retire from employment not later than the 30th September immediately preceding his or her 70th birthday, *when such birthday is the employee’s next birthday following 30 September 2017, 2018, 2019 or 2020;*

*employees whose 70th birthday falls after 30 September 2021 shall normally retire from employment not later than the 30th September immediately preceding his or her 71st birthday. shall retire not later than the date applicable to that employee as laid down by Council by regulation.’*

*Proposed by:* Professor Raymond Pierrehumbert, Physics

*Seconded by:* Professor Peter Read, Physics

Under regulation 2.24 (c) of Congregation Regulations 2 of 2002, Council gives notice that it opposes the amendment.

#### **Notice of opposition**

Notice of intention to vote against the legislative proposal as published in the *Gazette* on 23 March 2017 has been received.

*Proposed by:* Sir John Ball, Mathematical Institute

*Seconded by:* Peter Edwards, Chemistry

#### **Text of legislative proposal**

#### **Legislative Proposal: Statute XIV: Employment of Academic and Support Staff by the University (reproduced text from 23 March 2017 Gazette)**

##### *Explanatory Note*

##### **INTRODUCTION**

The Employer-Justified Retirement Age (EJRA) was introduced, following extensive consultation, in 2011, after the abolition of the default retirement age. It requires all academic and academic-related staff to retire on 30 September preceding the 68th birthday, unless they have successfully made a case for extended employment.

The EJRA was introduced for a period of ten years, with the expectation that it would be reviewed in 2016 and 2021. The 2016 review has now been conducted by an independent Review Group (‘the Group’) comprising senior staff from each of the divisions and representatives from Congregation and the Conference of Colleges. The Group was asked to consider:

- i. the extent to which the EJRA is meeting the *Aims* identified when the policy was established, and thus can be justified in law;
- ii. whether the EJRA is appropriately set at the 30 September before an individual’s 68th birthday; and

- iii. whether the policy is applied to the right staff groups.

The Group’s report, which makes 11 recommendations, is published online at: [www.ox.ac.uk/staff/consultations/ejra-review](http://www.ox.ac.uk/staff/consultations/ejra-review).

In summary, the Group recommends: that the EJRA be retained, with adjusted *Aims* and a reduced coverage; that the age for the EJRA be raised to 68 (with a recommendation that it is raised by a further year to 69 following the ten-year review in 2021, in line with anticipated increases in longevity of two years per decade); that the procedure be revised to better support all those involved; and that all these changes come into effect as soon as is practicable.

At its meeting on 6 February, Council received the Group’s Report and agreed to publish it within the University and to consult on its recommendations. The consultation is published at [www.ox.ac.uk/EJRA](http://www.ox.ac.uk/EJRA). The Vice-Chancellor sent an email to staff launching the consultation on 10 February, and held her Question Time on 7 March on the subject of ‘Retirement at Oxford and you’. There was an online consultation, to which 71 responses were received. These have been published in full on the EJRA website save where respondents asked that their feedback be withheld from publication or that it be published anonymously. 135 staff attended the Vice-Chancellor’s question and answer session, which was fully booked.

At its meeting on 13 March, Council considered the Report for a second time and the feedback from the consultation. Council is very grateful to the Group for its careful consideration of the issues, and to all those who contributed to the consultation, orally at the Question Time and online. The responses demonstrate the diverse range of views held on this in the University, and the strength of feeling this issue can generate. Council fully acknowledges that coming to a decision on the future of the EJRA is a difficult one for the University.

After giving careful consideration to the Report and to the feedback received, Council recommends the adoption of all the recommendations of the EJRA working group.

### THE LEGISLATIVE PROPOSAL

The following legislative proposal is put forward by Council and seeks approval for amendments to the statutes and regulations which govern the coverage of the EJRA and the age at which it is set. If the legislative proposal is carried, the EJRA policy and exceptions procedure, related guidance and supporting documents will be reviewed and updated by Personnel Committee subject, in the case of the policy and procedures, to the approval of Council to give effect to the remainder of the Group's recommendations. In doing so, these bodies will in particular address recommendations 8-10 to improve the processes involved in the implementation of the EJRA for all concerned, particularly for potential applicants under the policy to work beyond the EJRA.

### THE GROUP'S REPORT

The Group operated entirely independently and took a consultative and evidence-based approach. It ran three open meetings for staff, took feedback through a dedicated inbox and consulted the UCU, divisional boards, and other relevant staff groups, including recently retired staff. It considered internal and external data and was briefed on pensions and legal matters.

The data on which the Group based its analysis, along with a description of the Group's reasoning, are contained within the Report and its annexes.

### CONCLUSIONS

The Group considered each of the *Aims* in turn and decided that they remain important to the University's objective to sustain high standards in teaching, research and administration.

It assessed the evidence concerning the EJRA's contribution, in the first five years of its operation, to the achievement of the *Aims through the creation of vacancies*, and concluded that the evidence is showing, in the main, that the EJRA is contributing to: opportunities for career progression; refreshment; succession planning; the enhancement of diversity; and intergenerational fairness. They found that, although these objectives remain important, it cannot be shown that the EJRA is contributing substantially to the University's flexibility in the academic-related workforce or ability to maintain morale in the face of financial constraints.

The Group considered the coverage of the EJRA and decided that it should be adjusted to better reflect the staff groups where the data shows that the EJRA will continue to

have the most substantial impact in meeting the *Aims*. They saw it as an additional benefit that this would align closely with eligibility for membership of Congregation<sup>1</sup>, recognising the importance of consistency of treatment within that body.

In considering the age at which the EJRA should be set, the Group sought to balance the importance of sustaining progress against the *Aims* with their wish to take into account increased longevity, changes to pension provision, and proportionality, so as to ensure fairness to employees of all ages, including those beginning and those approaching the end of their careers.

The Group noted that there were a number of ways in which the process and supporting documentation for applying for extended employment beyond the EJRA could be improved, to better support individuals and their managers and to ensure that staff reaching the retirement age have clarity about their options, feel valued and have sufficient time to discuss their case. Better training for relevant line managers is required.

### RECOMMENDATIONS

The Group's recommendations are as follows:

#### *(a) Recommendations concerning the EJRA policy*

**Recommendation 1:** The Group recommends that the *Aims* be recast in order to make clear that the first *Aim* is an overarching objective which relies on the achievement of the other *Aims*, and not a freestanding objective in itself.

*NB: The first Aim reads: Safeguarding the high standards of the University in teaching, research and professional services.*

**Recommendation 2:** The Group noted that they had not been able to draw conclusions about the impact of the EJRA on ethnicity and disability because the number of staff known to belong to these minority groups is smaller than the number for whom their status is unknown. It is recommended that steps be taken to address the high proportion of 'unknowns' if at all possible before the ten-year review of the EJRA in

<sup>1</sup>Eligibility for Congregation is slightly wider than those in grade 8 and above; it includes some faculty members, who are academic or research staff at lower grades. The intention, for the purposes of clarity and to focus the EJRA on the grades at which it is having the most impact, is to limit the coverage of the EJRA to those in grade 8 and above. Grade 8 and above includes academic, research and administrative and professional roles in grade 8 and above of the University payscale and those roles that are assessed as being equivalent.

2021, in order that a fuller analysis in relation to these minority groups can be undertaken.

**Recommendation 3:** The Group recommends that the sixth *Aim* be removed, on the basis that there is little evidence that the EJRA is contributing to it.

*NB: The sixth Aim reads: Facilitating flexibility through turnover in the academic-related workforce, especially at a time of headcount restraint, to respond to the changing business needs of the University, whether in administration, IT, the libraries, or other professional areas.*

**Recommendation 4:** The Group recommends that the seventh *Aim* be removed, on the basis that there is no evidence that the EJRA is contributing substantially to it, and that the University is currently using other means to achieve it.

*NB: The seventh Aim reads: Minimising the impact on staff morale by using a predictable retirement date to manage any future financial cuts or constraints by retiring staff at the EJRA.*

**Recommendation 5:** The Group recommends that the EJRA be retained, with the purpose of safeguarding the high standards of the University in teaching, research and professional services, through its contribution to the achievement of the revised set of *Aims*.

**Recommendation 6:** The Group recommends that the coverage of the EJRA be aligned with the group of staff who are eligible for membership of Congregation ie to academic staff, research, and administrative and professional staff in grades 8 and above.

**Recommendation 7:** The Group recommends that (with due notice) the EJRA be moved by one year to 30 September before the 69th birthday (ie an EJRA of 68) for all staff that it covers. It further recommends that the age of the EJRA be raised by another year to 69 in 2022, to mirror changes in longevity, provided that the ten-year data confirms the trends observed in this interim review.

*(b) Recommendations concerning the exceptions process ('the procedure')*

**Recommendation 8:** The process, and particularly the paperwork supporting it, should be reviewed to ensure that it protects the dignity of applicants, is relevant to each staff group, and emphasises the value that the University places on those who have been in its employ.

**Recommendation 9:** Further support, perhaps in the form of training and guidance, should be given to heads of department to ensure that they can carry out their role in the process effectively and supportively. This should include further information on the alternatives to extended employment.

**Recommendation 10:** Thought should be given to whether further guidance is necessary in relation to the funding of extensions, to assist those for whom less grant funding is accessible to identify other legitimate funding sources in support of applications for extensions.

**Recommendation 11:** The deadline for applications for extended employment for all staff should be moved to two years prior to the EJRA date.

#### IMPLEMENTATION

It is proposed that the change in the coverage of the EJRA and the change in the retirement date from 30 September preceding the 68th birthday to 30 September preceding the 69th birthday will come into effect from 1 October 2017 ie those who are due to retire at age 67 on 30 September 2017 will do so. All other staff will have a retirement date of 30 September preceding the 69th birthday, unless they have successfully applied to the EJRA Committee (or, before 1 October 2015, to the EJRA Panel) for an extension to their employment.

The change in deadline for applications for extensions (from one year prior to the EJRA date to two years prior to the EJRA date) will also come into effect on 1 October 2017.

If any individual has an EJRA date later than 30 September preceding their 69th birthday and that date falls before 30 September 2019, such that it will not be possible for them to apply for any subsequent application two years in advance, an individual timetable will be set, with the agreement of the Chair of the EJRA Committee.

A table setting out how this will affect those who are nearing the EJRA is available online at [www.ox.ac.uk/EJRA](http://www.ox.ac.uk/EJRA).

*WHEREAS it is expedient to amend Statute XIV concerning employment, THE UNIVERSITY ENACTS AS FOLLOWS.*

**1** In Statute XIV, concerning employment, amend section 15 as follows (new text underlined, deleted text struck through):

'15. (1) Every employee of the University who holds a post on, or assessed as equivalent to, grade 8 or above ~~within section 3 (1)(a) or (b) of Statute XII~~, other than the holder of a professorship to which a canonry is annexed who is exempt from membership of the appropriate pension scheme referred to in section 12 of this statute, shall normally retire from employment not later than the 30th September immediately preceding his or her 69th birthday ~~shall retire not later than the date applicable to that employee as laid down by Council by regulation.~~

(2) Council may make arrangements to provide for the continued employment of employees, for a limited period and in special circumstances, as described in the EJRA policies and procedures (as amended from time to time by Council on the recommendation of Personnel Committee).'

**2** This statute shall be effective from 1 October 2017.

*Changes in Regulations to be made by Council if the Statutes are approved*

**1** In Council Regulations 3 of 2004, concerning employment, amend regulation 7 as follows (deleted text struck through):

'7. (1) ~~Every employee of the University specified in section 15 of Statute XIV shall normally retire from employment not later than the 30 September immediately preceding his or her 68th birthday.~~

(2) Any person may elect to retire to pension at, or at any time after, the minimum pension age stipulated in the rules of the pension scheme to which he or she belongs, as may be amended from time to time. Retirement benefits payable will be in accordance with the rules of the pension scheme.

(3) ~~Council may make arrangements to provide for the continued employment in special cases of a person who wishes to remain in the employment of the University and whose services for the University it desires to retain.'~~

**2** In Council Regulations 21 of 2002, concerning University officers, amend regulation 4 as follows (new text underlined, deleted text struck through):

'4. The Vice-Chancellor is subject to the provisions concerning retirement age as set out in the Regulations for the Employment of University Staff section 15 of Statute XIV.'

**3** These regulations shall be effective from 1 October 2017.

