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PRIME MINISTER

TENURE IN THE UNIVERSITIES

I undertook to minute you when I had considered the question of the future of academic tenure in the universities. I am confining this minute to my conclusions and recommendations for action, but a background paper by officials is attached.

I have concluded:

- (a) that tenure as it applies in at least half the universities is undesirable because of the rigidities it creates and is not necessary for the protection of academic freedom provided that the grounds on which academics may be dismissed or made redundant are properly defined in their contracts;
- (b) that terms of employment in many other universities may well in practice have the same disadvantages;
- (c) that it would be too expensive to buy out the tenure of those who hold it at present, and an intolerable interference in existing contracts to override them retrospectively by legislation;
- (d) that the way forward is therefore to take action in respect of new contracts only;
- (e) that our objective should be to ensure that all universities have, in respect of all academics whose contracts were entered into after the specified date, the power to terminate their appointments (subject to appropriate procedures to protect academic freedom)
 - (i) for anything that would constitute fair dismissal under the Employment Protection (Consolidation) Act 1978,
 - (ii) for redundancy, defined by analogy with that Act, and
 - (iii) for compelling reasons of financial exigency (ie where a university simply cannot afford to employ all its staff, which may fall outside the statutory definition of redundancy),and that universities cannot waive their right to this power by the terms of the contracts they grant to individuals;
- (f) that the Government should also seek:
 - (i) to have clarified any statutes that may be at all unclear as regards tenure,

- (ii) to ensure that institutions have the power to dismiss for reduced efficiency that is short of scandal, where this may be in doubt, and
- Could be better put*
- (iii) to improve and extend the probationary arrangements for new appointees;
- (g) that in other respects a university's terms of employment should remain for them to determine in order to demonstrate that the changes we are making are in no sense intended to limit or attack academic freedom;
- (h) that the universities for various reasons either cannot or will not achieve the necessary changes without external compulsion, and that if we are to achieve change we must therefore either legislate as soon as the Parliamentary timetable will allow or make it clear that we shall be prepared to legislate if the universities do not agree to comply with our requirements within a specified period.

The courses of action I am considering are either to announce a decision to legislate and to consult on the content of the legislation, or to announce an intention to legislate unless the universities agree within a specified period to make the changes required of them within a further specified period. The danger of the latter course is that there could be a longish period of uncertainty and that some universities might hope to delay matters so that the whole process was interrupted at some stage by a General Election. Some Vice-Chancellors and some institutions will welcome external compulsion as the only way in which this matter can ever be resolved. Whether we should legislate quickly or allow a period of grace for compliance first are alternatives between which, after I have discussed the foregoing proposals with the CVCP, I shall offer you and colleagues a judgment. But in order to be able to embark on those talks at all I must be able to declare the Government's willingness to legislate.

As to the form of legislation, there are considerable attractions in being guided by precedent - in this case the precedents of the Universities of Oxford and Cambridge Acts of the nineteenth century and of 1923, all of which appointed Statutory Commissioners with power to amend the statutes of the Universities. This approach means that the legislation does not have to do the job itself, and that once the job is done the Act disappears from the Statute Book while the amended statutes of the universities remain in force subject to the usual procedure for their amendment (which requires the approval of the Privy Council, so that the universities cannot just change them back).

I am anxious to make progress on the question of tenure because uncertainty is widespread. Until the Government's position is clear it will be difficult to address many of the fundamental issues relating to the planning of higher education over the next decade. I should be glad to have your reactions and those of colleagues to this minute. Subject to those reactions I shall discuss the matter further with the CVCP and in the light of that bring detailed

proposals to colleagues.

I am sending copies of this minute to the members of H Committee,
to Sir Robert Armstrong and to First Parliamentary Counsel.

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12 March 1984

EDUCATION: Expenditure Pt 4

Paper by DES Officials

Introduction

The most important factor in the Government's decision to make £100m available for the compensation of staff leaving universities as a result of the cuts announced in the 1981 Public Expenditure White Paper was that many universities could only reduce the numbers of their academic staff by agreement. Because the staff had tenure* they could not be dismissed. Any attempted dismissal would have been contested in the courts and could have led to levels of compensation far in excess of those offered to voluntary leavers under the arrangements proposed by the Committee of Vice-Chancellors and Principals (CVCP) and endorsed with only limited amendment by the Government.

2. The financial crisis of the universities naturally focussed attention on the question of tenure. It seemed absurd that institutions almost wholly dependent on public funds should be able to commit the public purse by such inflexible conditions of employment. In September 1981 the CVCP decided to review the question. They took the view that the contractual rights of existing holders of academic posts were sacrosanct - there could be no retrospection - but that universities should consider modifying the terms on which new appointments were made:

- (a) to provide for a longer and more rigorous probation, and
- (b) to allow permanent appointments to be terminated for reasons of redundancy or financial exigency.

These proposals (Annex A) were sent to universities by the CVCP in February 1982 and commended by the Secretary of State for Education and Science in a Parliamentary answer in March (Annex B).

*In this note "tenure" is used to mean conditions of employment which provide for dismissal before retiring age only for "good cause", defined variously in different statutes, but broadly covering: failure or inability to perform the duties of the post; physical or mental incapacity; conviction for an offence; or conduct of an immoral, scandalous or disgraceful nature rendering the academic unfit to continue to hold office.

3. The CVCP has now reviewed progress since then, on the basis of confidential reports from Vice-Chancellors. What they have reported may be summarised as follows:

- (i) The 50 institutions that replied (ie very nearly all of them) have all taken Counsel's opinion on their tenure position.
- (ii) About half of them have been told that their staff do not have effective tenure. This view would in many cases be contested by the Association of University Teachers (AUT) and any attempt to dismiss staff would be fought to the House of Lords if necessary. There may therefore be little comfort here: such institutions will continue to shrink from the idea of imposed redundancy.
- (iii) The universities that have been told that their staff do have tenure have at least the incentive to think about their position for future appointments. They are said to be doing so but there is as yet little to show for it. One institution has agreed in principle to accept "financial exigency" as a reason for breaking tenure and to seek to amend its statutes accordingly. Another has allegedly got agreement to include redundancy provision in contracts of employment.
- (iv) Some institutions have not taken a decision of principle, but are in practice making significantly more fixed term appointments and several are making only fixed term appointments.
- (v) Little attention has been given to the CVCP's proposals on probation because of the concentration of attention on tenure.

4. None of this adds up to very much after two years, and it seems almost certain that the CVCP will be unable to deliver any more, even if some universities continue to struggle with the issue on their own. Ministers therefore need to consider afresh what their objectives are and how to pursue them.

Objectives

5. The prime objective is to ensure that the universities are able and willing

to manage themselves effectively in the interests of quality and efficiency, and to respond quickly and rationally:

- (a) to changes in the level of support from public funds, whether occasioned by a further squeeze on resources per student or by a reduction in student numbers because of the fall in the size of the 18-21 age group, and
- (b) to the needs of the economy for skilled manpower and for research.

6. To this end it is desirable to secure the removal of the protection which some academics enjoy against redundancy**. This alone, however, is not likely to achieve the objectives in para 5 above. Even if permanent employees are untenured, universities will need the resources to be able to dismiss them on reasonable terms (ie terms comparable to those offered elsewhere in the public sector, the nationalised industries and the private sector). To achieve the changes that may be needed between now and the mid-90s it is likely to be necessary to reintroduce some special centrally funded arrangements for compensation akin to those now coming to an end.

7. The definition of "good cause" in some universities' statutes may be insufficient to allow dismissal for incompetence or diminished competence. Any action Ministers decide to take in relation to tenure should include any appropriate amendment of the definition of "good cause" to ensure that universities were able to dismiss those who failed satisfactorily to carry out the duties of their office.

**"Redundancy" is used throughout this note to embrace both the definition given in section 81(2) of the Employment Protection (Consolidation) Act 1978 and, because that may be insufficient for university purposes, also the concept of dismissal for what the CVCP proposals call "compelling reasons of financial exigency". Redundancy as defined in the Act extends to dismissal because the employer ceases to carry on the business for which the employee was employed or because the requirements of the business for work of a particular kind diminish. This definition of redundancy may not cover the situation where a university can simply no longer afford to employ all its staff - particularly as academics are employed for research and scholarship as well as teaching, which makes the business analogy difficult to pursue. Any provision for dismissal in legislation, in university statutes or in individual contracts would therefore need to embrace the wider concept of "financial exigency" as well as the statutory definition of redundancy.

8. It is necessary to consider whether tenure can be denied only to new entrants to academic posts, or removed also from those who enjoy it at present. The latter would mean either:

- (i) buying tenure out at a price freely negotiated, or
- (ii) removing it by legislation by retrospective intervention in contracts of employment.

These possibilities may be argued at length, but it seems unlikely that the Government would be prepared either to find the money for (i) or to embark on the legislation necessary for (ii). They are not further considered here, and the rest of the paper assumes that only denial of tenure to new entrants to posts is being considered. If Ministers are not prepared to contemplate retrospective action for them to say so publicly as early as possible would help considerably to clear the air.

9. For universities to be able to manage themselves effectively in the interests of quality and efficiency some changes in probationary arrangements may also be desirable. Probation is in some ways less significant if tenure is to be limited, or if there is to be a greater will to develop and use the machinery for dismissal for incompetence, but there is nevertheless a prima facie case for proceeding on probation in its own right. The CVCP have proposed up to eight years' probation in the form of fixed term contracts of three and five years; the Chairman of the UGC has suggested that the necessary judgments can be made and action taken in five years (to include a year's notice). The latter seems more likely to command support. It should be noted that dismissal at the end of a probationary period still has to be "fair" unless the period is a fixed term contract with a statutory waiver.

10. The Government's objectives might be attacked on the grounds that tenure is necessary for the protection of academic freedom and that limiting it in the manner proposed could be used as a covert way of securing the dismissal of those holding unpopular views. It would be important therefore to stress that the Government accepted that arrangements would have to be introduced for the dismissal of staff to ensure that the cause of dismissal was bona fide.

Possibilities for action

11. The nature of the relationship between the Government and the universities is such that the possibilities for action are relatively few. They may be identified as follows:

(a) Legislation. This could take two forms:

- (i) Direct. Such legislation would lay down that notwithstanding the provisions of their charters or statutes or the terms of individual contracts of employment it should be lawful for universities to dismiss any academic for reasons of redundancy. The provision would apply only to contracts made or employment entered into after a specified date. Such legislation would not be popular and would be unlikely on its own to inspire universities to use their new powers.
- (ii) Indirect. Acting on the precedents of the Universities of Oxford and Cambridge Acts of the nineteenth century and of 1923, Statutory Commission(s) could be established with power to amend the statutes of the universities as necessary to achieve specified objectives. (The necessary powers to amend statutes could not be given to a Royal Commission.) The 1923 Act would provide a model in many respects, eg as to time limits and procedures, rights of appeal etc. The powers of the Commission(s) would not be retrospective and the rights of existing office holders would be guaranteed. Such an approach would allow the Commissioners to tackle each institution's statutes individually to achieve the necessary amendment or clarification: this approach might not create the same hostility as direct legislation, and some might welcome it as removing a stumbling block while sparing institutions much hurtful and destructive internal dispute.

Legislation would give universities the power to make staff redundant. It could not ensure that universities would or could use this power, given the nature of their internal decision-making processes.

(b) Action through grant. This could take a variety of forms, from the sledgehammer of the more or less gradual removal of grant from those who did not co-operate to a more narrowly focussed condition that grant could not be used for any new tenured appointment. There could be constitutional difficulties with the UGC. There would in any case be significant difficulties in policing any such condition and endless scope for confrontation and brinkmanship. Some institutions would be harder hit than others - a few would be able to make no new appointments at all unless Senate and Council agreed to change their statutes.

(c) Exhortation. Some Vice-Chancellors are reported to argue that universities have no incentive to do anything about tenure until the Government's immediate intentions are known. If the Government says that it is not seeking to remove tenure retrospectively (as is suggested in para 8 above) and does not intend to legislate, this might clear the air and thus create some hope of achieving sensible changes for new appointments by local negotiation, either by amending statutes or in the terms of individual contracts. The Secretary of State would make a statement to the effect that he intended to take no direct action on tenure, that he had no wish to interfere with existing contractual rights, but that he believed universities should themselves take action:

- (i) to remove protection against redundancy,
- (ii) to ensure that they were able to dismiss the incompetent after due process, where this power was in doubt (see para 7 above), and
- (iii) to improve their probationary arrangements,

amending as necessary in respect of new appointments either their statutes or the terms of the contracts they offer. (Even some universities that had been advised that they did not have tenure would be well advised to clarify the position for new appointments.) Because action would relate only to those newly appointed to academic posts, no existing rights would be at risk and there should in theory be no question of "buying out".

The AUT will argue that existing salary scales are low because of the degree of security afforded by tenure. If those who come after are not to have it, they should be more highly paid. At the same time they might shrink from the two-tier structure this would imply. The response is presumably that some universities do not offer tenure now and that the attraction of academic jobs on the new terms will have to be tested in the market. But the nature of negotiation might make it impossible to offer nothing.

What course to adopt?

12. Legislation would be effective in giving universities powers to act. Direct legislation is feasible, but unattractive and unlikely to command support. Legislation to appoint Statutory Commissioners is more easily defended by reference to precedent and the merits of the case.
13. Action through recurrent grant is possible but messy. It would be long drawn-out and difficult to police. The results would be unpredictable.
14. The course described as "exhortation" is least likely to be immediately effective to the narrow purpose, but would not preclude action later.
15. All this assumes that no retrospective action is contemplated.
16. No course would obviate the likely need for some further financial provision for restructuring through early retirements etc if universities are to contract further during the next decade or so.

Department of Education and Science
February 1984

Committee of Vice-Chancellors and Principals of the Universities of the United Kingdom

29 Tavistock Square London WC1H 9EZ Telephone 01-387 9231 Telex 8811492

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T3/2/4
CIRC/82/11

16 February 1982

In reply please quote:

The present structure of the academic profession in the universities of the United Kingdom has remained virtually unchanged for some considerable time. One of its most characteristic features is that, on successful completion of an initial period of appointment, the appointee is confirmed in post up to the retirement age recognised by the institution. The career grade is that of Lecturer but in practice a significant number of academic staff are later promoted to the grade of Senior Lecturer or Reader.

The Vice-Chancellors' Committee has considered whether this structure continues to be appropriate for the proper performance of teaching and research within universities. The question is frequently raised in public debate on the funding and development of the university system. It has become particularly acute at the present time by the financial crisis in which the universities have been placed. Such difficulties are likely to recur and the universities would wish to be able to meet them with a better ordered response than is now possible. It is not easy to defend a structure which may bind a university to a legal commitment to continue an appointment to the normal age of retirement no matter how circumstances change.

The main concern of the Committee, in its discussions over the past months, has therefore been to draw up a series of proposals for consideration by every university in the context of the changing circumstances facing the system as a whole, and in the light of its own current contractual and statutory arrangements. I am now writing to send you the attached paper which the Committee, at its recent meeting, agreed should be put forward to universities for their consideration. In framing these proposals the Committee has been mindful of the autonomy of each individual university, which is free to make arrangements with its own staff as it wishes in accordance with its own Charter and statutes, and subject where appropriate to the provisions of national agreements on salaries and superannuation.

The aim of these proposals has, in the first place, been to continue to provide as secure and rewarding a career for the staff of universities as may be found in other occupations financed from public funds. It is recognised nevertheless that the universities cannot automatically be immune from cuts in public expenditure, nor can they be seen to provide

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greater security for their employees than is afforded in the rest of the public service except to the extent that their duties as scholars to be free to study, teach and publish so require. As their second aim the proposals therefore also specify as precisely as possible those circumstances in which a university may legally terminate an appointment. In the view of the Committee this part of the proposals (contained in section 3 of the attached paper) assumes particular importance and urgency in the present circumstances.

The responsibility for decisions as to whether and how to promote any or all of the changes suggested rests with each university, and each will no doubt take its own legal and other advice. (The Committee has not taken legal advice.) Generally speaking, changes can only apply to new contracts of appointment. If changes in statutes are required, the appropriate procedure will of course have to be followed, including where appropriate approval by the Privy Council.

Yours sincerely

GEOFFREY CASTON
Secretary General

Committee of Vice-Chancellors and Principals

STRUCTURE OF THE ACADEMIC PROFESSION IN THE UNIVERSITIES OF THE U.K.

Proposals for consideration by individual universities

The proposals deal with three issues:

1. the duties and responsibilities of academic staff.
2. the characteristics of two complementary types of appointment that might be contemplated for the future. The first, for purposes of illustration is designated an "unestablished appointment". It is for a fixed period or periods and is intended normally for new entrants to the academic profession. The second is designated an "established appointment". It is intended as an appointment to a career grade, normally to the retirement age of the staff of the university.
3. the conditions under which appointments might be terminated.

1. Duties and responsibilities governing all academic staff

Appointment to, and continuation in, any academic post of the university is on the condition that the person appointed, to the satisfaction of the university:

- (i) undertakes such teaching as the designated university authorities may prescribe;
- (ii) engages in research and scholarship;
- (iii) carries out such examining and other duties as the designated university authorities may prescribe.

2. Nature of appointments to an academic post in the university

There would be two types of appointment to academic posts in the university:

- (a) Appointments on a fixed-term basis for a total period not exceeding eight years ("unestablished"), but determinable by notice on either side during that period, and
- (b) appointments normally to retirement age ("established") but subject to termination for reasons of "good cause" or for failure to perform satisfactorily the duties of the appointment or for redundancy or compelling reasons of financial exigency.

(a) "Unestablished post"

Initial appointment to an academic post for a new entrant to the profession would normally be for a fixed-term period of three years. Provided the duties prescribed under 1. above are satisfactorily fulfilled, the university may, in writing, not less than three months before the expiration of the contract, give notice of its willingness to consider making an offer of a further appointment for a fixed-term period not exceeding five years.

/The...

DEPARTMENT OF EDUCATION and SCIENCE

Elizabeth House York Road London SE1 7PH

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PRESS NOTICE

68/82

23 MARCH 1982

CVCP PROPOSALS RECOGNISE NEED FOR FLEXIBILITY

Education Secretary Sir Keith Joseph welcomed proposals from the Committee of Vice-Chancellors and Principals to reshape the present basis of academic appointments in universities in the House of Commons today.

In a written answer to a Question from Mr K Harvey Proctor, MP for Basildon, who asked if the Secretary of State had seen the CVCP proposals and if he would make a statement, Sir Keith replied:

"I have seen the proposals of the Committee of Vice-Chancellors and Principals for the structure of the academic profession in the universities. The CVCP have, very responsibly, recognised that institutions that are significantly dependent on the annual voting of public funds by Parliament for their support must be able to respond flexibly to changes in the level of that support and that it is inconsistent with this need for flexibility that academic and related staff should be appointed until retirement age on terms which protect them against dismissal for reasons of redundancy or financial exigency.

"I welcome the CVCP's initiative in putting forward proposals designed to achieve the necessary flexibility without inhibiting academic freedom in teaching and research. These proposals are now for individual universities to consider. I hope that this consideration will lead them to bring forward in due course, where necessary, proposals for appropriate amendments to their charters and statutes. I hope also that from now on, in making appointments of new academic staff, they will do so as far as possible consistently with the long term arrangements which they propose to adopt

NOTE FOR EDITORS

The Committee of Vice-Chancellors and Principals proposals for the structure of the academic profession were sent to universities by the CVCP on 16 February.

EDUCATION: Expenditure Pt 4

2 MAR 1984





01-405 7641 Extn

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

The Rt.Hon. Sir Keith Joseph Bt.MP.,
Secretary of State for Education and Science
Department of Education and Science
Elizabeth House
York Road
London SE1 7PH

nbpm
DUB
4/4
3 April 1984

Dear Keith,

TENURE IN THE UNIVERSITIES

Thank you for sending me a copy of your minute of 12 March to the Prime Minister.

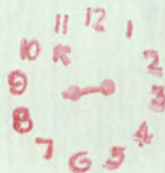
I am content with your proposed approach generally - and in particular with the conclusion that we should avoid retrospection. I shall look forward to seeing the further detailed proposals in this field.

I am copying this letter to the Prime Minister and the other recipients of your minute.

Yours ever,
Michael.

EDUCATION
DEPT.
P 4

- 4 APR 1984





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Fielden House
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Telephone: Direct Line 01-212 0515
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29 March 1984

Sir Keith Joseph Bt MP
The Secretary of State for
Education and Science
Elizabeth House
York Road
LONDON SE1 7PH

DMB
2/4

Dear Keith,

TENURE IN THE UNIVERSITIES

I have seen a copy of your minute to the Prime Minister of 12 March.

I am a member of the Scottish Universities Committee of the Privy Council and have an interest in this question in that capacity and also as a Law Officer.

I agree with the approach proposed (particularly as regards retrospection). As to the form of legislation the Universities (Scotland) Act 1889 contained provisions for statutory Commissioners. These provisions however were designed for the purpose of a comprehensive reorganisation of the Universities; in contrast for this specific and limited objective it might be simpler and quicker to legislate directly so that the requisite powers of dismissal etc. are available in respect of all contracts made after the new Act.

Copies of this letter go to the Prime Minister and the Attorney General.

Yours ever,

Jama

MACKAY OF CLASHFERN

30 MAR 1984



EC NO



SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

nbpm
DMS
23/3

Sir Keith Joseph Bt MP
Secretary of State for Education and Science
Elizabeth House
York Road
LONDON
SE1 7PH

22 March 1984

Dear Keith,

TENURE IN THE UNIVERSITIES

Thank you for letting me have a copy of your minute of 12 March to the Prime Minister about the future of academic tenure in the universities.

I agree entirely with your proposition that we should be prepared to declare our willingness to legislate, if need be, in respect of future academic appointments in order to avoid the difficulties described in your minute; but I accept also that retrospective legislation would be undesirable. I note your intention to bring forward more detailed proposals in due course, after further discussions with the Committee of Vice-Chancellors and Principals.

Copies of this letter go to the Prime Minister, Members of H Committee, Sir Robert Armstrong and First Parliamentary Counsel.

Yours truly,
George.

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23 MAR 1984

