

University of Birmingham

**Revisions to Legislation and**  
**the Code of Practice on Misconduct and Fitness to Practice Procedure and**  
**the Code of Practice on Suspension on Health Grounds**

**Purpose of Paper**

1. APRC is asked to **consider**, and if thought appropriate, **approve** amendments to University Regulations and to the University Code of Practice on Misconduct and Fitness to Practise Procedures, to take effect from the start of the academic session 2012/13.

**Proposals and Recommendations**

2. That the following revisions be made to Regulations.

Regulation	Proposed amendment
Regulation 1	To clarify the definitions of an External Resit Student, Leave of Absence and Sabbatical Officer and to remove the definition of "Life Governor"
Regulation 5 5.2.11	To reflect the Memorandum of Understanding between the University of Birmingham Guild of Students and The University of Birmingham dated 30 November 2009 which confirms the Vice-Chancellor and Principal's discretion to confer Registered Student status on Sabbatical Officers
Regulation 7 7.2.6(d)	To clarify the status of External Re-sit Students
Regulation 8 8.1.3 8.3.1	To ensure it addresses, in terms of procedure and the range of misconduct offences, misconduct by Sabbatical Officers and/or Registered Students holding office or a position of trust or confidence on behalf of the University or those who sit on University committees
Regulation 8 8.2.1 (j)	To reflect the proposed insertion of new penalties for academic misconduct committed by Research Students
Regulation 8 8.2.1(n)	To reflect the introduction by the police of new penalties issued as an alternative penalties to prosecution
Regulation 8 8.2.3(c)	To limit the application of the sanction of Community Service on summary offences to students aged 18 or above

Regulation 8 8.5.1	To address a recent decision of the OIA in relation to the period within which an appeal against the decision of a College Misconduct or Fitness to Practise Committee should be submitted
Regulation 8 8.7	To ensure it corresponds with the Code of Practice on Suspension of Students on Health Grounds
Regulation 8 8.8	To provide adequate and immediate powers to suspend students in appropriate circumstances which are consistent with the Code of Practice on Suspension from Study on Health Grounds

3. That the following amendments are made to the Code of Practice on Misconduct and Fitness to Practise Procedures:

Paragraphs: 3.1, 5.2	To reflect the proposed amendments to Regulations Sections 5 and 8 in relation to misconduct by Sabbatical Officers or students holding positions of trust or confidence or sitting on University committees, including the extension of the range of additional sanctions available to Misconduct and Fitness to Practise Committees
5.1.2	To limit the application of the sanction of Community Service on non-summary offences to students aged 18 or above
6.3	To insert new penalties for academic misconduct committed by Research Students
6.4.7	To refer to any successor organisation to the Independent Safeguarding Authority, in view of the likelihood of its abolition and a new body assuming some or all of its functions
7.4, 7.5	To address legal representation of parties before the University Misconduct and Fitness to Practise Committee in relation to appeals brought by Registered Students following Fitness to Practise programmes
1.1, 3.4, 3.5, 4.22, 5.1.2, 5.3, 5.4, 6.2.1, 6.5, 8.3, 8.6 Deletion of current 8.4 - 8.10	To clarify and “tidy up” wording

4. That the following amendment is made to the Code of Practice on Suspension from Study on Health Grounds

Paragraphs 2.1 2.2 and 2.3	To reflect the decision-making process specified in Regulation 8 in the Code of Practice
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5. All proposed changes are set out in Appendices 1-6 and are shown as tracked changes.

## **Background and Consultation**

6. The amendments are proposed for the variety of reasons summarized above.

### **Misconduct by students holding positions of trust or confident**

7. Currently, the range of misconduct offences and sanctions available to Misconduct and Fitness to Practise Committees does not envisage misconduct by a Registered Student who holds an office or position of trust or confidence on behalf of the University. Therefore, it is proposed that the range of misconduct offences set out in Regulation 8 be broadened to encompass this and the range of sanctions in the CoP on M&FTP be correspondingly broadened.

### **Sabbatical Officers**

8. A number of the proposed amendments relate specifically to Sabbatical Officers. First, the definition of Sabbatical Officers is amended to remove the specific "job titles" as these are now out of date and do not reflect the current titles of the Sabbatical Officers. The proposed definition removes the need for there to be any further change of Regulations in the event of any future change of titles. In terms of the other amendments, it should be noted that:

- The proposed amendment to Regulation 5 does not change the current position.
- The procedures set out in the CoP on M&FTP do not currently envisage proceedings in relation to an alleged misconduct offence by a Sabbatical Officer, and so a number of minor procedural amendments are proposed to address this.

### **New sanctions for academic misconduct**

9. At its meeting on 17 May 2012 APRC considered a paper proposing a number of amendments to Codes of Practice relating to Postgraduate Research Degrees which referred to a number of proposed amendments to the CoP on M&FTP to supplement the proposed change to 100% checking of thesis submissions, to be considered at this meeting. The proposed changes to Regulation 8.2.1 (j) and the insertion of new sanctions for academic misconduct in paragraph 6.3 of the CoP on M&FTP reflect those proposals. Currently the disciplinary offence of plagiarism can only be committed in relation to work submitted for assessment. The proposed change would enable misconduct proceedings to be taken against postgraduate research students (but not other students) for plagiarism in both formative and summative work. The purpose of this is avoid a situation whereby postgraduate research students are technically able to plagiarize right up until the point of submission, or at least challenge the process when pursued for plagiarism offences in the formative stages. This amendment is intended to close that small loophole and make the position explicit.

### **Legal representation before University Misconduct and Fitness to Practise Committees**

10. The proposed changes to paragraph 7.4 of the CoP on M&FTP are intended to allow a student to be legally represented at a University Misconduct and Fitness to Practise Committee. Case law has not yet extended the right to legal representation of individuals in higher education undertaking training for professional qualifications before misconduct or fitness to practise committees. However, it is suggested that it would be good practice and within the spirit of the law to allow students following Fitness to Practise programmes the right to be legally represented before the University Misconduct & Fitness to Practise Committee which is, ultimately, the

University body which might effectively prevent a student from entering their chosen profession. It is not proposed that this right should extend to College Fitness to Practise Committees which will by their nature be less formal and which, in any event, are not determinative of a student's right to practise his or her intended profession in view of the right of appeal. It is not proposed at this stage that this right of legal representation should extend to students who are not registered on Fitness to Practise programmes.

**Definition of External Re-sit Student and Leave of Absence**

11. The definition of External Re-sit Students is included pursuant to the request made by APRC at its meeting on 2 April 2012. The corresponding amendment to Regulation 7 is intended to make it clear that, whilst External Resit Students remain Registered Students of the University, their entitlement to access to resources and facilities is limited but they remain subject to Regulations and Codes of Practice governing conduct. Similarly, a definition of Leave of Absence has been clarified again at the request of APRC.

**Suspension of students from study on health grounds**

12. Whilst reviewing the CoP on M&FTP it became apparent that the process for suspending students on health grounds set out in Regulation 8 did not correspond with that in the Code of Practice on Suspension from Study on Health Grounds, and so amendments to Regulation 8 are proposed to address this. Minor amendments to the Code of Practice on Suspension from Study on Health Grounds are required so to reflect the process set out in Regulation 8. In addition, it is proposed that the grounds for suspending a student for misconduct are clarified.

**Implications of the establishment of the Birmingham Foundation Academy**

13. The establishment of the Birmingham Foundation Academy ("BFA") will result in an intake of Registered Students under the age of 18. Regulation 8 and the CoP on M&FTP will apply to those Registered Students. One of the sanctions available under Regulation 8 and the CoP on M&FTP is Community Service which can only be imposed with the consent of the student. It can involve highly visible work on campus. In order to avoid any concerns or issues relating to consent from students under the age of 18, it is proposed that this sanction should not be available in respect of students under the age of 18 at the date of the hearing (in relation to non-summary matters) or at the date on which consent is sought (in relation to summary matters).

**Time limits for submission of appeals to the University Misconduct and Fitness to Practise Committee**

14. A recent Preliminary Decision of the OIA recommended that the wording of Regulation 8.5.1 be reviewed to clarify the deadline for submitting appeals against the decision of a College Misconduct or Fitness to Practise Committee and the date from which this deadline is to run. Currently the period within which an appeal must be submitted is 5 working days, and in practice this now runs from the date on which the student is sent the report of the proceedings before the Committee (although this is not specifically stated in the Regulation). The OIA's view was that 5 working days was a particularly tight deadline. The deadline for submission of a Senate Review of an academic appeal is 15 working days from the notification of the result of the initial appeal, and therefore it is proposed that a similar deadline should apply in respect of appeals to the University Misconduct and Fitness to Practise Committee. It is also proposed that the date from which this deadline should run be expressly stated.

**Miscellaneous amendments**

15. Finally, changes are proposed simply to “tidy up” or clarify wording in the CoP on M&FTP which are not intended to have any change in effect or meaning.
16. The Registrar and Secretary, the Assistant Secretary and the Student Conduct and Appeals team have been consulted in relation to all proposed amendments.

**Appendices:**

1. Proposed amendments to Regulation 1
2. Proposed amendments to Regulation 5
3. Proposed amendments to Regulation 7
4. Proposed amendments to Regulation 8
5. Proposed amendments to the Code of Practice on Misconduct and Fitness to Practise Procedure
6. Proposed amendments to the Code of Practice on Suspension from Study on Health Grounds