

*Academic freedom and institutional autonomy
of higher education in the United Kingdom,
New Zealand and Hong Kong*

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Executive summary

Legal protection of academic freedom and institutional autonomy

1. In the UK, direct protection of academic freedom by law is limited. References to academic freedom are contained in provisions regarding grievance procedures dealing with redundancy and promoting fair access to higher education. In New Zealand, there is a detailed definition on academic freedom provided by the *Education Act 1989*. The definition of academic freedom in the New Zealand legislation incorporates the notion of institutional autonomy.
2. In the Hong Kong Special Administrative Region (HKSAR), direct legal protection of academic freedom and institutional autonomy is mainly through the *Basic Law (BL)*. However, *BL* does not provide a detailed definition on the meaning of academic freedom. There is no reference to academic freedom in other laws of the HKSAR besides *BL*.

Governing structure of higher education institutions

3. In the UK, the law requires that the governing body of post-1992 universities and colleges shall consist of not fewer than 12 and not more than 24 members. They must include independent members, students, teachers and co-opted members. About half of the members are drawn from outside the institution. New members are appointed by the governing body. The chairman of the governing body is appointed by the governing body from among its independent members.
4. In New Zealand, all tertiary education institutions are defined as statutory corporations under the terms of their individual statutes. The law requires that each tertiary education institution should form a council which is the governing body of the institution. Such council, comprising between 12 and 20 members, must include staff members, students, the chief executive of the institution and four persons appointed by the responsible Minister. The council elects one of its members to be the chairman of the council.
5. In the HKSAR, each of the eight University Grants Committee (UGC)-funded institutions is governed by a separate piece of ordinance. All of these institutions have a council as the supreme governing body. The size and composition of the council vary. The number of council members ranges from 24 to 55. The Chief Executive of the HKSAR (CE) is the Chancellor of the eight institutions, who also appoints the chairman of the respective councils. The number of council members appointed by the Government varies widely among the institutions. Except for the two oldest universities (the Chinese University of Hong Kong and the University of Hong Kong), the other six institutions all have a fairly significant number of council members appointed by the Government.

Funding arrangement of higher education

6. While UGC has been in existence in the HKSAR since 1965, in both the UK and New Zealand, their UGCs were abolished by the end of the 1980s and replaced by alternative arrangements. With the expansion of higher education, the quest for greater accountability in public funding, and the changing purposes of higher education to serve the needs of the wider society, both the UK and New Zealand governments saw a need to intensify its planning and monitoring roles in higher education. UGC, used to be an organization consisting of largely academics and maintaining close relationships with those universities receiving funding, was considered incapable of fulfilling these requirements. In 1992, statutory funding councils were set up in England, Wales and Scotland to fund higher education institutions. In 2003, New Zealand established the Tertiary Education Commission (TEC).
7. In both the UK and New Zealand, their funding bodies for higher education are kept at arms length from the government. The respective roles of the government and the funding body are set out in legislation.
8. In the HKSAR, UGC is a non-statutory advisory committee body and reports to CE. The UGC Secretariat, as a Government department, comes under the policy and housekeeping responsibility of the Education Bureau. The Secretary-General of UGC (SG(UGC)) and the other Secretariat staff are responsible both to UGC and the Secretary for Education.
9. Unlike the situation in the UK and New Zealand, the respective roles of the Government and UGC in the HKSAR are not defined by law. In addition, there are no legal rules in the HKSAR that prevent government officials from giving a funding instruction in such a way that a particular higher education institution is affected.

Employment relationship of higher education institutions

10. Since the enactment of the *Education Reform Act 1988*, the dominant employment trend in the UK higher education sector has been fixed-term contracts. However, the law requires that a fixed-term contract renewed or extended for four continuous years automatically becomes a permanent contract, unless the continuation of offering a fixed-term contract can be justified on objective grounds.
11. In the UK, higher education institutions must ensure that their internal procedures for dismissal and grievance comply with the statutory procedures and the principle of fairness. A new model statute for pre-1992 universities provides that any issue relating to academic freedom is to be decided having regard to a United Nations' document concerning rights and freedoms of higher education teaching personnel.

12. Academic posts in New Zealand can be appointed with either permanent tenure or limited tenure. There is a trend that the proportion of part-time university staff has been increasing. Employment with permanent tenure can be terminated for just cause through a fair and binding hearing.
13. In New Zealand, most tertiary education institutions have maintained collective employment agreements with the majority of their academic staff. These collective employment agreements may contain such matters as workloads, performance management, redundancy provisions, disciplinary procedures, training and professional development, protection of academic freedom, leave and remuneration.
14. In the HKSAR, academic posts may be appointed on either substantive terms or fixed-term contracts. Initial academic appointments to the eight UGC-funded institutions are usually on fixed-term contracts. Employment agreements in the eight UGC-funded institutions are subject to various legal requirements besides general employment-related legislation. Among the eight UGC-funded institutions in the HKSAR, only the Hong Kong University of Science and Technology makes reference to academic freedom in the employment agreements of its academic staff.
15. Among the eight UGC-funded institutions, the University of Hong Kong, City University of Hong Kong, Hong Kong Baptist University and Lingnan University have policies or procedures governing the changes of employment conditions in the event of organizational restructuring or redundancy. Some institutions have a set of procedures for handling general staff grievances or appeals. However, there is a great variety in their functions and specification.

Academic freedom and institutional autonomy of higher education in the United Kingdom, New Zealand and Hong Kong

Chapter 1 – Introduction

1.1 Background

1.1.1 At its meeting on 13 April 2007, the Panel on Education requested the Research and Library Services Division (RLSD) to conduct a research on academic freedom and institutional autonomy of higher education in overseas places and Hong Kong.

1.2 Scope of research

1.2.1 The scope of research includes the following:

- (a) overview of higher education systems in selected places;
- (b) legal protection of academic freedom and institutional autonomy;
- (c) governing structure of higher education institutions;
- (d) funding arrangement of higher education; and
- (e) employment relationship of higher education institutions.

1.2.2 The *Recommendation concerning the Status of Higher-Education Teaching Personnel (RSHTP)*, adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in 1997, is a set of recommended practices covering all higher education teaching personnel¹ Specifically, *RSHTP* sets out the principles in regard to institutional rights and responsibilities, rights and freedoms of higher education personnel, and terms and conditions of employment in the higher education sector. *RSHTP* was passed without a dissenting vote, although four countries (Australia, New Zealand, Spain, and the United Kingdom (UK)) expressed their objection to the section on economic and trade-union rights.²

¹ UNESCO (1997).

² See Savage & Finn (1999).

1.2.3 *RSHTP* is not a convention and is not legally binding on the countries which supported it. In any event, it does provide an interpretation of the meaning of academic freedom and institutional autonomy at the international level. *RSHTP* is administered jointly by UNESCO and the International Labour Organization.

1.2.4 *RSHTP* defines institutional autonomy of higher education as:

*"... that degree of self-governance necessary for effective decision-making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights."*³

1.2.5 University autonomy, *RSHTP* suggests, is the basis for the enjoyment of academic freedom. *RSHTP* also lists various duties that accompany the claim for institutional autonomy.⁴

1.2.6 Regarding academic freedom, Section 26 of *RSHTP* states that:

"all teaching-education personnel should enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right of liberty and security of the person and liberty of movement. They should not be hindered or impeded in exercising their civil rights as citizens, including the rights to contribute to social change through freely expressing their opinion of state policies and of policies affecting higher education. They should not suffer any penalties simply because of the exercise of such rights."

1.3 Selected places studied

1.3.1 The University Grants Committee (UGC) of Hong Kong was established in 1965, modelling on UGC of the UK. In recent years, similar UGC bodies in New Zealand, Australia and the UK have been replaced by alternative arrangements. It is not easy to find a comparable place that continues to use UGC as a funding body for higher education. The few places that still have UGC or similar arrangements include India, Pakistan, Bangladesh and Sri Lanka.

³ Section 17, *RSHTP*.

⁴ Section 22, *RSHTP*.

1.3.2 This research studies the experiences in the UK, New Zealand and Hong Kong. The UK is chosen because it is where the UGC concept first initiated. New Zealand is chosen because its higher education system is undergoing a series of reforms. Although both the UK and New Zealand no longer use UGC as a resource distribution agency for higher education, it is worth understanding why their UGCs were brought to an end and how their new funding mechanisms cope with the changing relationships between the government and the higher education sector. The corresponding development of UGC and the organizational structure of UGC-funded institutions in Hong Kong will be examined in respect of impacts on academic freedom and institutional autonomy.

1.4 Methodology

1.4.1 Information for preparing this report was obtained from the Internet, government documents and relevant materials. Enquiries were also sent to the relevant authorities and the eight UGC-funded institutions in Hong Kong.

Chapter 2 – The United Kingdom

2.1 Background

2.1.1 In the UK, there are 116 universities and 53 higher education colleges, most of them being in England.⁵ Higher education is provided mainly in universities and higher education colleges, and the remaining 10% is provided by further education colleges. The vast majority of the UK universities are state-financed, with only one private university – the University of Buckingham. In addition, there is only a very small group of private colleges.⁶ There are over 2 million students in the UK universities and colleges. Among them, around 50% are first-degree students, 20% are postgraduate students and the rest are in other undergraduate programmes.

2.1.2 Higher education institutions (HEIs) in the UK can be divided into two broad groups. The so-called pre-1992 universities are those HEIs having the status of a university before the *Further and Higher Education Act 1992* came into force. As to the universities transformed from polytechnics and colleges of higher education in or after 1992, they are often called post-1992 universities and are most commonly referred to as "New Universities" in the present day.

2.1.3 UGC was established in 1919 as a mechanism to channel public funds to universities in the UK. In 1963, the Committee on Higher Education, a committee appointed by the Prime Minister and chaired by Lord Robbins, recommended substantial expansion in higher education. The principles and recommendations of the Robbins Report formed the basis for the development of the university sector in subsequent years.

2.1.4 In 1988, the *Education Reform Act (ERA)* was passed, resulting in the abolition of UGC. Funding councils were later set up to fund HEIs. Appendix I contains a chronological summary of the major developments of higher education in the UK since 1960.

2.1.5 Before June 2007, the Department for Education and Skills (DfES) had been the government department responsible for developing the policy framework for tertiary education. On 28 June 2007, the Department for Innovation, Universities and Skills (DIUS) was created to take over some of the functions of the disbanded DfES and the Department of Trade and Industry. DIUS is responsible for adult learning, further and higher education, skills, science and innovation.

⁵ Ninety-one universities and 41 higher education colleges are in England.

⁶ They provide academic programmes for about 0.3-0.5% of all higher education students, mainly in medical-related, business or theological subjects.

2.1.6 Public funding for universities and colleges is distributed through various funding councils in England, Wales and Scotland; and the Department for Employment and Learning in Northern Ireland. An integrated quality assurance service for UK higher education is provided by the Quality Assurance Agency for Higher Education, which was established in 1997.

2.2 Legal protection of academic freedom and institutional autonomy

Direct legislative protection

2.2.1 In the UK, direct protection of academic freedom by law is limited.⁷ The university community has relied mainly on tradition and university autonomy to safeguard academic freedom. In any event, one reference to academic freedom is contained in an *ERA* provision regarding redundancy, disciplinary and grievance procedures.

2.2.2 Section 202(2) of *ERA* provides that the University Commissioners⁸, in exercising their functions, shall have regard to the need –

"(a) to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions;

(b) to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically; and

(c) to apply the principles of justice and fairness."

2.2.3 Section 202(2)(a) of *ERA* was an academic freedom amendment put forward by Lord Jenkins⁹ when *ERA* was passed in 1988. For the first time, academic freedom was defined in the laws of the UK.

2.2.4 Nevertheless, section 202(2) only applies to the pre-1992 universities and it becomes obsolete because no University Commissioners have been appointed since April 1996.¹⁰

⁷ See Farrington & Palfreyman (2006) and Birtwile (2004, 2006).

⁸ The University Commissioners were established to ensure that all the pre-1992 universities were able to declare redundancies amongst academic staff and had effective disciplinary and grievance procedures covering these staff. The original term of office of the Commissioners had been three years, which was extended several times and finally ended in April 1996.

⁹ He was the Chancellor of the University of Oxford.

¹⁰ *The Education (University Commissioners) Order*, statutory instrument 1995 No. 604.

2.2.5 The other specific reference to academic freedom is found in the *Higher Education Act 2004 (HEA)*. Section 32(2) of *HEA* requires that the Director of Fair Access to Higher Education¹¹, in performing his/her duty, has a duty to protect academic freedom, including, in particular, the freedom of institutions –

"(a) to determine the contents of particular courses and the manner in which they are taught, supervised or assessed, and

(b) to determine the criteria for the admission of students and apply those criteria in particular cases."

Relevant legal protection measures

2.2.6 The provisions concerning freedom of speech in the UK law have potential impact on academic freedom. Section 43 of the *Education (no 2) Act 1986* imposes on the authorities of universities, polytechnics and colleges obligations to safeguard the lawful exercise of freedom of speech and requires each of them to issue a code of practice to facilitate the discharge of its duties under the Act. The authorities are further required to take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures) to ensure compliance with the code of practice.¹²

2.2.7 Section 43(1) of the *Education (no 2) Act 1986* states that:

"Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers."

2.2.8 The right of freedom of expression granted by the *European Convention of Human Rights (ECHR)* is incorporated into the UK law through the *Human Rights Act 1998*. Articles 9 and 10 of *ECHR* provide for the right to the freedoms of thought, conscience, religion and expression. The right to the freedom of expression shall "include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."¹³

¹¹ The Director of Fair Access to Higher Education is set up to safeguard and promote fair access by regulating any institution wishing to increase tuition fees above the standard level.

¹² See, for example, the Code of Practice on Freedom of Speech of the University of Oxford, available at <http://www.admin.ox.ac.uk/councilsec/gov/fos.shtml>.

¹³ Article 10, *ECHR*.

2.2.9 Whether academic freedom includes the right to criticise a HEI is a controversial issue. In the Second report of the Nolan Committee on Standards in Public Life (1996), it recommends that:

"Institutions of higher and further education should make it clear that the institution permits staff to speak freely and without being subject to disciplinary sanctions or victimisation about academic standards and related matters [including whistle blowing], providing that they do so lawfully, without malice, and in the public interest."

2.2.10 Employees who raise issues of concern in the public interest are protected by section 43B of the *Public Interest Disclosure Act 1998*. Disclosures that are protected include allegations of genuine concerns about crime, civil offences, miscarriage of justice, danger to health and safety or the environment and the cover-up of any of such matters.

Governing structure of higher education institutions

2.2.11 HEIs in the UK have diverse backgrounds and traditions which are reflected in the variations in their constitutional arrangements and the structure and powers of their governing bodies.¹⁴ Although HEIs are diverse in origin, size and organization, they share the following common characteristics of being:

- (a) a legally independent corporate institution;
- (b) a body with charitable status; and
- (c) accountable through a governing body which carries ultimate responsibility for all aspects of the institution.

Pre-1992 universities

2.2.12 In the case of the so-called pre-1992 universities, the constitution and powers of the governing body are laid down in the charter and statutes of the institution.¹⁵ Most of these universities were established by a royal charter granted through the Privy Council¹⁶, with an associated set of statutes. A very small number of these universities were established by a specific Act of Parliament, the operative part of which is a set of statutes. The charter and statutes can only be amended on application to the Privy Council.

¹⁴ For details, see Committee of University Chairmen (2004) and Farrington & Palfreyman (2006) Chapter 5.

¹⁵ The pre-1992 universities include the University of Oxford, the University of Cambridge, the University of London and the member institutions of the University of Wales.

¹⁶ The Privy Council Office deals with such matters as approving any changes in the royal charters of the pre-1992 universities and approving the arrangements for governance of the post-1992 universities and designated institutions.

2.2.13 The governing body of the pre-1992 universities is usually called the council and is the executive governing body of the university. Its membership is specified in the statutes and typically includes officers of the university, co-opted members, elected staff members and student representatives. New members are appointed by the governing body. It is a common practice that the governing body has a majority of members being external and independent, i.e. not staff or students of the university. A governing body of not more than 25 members represents a benchmark of good practice.

2.2.14 These pre-1992 universities also have a senate, which is responsible for regulating and directing the academic work of the university. Its membership is mostly drawn from within university, comprising academic staff and student representatives. Constitutionally, the senate reports to the council. Decisions of the senate on academic matters, which have financial or resource implications, are subject to approval by the council. Conversely, decisions by the council which have academic implications (for example the creation or closure of an academic department) are subject to consultation with the senate, and the senate would normally be the initiating body with regard to such matters.

2.2.15 In a number of pre-1992 universities, there is another statutory body called the court. The membership of a court can range from around 50 to more than 400. The typical size is in the region of 200. The court usually includes representatives of local authorities; Members of Parliament; representatives of other universities, colleges, schools and the professions; members of the council and university officers; elected staff and students; and representatives and graduates of the university.

2.2.16 The powers of the court vary among universities, but typically include:

- (a) consideration of the annual report of the university;
- (b) receiving the annual accounts; and
- (c) (in most, but not all, cases) appointing the chancellor.

Post-1992 universities

2.2.17 For the so-called post-1992 universities and colleges, the constitution and powers of the governing body are laid down in *ERA* (as amended by the *Further and Higher Education Act 1992*), together with the instruments and articles of the government or equivalent.

2.2.18 The law requires that the governing body of these post-1992 universities and colleges shall consist of no fewer than 12 and not more than 24 members (plus the head of the institution unless he/she chooses otherwise). New members are appointed by the governing body.¹⁷ ERA specifies that of the appointed members:

- (a) up to 13 must be independent members, who are people appearing to the appointing authority (in practice, the existing independent members) to have experience of and to have shown capacity in industrial, commercial or employment matters or the practice of any profession, and who are not members of staff or students of the institution or an elected member of the local authority;
- (b) up to two may be teachers of the institution, nominated by the academic board, and up to two may be students of the institution, nominated by the students; and
- (c) at least one and not more than nine shall be co-opted members¹⁸, nominated by the members of the governing body who are not co-opted members.

2.2.19 Subject to the above maximum and minimum requirements, the governing body of a post-1992 university can determine the number of members in each category, given that at least half of all the members of the governing body are independent members. The chair of the governing body is appointed by the governing body from among its independent members.

2.2.20 These post-1992 universities mostly operate under articles of government, which usually state that the governing body is responsible for:

- (a) determination of the educational character and mission of the institution and oversight of its activities;
- (b) effective and efficient uses of its resources, the solvency of the institution and safeguarding its assets;
- (c) approval of annual estimates of income and expenditure;

¹⁷ Members of the first council of these post-1992 universities and colleges are appointed by the Secretary of State.

¹⁸ One of the co-opted members must be a person who has experience in the provision of education. Other co-opted members may be staff and students of the institution, or elected members of local authorities, but these persons are not eligible for appointment as independent members.

- (d) appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the head of the institution, the clerk to the governing body, and other senior post-holders as the governing body may determine;
- (e) setting up of a framework for the pay and conditions of service of all other staff; and
- (f) appointment of external auditors.

2.2.21 In the post-1992 universities, the academic board is responsible for academic affairs, including academic standards, research, scholarship, teaching and learning, and courses offered by the institution, and development of academic activities of the institution, subject to the overall responsibilities of the governing body and the head of the institution. The articles of government of the post-1992 universities specify that the academic board should normally consist of not more than 30 members. Additionally, the articles state that individuals in senior management positions (i.e. deputy and assistant principals, deans of faculty or equivalent, heads of schools and departments) must make up at least 50 per cent of the membership.

2.2.22 Some post-1992 HEIs are companies limited by guarantee, in which case the memorandum and articles of association incorporate the provisions of the instruments and articles of government.

2.3 Funding arrangement of higher education

Funding institutions

The demise of UGC

2.3.1 In the UK, UGC was established in 1919, and reported directly to the Treasury. The original terms of reference of UGC focused mainly on enquiring into the financial needs of university education and advising the government as to the allocation of grants to university institutions. In the middle of the 1940s, its terms of reference were expanded to include data collection and planning functions concerning university education.¹⁹ In 1964, the supervisory responsibility for UGC was transferred from the Treasury to the then newly constituted Department of Education and Science.

¹⁹ See Shinn (1986).

2.3.2 Up until World War II, UGC had achieved its purpose of serving as a buffer or shock absorber between the government and the universities. In 1963-79, UGC attempted to play a more active role. However, the needs for a diversified higher education and the increase in the number of HEIs had actually resulted in UGC losing its power to the government. For example, UGC had to abandon its quinquennial planning system²⁰ in the mid-1970s because of high inflation. UGC also lost control of issues relating to salary determination in universities and its influence in respect of student fees and numbers of overseas student.²¹

2.3.3 In the 1980s, UGC reclaimed a central role for itself in the implementation of the controversial policies for dealing with retrenchment and restructuring of universities. In particular, UGC managed to carry out the government's decision to cut public expenditure on higher education in the early 1980s. Such action took UGC into a detailed involvement in universities' internal affairs. UGC's active role generated a storm of protests and criticisms from within and outside the higher education sector itself. At the same time, there was an indication that the government began to cast doubt on whether UGC *"is composed as it largely is of practicing academics, has too cozy a relationship with the universities and is incapable of enforcing change externally."*²²

2.3.4 In the mid-1980s, UGC began to change its funding formula by allocating UGC resources based on effectiveness in research. UGC also used its funding resources to promote subject specialization which had the effect of concentrating less popular disciplines in fewer HEIs. All these activities had a destabilizing impact, causing financial crisis in some HEIs. Following the investigation of the financial crisis of University College, Cardiff, the Public Accounts Committee of the House of Commons criticized UGC for not taking 'earlier and more positive action' and for taking a 'too passive a role' until it was too late.

2.3.5 With the creation of the new universities of the 1960s, the development of research selectivity, and the changing relationships between the government and universities, the UGC machinery seemed to be less adequate to deal with issues relating to higher education. In 1987, the government published the white paper *Higher Education: Meeting the Challenge*, which spelt out the demise of UGC.

²⁰ Under the system, the universities were given a promise of funds for five years within which they could plan their activities.

²¹ Shattock (1994) pp. 12-9.

²² Shattock (1994), p. 25.

New funding body

2.3.6 By the time of the passing of *ERA* in 1988, universities were funded by UGC, while polytechnics and higher education colleges were under the responsibility of the local authorities. On the one hand, *ERA* removed some 30 polytechnics and 59 colleges from local authority control and set up a Polytechnics and Colleges Funding Council to take up the funding responsibility. On the other hand, UGC was replaced by a new Universities Funding Council.

2.3.7 In 1992, the *Further and Higher Education Act (FHEA)* removed more financing and other responsibilities from the local authorities, and set up centrally-controlled Higher Education Funding Councils to distribute funds to all HEIs in England and Wales. These new funding councils replaced the Universities Funding Council and the Polytechnics and Colleges Funding Council created in 1988. *FHEA* establishes a single system of higher education (thereby abolishing the distinction among universities, polytechnics and colleges) with a unified funding structure.

2.3.8 The Scottish Higher Education Funding Council, established by the *Further and Higher Education (Scotland) Act 1992* is the funding council in Scotland. In Northern Ireland, the Department for Employment and Learning funds HEIs directly because there is no funding council serving as an intermediary. In order to focus on specific issues, only the funding arrangement of the Higher Education Funding Council for England (HEFCE) will be discussed below.

2.3.9 Both the Chairman and the 12 to 15 Members of the HEFCE Board are appointed by the Secretary of State. A representative of the Secretary of State is entitled to attend as the Assessor at HEFCE's Board meetings, but he/she would not take part in the decision-making process. The Chief Executive of HEFCE is appointed by the Board with the Secretary of State's approval.

2.3.10 The functions of HEFCE are as follows:

- (a) to administer funds made available by the Secretary of State for the purpose of providing financial support for 'eligible activities' of HEIs;
- (b) to impose terms and conditions on making grants, loans or other payments to HEIs;
- (c) to require information from HEIs;

- (d) to provide the Secretary of State with such information or advice relating to the provision of higher education;
- (e) to ensure that provision is made for assessing quality of education;
- (f) to exercise any of HEIs' functions jointly if it is more efficient or effective to do so; and
- (g) to arrange for the promotion or carrying out of efficiency studies designed to improve economy, efficiency, and effectiveness in the management or operations of a HEI.

Relationship with government

2.3.11 HEFCE is set up as a 'non-departmental public body'.²³ HEFCE is not part of DIUS, but works within a policy framework set by the Secretary of State for Innovation, Universities and Skills. The broad policy framework is set out in the Management Statement between DIUS and HEFCE.²⁴ The terms and conditions under which DIUS makes funds available to HEFCE so that HEFCE can carry out its duties is set out in the Financial Memorandum between DIUS and HEFCE.²⁵

2.3.12 The Secretary of State's power to impose terms and conditions as he/she determines on grants to HEFCE is set out in section 68 of *FHEA*. The Secretary of State may impose conditions which must be met by all institutions, or by all institutions of a particular category. The conditions which may be imposed by the Secretary of State include those relating to repayment of grants and payment of interest on grants not repaid.²⁶

2.3.13 However, the terms and conditions on grants to HEFCE must be general and should not be expressed in such a way so as to affect any particular HEI. The terms and conditions "*shall not otherwise relate to the provision of financial support by the council in respect of activities carried on by any particular institution or institutions*"²⁷. In particular, such terms and conditions "*may not be framed by reference to particular courses of study or programmes of research (including the contents of such courses or programmes and the manner in which they are taught, supervised or assessed) or to the criteria for the selection and appointment of academic staff and for the admission of students.*"²⁸

²³ A non-departmental public body (NDPB) is an organization that has a role in government processes, but is not part of the government or one of its departments. As a consequence, NDPBs work at arm's length from Ministers, who are ultimately responsible for their effectiveness and efficiency.

²⁴ HEFCE (2006a).

²⁵ HEFCE (2006b).

²⁶ Section 68(4), *FHEA*.

²⁷ Section 68(2)(b), *FHEA*.

²⁸ Section 68(3), *FHEA*.

Funding policies and procedures

2.3.14 In the UK, the government sets the total funding for higher education institutions and has the power to set conditions on the funding councils covering national developments which it wishes to promote.

2.3.15 HEFCE advises the Secretary of State for Innovation, Universities and Skills on the funding needs of higher education in England. The actual funding for higher education is decided by the government and voted by Parliament. Every year, the Secretary of State sets out the resources and priorities for higher education for the following year, which is in the form of an annual grant letter to HEFCE. HEFCE then determines the grants to individual institutions according to formulae which take account of certain factors within each institution, including the number and type of students, the subjects taught and the amount and quality of research undertaken there. Every March, HEFCE announces the grant for the following academic year to each university and college that it funds.

2.3.16 The grants from HEFCE fall into three main categories:

- (a) funding for learning and teaching, including widening participation;
- (b) funding for research; and
- (c) special funding and earmarked capital.

2.3.17 Funds allocated to funding for learning and teaching, funding for research and some special funding, though under separate headings, are all part of a block grant. In other words, an HEI may distribute the funds internally at its own discretion, as long as they are used for learning and teaching, research and related activities. On the other hand, other special funding must be spent on the corresponding specific activities agreed with HEFCE.

Funding for learning and teaching

2.3.18 The existing teaching funding method, which was introduced in 1998-99, is based on the following principles:

- (a) similar activities should be funded at similar rates;
- (b) any variations should be based only on previously-determined factors, such as mode of study and type of student or certain institutional characteristics; and
- (c) additional funded student numbers should be allocated against a published set of criteria in open competition.

2.3.19 HEFCE has regularly reviewed its funding methodology for teaching. In October 2005, HEFCE conducted a consultation exercise seeking views on a number of proposed alterations to its method for funding teaching.

2.3.20 HEFCE has an annual funding agreement with each HEI, which specifies the numbers of students that an institution is required to deliver for receiving funds for teaching. All academic subjects are allocated to one of four price groups, and a standard price for full-time students is calculated for each group.

2.3.21 A series of funding premiums is applied to recognise that costs vary among different HEIs. Some are student-related, such as premiums for part-time students. Others relate to the institution, such as premiums for universities and colleges with historic buildings, and premiums for small and specialist institutions providing high-cost courses such as music, dance, and art and design. Additional allocations are made for widening participation – outreach and supporting disabled students.

Funding for research

2.3.22 HEFCE operates a policy of allocating research funding selectively on the basis of research quality of HEIs. Research quality is assessed periodically in a Research Assessment Exercise (RAE). RAE is run by the four UK higher education funding bodies, i.e. HEFCE, the Scottish Funding Council, the Higher Education Funding Council for Wales and the Department for Employment and Learning of the Northern Ireland. Assessment is based largely on the quality of cited published research outputs (which can be printed works, products or even artistic performances), taking into account subsidiary indicators. These indicators include the number of postgraduate research students, funded research studentships, external research income and statements of research plans.

2.3.23 The funding provided by HEFCE represents part of the government's dual-support arrangements for funding research in HEIs, which is used to support the research infrastructure such as the salaries of permanent academic staff, premises, libraries and central computing facilities. The other part comes from the Research Councils²⁹ which provide grants for specific projects.

²⁹ There are eight Research Councils: (a) Arts and Humanities Research Council; (b) Council for the Central Laboratories of the Research Councils; (c) Biotechnology and Biological Sciences Research Council; (d) Economic and Social Research Council; (e) Engineering and Physical Sciences Research Council; (f) Medical Research Council; (g) Natural Environment Research Council; and (h) Particle Physics and Astronomy Research Council.

Special funding and earmarked capital

2.3.24 The main elements of special funding provided by HEFCE cover the following areas:

- (a) rewarding excellence in teaching and raising the quality of learning and teaching;
- (b) introducing programmes that promote widening access and increasing participation;
- (c) supporting HEIs in developing their capability to respond to the needs of business and the community which may lead to economic benefits;
- (d) reimbursing inherited liabilities;
- (e) rewarding and developing staff; and
- (f) supporting specialist museums, galleries, collections and libraries which are available to all researchers within the higher education sector.

2.3.25 Earmarked capital is additional funding provided by the government to support sustainable investment in higher education. The two major programmes under this category are the Science Research Investment Fund, and capital funding for learning and teaching and IT.

Accountability

2.3.26 The Secretary of State is accountable to Parliament for the activities and performance of HEFCE. The Chairman of HEFCE is responsible to the Secretary of State, who ensures that HEFCE's policies and actions support his/her wider strategic policies; and that HEFCE's affairs are conducted with probity and regularity, and with due regard to value for money.

2.3.27 HEFCE's accounts are audited by the National Audit Office (NAO), which is responsible for auditing the accounts of government departments and certain public bodies, and reporting on them to Parliament. NAO may also perform value for money studies on HEFCE or any HEIs.

2.3.28 The Chief Executive of HEFCE is designated as HEFCE's accounting officer, who is responsible for safeguarding the public funds under his/her charge; for ensuring propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of HEFCE.

2.3.29 The Chief Executive of HEFCE may be summoned to appear before the Public Accounts Committee of the House of Commons to give evidence and answer questions. The Public Accounts Committee may also summon heads of HEIs, as designated office holders under the Financial Memorandum with HEFCE, to give evidence.

2.3.30 HEFCE has established an audit service which has the right of access to all information held by HEFCE and by HEFCE-funded HEIs. The audit service is responsible for evaluating the systems of risk management, and the control and governance of individual institutions. This process involves visits by the audit service to the institutions and reviews of the institutions' annual audit reports. The evaluation findings will be reported to the Audit Committee under HEFCE and through the Audit Committee to the Chief Executive.

2.4 Employment relationship of higher education institutions

2.4.1 Universities UK (UUK) is the representative body for the executive heads of the UK universities. Meanwhile, the Universities and Colleges Employers Association (UCEA) is the employers' association for universities and higher education colleges in the UK. UCEA represents universities and colleges in national negotiations with trade unions, government bodies, funding councils and other stakeholders. On the employee side, the University and College Union (UCU)³⁰ is the trade union and professional association representing more than 120 000 academics, lecturers, trainers, researchers and academic-related staff working in further and higher education throughout the UK.

Employment agreement

2.4.2 There are various aspects of employment relationship in the higher education sector and they are subject to a wide variety of employment-related legislation.³¹ For the purpose of this research, the following discussion focuses on the tenure and contractual arrangement of academic staff.

³⁰ UCU was established on 1 June 2006 by the amalgamation of two partners – the Association of University Teachers and the University & College Lecturers' Union.

³¹ For further discussion, see Farrington & Palfreyman (2006) Chapters 10-11.

2.4.3 In the UK, academic staff in higher education traditionally enjoyed a security of tenure. Professorial academic staff was usually appointed until the age of retirement, and could not be removed except for good cause (legally justifiable reason).³² This has been changed with the passage of *ERA*.

2.4.4 Sections 202 and 203 of *ERA* have significantly modified the contractual arrangements in the higher education sector. All pre-1992 universities are required to include in their contractual arrangements for new faculty members or those being promoted a provision enabling the university governing body "... to dismiss any member of the academic staff by reason of redundancy"³³. It affects all universities existing before 1992³⁴ and those academic staff appointed or promoted on or after 20 November 1987.

2.4.5 Since the enactment of *ERA*, the dominant employment trend in the UK higher education sector has been fixed-term contracts, either full-time or part-time. Nevertheless, with the passage of *the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2000 (FTER)* to implement the 1999 European Union Fixed-Term Contracts Directive, fixed-term employees are protected from being treated less favourably than similar permanent employees, and the use of successive fixed-term contracts is restricted.

2.4.6 *FTER*, which came into force on 1 October 2002, provides that a fixed-term contract renewed or extended for four continuous years automatically becomes a permanent contract, unless the continuation of offering a fixed-term contract can be justified on objective grounds. In addition, a fixed-term employee has the right not to be treated by his/her employer less favourably than the employer treats a comparable permanent employee, which is a matter that could be appealed to an employment tribunal.

Dismissal and dispute handling mechanism

2.4.7 HEIs must ensure that their internal procedures for dismissal and grievance comply with the statutory procedures and the principle of fairness.

³² See Stephen (1998).

³³ Under section 203(5) of *ERA*, redundancy is defined as when: "(a) ... the institution has ceased, or intends to cease, to carry on the activity for the purposes of which he was appointed or employed by the institution, ...; or (b) ... the requirements of that activity for members of staff to carry out work of a particular kind, or for members of staff to carry out work of a particular kind in that place, have ceased or diminished or are expected to cease or diminish."

³⁴ Academic staff of institutions which have become universities after 1992, principally former polytechnics, do not have tenure.

2.4.8 The meaning of dismissal is set out in section 95 of the *Employment Rights Act 1996 (EmRA)* as follows: an employee shall be treated as being dismissed if,

- "(a) *the contract under which he is employed is terminated by the employer (whether with or without notice),*
- (b) *the employee is employed under a limited-term contract and the contract terminates by virtue of the limiting event without being renewed under the same contract³⁵, or*
- (c) *the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

2.4.9 A wrongful dismissal may be liable for breach of contract before the courts. Under *EmRA*, an employee has the right not to be unfairly dismissed. An employee claiming unfair dismissal needs to first appeal under his/her employer's dismissal or grievance procedures. Both parties may also try conciliation and arbitration to sort out the problem. The employee could bring his/her case to an employment tribunal if he/she is not able to sort things out directly with his/her employer.

Pre-1992 universities

2.4.10 For pre-1992 universities, university governance is set out in statutes. There is an employment statute which specifies procedures covering the suspension of academic staff for misconduct or other 'good cause'; the dismissal of academic staff for reason of redundancy or incapacity; and the dismissal of senior post-holders.

2.4.11 The governing bodies of the pre-1992 universities are responsible for appointing individuals or bodies (as specified in the statutes) to hear disciplinary charges which may result in the dismissal of academic staff, and to hear appeals and grievances from academic staff.

³⁵ It is substituted by paragraph 3(7) of schedule 2, *FTER*, SI 2002/2034.

2.4.12 A typical 'good cause' statute would allow the dismissal of an academic staff in the event of:

- "(a) conviction for an offence which may be deemed by the Visitation Board³⁶ ... to be such as to render the person convicted unfit for the performance of the duties of the office or employment as a member of the academic staff; or*
- (b) conduct of an immoral, scandalous, or disgraceful nature incompatible with the duties of the office or employment; or*
- (c) conduct constituting failure or persistent refusal or neglect or inability to perform the duties or comply with the conditions of office or employment; or*
- (d) physical or mental incapacity ...³⁷"*

2.4.13 In response to the Bett report³⁸ released in 1999 – which recommended that pre-1992 universities reviewed their statutes to eliminate impediments to good management while ensuring fair treatment and safeguarding academic freedom – UUK and UCEA jointly established a working group to draw up a revised model statute. In 2003, a new model statute for pre-1992 universities was agreed by the Privy Council (see Appendix II). Since then, individual universities may apply to the Privy Council to adapt their existing statute to the new model.

2.4.14 The new model statute is based on a number of principles, which include the application of general principles of employment law to academic staff; the preservation and reinforcement of academic freedom; securing due process and fairness, and the simplification of the statutes. The new model statute provides that any issue relating to 'academic freedom' is to be decided having regard to *RSHTP* (see paragraph 1.2.2).

2.4.15 From the employees' point of view, UCU has the following main concerns with the new model statute:

- (a) the right to appeal to an external party has been removed, which will impact adversely on academic freedom;

³⁶ Most pre-1992 universities have a Visitor, whose role is restricted largely to the interpretation and enforcement of the charter and statutes of the university.

³⁷ *Statute XII*, Part A, Section 5, University of Oxford.

³⁸ Independent Review of Higher Education Pay and Conditions – a report of an independent review body chaired by Sir Michael Bett.

- (b) less favourable treatment is proposed for staff on fixed-term contracts in potential redundancy situations when fixed-term contracts come to an end;
- (c) the need for a redundancy committee is removed;
- (d) financial penalties are introduced for disciplinary cases; and
- (e) it contains very little detail – that is left to the ordinances which do not require approval by the Privy Council.

Post-1992 universities

2.4.16 The articles of government of post-1992 universities require the governing body to make rules relating to the conduct of staff, the suspension of staff and grievance procedures. The articles also contain rights of appeal against suspension or dismissal.

Chapter 3 – New Zealand

3.1 Background

3.1.1 Tertiary education in New Zealand comprises all post-secondary education: foundation education (such as adult literacy), certificates and diplomas, bachelor's degrees, industry training (including apprenticeships), adult and community education, and postgraduate qualifications. Tertiary education organizations (TEOs) are institutions and organizations that provide or facilitate tertiary education and training. They include public tertiary education institutions (TEIs), private training establishments, other tertiary education providers, government training establishments and industry training organizations.

3.1.2 In New Zealand, TEIs encompass eight universities, 20 institutes of technology and polytechnics, two colleges of education and three Wananga³⁹. Private training establishments are by and large small to very small institutions. Among the half million tertiary education students, 68% study at the sub-degree certificate and diploma level, 25.6% at the bachelor level and a small proportion (6.4%) at the post-graduate level. The largest body of students can be found in institutes of technology and polytechnics (42%), followed by universities (33%), private training establishments and Wananga (14%), with a small group in the two colleges of education (3%).

3.1.3 Since the late 1980s, the New Zealand tertiary education system has gone through a series of reforms. In 1990, competition and private contributions were introduced into tertiary education with the objective of broadening student participation. From 2000 onwards, the emphasis has shifted towards more government steering in an attempt to align tertiary education closer with socio-economic development. Appendix III contains a chronological summary of the major policy reforms in the New Zealand tertiary education system since 1989.

3.1.4 In the 1989 reform, both UGC and the Department of Education were abolished. The Ministry of Education (MoE) and the New Zealand Qualifications Authority (NZQA) were subsequently created. MoE is the government department responsible for developing the policy framework for tertiary education and advising Ministers on the tertiary education strategy, while NZQA's major function is to provide an overarching quality assurance role for the tertiary education sector.

³⁹ Wananga are Maori centres of tertiary learning.

3.1.5 The New Zealand government has developed a Tertiary Education Strategy for 2002-2007 to guide the activities of the government's tertiary education agencies, and the decision-making of providers. MoE's role is to translate the Tertiary Education Strategy into sound policies and decisions. In practice, MoE releases the Statement of Tertiary Education Priorities based on the Tertiary Education Strategy every one to three years.

3.2 Legal protection of academic freedom and institutional autonomy

Direct legislative protection

3.2.1 After its re-election to office in 1987, the Labour government initiated a major reform of the education system in New Zealand. In March 1988, the government set up a review committee on 'Post-Compulsory Education and Training', convened by Gary Hawke⁴⁰. The Hawke Report was submitted to the government in July 1988, and one of its suggestions was to create a MoE responsible for all levels of education, which required the abolition of UGC.

3.2.2 Soon after the release of the Hawke Report, criticisms quickly came from various institutions (particularly universities). Two universities went to court alleging a lack of consultation in the preparation of the Hawke Report and a violation of the autonomy of the universities.⁴¹ During the court proceedings, the government agreed to put off its legislation based on the Hawke Report and to go back to consult the universities. The government also decided to create a number of working groups to study relevant issues arisen from the incident, one of which focused on academic freedom and institutional autonomy.

3.2.3 As a consequence of persistent lobbying by universities and the activities of the working group on academic freedom and institutional autonomy, the government inserted into the proposed legislation based on the Hawke Report a definition of and a commitment to academic freedom and autonomy of TEIs.⁴²

3.2.4 Academic freedom is explicitly provided for in the *Education Act 1989* (EA). The relevant provisions reflect the intention of the New Zealand Parliament that academic freedom and the autonomy of institutions are to be preserved and enhanced.⁴³

⁴⁰ He was a Professor of Economics and the Head of the Institute for Policy Studies of the University of Victoria at Wellington.

⁴¹ For a detailed discussion, see Butterworth & Tarling (1994) Chapter 6.

⁴² See Snook (1991).

⁴³ Section 161(1), EA.

3.2.5 Under section 161(2) of EA, academic freedom means:

- "(a) The freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions;*
- (b) The freedom of academic staff and students to engage in research;*
- (c) The freedom of the institution and its staff to regulate the subject-matter of courses taught at the institution;*
- (d) The freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning;*
- (e) The freedom of the institution through its chief executive to appoint its own staff."*

3.2.6 In exercising their academic freedom and autonomy, TEIs are required to act in a manner that is consistent with:

- "(a) The need for the maintenance by institutions of the highest ethical standards and the need to permit public scrutiny to ensure the maintenance of those standards; and*
- (b) The need for accountability by institutions and the proper use by institutions of resources allocated to them."⁴⁴*

3.2.7 Specifically, the law requires that the councils and chief executive of TEIs, Ministers, and authorities and agencies of the Crown, when performing their functions, must in all respects give effect to the intention of Parliament so that academic freedom and the autonomy of institutions are to be preserved and enhanced.⁴⁵

⁴⁴ Section 161(3), EA.

⁴⁵ Section 161(4), EA.

Relevant legal protection measures

3.2.8 Similar to the UK, provisions concerning freedom of speech in the New Zealand legislation have potential impact on academic freedom. New Zealand has ratified the *International Covenant on Civil and Political Rights (ICCPR)* and legislated domestically for freedom of expression in the *New Zealand Bill of Rights Act (BoRA)*. Section 14 of *BoRA* states that:

"Everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind in any form."

3.2.9 *BoRA* applies to acts by the government and public actors, including TEIs. Freedom of thought and conscience are also affirmed in *BoRA*, including the right to adopt and to hold opinions without interference. At the same time, employment discrimination based on political opinion is prohibited by the *Human Rights Act*.

3.2.10 The *Protected Disclosures Act*, which came into force in January 2001, is to protect staff who, in accordance with the Act, make disclosures of information about serious wrongdoing in or by an organization. All public sector organizations, including TEIs, must operate appropriate internal procedures in accordance with the requirement of the *Protected Disclosures Act*.⁴⁶

Governing structure of tertiary education institutions

3.2.11 Under *EA*, TEIs include colleges of education, polytechnics, universities and Wananga. All TEIs are defined as statutory corporations under the terms of their individual statutes (seven of the eight universities have their own statutes) and *EA*. Section 192 of *EA* states the scope of an institution's power as:

- (a) the rights, powers and privileges of a natural person;
- (b) the power to issue debentures;
- (c) the power to grant floating charges on the institution's undertaking or property; and
- (d) the power to do any other thing it is authorised to do by *EA*, or by other rule of law.

⁴⁶ For example, see the University of Otago's Protected Disclosures Policy and Procedure (available at <http://www.otago.ac.nz/humanresources/policies/protecteddisclosure.html>).

3.2.12 Under *EA*, each TEI should form a council which is the governing body of the institution. The functions of the council are:

- (a) to appoint a chief executive and to monitor and evaluate his/her performance;
- (b) to prepare, negotiate, and adopt a charter for the institution;
- (c) to adopt a profile for the institution;
- (d) to ensure that the institution is managed in accordance with its charter and its profile; and
- (e) to determine the policies of the institution in relation to the implementation of its charter, the carrying out of its profile, and the management of its affairs.⁴⁷

3.2.13 Section 171(1) of *EA* provides for such a council to consist of between 12 and 20 members. Each council must include:

- (a) four persons appointed by the responsible Minister;
- (b) the chief executive of the institution;
- (c) one to three permanent members of the academic staff of the institution, elected by permanent academic staff members;
- (d) one to three permanent members of the general staff of the institution, elected by the permanent general staff members;
- (e) one to three persons appointed by the students of the institutions;
- (f) one person appointed in consultation with the central organization of employers;
- (g) one person appointed in consultation with the central organization of workers; and
- (h) if the council considers it appropriate, one or more persons appointed in accordance with the council's constitution to represent professional bodies.

⁴⁷ Section 180-181, *EA*.

3.2.14 Section 171(4) of *EA* states that the membership of the council should reflect, so far as reasonably practicable, the ethnic and socio-economic diversity of the communities served by the institution as well as gender balance. The council elects one of its members to be the chairman of the council.⁴⁸

3.2.15 The council is required to establish an academic board consisting of the institution's chief executive, members of the staff and students for advising the council on matters relating to courses of study or training, awards and other academic matters.⁴⁹ Both the council and the chief executive cannot make decisions on academic matters without first consulting the academic board.

3.2.16 The autonomy of TEIs is reflected in different treatments of the government on TEIs and other forms of Crown entities⁵⁰:

- (a) the Crown accepts that it does not legally own TEIs although the Crown is the in-substance owner of these institutions;
- (b) TEIs do not have to prepare an annual Statement of Intent⁵¹ which is required of other Crown entities. Rather, TEIs must produce an annual profile⁵²;
- (c) the government only has four appointees on TEI councils, while a Minister generally appoints the entire board of other Crown entities; and
- (d) although the councils of TEIs are required to have regard to the Tertiary Education Strategy and the Statements of Tertiary Education Priorities, Ministers do not explicitly determine priorities for TEIs on an annual basis as they do for other Crown entities.

3.2.17 In 2003, the New Zealand government commissioned an independent review on the governance of TEIs. The review report, entitled the *New Zealand Tertiary Education Institution Governance*⁵³, recommended a new framework to achieve good governance practice by adopting a national protocol on TEI governance.

⁴⁸ Section 177(1), *EA*.

⁴⁹ Section 182, *EA*.

⁵⁰ A Crown entity is a type of organizations that form part of New Zealand's state sector established under the *Crown Entities Act 2004*.

⁵¹ The Statement of Intent is a public document designed to give Parliament and stakeholders a full and balanced view of a Crown entity's performance intentions. It provides a high-level description and explanation of an entity's operating intentions and performance expectations over the medium-term – usually a three to five year period.

⁵² See paragraph 3.3.25 of this report.

⁵³ Edwards (2003).

3.3 Funding arrangement of higher education

Funding institutions

The demise of UGC

3.3.1 New Zealand had two UGCs established at different points of time in the past.⁵⁴ One was established in 1948 as a subcommittee of the Senate of the University of New Zealand, whose major task was to transform colleges into autonomous universities. The second one, succeeding the first one, was set up in 1960 under the *University Grants Committee Act*. In the following discussion, UGC refers to the one established in 1960.

3.3.2 With its introduction, the second UGC assumed some of the granting and academic functions of its predecessor. However, its composition and organization were changed and its duties and powers were greatly enlarged. UGC was a statutory body, comprising eight members appointed by the Governor General on the advice of the Minister of Education and university administrators.

3.3.3 The *University Grants Committee Act* stipulated that UGC determined "*the allocation of grants of money to be recommended for appropriation by Parliament...and review expenditure.*" The Act also gave UGC broad responsibility to "*initiate plans for such balance University Development as may be required to make the Universities fully adequate to the needs of New Zealand.*" Unlike its predecessor, UGC was established with its own secretariat and received income generated from the former assets of the University of New Zealand.

3.3.4 Starting from the middle of the 1980s, New Zealand had been subject to a massive restructuring programme in economic, social and educational policies. The issues of efficiency and accountability had been identified as of central importance in the tertiary education sector. The 1988 Hawke Report recommended that universities should be more commercial and generate funds; that research and teaching should be separated; that university councils should be smaller; and that there should be more extensive use of charters, audit procedures and performance appraisals to regulate universities.

3.3.5 As mentioned in paragraph 3.2.2, the 1988 Hawke Report proposed the creation of a centralized Ministry to manage all education sectors including universities, which required the abolition of UGC. The New Zealand government's subsequent policy documents, entitled *Learning for Life I* and *Learning for Life II*, re-affirmed the major recommendations of the Hawke Report, including the setting up of a Ministry for policy development across the entire education sector. UGC was abolished with the passage of *EA* in 1989.

⁵⁴ See Eisemon (1984) and Gould (1988).

3.3.6 Before the abolition of UGC, universities had been bulk funded on a five-year programme (quinquennium), with the share of funding to individual institutions being proportional to the number of equivalent full-time students in various faculties of each institution. Funding allocation was carried out by UGC, which also determined and funded the capital works programme for universities. Polytechnics and colleges of education were funded by the former Department of Education.

New funding body

3.3.7 In the 1990s, there were various funding systems that applied to different components of the tertiary education system. The bulk of tertiary education funding was allocated to providers through the equivalent full-time student system, which was operated by MoE. Foundation education was funded through a purchase model run by a government agency (Skill NZ).

3.3.8 In early 2000, the Tertiary Education Advisory Commission (TEAC) was established by the government to map out a new direction for tertiary education. TEAC subsequently proposed to create a tertiary education commission to allocate government funding and to develop a unified and coherent funding framework for the tertiary education system.⁵⁵

3.3.9 The Tertiary Education Commission (TEC), established on 1 January 2003 under section 159C of *EA*, is the lead agency for managing relationships of the government with the tertiary education sector and developing related policies. One of TEC's major functions is to implement the tertiary education reforms in conjunction with MoE and NZQA.

3.3.10 TEC is responsible for allocating government funding to tertiary education and training offered by universities, polytechnics, colleges of education, Wananga, private training establishments, foundation education agencies, industry training organizations and adult and community education providers.

Relationship with government

3.3.11 TEC is a Crown entity governed by eight Commissioners appointed by the responsible Minister, in the capacity of a general management board. The board reports to the Minister and is responsible for governing the organization and setting the strategic direction of TEC.

⁵⁵ TEAC (2001).

3.3.12 The responsible Minister may give a direction to TEC, and such direction must be consistent with the Tertiary Education Strategy and the functions of TEC. The Minister should not direct TEC to provide or deny funding to any specified organization. If the Minister gives a direction to TEC, TEC must include in its annual report on how TEC has responded to the direction.⁵⁶

3.3.13 Under *EA*, the Minister is not permitted to determine or intervene in the allocation of funding to any particular TEO.

Funding policies and procedures

3.3.14 In general, the government sets the total amount of funding available for tertiary education. The Minister also determines the 'design of funding mechanisms' – that is, specifying the broad funding parameters.⁵⁷ These parameters are communicated to TEC, which is responsible for setting the operational rules for funding and allocating funding to TEOs. TEC publishes its operational policies in funding guides.

3.3.15 New Zealand has set up an integrated funding framework for its tertiary education system. It has three broad elements:

- (a) Funding for the teaching and learning of domestic students, through the Student Component, the Industry Training Fund, and a number of targeted programmes;
- (b) Funding for research, through the Centres of Research Excellence (CoREs) funding and the Performance-Based Research Fund (PBRF); and
- (c) Targeted funding, through a Strategic Development Component.

Funding for teaching and learning

3.3.16 The Student Component accounts for the largest share of the teaching and learning funding element and is used to subsidise the costs of tuition carried out in TEOs. Under the Student Component, the level of funding for each TEO is determined by a formula based on the number of equivalent-full time students (EFTS) enrolled in courses offered by each TEOs. Each course is assigned to a course classification, with each course classification being allocated to a funding category which recognises the costs in the subject area covered by that classification. The funding category carries with it a funding rate per EFTS.

⁵⁶ Section 159J, *EA*.

⁵⁷ Section 159ZA, *EA*.

3.3.17 Quality assurance has always been a prerequisite for Student Component funding.⁵⁸ In addition, the government has decided to link an extra 5% of Student Component funding to performance of institutions. The performance indicators used are student retention rates, rates of successful completion of courses, and the results of learner survey.

Funding for research

3.3.18 Up to 2004, the main funding for the research activities of TEOs had been delivered as part of the Student Component funding for degree and postgraduate enrolments. This system of funding is being phased out over the period of 2004 to 2007 as the new PBRF is introduced. Under PBRF, funding is allocated to TEOs on the basis of an assessment of their research performance using a set of performance indicators, complemented by peer assessment of the quality of their research.

3.3.19 The assessment method of PBRF using a combination of peer review and performance indicators differs from the 'pure' indicator models used in Australia and Israel and the 'pure' peer review models employed in the UK and Hong Kong. Unlike the UK RAE where the unit of assessment is a discipline-based department or school, the New Zealand PBRF assessment is based on individual staff members.

3.3.20 In 2002, the government invited bids from TEOs to host CoREs which are research networks focused on areas of established research excellence of importance to New Zealand. Seven CoREs have been established as a result, each for a period of six years.

3.3.21 In addition to these sources of research funding, TEOs may obtain research funding through the contestable science funds offered by the government through Vote:RST (Research, Science and Technology). TEOs can also bid for contracts in the private sector to provide research for firms and other organizations for the purposes of their businesses.

Targeted funding

3.3.22 The Strategic Development Component contains a number of funds which help facilitate the alignment of TEI's provision with the Tertiary Education Strategy. Among the funds in this component are:

- (a) Special Supplementary Grants – Tertiary Students with Disabilities;

⁵⁸ There are two quality assurance agencies: NZQA and the New Zealand Vice-Chancellors' Committee.

- (b) Partnerships for Excellence: This fund enables TEIs to support major strategic initiatives. Government funding under this scheme is to be matched by contributions from the private sector; and
- (c) Institute of Technology and Polytechnic Business Links Fund: Participation in this fund requires institutes of technology and polytechnics to negotiate an industry engagement plan with TEC.

3.3.23 Other funds included in the Strategic Development Component are the Innovation Development Fund, which is intended to help TEIs develop initiatives that will support their strategies, and the e-Learning Collaborative Development Fund, which funds programmes that will allow TEOs work together on innovative e-learning projects.

Accountability

3.3.24 MoE is the government department responsible for developing the policy framework for tertiary education and monitoring the financial performance of TEIs. TEC is required to submit the annual Statement of Intent to the responsible Minister. TEC also negotiates an Output Agreement each year with the Minister. According to the Output Agreement, TEC reports to the Minister through its annual report and quarterly reports.

3.3.25 As part of the process of implementing the Tertiary Education Strategy and providing funding to TEOs, TEC negotiates and assesses the charters and profiles of TEOs. A charter is a high-level governance document that describes an organization's role in the tertiary education system and how it aligns with the Tertiary Education Strategy. A profile describes in greater detail the TEO's strategic direction, activities and performance targets for the next three years. Profiles have to be submitted each year by all publicly-funded TEOs. Approval of a profile by TEC is likely to include funding approval.

3.3.26 Through the Tertiary Advisory Monitoring Unit (TAMU), TEC also monitors the financial, leadership and governance performance of all 33 TEIs. TAMU's main functions are to monitor TEIs' finances, governance and management; advise the Minister on appointments to the TEI councils; strengthen TEIs' governance and management capability as well as take the lead on TEI's risk assessments, and provide intervention advice to the Minister.

3.3.27 TEIs are required to submit annual reports to the Minister and the reports should be available for public inspection. TEIs' accounts are audited by the National Controller and Auditor General. In 2001, partly in response to the worsening risk profile of the TEI sector, New Zealand passed the *Education Standards Act*. This Act provides for additional intervention mechanisms by the government with regard to at-risk TEIs. Such mechanisms include (a) requirements for the councils of these TEIs to provide specified information or regular reports; (b) power to appoint Crown Observers, following consultation with the council of a particular TEI; and (c) power to dismiss the council of a particular TEI and to appoint a commissioner.

3.4 Employment relationship of tertiary education institutions

3.4.1 The New Zealand Vice-Chancellors' Committee, comprising the Vice-Chancellors of the eight universities, represents the corporate and management interests of the universities. The Association of University Staff (AUS) of New Zealand represents academic and general staff interests in the universities. The Association of Staff in Tertiary Education (ASTE) covers the corresponding interests in the polytechnics, colleges of education and Wananga. Recently, AUS, ASTE and the Tertiary Institutes Allied Staff Association have all agreed in principle to form a single new union in the tertiary education sector.

Employment agreement

3.4.2 The overriding employment legislation in New Zealand is the *Employment Relations Act 2000 (ERA)*. Employment arrangements of TEIs are also governed by the *State Sector Act 1988 (SSA)* and *EA*. *SSA* makes the chief executive of each TEI responsible for staff employment and employment agreement negotiations; whereas *EA* states that one of the characteristics of academic freedom is the right of the institution to appoint its own staff.

3.4.3 Since the late 1980s, TEIs have acted independently of the central government on employment matters. In the 1990s, many TEIs had individual employment contracts with their staff. Nevertheless, since the passage of *ERA*, most TEIs have moved back to collective employment agreements with the majority of their staff. Collective employment agreements are negotiated between TEIs and unions representing the staff.

3.4.4 The collective employment agreements vary in detail. In some cases, they contain detailed specifications about employment arrangements. In other cases, they refer to previously agreed and published policy documents, without specifying details. The items covered in a typical TEI employment agreement include such matters as workloads, performance management, redundancy provisions, disciplinary procedures, training and professional development, leave and remuneration.⁵⁹

3.4.5 Individual collective employment agreement may also contain provisions concerning academic freedom. For instance, the 2006/2007 collective employment agreement of the Victoria University of Wellington specifies that academic staff covered by the agreement have the rights and privileges of academic freedom as provided for under Section 161 of *EA*. The agreement further assures that the employer will continue to honour the academic freedom provisions in *EA* even if they are repealed.⁶⁰

3.4.6 Academic posts can be appointed with either permanent tenure or limited tenure; i.e. for a term of fixed duration (a fixed term agreement). Both types of tenures may be either full-time or part-time. A recent study shows that the proportion of part-time university staff has trended upwards over the 10 year period of 1994-2004, from 24% to 37%.⁶¹ However, the trend is less conspicuous for other institutions such as institutes of technology and polytechnics and colleges of education.

Dismissal and dispute handling mechanism

3.4.7 An academic staff collective agreement of the University of Auckland is used to illustrate the situation regarding the dismissal and dispute handling mechanism adopted by TEIs in New Zealand.⁶² Relevant parts of the *2006/2007 Academic Staff Collective Employment Agreement (ASCEA)* of the University of Auckland are reproduced in Appendix IV.

3.4.8 Employment with permanent tenure can be terminated for just cause through a fair and binding hearing. Just cause includes gross incompetence, persistent neglect of duties and professional malfeasance.

⁵⁹ For collective agreements of academic staff in universities, see <http://www.aus.ac.nz/Industrial/EmploymentAgreements.asp>. For collective agreements of academic staff in institutes of technology and polytechnic and colleges of education, see <http://www.aste.ac.nz/all/framespages/agreements/AgreementFrameset.htm>.

⁶⁰ The Victoria University of Wellington (2006) section 2.0.

⁶¹ Choat (2006).

⁶² The University of Auckland (2006).

3.4.9 Under *ASCEA*, a staff member may be dismissed without notice for serious misconduct. Section 2.1 of *ASCEA* specifies that serious misconduct includes, but is not limited to, sexual harassment, assault, theft, fraud, misappropriation, wilful negligence, wilful disobedience, wilful misconduct, failure to disclose a conflict of interest or breach of the university's policy against harassment. Disciplinary procedures are set out clearly in schedule 3 of *ASCEA* and the rules of natural justice apply under these procedures.

3.4.10 *ASCEA* also deals with changes in employment arrangements in the event of institutional restructuring and redundancy (see schedule 7 of Appendix IV). Under section 69B of *ERA*, restructuring means:

- (a) contracting out;
- (b) contracting in;
- (c) subsequent contracting; or
- (d) selling or transferring an employer's business (or part of it) to another person.

3.4.11 Provisions concerning redundancy include requirements for the employer to provide the union with related information and to discuss with staff about related arrangements, consideration by the employer of alternatives to termination and termination pay.

3.4.12 *ERA* requires that all collective and individual agreements contain a plain-language explanation of the services and processes available to resolve any employment relationship problem (see schedule 8 of Appendix IV). Employment relationship problems include:

- (a) a personal grievance (a claim of unjustifiable dismissal, unjustifiable disadvantage, discrimination, sexual or racial harassment, or duress in relation to membership or non-membership of a union or employee organization);
- (b) a dispute (about the interpretation, application or operation of an employment agreement); and
- (c) any other problem relating to or arising out of the employee's employment relationship with the university except matters relating to the fixing of new terms and conditions of employment.

3.4.13 If an employment relationship problem cannot be settled by the concerned parties, they can request assistance from the Department of Labour Mediation Service. If the problem is not resolved by mediation, the employee may apply to the Employment Relations Authority⁶³ for investigation and determination. In certain circumstances, the decision of the Employment Relations Authority may be appealed by the concerned parties to the Employment Court⁶⁴.

⁶³ The Employment Relations Authority, established under *ERA*, is an investigative body that operates in an informal way. It looks into the facts and makes a decision based on the merits of the case, not on legal technicalities.

⁶⁴ Section 187 of *ERA* gives the Employment Court jurisdiction over all matters relating to employment disputes. The Employment Court is a court of record and has equal standing to the High Court of New Zealand.

Chapter 4 – Hong Kong

4.1 Background

4.1.1 The University of Hong Kong (HKU) founded in 1911 is the oldest higher education institution in Hong Kong. The Chinese University of Hong Kong (CUHK) was established in 1963 by the amalgamation of three post-secondary colleges: New Asia, Chung Chi and United. In 1965, the Hong Kong Government set up UGC as a funding body for the two universities. The first polytechnic (the Hong Kong Polytechnic) was established in 1972.

4.1.2 In 1978, the Hong Kong Government published the *White Paper on Senior Secondary and Tertiary Education*, proposing an increase in the number of students taking degree courses; the possible development of part-time degree programmes at the universities and the possible development of a limited number of degree programmes at the Hong Kong Polytechnic.

4.1.3 In the late 1980s, the Government adopted two new policies which led to major changes in the nature and scope of higher education. The first policy, adopted in 1988, was that all students entering first university degree programmes had to come from a two-year sixth form course leading to the Advanced Level Examination. This change had particular implications for CUHK because of its previous practice of taking most of its students after a one-year sixth form course. The second policy, adopted in 1989, was that the Government asked UGC to increase the planned provision for first year, first degrees places in tertiary education from about 7 000 in 1990 to 15 000 in 1995.

4.1.4 In 1996, UGC submitted a review report, entitled *Higher Education in Hong Kong*, to the Government. The report, commissioned by the Government, stated that the Hong Kong's higher education system had survived the rapid expansion in good condition and was well supported with adequate manpower resources and facilities. It also envisaged a number of prospects for the future, centring on the possibility of Hong Kong becoming a regional centre for higher education.

4.1.5 In 1999, the report of the Education Commission's⁶⁵ review on the overall education system in the Hong Kong Special Administrative Region (HKSAR), *Learning For Life*, recommended the introduction of more flexibility and diversity into the higher education sector. In particular, the Commission recommended the development of various types of private universities.

⁶⁵ The Education Commission has the responsibility for advising the Government on the development of the education system as a whole. It recommends development priorities and monitors the planning and development of education at all levels.

4.1.6 In May 2001, the Secretary for Education and Manpower commissioned UGC to launch a comprehensive review of higher education. In March 2002, UGC published the review report entitled *Higher Education in Hong Kong*, written by Stewart Sutherland.⁶⁶ The Sutherland Report put forward a number of key recommendations, including (i) reviewing UGC's own operations; (ii) creating extra capacity at senior years of universities for new entrants and enhancing student mobility; (iii) establishing a further education council to oversee the provision of programmes at associate degree; (iv) ensuring the governance and management structures of institutions to be 'fit for purpose'; and (v) enhancing the capability of a small number of institutions to compete at the highest international levels.

4.1.7 Based on the review report, the Government announced in November 2002 a blueprint for the further development of higher education in Hong Kong. The aim of the blueprint was to encourage tertiary institutions to strategically position themselves, promote quality in teaching and research, and provide more choices and articulation opportunities for students.

4.1.8 At present, there are twelve degree-awarding institutions in Hong Kong, eight of which are funded by UGC. Of the eight, seven are fully self-accrediting universities, namely, City University of Hong Kong (CityU), Hong Kong Baptist University (HKBU), Lingnan University (LU), the Hong Kong Polytechnic University (PolyU), the Hong Kong University of Science and Technology (HKUST), CUHK and HKU. The remaining institution is the Hong Kong Institute of Education (HKIED) which has self-accrediting status in respect of its teacher education programmes at degree and above levels. In addition, there are four tertiary institutions not funded by UGC, namely, the publicly-funded Hong Kong Academy for Performing Arts and the self-financing Open University of Hong Kong, Hong Kong Shue Yan University and the Chu Hai College of Higher Education.

4.1.9 The Secretary for Education, who heads the Education Bureau, formulates, develops and reviews education policies, secures funds in the government budget, and oversees the effective implementation of educational programmes. The Permanent Secretary for Education assists the Secretary for Education in formulating, coordinating and implementing educational policies with the help of the bureau.

⁶⁶ A senior member of UGC and the Principal and Vice-Chancellor of the University of Edinburgh in the UK.

4.1.10 In recent years, there were two notable public controversies concerning academic freedom and institutional autonomy. One incident happened in 2000, relating to the alleged government interference over the public opinion work of a HKU academic, Dr. Chung Ting-yiu [Dr Chung's Case]. HKU subsequently appointed an independent investigation panel to ascertain the facts surrounding the allegations.⁶⁷

4.1.11 Another incident happened in February 2007, which erupted over the alleged government interference in the academic freedom and institutional autonomy of HKIEd [HKIEd's case]. The Government, according to the *Commissions of Inquiry Ordinance*, set up the Commission of Inquiry to investigate the case. The Commission published its report in June 2007.⁶⁸

4.2 Legal protection of academic freedom and institutional autonomy

Direct legislative protection

4.2.1 In the HKSAR, direct legal protection of academic freedom and institutional autonomy is mainly through the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (BL)*. In the governmental level, *BL* provides the Government with the autonomy to maintain its own educational system and to set its own policies. The first clause of Article 136 of *BL* states that:

"On the basis of the previous educational system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications."

⁶⁷ The Independent Investigation Panel (2000). For more discussion, see Currie & others (2006).

⁶⁸ The Commission of Inquiry on Allegations relating to HKIEd (2007).

4.2.2 Article 136 of *BL* basically derives from Article 10, Annex I of the *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong* (Joint Declaration).⁶⁹ Annex I of the Joint Declaration lays down the basic policies of the People's Republic of China regarding Hong Kong.

4.2.3 In the institutional level, *BL* allows education institutions of all kinds to maintain their autonomy and to enjoy academic freedom. The second clause of Article 136 of *BL* provides that "[c]ommunity organizations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region."

4.2.4 More importantly, Article 137 of *BL* draws a direct reference to academic freedom in that:

"Educational institutions of all kinds may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Schools run by religious organizations may continue to provide religious education, including courses in religion."

4.2.5 Article 137 of *BL* offers a stronger protection than the corresponding provisions of the Joint Declaration⁷⁰. *BL* does not provide further detail on the meaning of academic freedom.⁷¹ There is no reference to academic freedom in other laws of the HKSAR besides *BL*.

⁶⁹ Article 10, Annex I of the Joint Declaration states that "[t]he Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall on its own decide policies in the fields of culture, education, science and technology, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational and technological qualifications. Institutions of all kinds, including those run by religious and community organisations, may retain their autonomy. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong Special Administrative Region."

⁷⁰ See footnote 69.

⁷¹ During the drafting process of *BL*, there were some suggestions that the meaning of academic freedom should be more specific. See the Consultative Committee of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (1989) pp. 239-40.

4.2.6 In the individual level, *BL* guarantees individual's right to academic freedom. Article 34 of *BL* states that "*Hong Kong residents shall have freedom to engage in academic research, literary and artistic creation, and other cultural activities.*" Article 34 belongs to the chapter on fundamental rights and duties of the residents of *BL*.⁷²

4.2.7 In Dr Chung's case, the independent investigation panel, for the purpose of the investigation, adopted a definition of academic freedom to include "*the unhindered freedom to explore a given subject to the extent that our rational powers of investigation are capable; and the freedom to do so without influence or pressures external to the process.*"⁷³

4.2.8 Meanwhile, in HKIED's case, the Commission of Inquiry considered that academic freedom "*includes the right to seek and disseminate the truth as one sees it and the right not to be penalized for finding and publicising unpopular truths.*"⁷⁴ The Commission also regarded academic freedom as "*a basic human right, applicable specifically to the academic community.*"⁷⁵

4.2.9 Considering that scholars and students ought to be able to research and publish without fear of intimidation or reprisal and without political interference, the Commission of Inquiry concluded that:

"[c]omplaining or protesting to the critics directly or through their superiors could have inhibited their will and ability to speak their mind and communicate their ideas, and therefore an improper interference with their academic freedom."⁷⁶

4.2.10 On 17 September 2007, the Government launched a judicial review on part of the findings in the Report of the Commission of Inquiry on Allegations relating to HKIED. Specifically, the Government challenged the findings of the Commission in respect of:

"[t]he Commission concluded that direct contact of a senior government official with academic members of an educational institution to express his/her opinion on or to protest against the critical views of the academic members, even without any threat of sanction or reprisal, would constitute improper interference with academic freedom."⁷⁷

⁷² The Joint Declaration also lists 'academic research' as one of the rights and freedoms protected by law. See Joint Declaration, Annex I, Article 13.

⁷³ The Independent Investigation Panel (2000).

⁷⁴ The Commission of Inquiry on Allegations relating to HKIED (2007) paragraph 14.2.

⁷⁵ Ibid.

⁷⁶ The Commission of Inquiry on Allegations relating to HKIED (2007) paragraph 14.27.

⁷⁷ The Hong Kong Government Press Release, 17 September 2007.

Relevant legal protection measures

4.2.11 Provisions relating to academic freedom such as freedom of speech and publication are stipulated under Article 27 of *BL*:

"Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike."

4.2.12 According to *BL*, *ICCPR*, the *International Covenant on Economic, Social and Cultural Rights*, and international labour conventions continue to apply to the HKSAR after 1997.

4.2.13 The *Hong Kong Bill of Rights Ordinance*, which was drafted based upon *ICCPR*, does not contain provisions expressly touching upon academic freedom. However, relevant provisions protecting freedom of opinion, expression, assembly and association are included. The Ordinance applies to public organizations, including universities.

4.2.14 There is no legal provision in the HKSAR that protect academics who make disclosures of information about serious wrongdoing in or by an HEI.

Governing structure of higher education institutions

4.2.15 As mentioned in paragraph 4.1.6, the Sutherland Report covered many aspects of higher education, including the governance of the eight UGC-funded institutions. The Report recommended the governing body of each of these institutions to carry out a review of their governance and management structures. Subsequently, after completing their 'fitness for purpose' review, some of the institutions see a need to revise the governing structure and are making the changes.⁷⁸

⁷⁸ For details, see EMB (2007).

4.2.16 In March 2003, the Director of Audit published its Report No. 40, containing the result of a value for money audit on the UGC-funded institutions.⁷⁹ Chapter 8 of the Report No. 40 was on the governance, strategic planning and financial and performance reporting of the institutions. After considering the Audit Report, the Public Accounts Committee of the Legislative Council (LegCo) published its report in November 2003.⁸⁰ The Public Accounts Committee Report put forward a number of recommendations regarding the corporate governance of the institutions, including asking the institutions to adopt measures to ensure that external members of the governing body of the institutions will constitute a majority at council meetings and to conduct periodic reviews of the effectiveness of the governing body.

4.2.17 Each of the eight institutions is governed by a separate piece of ordinance, which may be amended by LegCo only. They are:

- (a) *City University of Hong Kong Ordinance* (Cap. 1132);
- (b) *Hong Kong Baptist University Ordinance* (Cap. 1126);
- (c) *Lingnan University Ordinance* (Cap. 1165);
- (d) *The Chinese University of Hong Kong Ordinance* (Cap. 1109);
- (e) *The Hong Kong Institute of Education Ordinance* (Cap. 444);
- (f) *The Hong Kong Polytechnic University Ordinance* (Cap. 1075);
- (g) *The Hong Kong University of Science and Technology Ordinance* (Cap. 1141); and
- (h) *University of Hong Kong Ordinance* (Cap. 1053).

4.2.18 Although the eight institutions have diverse backgrounds and traditions, their governance structures are similar. The eight governing ordinances provide for the governing structure, the vesting of particular powers and functions in the officers, the establishment of faculties and institutes, the appointment and termination of staff, and the power to confer degrees and to make statutes (or rules) for the institutions. In general, the governance structure of the eight institutions includes:

- (a) a governing council for managing financial and human resources;
- (b) a court performing an advisory role; and
- (c) a senate for regulating academic matters.

⁷⁹ Director of Audit (2003).

⁸⁰ Public Accounts Committee (2003).

4.2.19 Each of these eight institutions has a council as the supreme governing body⁸¹. The size and composition of the council vary, and they are specified under their governing ordinances (see Appendix V). The council membership may consist of senior staff of the institutions, deans, students and staff representatives, alumni, members appointed by the council and members appointed by the Chief Executive of the HKSAR (CE). The number of council members in the institutions ranges from 24 (HKU) to 55 (CUHK). A recent legislative amendment has reduced the number of council members of CityU from 37 to 23. CUHK also has a plan to downsize its council membership to around 25.⁸²

4.2.20 CE is the Chancellor of the eight institutions, who also appoints the chairman of the respective councils. The powers and duties of the Chancellor are specified under the governing ordinances, and in most institutions primarily concern appointment of council members and conferment of degrees and other honorary awards.

4.2.21 However, under the *HKU Ordinance*, the Chancellor is empowered to receive appeals for any decision of the council to terminate the appointment of any officer or teacher.⁸³ Under *Statute 4*, Schedule 1 of the *CUHK Ordinance*, the Chancellor has the power to request for information in regard to any matter relating to the welfare of the university and to recommend to the council such action as he/she deems proper.⁸⁴

4.2.22 The power for the Government to give advice is explicitly provided for in the *HKIED Ordinance*. Under section 5 of the *HKIED Ordinance*, the CE in Council is entitled to give HKIED '*directions with respect to the exercise of its powers or the achievement of its objects, either generally or in any particular case*' and HKIED '*shall comply with any directions given by the CE in Council*'.

4.2.23 The number of council members appointed by the Government varies significantly among the institutions (see Table 1). The two oldest universities have comparatively fewer council members appointed by the Government, with six members being nominated by the Chancellor for CUHK and seven members being appointed by the Chancellor for HKU.

⁸¹ According to the *Hong Kong University Ordinance*, the court is the supreme governing body of HKU. However, following the recommendations of the 2003 fitness and purpose review conducted by the HKU, the council is now regarded as the supreme government body. See HKU (2003).

⁸² See EMB (2007).

⁸³ Section 12(11), the *HKU Ordinance*.

⁸⁴ Section 2, *Statute 4*, Schedule 1 of the *CUHK Ordinance*.

Table 1 – Number of council members appointed by the Government and from the Legislative Council

Institution	Total number of members	No of members appointed by CE		No of public officials	No of members from the Legislative Council	Percentage of members directly appointed by the Government
		Appointed by CE	Appointed by CE based on nomination			
LU	33	18	7 ⁽¹⁾	-	-	55%
PolyU	29	20 ⁽²⁾	-	Not more than 2	-	69%
HKUST	33	Not more than 9	Not more than 9 ⁽³⁾	Not more than 3	-	Not more than 36%
HKIED	28	Not more than 14	-	At least one but not more than 3	-	Not more than 61%
CityU	23	7	Not more than 8 ⁽⁴⁾	-	-	30%
CUHK	55	6 ⁽⁵⁾	-	-	3	11%
HKBU	34	15	3 ⁽⁶⁾	-	-	44%
HKU	24	7	-	-	-	29%

Notes: (1) Nominated by the Lingnan Education Organization Limited.
(2) Including public officials.
(3) Appointed based on the recommendation of the council.
(4) Appointed based on the recommendation of the council.
(5) Nominated by the Chancellor.
(6) Nominated by the Baptist Convention of Hong Kong.

4.2.24 The other six institutions all have a fairly significant number of council members appointed by the Government. For example, 20 of the 29 council members of PolyU are appointed by CE. At present, among these eight institutions, only CUHK is required to have council members who are LegCo Members.⁸⁵ The law requires that the council of CUHK comprises three persons elected by LegCo Members from among themselves.

⁸⁵ Three of HKU's court members are LegCo Members, who are elected among themselves.

4.2.25 In respect of the composition of the governing council, there is no specified rule for determining the ratio between internal and external members for all institutions. The number of internal members versus external members in the councils of the eight institutions are summarised in Table 2 below. The percentage of external council members ranges from 53% (HKBU) to 76% (LU).

Table 2 – Number of internal members versus external members in the governing council of the eight UGC-funded institutions

	Total number of members	Internal members			External members	Percentage of external members
		Ex-officio	Staff (elected or appointed)	Student		
LU	33	2	5	1	25	76%
PolyU	29	2	5	1	21	72%
HKUST	33	8	3	0	22	67%
HKIEd	28	4	6	1	17	61%
CityU	23	2	3	2	15	65%
CUHK	55	17	7	0	31	56%
HKBU	34	11	4	1	18	53%
HKU	24	2	5	2	15	63%

4.2.26 None of the terms of reference of the councils of the eight institutions makes reference to academic freedom. Among the eight institutions, only HKU and HKUST have an explicit policy on academic freedom. HKU's policy was developed by a senate committee after Dr Chung's Case, comprising a working definition of academic freedom and a list of academic freedom enjoyed by the University and its members with corresponding responsibilities (see Appendix VI).⁸⁶ HKUST's policy is enshrined in the employment contracts of all academic staff, which will be discussed in later part of this research report.

⁸⁶ One of the mission statements of HKU also relates to freedom of thought, enquiry and expression, i.e. "[t]o develop a collegial, flexible, pluralistic and supportive intellectual environment that inspires and attracts, retains and nurtures scholars, students and staff of the highest calibre in a culture that fosters creativity, learning and freedom of thought, enquiry and expression."

4.2.27 The other institutions use various ways to express their concern on academic freedom. For example, PolyU chooses to incorporate the concept of academic freedom in its University Governance Statement, in which it is stated that "*PolyU will uphold and defend academic freedom and institutional autonomy so as to ensure that its education and academic pursuits are not subject to undue intervention.*" HKBU enshrines academic freedom in its Core Values as expounded in the Strategic Plan 2006, viz. "*the pursuit of knowledge and truth through a liberal approach to higher education*", and "*a collegial environment in which scholarship and academic freedom exist in harmony.*"

4.2.28 In CUHK, reference to academic freedom is made in the Policy on Research, Consultancies and Intellectual Property. Paragraph 12 of the Policy states that "*[a]ll members of the community, whether staff or students, are expected to respect the rights of every other member, his or her academic freedom to pursue knowledge and to disseminate his or her ideas and research results, and to share in the use of the University's facilities to achieve these goals.*"⁸⁷

4.3 Funding arrangement of higher education

Funding institution

4.3.1 UGC was established in 1965 as the result of suggestions made by LegCo Members during the Budget Debate in 1964.⁸⁸ The suggestion was that a committee similar to the UK UGC should be set up in Hong Kong to advise the Government on the facilities, development and financial needs of the universities.⁸⁹

4.3.2 In November 1964, the Government invited Sir Edward Hale (Secretary to the UK UGC from 1951-1957) to study the issue. In his report to the Governor, entitled "*The Financing of Universities in Hong Kong*", Hale concluded that the Hong Kong Government was in need of the advice from an impartial and expert body on the facilities, development and financial needs of the universities.⁹⁰ The Government accepted the report and UGC was formally established in October 1965.

4.3.3 UGC was entrusted with the following terms of reference when it was set up:

"To keep under review in the light of the community's needs

(a) the facilities for university education in Hong Kong;

⁸⁷ See CUHK (2005).

⁸⁸ Actually, a similar suggestion was put forward by another LegCo Member in the Budget Debate of 1956. See Hong Kong Hansard (1956) pp. 146-7.

⁸⁹ See Hong Kong Hansard (1964) p. 92.

⁹⁰ Hale (1965) pp. 27-8.

- (b) *such plans for development of the universities as may be required from time to time;*
- (c) *the financial needs of university education;*
- (d) *and to advise Government on the application of such funds as may be approved by the Legislature for university education.*"⁹¹

4.3.4 In the first report of UGC published in 1968, it laid down certain areas in which institutional autonomy operated. These areas were:

- (a) selection of staff;
- (b) selection of students;
- (c) control of curricula and academic standards;
- (d) acceptance of research programmes; and
- (e) allocation of money within the university.⁹²

4.3.5 In 1982, the terms of reference of UGC were extended to include providing advice on other aspects of higher education as might be referred to UGC by the Governor. The amendment was a response to UGC's growing responsibilities for higher education planning, specifically its involvement in formulating higher education policies and setting up new institutions. For instance, the creation of a polytechnic in 1971 was a UGC recommendation.

4.3.6 In 1972, UGC was re-titled the University and Polytechnic Grants Committee (UPGC) to reflect the inclusion of the Hong Kong Polytechnic within its purview. Following the adoption of university titles by two former polytechnics and Hong Kong Baptist College, UPGC reverted to its previous title of UGC in November 1994.

⁹¹ UGC (1968) p. 3.

⁹² UGC (1968) pp. 4-5.

4.3.7 In recent years, UGC has intensified both its strategic role to steer the higher education sector and quality assurance efforts for the institutions. In 2004, UGC published a document entitled *'Hong Kong Higher Education-To make a Difference, To Move with the Times'*. The document pointed out that UGC would strengthen its role in strategic planning and policy development and introduce a performance and role-related funding mechanism into UGC's funding methodology.⁹³ However, there were concerns that the change in funding mechanism might undermine academic autonomy of the institutions.⁹⁴

4.3.8 UGC has maintained the status of a non-statutory advisory body since its establishment. This arrangement is based on the now defunct UK model. In the Hale's Report mentioned above, a reason was provided for not having a constitution for UGC, in that in the UK model, grants to universities could not be on a statutory basis because they were promised for a period of years.⁹⁵ In the UK, government expenditure has to be authorized year by year by the annual Appropriation Act.

4.3.9 There were some discussions within UGC and the Government for changing the legal status of UGC in the past. In the UPGC Report for the 1985-88 Triennium, paragraph 2.9 indicated that *"the Committee's status as an advisory body might need to be re-examined and its legal incorporation considered."* In late 1997, the Government initiated a review of all education-related executive and advisory bodies. In a consultation paper published in May 1998, it was suggested that UGC should continue to perform its advisory role and whether UGC's role could be enhanced by turning it into a statutory body required further consideration.⁹⁶

UGC membership

4.3.10 All UGC members are appointed by CE in their personal capacity. There is no specific published criterion for making such appointments. Various UGC Reports only state that UGC members are all prominent in their respective fields, comprising eminent academics from Hong Kong and overseas, as well as renowned local professionals and business people. There is no government official sitting on UGC.

4.3.11 UGC consists of both academic and lay (non-academic) members. The size of UGC does not have a limit. When UGC was first established, it had 11 members, mostly scholars from the UK. There was no academic member from Hong Kong at that time so as to avoid conflicts of interest.⁹⁷ The number of UGC members has gradually increased over the years, from 11 in 1966 to 24 in 2007.

⁹³ See UGC (2004a).

⁹⁴ See Hong Kong Hansard, session 2003-04, pp. 4 728-38.

⁹⁵ Hale (1965) pp. 15-6.

⁹⁶ EMB (1998).

⁹⁷ The Hale's Report suggested that UGC members should not be drawn from the universities in Hong Kong.

4.3.12 In recent years, the number of UGC members has been kept to around 20-25, with about half of the membership being academics and higher education administrators from outside Hong Kong. Since the 1990s, UGC's membership has included academic members from the local institutions. About 40% of the existing UGC members are lay members, mostly local business people.

4.3.13 It has been a tradition that the Chairman of UGC is resident in Hong Kong and not from academia. For instance, the Chairmen in the 1980s all had legal background, while the Chairmen in recent years often have close ties with the business sector.

Relationship with government

4.3.14 UGC is a non-statutory advisory committee body. The UGC Secretariat, as a Government department, comes under the policy and housekeeping responsibility of the Education Bureau.⁹⁸ The Secretary-General of UGC (SG(UGC)) is the head of the UGC Secretariat. According to the UGC Notes on Procedures, SG(UGC) and the other Secretariat staff are responsible both to UGC and the Secretary for Education.⁹⁹

4.3.15 SG(UGC) is a civil servant who reports to the Chairman of UGC. The appraisal report of SG(UGC) is signed by the Chairman of UGC and counter-signed by the Permanent Secretary for Education.¹⁰⁰

4.3.16 UGC is the principal channel of communications between the Government and the institutions. Certain principles regarding communications between the Government, UGC and the institutions are set out in the UGC Notes of Procedures (see appendix VII).

4.3.17 Under the current UGC Notes of Procedures, direct formal contacts between the institutions and the Government are normally limited to the following areas¹⁰¹:

- (a) legislative matters regarding the institutions' ordinances;

⁹⁸ According to UGC, the UGC Secretariat has been a Government department since its establishment, and the UGC Secretariat has been under the policy responsibility of a bureau ever since the early 1980s.

⁹⁹ UGC (2007) paragraph 10.1. This dual responsibility statement was not included in the Notes of Procedures published in November 1980. See UPGC (1980a).

¹⁰⁰ According to UGC, ever since the early 1980s, the appraisal report of SG(UGC) has been signed by the Chairman of UGC and counter-signed by a senior government official.

¹⁰¹ Under the 1968 UGC Notes on Procedures, direct formal contacts between the institutions and the Government were limited strictly to three areas: (a) land matters; (b) salary scales for academic and equivalent administrative grades; and (c) contracts for services rendered.

- (b) performing functions and exercising powers as provided for in the institutions' ordinances;
- (c) land matters;
- (d) contracts for services rendered; and
- (e) course/programme (other than the ones which are totally self-financed) commissioning.

4.3.18 In HKIED's case, the Commission of Inquiry reported that it heard allegations that UGC was a rubber stamp, and that UGC uncritically co-operated with the Education and Manpower Bureau (EMB) to achieve EMB's objectives.¹⁰² In order to improve the relationships between the Government and the Teacher Education Institutions (TEIs), the Commission suggested the establishment of a board independent of the Government to serve the following purposes:

- (a) to advise the Government on policies and development plans regarding TEIs;
- (b) to resolve disputes between EMB and TEIs in case of a deadlock; and
- (c) to hear appeals from TEIs on UGC funding arrangements.¹⁰³

Funding policies and procedures

4.3.19 UGC provides two types of funding to the institutions:

- (a) recurrent grants to support on-going academic and related activities; and
- (b) capital grants for capital works projects.

4.3.20 Recurrent grants usually operate in a triennial cycle. A typical cycle involves the following stages:¹⁰⁴

- (a) issue of the so-called "start letters" to the institutions, which incorporate broad policy guidelines and parameters from the Government (including the indicative student number targets and specific manpower requirements);

¹⁰² The Commission of Inquiry on Allegations relating to HKIED (2007), paragraph 17.8.

¹⁰³ The Commission of Inquiry on Allegations relating to HKIED (2007), paragraph 17.20.

¹⁰⁴ For more details, see UGC (2007) Chapter 2.

- (b) consideration of Academic Development Proposals (ADPs) submitted by the institutions;
- (c) examination of cost estimates submitted by the institutions and the detailed recurrent grant assessment exercise;
- (d) submission of the specific grant recommendations to the Government; and
- (e) issue of grant allocation letters to the institutions subject to the approval of the financial implications by the Finance Committee of LegCo.

4.3.21 There were disruptions in the triennial funding cycle in recent years. In November 2003, the Government decided that the 2001/02 to 2003/04 triennium would roll over for one year to cover the 2004/05 academic year, postponing the new triennium to 2005/06 to 2007/08. The reason given by the Government was that there would be considerable changes to the existing funding system arising from the Higher Education Review.¹⁰⁵ In February 2005, the Government submitted its funding recommendations for UGC-funded institutions in the 2005/08 triennium to the Finance Committee of LegCo for approval. However, the funding arrangement for the 2005/08 triennium was based on a 0-0-X model, which meant that there was no reduction in recurrent grant in the first two years, but the grant might be reduced in the third year by an undefined percentage.¹⁰⁶

4.3.22 Recurrent grants to each institution basically comprise a block grant and earmarked grants for specific purposes. The block grant consists of four elements:

- (a) Teaching – about 68%;
- (b) Research – about 20%;
- (c) Performance and Role-Related – about 10%; and
- (d) Professional Activity – about 2%.

4.3.23 In addition to the government funding, the Government introduced three rounds of matching grant schemes costing HK\$1 billion each in 2003, 2005 and 2006 respectively to broaden the funding sources of the eight UGC-funded institutions and strengthen their fund-raising capabilities. Over the past three rounds of the schemes, UGC-funded institutions raised some HK\$4.8 billion in private donations and a total of HK\$2,888 million of matching grants was allocated.

¹⁰⁵ See EMB (2003).

¹⁰⁶ The percentage should be no more than 5%, to be determined nearer the time. See EMB (2005).

Funding for teaching

4.3.24 The Teaching element is the largest funding component of the block grant, determined based on the number of students, their study levels (i.e. sub-degree, first degree, postgraduate degrees), modes of study (i.e. part-time, sandwich and full-time) and disciplines of study. The amount of funding is also adjusted for high-cost subjects.

4.3.25 The Education Bureau is responsible for coordinating the views of relevant Bureau/Departments on the manpower requirement of the professionals under their previews, which include doctors, nurses, social workers and teachers. Upon endorsement by the Executive Council, the Education Bureau will put forward its manpower advice to UGC. The advice serves as a reference for UGC-funded institutions to prepare their ADPs. UGC, after considering the ADPs, the Government's advice on manpower requirement, the roles and development needs of each institution, as well as the overall strategic development of UGC, will provide its advice on the allocation of student places and academic planning to individual institutions. The allocation of student places to each institution is a duty of UGC.

4.3.26 The government's role in the allocation of student places was a controversial issue in the HKIED's case. There was an allegation that the Government acting with UGC had reduced the student numbers of HKIED so as to force a merger between HKIED and CUHK.¹⁰⁷ The Commission of Inquiry found insufficient evidence to substantiate this allegation.¹⁰⁸

4.3.27 In July 2007, in response to a LegCo Member's Question regarding the Government's proposal to UGC in 2004 to reduce HKIED's student places for certificate of early childhood education, the Government explained that it was a result of departmental communication problems.¹⁰⁹

Funding for research

4.3.28 There are two main sources of funding for research in the institutions:

- (a) from UGC, either through the block grant or earmarked grants; and
- (b) from other government sources and private funds.

¹⁰⁷ The Commission of Inquiry on Allegations relating to HKIED (2007) p. 22.

¹⁰⁸ The Commission of Inquiry on Allegations relating to HKIED (2007) pp. 68-73.

¹⁰⁹ Legislative Council Official Record of Proceedings, 11 July 2007, pp. 66-72.

4.3.29 The determination of the Research element of the block grant is primarily related to the number of active research staff and the cost of research in the respective fields of an institution. This element provides the key staffing and infrastructure for research. The number of active research staff is identified in the context of a RAE periodically run by UGC. RAE assesses the research performance of each institution, with the latest RAE being conducted in 2006.

4.3.30 The Earmarked Research Grant (ERG) is allocated from UGC to the Research Grants Council (RGC)¹¹⁰ for supporting various academic research activities of the institutions. The largest component of ERG is the Competitive Earmarked Research Grants (CERG), accounting for 80% of ERG in 2006/07. CERG are provided in response to individual institution's competitive research bids examined by RGC subject panels, with help from specialist academic assessors/referees mostly from overseas.

4.3.31 In addition to CERG, there are other allocations under ERG, which are:

- (a) Direct Allocation for discretionary use by the institutions to support small-scale research projects;
- (b) Central Allocation for promoting collaboration among the institutions and synergy between research teams;
- (c) Joint Research Schemes for Hong Kong researchers to collaborate with their counterparts in Mainland China, France and Germany;
- (d) Clinical Research Fellowships for young clinicians in undertaking clinical research; and
- (e) Fulbright Hong Kong Scholar Programme for Hong Kong scholars to undertake research work in the United States.

¹¹⁰ RGC is a non-statutory advisory body established under the aegis of UGC, and is responsible for advising on the needs of Hong Kong's higher education institutions in the field of academic research and funding for research projects undertaken by academic staff of those UGC-funded institutions.

Targeted funding

4.3.32 Unlike the block grant, earmarked grants for specific purposes are used to fund activities that are considered to be important to the development of higher education. For the 2005-2008 triennium, they include:

- (a) ERG;
- (b) Performance and Role-related Funding;
- (c) Teaching Development Grants;
- (d) Language Enhancement Grants;
- (e) Restructuring and Collaboration Fund;
- (f) Research Development Fund; and
- (g) Central Allocation Vote.

4.3.33 While ERG has been discussed above, the other earmarked grants serve a variety of purposes. The Performance and Role-related funding is to provide an assurance that the institutions are following their chosen roles and that they perform well in those roles. The Teaching Development Grants aim to encourage the institutions to adopt innovative approaches to teaching and improve the quality of the learning environment.

4.3.34 The Language Enhancement Grants provide support for the institutions to organize programmes to enhance the proficiency of students in both English and Chinese languages. The setup of the Restructuring and Collaboration Fund encourages deep collaborative relationships among the institutions. The Research Development Fund is used for supporting further research development activities. The Central Allocation Vote provides funding to meet the expenditure incurred in connection with sector-wide and cross-institutional activities and costs of institutional advancement projects.

Capital grants

4.3.35 UGC also provides funding for capital works projects. Capital works projects wholly or partly funded by UGC, costing more than HK\$15 million each, are funded by capital subventions. Proposals for capital subventions are considered by UGC on an annual basis to coincide with the Government's annual Capital Works Resource Allocation Exercise. For those projects costing less than HK\$15 million each, they are funded through the annual Alterations, Additions, Repairs and Improvements Block Allocation.

Accountability

4.3.36 UGC formally reports to CE. UGC publishes its report triennially, which coincides with the funding cycle. Heading the UGC Secretariat, SG(UGC) is the Controlling Officer of the UGC head of Expenditure (Head 190).

4.3.37 The UGC Secretariat's records are subject to examination by the Director of Audit (DoA). DoA also has the power to examine records of the institutions. However, this power is subject to certain restrictions:¹¹¹

- (a) DoA has the right to raise queries on a management efficiency audit and related matters;
- (b) DoA has no right, whether on his/her own initiative or under instruction, to question academic decisions properly taken – but the Government has the right through the Chief Secretary for Administration to raise academic and related matters with UGC; and
- (c) all queries and correspondence between DoA and the institutions, in both directions, must be copied to UGC.

4.3.38 There are statutory requirements on financial reports of the institutions, which are laid down in their relevant governing ordinances. They include:

- (a) maintaining proper accounts and records of all income and expenditure;
- (b) preparing annual statements of income and expenditure and of assets and liabilities; and
- (c) appointing auditors to audit all financial statements.

¹¹¹ This audit arrangement was first set up in 1975 and has been used ever since. See UPGC (1980).

4.3.39 In addition, UGC has set out financial reporting and audit requirements for the institutions to use UGC funds.¹¹² For example, the institutions are required to submit monthly income and expenditure statements on recurrent grants and annual return on the use of all UGC funds.

4.3.40 In order to promote the quality of the institutions and their activities, UGC in recent years has intensified its quality assurance efforts, including the Management Review (1998-1999), the Teaching and Learning Quality Process Reviews (1995-1997, 2001-2003) and the Performance and Role-related Funding Scheme (2004). In April 2007, UGC established the Quality Assurance Council (QAC) under its aegis. QAC is intended to assure the quality of degree level and above programmes offered by the eight institutions, and to promote quality assurance and enhancement. It conducts institutional audits, and facilitates the spread of good practice in learning and teaching among the institutions.

4.3.41 As an on-going process, the eight institutions are required to submit annual performance data to UGC. UGC has developed a Common Data Collection Format to collect the data, which include information regarding education programmes conducted, number of staff and students, financial situations and research activities.

4.4 Employment relationship of higher education institutions

4.4.1 The higher education institutions in the HKSAR have considerable autonomy in the selection, promotion and dismissal of their staff. Recruitment of staff is generally regarded as an important aspect of institutional autonomy, which is protected by *BL*.

4.4.2 In the HKSAR, the overriding employment legislation is the *Employment Ordinance (HKEO)*. In addition to the general laws applying to employment contracts, employment of academics in the institutions is subject to various statutory requirements.

Employment agreement

4.4.3 Details of employment agreements are set out in relevant legal provisions, employment contracts, and other documents such as staff handbooks and specific personnel policies or procedures.

¹¹² For details, see UGC (2007) Chapter 6.

4.4.4 The terms and conditions of academic appointments in HKU and CUHK are subject to statutes passed by each institution in accordance with the provisions of the *HKU Ordinance* and the *CUHK Ordinance* respectively. For example, the appointment and removal of academic and senior administrative staff of CUHK is regulated by *Statute 20* and *Statute 24*, Schedule 1 of the *CUHK Ordinance* respectively. Appointments to the other six institutions are not subject to such statutes under their respective governing ordinances.

4.4.5 In the HKSAR, academic posts may be appointed on either substantive terms or fixed-term contracts. Initial academic appointments to these eight institutions are usually on fixed-term contracts, with the duration of the term being treated as a probationary period. Upon the completion of the probationary period, substantive appointment status may then be offered to an eligible academic staff member. Among the eight institutions, the percentage of academic staff on fixed-term contracts ranges from 40% (CUHK) to 75% (LU) (see Table 3 below).¹¹³

Table 3 – Number of academic staff on substantive terms and fixed-term contracts

	Substantive terms	Fixed-term contracts	Percentage of academic staff on fixed-term contracts
LU	40	120	75%
PolyU	415	667	62%
HKIEd	118	152	56%
CityU	467	391	46%
HKU	489	351	42%
HKBU	170	122	42%
CUHK	536	361	40%
HKUST	288	153	35%

Source: Information supplied by the institutions.

¹¹³ Figures were obtained through enquiries to the institutions. They should be treated as rough estimates because the institutions may have different definitions for the terms of 'academic staff' and 'fixed-term contracts'.

4.4.6 Among the eight institutions, only HKUST makes reference to academic freedom in the employment agreements of its academic staff.¹¹⁴ Their academic staff employment contracts include a clause stipulating that the university shall not terminate the employment of an appointee "by reason only of anything done or omitted by the appointee pursuant to his freedom in the classroom to discuss his disciplines, in the conduct of research in his field of special competence and in the publication of the results of his research except where the Senate is of the opinion that what the appointee has done or omitted amounts to a failure to meet the standards required by the University".

Dismissal and dispute handling mechanism

4.4.7 The grievance handling procedures of UGC-funded institutions have been a major area of concern to the Panel of Education of LegCo.¹¹⁵ In the Report of the Panel on Education 2002-2003, LegCo Members were of the view that there was a need to establish a sound mechanism to handle staff grievances and complaints in the higher education sector.¹¹⁶

Procedures dealing with dismissal of academic staff for good cause

4.4.8 In the HKSAR, most of the institutions have laid down procedures for dismissal of academic staff for reasons of misconduct and good cause. In both HKU and CUHK, dismissal of academic staff for good cause is governed by law.

4.4.9 Under the *HKU Ordinance*, the council is not allowed to terminate the appointment of academic staff (including senior academic staff and other persons designated as teachers by the statutes) except "where after due enquiry into the facts and after receiving the advice of the Senate on the findings of such enquiry there exists in the opinion of the Council good cause for such termination."¹¹⁷ The definition of good cause covers inability to perform efficiently the duties of the office, neglect of duty, or such misconduct, whether in an official or a private capacity, as renders the holder unfit to continue in office.¹¹⁸

¹¹⁴ An enquiry has been sent to the other UGC-funded institutions asking whether they had considered and would consider making reference to academic freedom in the employment agreements of academic staff. Pending reply from the institutions.

¹¹⁵ Legislative Council Secretariat (2000) pp. 4-5.

¹¹⁶ See Legislative Council Secretariat (2003) p.11.

¹¹⁷ Section 12 (9), the *HKU Ordinance*.

¹¹⁸ Section 2(2), the *HKU Ordinance*.

4.4.10 HKU has a set of procedures for the termination of the appointment of an academic staff for good cause, with the Vice-Chancellor of HKU having the authority to initiate proceedings for such termination. A credible charge would be investigated by an enquiry committee, i.e. the Committee of Enquiry into Possible Good Cause.¹¹⁹ The academic staff concerned has the rights to make statements to the committee and to be accompanied by a legal representative when attending the committee meetings. After receiving the report of the enquiry committee, the Vice-Chancellor may refer the report to the senate for its advice on the findings of the enquiry. On receipt of the senate's advice on the findings of the enquiry, the council has the power to determine whether or not the academic staff's appointment shall be terminated. As mentioned in paragraph 4.2.21, in the case of a decision for termination of appointment, the academic staff concerned has the right to appeal to the Chancellor.

4.4.11 Section 3 of *Statute 24*, Schedule 1 of the *CUHK Ordinance* authorises the council to remove the appointment of an academic staff for good cause. The Statute also provides for a definition of good cause, including criminal conviction, actual physical or mental incapacity, conduct of an immoral, scandalous or disgraceful nature and inability to perform an employee's duty.¹²⁰ A relevant complaint would be examined by a committee consisting the chairman of the council, two other council members and three members of the Senate.¹²¹

4.4.12 Under section 15(8) of *LU Ordinance*, the council may also terminate the appointment of an employee on the ground of misconduct, incompetence, inefficiency or 'other good cause'. However, the Ordinance does not provide for a definition of good cause. LU has a set of procedures for termination of employment on good cause. The 'other good cause' was defined in the procedures to cover staff redundancy and financial exigency on the part of the University.

4.4.13 For CityU, HKBU and HKUST, the good cause provisions are specified in their service agreement or memorandum on conditions of service. PolyU only has a good cause provision in some old academic staff employment agreements.

¹¹⁹ The Vice-Chancellor is the chairman of the committee, with other members comprising the Deputy Vice-Chancellor or a Pro-Vice-Chancellor appointed by the Vice-Chancellor and four members of a panel of 12 members of the senate who are teachers.

¹²⁰ Section 5, *Statute 24*, Schedule 1, the *CUHK Ordinance*.

¹²¹ Section 4, *Statute 24*, Schedule 1, the *CUHK Ordinance*.

Procedures dealing with redundancy

4.4.14 Under *HKEO*, an employee is entitled to a severance payment whenever an employment contract is terminated by reason of redundancy.¹²² Those institutions that went through reorganization in the past tend to have policies and procedures on redundancy. Among the eight institutions, HKU, CityU, HKBU and LU have policies or procedures governing the changes of employment conditions in the event of organizational restructuring or redundancy. In HKIEd, as a result of its transition from various colleges into one institution in 1994, there has been a clause on redundancy for transferred staff's contract agreement.

4.4.15 HKU's redundancy policies and procedures are contained in its staff manual, including requirements for the employer to use redundancy as the last resort to cope with financial contractions or job surplus, to allow an affected appointee to represent his/her case and the right of appeal. In particular, the affected appointee has the right of appeal to the council against the decision to terminate the appointment on the grounds of redundancy.

4.4.16 CityU's policies lay down grounds giving rise to redundancy, procedures for approving a redundancy proposal and relevant appealing procedures. The affected appointee has the right of appeal to the president against the decision to terminate the appointment on the grounds of redundancy. The president has the authority to form an appeal committee to consider the case and to make a final decision. There is a variation clause in the employment agreements of CityU which provides the university the right to introduce changes in employment conditions.

4.4.17 In HKBU, there is a specific provision in the terms of service such that a staff member may be removed from appointment by the council on a redundancy reason. HKBU has a brief procedure dealing with redundancy, which does not contain provisions for appeals. LU's policies only cover redeployment of staff arising from redundancy.

¹²² Under section 31B(2) of *HKEO*, an employee is taken to be dismissed by reason of redundancy if the dismissal is due to the fact that "(a) the employer closes or intends to close his business; (b) the employer has ceased, or intends to cease, the business in the place where the employee was employed; or (c) the requirement of the business for employees to carry out work of a particular kind, or for the employee to carry out work of a particular kind in the place where the employee was employed, ceases or diminishes or is expected to cease or diminish."

Staff grievance handling procedures

4.4.18 There is no legal provision that requires the institutions to set up a dispute handling mechanisms dealing with employment relationship problems. In any event, some institutions have a set of procedures for handling general staff grievance or appeals, although they may not be specifically established for dealing with employment-related complaints.¹²³ However, there is a great variety in their functions and specification among the institutions.

4.4.19 HKUST has in place a set of appeal policies and procedures for academic review in respect of contract non-renewal and non-substantiation of appointment. It also has separate procedures convening complaints in specific areas such as breaches of academic integrity and a set of staff grievance procedures covering complaints which fall outside the scope of the above specific procedures.

4.4.20 HKU's Procedures for the Resolution of Staff Grievances is established under section 2(1) of *Statute XIX* of the *Statutes of HKU*, covering detailed procedures on complaint proceedings. There are a grievances panel (six to ten members appointed by the council) to deal with credible complaints and a committee of enquiry (comprising the chairman of the grievances panel and two other panel members) to investigate the complaints. On completion of its investigation, the committee of enquiry is required to submit a report to the council.

4.4.21 HKIED also has a set of procedures for resolving staff grievances. A grievance committee (with the Vice-President (VP) as the chairman, three teaching staff selected by VP and one elected staff representative) may be set up to resolve and investigate a complaint or grievance. On completion of its investigation, the committee is required to submit a report to the President, who will decide upon the appropriate action to be taken. A complainant has the right to appeal to the appropriate appeal authority if he/she is not satisfied with the final decision.

4.4.22 CityU does not have a standard procedure dealing with general staff grievances. Staff grievances are to be handled in the spirit of the Regulations Governing Staff Discipline, in which a disciplinary committee (three to five members appointed by the chairman of the human resources committee of the council) will be set up to investigate the case.

¹²³ For earlier information, see EMB (2000).

Chapter 5 – Analysis

5.1 Introduction

5.1.1 Tables 4-10 (on pages 71-77) summarises various attributes of academic freedom and institutional autonomy of higher education in the United Kingdom (UK), New Zealand and the Hong Kong Special Administrative Region (HKSAR). The following analysis will look at some of the important issues with particular reference to the HKSAR.

Legal protection of academic freedom and institutional autonomy

Direct legislative protection

5.1.2 In the UK, direct protection of academic freedom by law is limited. References to academic freedom are contained in provisions regarding grievance procedures dealing with redundancy and promoting fair access to higher education. In New Zealand, there is a detailed definition on academic freedom provided by the *Education Act 1989 (EA)*. The definition of academic freedom in the New Zealand legislation incorporates the notion of institutional autonomy. It states that universities should themselves regulate the subject matter of the courses taught, be responsible for teaching and assessment, and appoint their own staff.

5.1.3 By the end of the 1980s, the university communities in both the UK and New Zealand saw a threat to academic freedom because of the strained relationship between the government and the higher education sector. As a consequence of persistent lobbying by the university communities, the idea of academic freedom was incorporated in their then enacted new education legislation.

5.1.4 In the HKSAR, direct legal protection of academic freedom and institutional autonomy is mainly through the *Basic Law (BL)*. However, *BL* does not provide a detailed definition on the meaning of academic freedom. There is no reference to academic freedom in other laws of the HKSAR besides *BL*.

Relevant legal protection measures

5.1.5 In the three places studied, their legal provisions concerning freedoms of speech, thought, publication and assembly all have potential impact on academic freedom. Specifically, the higher education institutions in the UK are imposed an obligation to safeguard the lawful exercise of freedom of speech.

5.1.6 Unlike the HKSAR, both the UK and New Zealand have disclosure protection laws to protect employees of an organization who make disclosures of information about serious wrongdoing in or by the organization.

Governing structure of higher education institutions

5.1.7 Higher education institutions in the UK can be divided into two broad groups, pre-1992 universities and post-1992 universities. The governing structure of post-1992 universities is used for comparison because they are more recently established universities. In the UK, the law requires that the governing body of post-1992 universities and colleges shall consist of not fewer than 12 and not more than 24 members. They must include independent members, students, teachers and co-opted members. About half of the members are drawn from outside the institution. New members are appointed by the governing body. The chairman of the governing body is appointed by the governing body from among its independent members.

5.1.8 In New Zealand, all tertiary education institutions are defined as statutory corporations under the terms of their individual statutes. The law requires that each tertiary education institution should form a council which is the governing body of the institution. Such council, comprising between 12 and 20 members, must include staff members, students, the chief executive of the institution and four persons appointed by the responsible Minister. The council elects one of its members to be the chairman of the council.

5.1.9 In the HKSAR, each of the eight University Grants Committee (UGC)-funded institutions is governed by a separate piece of ordinance. All of these institutions have a council as the supreme governing body. The size and composition of the council vary. The number of council members ranges from 24 to 55. The Chief Executive of the HKSAR (CE) is the Chancellor of the eight institutions, who also appoints the chairman of the respective councils. The number of council members appointed by the Government varies widely among the institutions. Except for the two oldest universities (the Chinese University of Hong Kong (CUHK) and the University of Hong Kong (HKU)), the other six institutions all have a fairly significant number of council members appointed by the Government.

Funding arrangement of higher education

Funding body

5.1.10 While UGC has been in existence in the HKSAR since 1965, in both the UK and New Zealand, their UGCs were abolished by the end of the 1980s and replaced by alternative arrangements. In 1992, statutory funding councils were set up in England, Wales and Scotland to fund higher education institutions. In 2003, New Zealand established the Tertiary Education Commission (TEC).

5.1.11 In the UK, UGC was established in 1919 as a mechanism to channel public funds to universities. The UGC concept was an example of a buffer mechanism operating between the government and the universities, striving for the right balance between autonomy and accountability. However, with the creation of the new universities of the 1960s, the development of research selectivity, and the changing relationships between the government and universities, UGC in the UK had finally come to an end with the passage of *Education Reform Act* in 1988.

5.1.12 The Higher Education Funding Council for England (HEFCE), comprising 12 to 15 members appointed by the government, distributes public money to universities and colleges in England that provide higher education. HEFCE also monitors the financial and managerial health of universities and colleges, ensures the quality of teaching and provides guidance on good practice.

5.1.13 New Zealand had established two UGCs before. The first was established in 1948, while the second one was set up to replace the previous one in 1960 under the *University Grants Committee Act*. Starting from the middle of the 1980s, New Zealand's educational policies had been subject to a massive restructuring change. UGC seemed to be incapable of serving the needs for greater efficiency and accountability. As a consequence, New Zealand abolished UGC with the passage of *EA*.

5.1.14 TEC was established as the lead agency for managing relationships with the tertiary education sector and developing related policies in New Zealand. TEC is a Crown entity governed by eight Commissioners appointed by the government. TEC is responsible for allocating government funding to tertiary education and training offered by universities, polytechnics, colleges of education and other education providers.

5.1.15 With the expansion of higher education, the quest for greater accountability in public funding, and the changing purposes of higher education to serve the needs of the wider society, both the UK and New Zealand governments saw a need to intensify its planning and monitoring roles in higher education. UGC, used to be an organization consisting of largely academics and maintaining close relationships with those universities receiving funding, was considered incapable of fulfilling these requirements.

5.1.16 In the HKSAR, UGC was established in 1965 as a funding body for universities. UGC has maintained the status of a non-statutory advisory body since its establishment. All UGC members are appointed by CE in their personal capacity. In recent years, the number of UGC members has been kept to around 20-25, with about half of the membership being academics and higher education administrators from outside Hong Kong.

5.1.17 In the HKSAR, the range of UGC's activities has gradually been enlarged. When UGC was set up initially, its role was to advise the Government on the financial needs of the universities. In 1982, UGC's terms of reference were expanded to include providing advice on other aspects of higher education. The change was a response to UGC's growing responsibilities for higher education planning, specifically its involvement in formulating higher education policies and setting up new institutions. In recent years, UGC has intensified both its strategic role to steer the higher education sector and quality assurance efforts. Inevitably, many of these new developments have taken UGC into a more detailed involvement in the internal affairs of its funded institutions.

Relationship with government

5.1.18 In both the UK and New Zealand, their funding bodies for higher education are kept at arms length from the government. The respective roles of the government and the funding body are set out in legislation. In the UK, HEFCE is set up as a non-departmental public body. HEFCE is not part of the Department for Innovation, Universities and Skills (DIUS), but works within a policy framework set by the Secretary of State for Innovation, Universities and Skills. The broad policy framework is set out in the Management Statement between DIUS and HEFCE. The terms and conditions under which DIUS makes funds available to HEFCE so that it can carry out its duties is set out in the Financial Memorandum between DIUS and HEFCE.

5.1.19 In the UK, the Secretary of State can impose terms and conditions on grants to HEFCE which must be met by all institutions, or by all institutions of a particular category. The terms and conditions must be general and should not be expressed in such a way so as to affect any particular higher education institution.

5.1.20 In New Zealand, TEC is a Crown entity and is responsible for allocating government funding to tertiary education and training. The responsible Minister may give direction to TEC, which must be consistent with the Tertiary Education Strategy and the functions of TEC. The Minister should not direct TEC to provide or deny funding to any specified organization. If the Minister gives a direction to TEC, TEC must include in its annual report on how TEC has responded to the direction.

5.1.21 Unlike the situation in the UK and New Zealand, the respective roles of the Government and UGC in the HKSAR are not defined by law. UGC, a non-statutory advisory committee body since its establishment, reports to CE. The UGC Secretariat, as a Government department, comes under the policy and housekeeping responsibility of the Education Bureau. The Secretary-General of UGC (SG(UGC)) is the head of the UGC Secretariat. SG(UGC) and the other Secretariat staff are responsible both to UGC and the Secretary for Education.

5.1.22 In the HKSAR, UGC is the principal channel of communications between the Government and its funded institutions. Certain principles regarding communications among the Government, UGC and the institutions are set out in the UGC Notes of Procedures. Unlike the situations in the UK and New Zealand, there are no legal rules in the HKSAR that prevent government officials from giving a funding instruction in such a way that a particular higher education institution is affected.

Funding policies and procedures

5.1.23 In the UK, the government sets the total funding for higher education institutions and has the power to set conditions on the funding councils covering national developments which it wishes to promote.

5.1.24 The grants from HEFCE fall into three main categories: (a) funding for learning and teaching, (b) funding for research, and (c) special funding and earmarked capital. The main factor for assessing funds for teaching is the number of students completing a specified element of their programmes. Funds for research are linked closely with the assessed quality and volume of research.

5.1.25 In New Zealand, the government sets the total amount of funding available for tertiary education. The Minister also determines the design of funding mechanisms – that is, specifying the broad funding parameters. These parameters are communicated to TEC, which is responsible for setting the operational rules for funding and allocating funding to tertiary education organizations. TEC publishes its operational policies in funding guides.

5.1.26 New Zealand's funding mechanism for its tertiary education system consists of three broad elements: (a) funding for teaching and learning; (b) funding for research and (c) targeted funding. The level of funding for teaching and learning is determined mainly based on the number of equivalent-full time students enrolled in courses offered by each tertiary education organization. Funds for research are allocated based on research performance, assessed by a set of performance indicators, complemented by peer assessment.

5.1.27 In the HKSAR, UGC provides two types of funding to its funded institutions, which are (a) recurrent grants to support on-going academic and related activities and (b) capital grants for capital works projects. Recurrent grants operate in a triennial cycle, while capital grants are considered by UGC on an annual basis.

5.1.28 Recurrent grants comprise a block grant and earmarked grants for specific purposes. The block grant consists of four elements: (a) teaching, (b) research, (c) performance and role-related and (d) professional activity. The level of funding for teaching element is determined based on the number of students, their study levels, modes of study and disciplines of study. The determination of the research element of the block grant is linked closely with the assessed quality and volume of research. UGC also, through the Research Grants Council, offers earmarked research grants for supporting various academic research activities of its funded institutions.

Employment relationship of higher education institutions

Employment agreement

5.1.29 In the UK, security of tenure for academic staff has been changed with the passage of the *Education Reform Act 1988 (ERA)*. All pre-1992 universities are required to include in their contractual arrangements for new faculty members or those being promoted a provision enabling the university governing body "... to dismiss any member of the academic staff by reason of redundancy". It affects all universities existing before 1992 and those academic staff appointed or promoted on or after 20 November 1987.

5.1.30 Since the enactment of *ERA*, the dominant employment trend in the UK higher education sector has been fixed-term contracts. Nevertheless, with the passage of the *Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2000 (FTER)*, a fixed-term contract renewed or extended for four continuous years automatically becomes a permanent contract, unless the continuation of offering a fixed-term contract can be justified on objective grounds.

5.1.31 In the UK, a new model statute for pre-1992 universities was agreed in 2003. The new model statute provides that any issue relating to academic freedom is to be decided having regard to a United Nations' document concerning rights and freedoms of higher education teaching personnel.

5.1.32 Academic posts in New Zealand can be appointed with either permanent tenure or limited tenure. There is a trend that the proportion of part-time university staff has been increasing.

5.1.33 In New Zealand, most tertiary education institutions maintain collective employment agreements with the majority of their academic staff. Collective employment agreements are negotiated between the tertiary education institutions and unions representing the staff. These collective employment agreements may contain such matters as workloads, performance management, redundancy provisions, disciplinary procedures, training and professional development, protection of academic freedom, leave and remuneration.

5.1.34 In the HKSAR, academic posts may be appointed on either substantive terms or fixed-term contracts. Initial academic appointments to the eight UGC-funded institutions are usually on fixed-term contracts. Among the institutions, the percentage of academic staff on fixed-term contracts ranges from 40% to 75%.

5.1.35 In the HKSAR, employment agreements in the eight UGC-funded institutions are subject to various legal requirements besides general employment-related legislation. In particular, the terms and conditions of academic appointments in HKU and CUHK are subject to dedicated statutory provisions.

5.1.36 Among the eight UGC-funded institutions in the HKSAR, only the Hong Kong University of Science and Technology makes reference to academic freedom in the employment agreements of its academic staff.

Dismissal and dispute handling mechanism

5.1.37 In the UK, higher education institutions must ensure that their internal procedures for dismissal and grievance comply with the statutory procedures and the principle of fairness. For pre-1992 universities, university governance is set out in statutes. There is an employment statute which specifies procedures covering the suspension of academic staff for misconduct or other 'good cause'; the dismissal of academic staff for reasons, including by reason of redundancy or incapacity; and the dismissal of senior post-holders.

5.1.38 The articles of government of post-1992 universities require the governing body to make rules relating to the conduct of staff, the suspension of staff and grievance procedures. The articles also contain rights of appeal against suspension or dismissal.

5.1.39 In New Zealand, employment with permanent tenure can be terminated for just cause through a fair and binding hearing. Collective employment agreements may include provisions dealing with changes in employment arrangements in the event of institutional restructuring and redundancy.

5.1.40 The New Zealand law requires that all collective and individual employment agreements contain a plain-language explanation of services and processes available to resolve any employment relationship problem.

5.1.41 In the HKSAR, most of the UGC-funded institutions have laid down procedures for dismissal of academic staff for reasons of misconduct and good cause. In both HKU and CUHK, dismissal of academic staff for good cause is governed by law.

5.1.42 Among the eight UGC-funded institutions, HKU, City University of Hong Kong, Hong Kong Baptist University and Lingnan University have policies or procedures governing the changes of employment conditions in the event of organizational restructuring or redundancy. Some institutions have a set of procedures for handling general staff grievances or appeals. However, there is a great variety in their functions and specification.

Table 4 – Direct Legal protection of academic freedom and institutional autonomy

Places	Direct legislative protection	Definition of academic freedom
The United Kingdom	Section 202, the Education Reform Act 1988 and Section 32, the Higher Education Act 2004.	<i>"to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions."</i>
New Zealand	Section 161, the Education Act 1989.	<p><i>"(a) The freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions;</i></p> <p><i>(b) The freedom of academic staff and students to engage in research;</i></p> <p><i>(c) The freedom of the institution and its staff to regulate the subject-matter of courses taught at the institution;</i></p> <p><i>(d) The freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning;</i></p> <p><i>(e) The freedom of the institution through its chief executive to appoint its own staff."</i></p>
The Hong Kong Special Administrative Region	Articles 34, 136 and 137, the Basic Law.	No detailed definition.*

Note: * According to the Commission of Inquiry on Allegation relating to Hong Kong Institute of Education, academic freedom *"includes the right to seek and disseminate the truth as one sees it and the right not to be penalized for finding and publicizing unpopular truths."*

Table 5 – Relevant legal protection of academic freedom and institutional autonomy

Places	Provisions concerning freedom of speech	Whistle blowing legislation
The United Kingdom	Provisions concerning freedoms of speech and thought in the <i>Human Rights Act 1998</i> and a specific requirement for higher education institutions to safeguard the lawful exercise of freedom of speech.	Employees of higher education institutions who raise issues of concern in the public interest are protected by the <i>Public Interest Disclosures Act 1998</i> . Disclosures that are protected include allegations of genuine concerns about crime, civil offences, miscarriage of justice, danger to health and safety or the environment and the cover-up of any such matters.
New Zealand	Provisions concerning freedoms of expression and thought under the <i>New Zealand Bill of Rights Act</i> .	The <i>Protected Disclosures Act 2001</i> protects staff who make disclosures of information about serious wrongdoing in or by an organization. All public sector organizations, including tertiary education institutions, must operate appropriate internal procedures in accordance with the Act.
The Hong Kong Special Administrative Region	Provisions concerning freedoms of speech and publication under the <i>Basic Law</i> and the <i>Hong Kong Bill of Rights Ordinance</i> .	None.

Table 6 – Governing structure of higher education institutions

Places	Governing body	Membership	Chairmanship	Government appointment
The United Kingdom (post 1992 universities and colleges)	No standard nomenclature.	Between 12 and 24 members, comprising independent members, students, teachers and co-opted members.	Appointed by the governing body from among its independent members.	None.
New Zealand	Council.	Between 12 and 20 members, comprising staff members, students, the chief executive of the institution and four persons appointed by the responsible Minister.	The council elects one of its members to be the chairman of the council.	Four persons appointed by the responsible Minister.
The Hong Kong Special Administrative Region	Council.	The size and composition vary. The number of members ranges from 24 to 55.	Appointed by the Chief Executive of the HKSAR.	The number of council members appointed by the Government varies widely among the institutions, ranging from six to 20.

Table 7 – Funding body of higher education

Places	Funding body	Membership	Relationship with government
The United Kingdom	The Higher Education Funding Council for England (HEFCE) is the funding council in England.	Both the chairman and members of the board, ranging from 12 to 15, are appointed by the Secretary of State.	HEFCE is a non-departmental public body, and works within a broad government policy framework. The terms and conditions on grants to HEFCE must be general and should not be expressed in such a way so as to affect any particular higher education institution.
New Zealand	The Tertiary Education Commission (TEC).	Eight Commissioners appointed by the government.	TEC is a Crown entity. The Minister may give direction to TEC, which must be consistent with the Tertiary Education Strategy and the functions of TEC. The Minister should not direct TEC to provide or deny funding to any specified organization.
The Hong Kong Special Administrative Region	The University Grants Committee (UGC).	Around 20-25 members appointed by the Chief Executive of the HKSAR.	UGC is a non-statutory advisory body. The UGC Secretariat, as a Government department, comes under the policy and housekeeping responsibility of the Education Bureau.

Table 8 – Funding arrangement of higher education

Places	Funding policies and procedures
The United Kingdom (HEFCE)	<p>The government sets the total funding for higher education institutions and has the power to set conditions on the funding councils covering national developments which it wishes to promote.</p> <p>The grants from HEFCE fall into three main categories: (a) funding for learning and teaching; (b) funding for research; and (c) special funding and earmarked capital.</p>
New Zealand (TEC)	<p>The government sets the total amount of funding available for tertiary education. The Minister also determines the design of funding mechanisms. TEC is responsible for setting the operational rules for funding and allocating funding to tertiary education organizations.</p> <p>New Zealand's funding mechanism consists of three broad elements: (a) funding for teaching and learning; (b) funding for research; and (c) targeted funding.</p>
The Hong Kong Special Administrative Region (UGC)	<p>UGC provides two types of funding to its funded institutions, which are (a) recurrent grants to support on-going academic and related activities; and (b) capital grants for capital works projects. Recurrent grants operate in a triennial cycle, while capital grants are considered by UGC on an annual basis.</p> <p>Recurrent grants comprise a block grant and earmarked grants for specific purposes. The block grant consists of four elements: (a) teaching; (b) research; (c) performance and role-related; and (d) professional activity.</p>

Table 9 – Employment agreement of higher education institutions

Places	Employment agreement	Reference to academic freedom
The United Kingdom	<p>Security of tenure for academic staff has been changed with the passage of the <i>Education Reform Act 1988 (ERA)</i>. The dominant employment trend in the UK higher education sector has been fixed-term contracts since the enactment of <i>ERA</i>.</p> <p>A new law passed in 2000 provides that a fixed-term contract renewed or extended for four continuous years automatically becomes a permanent contract, unless the continuation of offering a fixed-term contract can be justified on objective grounds.</p>	A new model statute for pre-1992 universities provides that any issue relating to academic freedom is to be decided having regard to a United Nations' document concerning rights and freedoms of higher education teaching personnel.
New Zealand	<p>Academic posts in New Zealand can be appointed with either permanent tenure or limited tenure. There is a trend that the proportion of part-time university staff has been increasing.</p> <p>Most tertiary education institutions maintain collective employment agreements with the majority of their academic staff. Collective employment agreements are negotiated between the tertiary education institutions and unions representing the staff.</p>	Individual collective employment agreements may contain provisions regarding academic freedom.
The Hong Kong Special Administrative Region	<p>Academic posts may be appointed on either substantive terms or fixed-term contracts. Initial academic appointments are usually on fixed-term contracts.</p> <p>Employment agreements in the eight UGC-funded institutions are subject to various legal requirements besides general employment-related legislation.</p>	Among the eight institutions, only the Hong Kong University of Science and Technology makes reference to academic freedom in the employment agreements of its academic staff.

Table 10 – Dismissal and dispute handling mechanism of higher education institutions

Places	Dismissal	Employment policies or procedures relating to restructuring or redundancy	Dispute handling mechanism
The United Kingdom	Employment with permanent tenure can be terminated for just cause through a fair and binding hearing.	The law requires that the contractual arrangements for new faculty members (appointed or promoted on or after 20 November 1987) of pre-1992 universities contain relevant provisions.	Higher education institutions must ensure that their internal procedures for dismissal and grievances comply with the statutory procedures and the principle of fairness.
New Zealand	Employment with permanent tenure can be terminated for just cause through a fair and binding hearing.	Collective employment agreements may include relevant provisions.	The law requires that all collective and individual employment agreements contain a plain-language explanation of services and processes available to resolve any employment relationship problem.
The Hong Kong Special Administrative Region	Most of the UGC-funded institutions have laid down procedures for dismissal of academic staff for reasons of misconduct and good cause.	Only the University of Hong Kong, City University of Hong Kong, Hong Kong Baptist University and Lingnan University have relevant policies or procedures.	Some institutions have a set of procedures for handling general staff grievances or appeals involving dismissal. However, there is a great variety in their functions and specification.

Appendix I**Major developments in the UK higher education sector since 1960**

1963	Robbins Committee of Inquiry reports – recommend expansion of university education and emphasis on preparing students for employment.
1970	Secretary of State announces formation of 30 polytechnics in England and Wales, to be maintained by local education authorities.
1982	Secretary of State announces reduction in public spending on universities, and University Grants Committee (UGC) reduces allocations to selected universities by some 25%. Former quinquennial funding for universities replaced by annual funding.
1988	Government White Paper emphasises need for universities to respond to needs of economy and society. UGC replaced by statutory Universities Funding Council. Polytechnics given independence from local authorities with funding from new Polytechnics and Colleges Funding Councils in England and Wales.
1991	Government White Paper announces abolition of binary line between universities and polytechnics, with formation of Higher Education Funding Council for England and similar councils in Scotland and Wales. New quality assurance introduced for teaching in higher education, embracing both audit and assessment of quality in individual subject areas.
1997	Dearing National Committee of Inquiry reports – set out case for private tuition fees for UK students and offer four options for introducing fees.
1998	Government announces tuition fees of £1,000 per year for full-time students with support through grants for students according to parental income. Loans for student living costs to be repaid according to graduate income.
2001	Scottish Executive announces abandonment of tuition fees in Scotland. Scottish students would pay £2,000 towards an endowment to supplement funding for future students.
2003	Government White Paper announces major reforms in England. Tuition fees to be set by institutions up to a maximum of £3,000 subject to arrangements to improve access for students from disadvantaged families. Quality assurance replaced by a Framework which includes the publication for each institution of performance indicators on a common basis.
2004	Higher Education Act (to implement White Paper reforms).
2006	Introduction of variable tuition fees.

Source: Clark (2006).

Appendix II

UUK and UCEA

REVISED MODEL STATUTE

[Approved by the Privy Council Office: 31 March 2003]

STATUTE XX

Academic Staff: Dismissal, Discipline, Grievance Procedures and related matters

PART I: GENERAL

1. Application

...

2. General principles of construction and application

- (1) This Statute and any Ordinances or Regulations made under it shall be applied and construed in every case to give effect to the following guiding principles:
 - (i) to ensure that members of staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges;
 - (ii) to enable the University to provide education, promote learning and engage in research efficiently and economically; and
 - (iii) to apply the principles of justice and fairness.
- (2) Where, in any proceedings under this Statute, a member of staff invokes sub-clause (1)(i) above, that claim shall be considered by the person or persons dealing with the matter, and, if it is found that any action has been taken against the member of staff because that member of staff questioned or tested received wisdom or put forward new ideas or controversial opinions, the person or persons dealing with the matter shall cancel that action and it shall be treated as invalid.
- (3) Where there is any issue as to the meaning of "academic freedom" in any proceedings under Parts II, III, IV, V and VI of this Statute, regard shall be had to Sections VI and VII of the Recommendation concerning the Status of Higher-Education Teaching Personnel adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Paris on 11 November 1997.

Appendix II (cont'd)

- (4) Any reference in this Statute to a provision in an Act of Parliament shall be taken to be a reference to that provision as it may have been amended or superseded from time to time.
- (5) In interpreting or construing any provision in this Statute, regard shall be had to the Notes on Clauses on the Draft Revised Model Statute issued by the Universities and Colleges Employers Association (xxxx 2002).

3. Dismissal

- (1) For the purpose of this Statute, "dismissal" shall have the same meaning as in section 95 of the Employment Rights Act 1996.
- (2) A member of staff may be dismissed if that dismissal is for a reason set out in section 98 of the Employment Rights Act 1996.
- (3)
 - (i) A dismissal by reason of redundancy (other than the non-renewal of a fixed-term contract) shall be handled in accordance with Part II;
 - (ii) a dismissal for disciplinary reasons shall be handled in accordance with Part III;
 - (iii) a dismissal on health grounds shall be handled in accordance with Part IV; and
 - (iv) a dismissal on any other grounds, including the non-renewal of a fixed-term contract, shall be handled in accordance with Part V.

4. Hearing, appeal and grievance panels

- (1) Any panel established pursuant to clauses 8(1), 10(ii)(d) and (h), 15(2), 18(2) and 20(5) of this Statute shall consist of three persons, none of whom shall previously have had any involvement with the case, at least one of whom shall be a lay member of Council and one a member drawn from a list agreed from time to time by the Senate.
- (2) Ordinances may provide for any relevant National Health Service or other relevant body to be represented on any panel established under this Statute to deal with a member of staff falling within clause 19(1) below and for the panel to be enlarged for this purpose.
- (3) At any panel within sub-clause (1) above, the member of staff shall be entitled to be represented or assisted by any person.

Appendix II (cont'd)

- (4) Any panel within sub-clause (1) above shall give a reasoned decision in writing which shall be provided to the member of staff and reported to the Council.

PART II: REDUNDANCY

5. Application

- (1) The power to dismiss, and the procedures prescribed, under this Part shall not apply to those staff defined in sub-sections (3) to (6) of section 204 of the Education Reform Act 1988 [staff appointed prior to, and not promoted after, 20 November 1987], who shall for this purpose continue to be subject to such powers, if any, as applied to them prior to the introduction of the Statute made by the University Commissioners in the exercise of their powers under sections 203 and 204 of the Education Reform Act 1988.
- (2) This Part shall not apply to the non-renewal of a fixed-term contract, which shall be dealt with under clause 16 below.

6. Definition of "redundancy"

Subject to clause 5(2) above, dismissal by reason of redundancy for the purpose of this Part has the same meaning as in section 139 of the Employment Rights Act 1996.

7. Procedure for dismissal by reason of redundancy

- (1) The Council shall by Ordinance prescribe the procedures for dismissing members of staff on grounds of redundancy, which shall include the following:
- (i) a preliminary stage involving consultation with appropriate representatives in accordance with and to the extent required by section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 and discussion with the staff concerned;
 - (ii) a procedure which is fair and which allows each staff member concerned, having been informed of the selection criteria to be employed, to make written and oral representations on his or her behalf;
 - (iii) provision for informing any member of staff dismissed under this Part of the reasons for the dismissal and, where selection has taken place, why he or she was selected; and

Appendix II (cont'd)

- (iv) authorising the Vice-Chancellor or other person to dismiss any member of staff selected for dismissal under this Part and requiring reports of dismissals to be submitted to the Council.
- (2) The procedures following the preliminary stage may be used at any particular time only after the Council has first determined that the circumstances are such that the procedures should be instituted.

8. Appeal against dismissal by reason of redundancy

- (1) The Ordinances shall include provision for an appeal to a panel by a member of staff who has been given notice of dismissal under this Part.
- (2) The panel shall be entitled to review all aspects of the matter other than the Council's determination under clause 7(2) above.
- (3) The panel shall have the power to reach a final decision on the matter or to remit the matter for further consideration by the body whose decision is being appealed.

PART III: DISCIPLINARY PROCEDURES

9. Grounds for disciplinary action

Disciplinary action under this Part may be taken, and where found to be appropriate a penalty imposed, in respect of the following:

- (i) conduct amounting to a criminal offence, whether or not there has been a prosecution and conviction, of a kind that is judged in all the circumstances to be relevant to the member of staff's employment by the University;
- (ii) failure, refusal, neglect or inability to perform some or all of the duties or to comply with some or all of the conditions attaching to the post, or performing those duties or complying with those conditions in an unsatisfactory or inadequate manner;
- (iii) conduct of a kind judged to be inappropriate or unacceptable on the part of a holder of the post held by the member of staff, such as (but not confined to) the following:

Appendix II (cont'd)

- (a) breach of any obligation or duty arising under any of the University's regulations regarding financial matters, harassment, equal opportunities, public interest disclosure, health and safety, or data protection or any other rules, regulations or codes binding on the member of staff;
- (b) damage to or improper use of University facilities, premises, property or equipment;
- (c) disruption of, or improper interference with, the activities of the University or of any employee, student, Council member or visitor (other than any lawful industrial action);
- (d) violent, indecent, disorderly, threatening, abusive, insulting or harassing behaviour or language (whether written, spoken or in any other form);
- (e) fraud, deceit, deception or dishonesty in relation to the University or any related activity, including research and examining;
- (f) action likely to cause injury or impair safety;
- (g) divulging information or material received in confidence (unless the disclosure is permitted under the Public Interest Disclosure Act 1998 or in accordance with the University's Public Interest Disclosure Procedure).

10. Disciplinary procedures

The Council shall by Ordinance promulgate disciplinary procedures for members of staff, which shall provide:

- (i) for less serious matters to be dealt with by warnings following a fair and appropriate procedure and for a member of staff to be able to appeal against the imposition of a warning to a person designated by the Vice-Chancellor; and
- (ii) for dealing with more serious matters, which shall include provision for the following:
 - (a) fair and reasonable time limits for each stage;
 - (b) investigating complaints and dismissing those found to be without substance;
 - (c) suspension, on full pay, by the Vice-Chancellor pending an investigation or hearing where this is necessary;

Appendix II (cont'd)

- (d) a hearing by a panel, authorised by the Vice-Chancellor, at which the member of staff against whom the complaint has been made shall have been informed of the complaint, shall be entitled to be present, to hear the evidence, to call relevant witnesses, and to examine and cross-examine witnesses (but provision may be made for witnesses in appropriate cases to give their evidence behind a screen or from another room or place and for questions to be asked only by a representative);
- (e) appropriate penalties, which in addition to warnings and dismissal shall, for staff appointed or promoted after the coming into effect of this Statute, include withholding any forthcoming increment in salary, suspension without pay (for up to three months), and reduction in grade and/or loss of title (and "promoted" for the purpose of this provision shall have the same meaning as in section 204 of the Education Reform Act 1988);
- (f) the award of compensation either to the University or to an individual in respect of any loss caused or damage done;
- (g) designating a member of staff's conduct as constituting "gross misconduct" such as to merit summary dismissal without notice; and
- (h) a right to appeal against the finding of, or penalty imposed by, the panel, including a finding under paragraph (g) above. An appeal shall not take the form of a re-hearing of the evidence and witnesses may be called only with the appeal panel's permission.

11. Code of Practice

In drawing up the procedures, and in any regulations made or action taken thereunder, regard shall be had to Section 1 of the Code of Practice on Disciplinary and Grievance Procedures (as may be amended or replaced from time to time) issued in September 2000 by the Advisory Conciliation and Arbitration Service (ACAS) and brought into effect by order of the Secretary of State under section 199 of the Trade Union and Labour Relations (Consultation) Act 1992.

Appendix II (cont'd)

12. Dismissal

- (1) The Secretary/Registrar or other designated officer shall give effect to a decision of a panel that a member of staff should be dismissed:
 - (i) where the panel has designated the conduct as "gross misconduct" such as to merit summary dismissal pursuant to clause 10(ii)(g), the Secretary/Registrar shall forthwith dismiss the member of staff;
 - (ii) in all other cases, the Secretary/Registrar shall issue the notice of dismissal or dismiss together with payment in lieu of notice.
- (2) Any dismissal or notice of dismissal shall be cancelled, withdrawn or modified if an appeal panel decides that the member of staff should not be dismissed or should only be dismissed with notice.

13. Relationship with Part IV

...

14. Clinical staff

Action under this Part or under Part IV may be taken against a member of staff falling within clause 19(1) below in respect of conduct or incapacity arising in connection with that member of staff's clinical work or activities as if the work or the activities were performed in and for the University.

PART IV: INCAPACITY ON HEALTH GROUNDS

15. Dismissal on health grounds

- (1) The Council shall by Ordinance prescribe a procedure for dealing with staff, including dismissal, because of incapacity on health grounds, whether physical or mental.
- (2) The procedure shall include a hearing by a panel, with a right of appeal to another panel, and both panels shall contain an appropriately medically qualified person.
- (3) No member of staff may be dismissed whether under this Part or Part III where that dismissal would contravene the Disability Discrimination Act 1995.

Appendix II (cont'd)

PART V: OTHER DISMISSALS

16. Non-renewal of a fixed-term contract

- (1) The Vice-Chancellor, or other person or persons designated by the Vice-Chancellor, shall in every case where a fixed-term contract is due to terminate consider whether that contract should be renewed or extended or a contract of indefinite duration should be offered, having consulted the appropriate representatives in accordance with and to the extent required by section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 and having given an opportunity to the member of staff to make representations.
- (2) A decision not to renew or extend or offer a contract of indefinite duration under the preceding paragraph must be justified on the basis that, in respect of one or more of the following considerations, it is not expedient or desirable to renew or extend the contract or offer a contract of indefinite duration:
 - (i) the availability of funding for the post, or the financial situation;
 - (ii) the individual's performance (following appropriate warnings and counselling);
 - (iii) the need for the post or the duties attaching to the post;
 - (iv) the nature and character of the post;
 - (v) the desirability of making the post permanent and appointing to it after open competition.
- (3) A member of staff whose fixed-term contract is not renewed or extended on termination or is not offered a contract of indefinite duration shall be given full reasons for the decision and shall be entitled to have the decision reviewed by a panel in accordance with a procedure to be prescribed by Ordinance.
- (4) The panel, whose decision shall be final, shall consider whether the reasons advanced in support of the decision are reasonable and supportable.

17. Probationary appointments

- (1) This Part shall also apply to members of staff who have been appointed subject to review after a period of probationary service.

Appendix II (cont'd)

- (2) The Council shall by Ordinance prescribe a procedure under which staff on probation shall be reviewed and shall include provision for non-confirmation in post at the end of the probationary period if their performance is found to be deficient or for any other substantial reason or reasons they are judged unsuitable to be confirmed in post.
- (3) The review referred to in sub-clause (2) may encompass matters which, in other circumstances, would fall to be dealt with under Parts II, III or IV of this Statute.
- (4) The substance of sub-clauses (3) and (4) of clause 16 shall apply to a member of staff who has not been confirmed in post under this clause.

18. Dismissal on other grounds

- (1) This clause covers dismissals on any ground falling within clause 3(2) other than those covered by Parts II, III, IV and clauses 16, 17 and 19 of Part V of this Statute (i.e. "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held" (Employment Rights Act 1996, s. 98(1)(b); "the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment" (s. 98 (2)(d)).
- (2) Dismissals covered by sub-clause (1) above shall be handled in accordance with a procedure prescribed by Ordinance, which shall include the right to be heard by a panel and the right to appeal to a panel.

19. Clinical staff

- (1) This clause applies to a member of the clinical academic staff who is required to engage in clinical work or activities and for that purpose to be registered with the General Medical or Dental Council or similar body and/or to have an honorary or substantive contract or status with a National Health Service trust or similar body, and may by Ordinance be extended to other groups of staff in a similar situation.

Appendix II (cont'd)

- (2) Where the registration, contract or status referred to in sub-clause (1) above is terminated, withdrawn or revoked, the Vice-Chancellor may, having first afforded an opportunity to the member of staff concerned to make representations, dismiss the member of staff concerned; and where the registration, contract or status is suspended, the Vice-Chancellor may suspend the member of staff from employment for so long as the registration, contract or status is suspended, that suspension from employment to be without pay where the registration, contract or status has been suspended as a substantive disciplinary measure.

PART VI: GRIEVANCE PROCEDURES

20. Grievance Procedure

- (1) The Council shall by Ordinance promulgate a Grievance Procedure for members of staff and in doing so shall have regard to Section 2 of the Code of Practice (as may be amended or replaced from time to time) referred to in clause 11 above.
- (2) The Procedure shall apply to grievances by members of staff concerning their appointments or employment in relation to matters affecting themselves as individuals or their personal dealings or relationships with other staff of the University, other than those for which provision is made elsewhere in this Statute or in respect of the outcome of any matter dealt with under this Statute, or where the Council has prescribed other procedures, provided those other procedures are no less favourable to the individual than under the Grievance Procedure.
- (3) The Procedure shall provide that consideration of a complaint under the Procedure may be deferred if other proceedings under this Statute concerning the individual and relevant to the application are pending or in progress.
- (4) The Procedure shall provide for the fair and speedy resolution of complaints, informally wherever possible, and for the complainant to be entitled to be assisted by any other member of staff or by a trade union representative at any hearings prior to that under sub-clause (5) below.
- (5) The Procedure shall make provision for a member of staff who is dissatisfied with the outcome of a complaint to be able to have the complaint heard by a Grievance Panel unless the complaint has been ruled frivolous, vexatious or invalid in accordance with the Procedure.

Appendix III

Chronology of key reforms of
the New Zealand tertiary education system

1970-1989	<p>Before the reforms:</p> <ul style="list-style-type: none"> (a) The universities were regulated through the University Grants Committee (UGC). The UGC managed the system's accountability to government and allocated government funding to universities under a quinquennial system, using the equivalent full-time student (EFTS) as a funding metric. (b) While the universities funding was received as a bulk fund, the government controlled major capital investments. (c) The management of the institutes of technology and polytechnics and colleges of education was closely controlled by the Department of Education. (d) Tuition fees were low and much of the fee was paid through the student support system. (e) A tertiary grants system supported students' living costs.
1989-1990	<p>The first round of reforms:</p> <ul style="list-style-type: none"> (a) The Education Act 1989 was enacted – setting the statutory framework for all tertiary education. The UGC and the Department of Education were abolished. The Ministry of Education and New Zealand Qualifications Authority (NZQA) were created. (b) All tertiary education institutions (TEIs) were given autonomy. Councils had a governance role, with chief executive responsible for management. (c) Funding was delivered to all as a bulk fund, using EFTS as the metric, with the amount of funding dependent on the number of EFTS in different funding categories. The principle of equal funding for similar courses underpinned the funding system. TEIs had control over their capital spending. (d) Quality assurance responsibilities were split between the NZQA and the New Zealand Vice-Chancellors' Committee. (e) Awarding of non-university degrees was permitted. (f) The standard tertiary fee was created. (g) The tertiary grants scheme was replaced by student allowances – with targeting on the basis of parents' income for those under 20 years. (h) TEIs were free to enrol international students on a full-cost-recovery basis.

Appendix III (cont'd)

1991-1992	<p>The second round of reforms:</p> <ul style="list-style-type: none"> (a) The standard tertiary fee was abolished, with TEIs given the freedom to set their own fees, including the right to set fees with differences between levels of study and/or fields of study. (b) Some limited funding was made available for private training establishments (PTEs). (c) Targeting of student allowances was extended to the age of 25 years. (d) The Student Loan Scheme was created. (e) A moving cap on the number of EFTS places that could be funded was set. (f) The Studyright policy was implemented – introducing funding differentials between students of different age groups. (g) Industry Training Act was enacted – enabling industries to develop qualifications and implement work-based training arrangements that are responsive to the needs of industry.
1993-1998	Over this time, additional spending was put into funding additional student places. There was also a series of funding rate cuts. Fees rose in consequence.
1994	Publication of <i>Education for the 21st Century</i> , a statement of the government's strategy for tertiary education.
1995	The Ministerial Consultative Group was set up to examine tertiary education resourcing –in particular, the issue of the balance of the public and private contributions to the costs of tertiary education.
1997-1998	The government developed a series of green and white papers on tertiary education. While many of the reforms proposed in these papers were never enacted, some of the changes were implemented – for instance, improved monitoring and improved information systems.
1999	<p>The third round of reforms:</p> <ul style="list-style-type: none"> (a) The moving cap was lifted – funding in TEIs became demand driven. (b) At levels 3 and above, the funding of PTEs was put on a level footing with TEI tuition funding.

Appendix III (cont'd)

2000-2001	<p>The Tertiary Education Advisory Commission (TEAC) was established to map out a new direction for tertiary education.</p> <p>TEAC proposed:</p> <ul style="list-style-type: none"> (a) The creation of a tertiary education commission – a new government agency to allocate government funding. (b) The creation of a tertiary education strategy and statement of tertiary education priorities to ensure better alignment of tertiary education with national priorities. (c) The system of charters and profiles to help the commission influence the direction of tertiary education organizations and to improve alignment with the strategy. (d) The separation of research funding from funding for teaching and learning.
2000	<p>The government introduced fee stabilisation, providing extra funding to tertiary education providers in exchange for an undertaking to hold fees. Fee stabilisation remained in place for three years.</p> <p>The government also moved to write off the interest of student loans for those in study.</p>
2002	<p>Limits were placed on funding for PTEs.</p> <p>The first Centres of Research Excellence were established.</p>
2002-2003	<p>The fourth round of reforms:</p> <p>Amendments to the Education Act 1989 gave effect to many of the TEAC proposals, including the creation of the Tertiary Education Commission. The legislation also provided for the Performance-Based Research Fund and for fee and course costs maxima.</p> <p>The Tertiary Education Strategy 2002/07 was published.</p>
2003-2005	<p>Limits were placed on growth in some areas of tertiary education provided by TEIs.</p> <p>Government removed interest on student loan scheme borrowers for those that remained in New Zealand.</p>

Source: The New Zealand Ministry of Education (2006).

Appendix IV

The University of Auckland Academic Staff Collective Employment Agreement 2006-2007

SCHEDULE 3

DISCIPLINARY PROCEDURES FOR ACADEMIC STAFF

Before any action is taken by a Head of Department to apply these procedures, the advice of the Human Resources Registry must be obtained.

1. INTRODUCTION

1.1 Members of the Academic Staff are responsible to the Vice-Chancellor through the Dean and the Head of Department for the proper performance of their duties. Unsatisfactory performance or misconduct by a Staff Member may occasion disciplinary action including termination of employment.

1.2 These procedures have been established by the Vice-Chancellor after consultation with the Association of University Staff of New Zealand (Inc.) Auckland Branch to ensure that Staff Members are treated fairly in considering whether their performance or misconduct warrants any such action being taken.

1.3 The rules of natural justice apply under these procedures.

2. DEFINITIONS

2.1 In these Procedures:

- "Delegate" means a member or members of the University staff to whom the Vice-Chancellor has delegated the authority to discipline the Staff Member by virtue of a general or specific delegation.
- "Head of Department" means the Head of Department or Acting Head of Department in which the Staff Member is employed.
- "Misconduct" means:
 - a. The failure of a Staff Member in their employment to maintain proper standards of integrity, conduct and concern for the public interest or the well being of the students or other members of the staff of the University;
or
 - b. The failure of a Staff Member to comply with policies or directions of the University, Head of Department, or other persons in authority at the University;

Appendix IV (cont'd)

- "Performance" means the performance by a Staff Member of his or her duties and includes matters referred to as grounds for dismissal on notice in the applicable employment agreement;
- "Serious Misconduct" means Misconduct which is so serious as to warrant summary dismissal and may include, but is not limited to, sexual harassment, assault, theft, fraud, misappropriation, wilful negligence, wilful disobedience, wilful Misconduct failure to disclose a conflict of interest or breach of the University's policy against harassment or otherwise conduct warranting dismissal without notice as set out in the applicable employment agreement.
- "Staff Member" means a member of the Academic Staff of the University.
- "University" means the University of Auckland.
- "Vice-Chancellor" means the Vice-Chancellor or Acting Vice-Chancellor of the University of Auckland.

3. APPLICATION OF PROCEDURES

3.1 These procedures apply where, in the course of employment of a Staff Member, there is concern about the standard of his or her Performance or conduct.

Exceptions

3.2 Where disciplinary issues emerge from the Annual Performance Review Process, any meeting or meetings held as part of the Annual Performance Review shall not be considered as a meeting for the purposes of clauses 4, 5, 6, 7 or 8 of the Disciplinary Guidelines.

3.3 These procedures do not apply where the appointment of a Staff Member is for a fixed term and that fixed term expires.

3.4 Only **Section 8** of these Procedures applies where Serious Misconduct is alleged against a Staff Member.

4. INITIAL MEETING

4.1 Where the Head of Department considers that the Performance of a Staff Member is unsatisfactory or that the behaviour of a Staff Member amounts to Misconduct, the Head of Department will arrange a meeting with the Staff Member concerned to discuss in an informal and constructive manner the aspects of Performance or behaviour that are perceived to be unsatisfactory. The Staff Member may be accompanied by a representative. Support to achieve the standards required will be provided where applicable.

Appendix IV (cont'd)

4.2 At that meeting, the Head of Department will:

- a. Identify the perceived shortcomings and invite any explanations for them.
- b. Outline the standards of performance or behaviour that are required and explain the ways in which improvement is needed and the period for the Staff Member to attain those standards.
- c. In the absence of a satisfactory explanation by the Staff Member, give an oral or written warning to the Staff Member which should be noted on the Staff Member's official University file. The Staff Member shall be given a copy of the note.

5. SUBSEQUENT MEETING

5.1 If the Staff Member does not attain within the period set under 4.2(b) the required standards of Performance or behaviour, the Head of Department will report, through the Dean, to the Vice-Chancellor who will appoint a Delegate who will then arrange a subsequent meeting.

5.2 In the arrangement of that meeting, the Staff Member will be notified in writing:

- a. Of the matters of concern to be discussed at the subsequent meeting; and
- b. That the Staff Member may be accompanied at the meeting by a representative.

5.3 The meeting which will be chaired by the Delegate will be attended by:

- a. The Staff Member;
- b. Any representative of the Staff Member (at the discretion of the Staff Member);
- c. The Head of Department;
- d. A representative of the Head of Department.

Note: A legal representative may be brought to the meeting by either party at the discretion of the parties.

5.4 At the meeting:

- a. The substance of the initial meeting and the notified matters of concern will be conveyed by the Head of Department;
- b. The Staff Member and his or her representative will be given the opportunity to comment and offer an explanation.

Appendix IV (cont'd)

5.5 Following the meeting:

- a. If the Delegate considers, after hearing the Staff Member's comments or explanation and any other discussions at the meeting, that the necessary improvement in the Performance or behaviour of the Staff Member has occurred and decides that no further action shall be taken, a note to that effect will be placed on the Staff Member's file.
- b. If the Delegate considers, after hearing the Staff Member's comments or explanation and any other discussions at the meeting, that the necessary improvement in the Performance or behaviour of the Staff Member has not occurred and there has been no satisfactory explanation, the Delegate will:
 - i. Outline the standards of Performance or conduct that the Staff Member must attain and the improvements necessary to attain those standards. Support to achieve the standards required will be provided where appropriate.
 - ii. In the case of unsatisfactory Performance, specify a time period within which the Staff Member is required to improve, or in the case of Misconduct, require the Staff Member not to engage in further Misconduct.
 - iii. Warn the Staff Member that failure to make those improvements within the specified time or that repetition of the Misconduct will result in disciplinary action that could include termination of employment.

5.6 As soon as practicable after the meeting, the Delegate will notify the Staff Member in writing of the matters referred to in 5.5 (a), 5.5 (b) (i – iii).

6. FURTHER MISCONDUCT

6.1 Where Misconduct occurs after the Staff Member has received a written warning in accordance with clauses 5.5(b)(iii) and 5.6 above, a further meeting will be arranged to be attended by the persons then holding the positions listed in clause 5.3.

6.2 At that meeting:

- a. The Staff Member will be given the opportunity to respond and offer an explanation;
- b. If the Delegate considers, after hearing the Staff Member's comments or explanation and any other discussions at the meeting, that the necessary improvement in the Performance or behaviour of the Staff Member has occurred and decides that no further action shall be taken, a note to that effect will be placed on the Staff Member's file;
- c. If the Delegate is satisfied that Misconduct has occurred without a satisfactory explanation, the Delegate may terminate the employment of the Staff Member or decide on any other disciplinary action, giving reasons for doing so.

Appendix IV (cont'd)

6.3 Any decision by the Delegate will be notified in writing to the Staff Member.

7. FURTHER UNSATISFACTORY PERFORMANCE

7.1 After the time specified in a written warning given in accordance with clauses 5.5(b)(ii) and 5.6 above to improve standards of Performance, a further meeting will be arranged to be attended by the persons then holding the positions listed in clause 5.3.

7.2 At the meeting, the Performance of the Staff Member during the specified time period will be discussed and the Staff Member will be given an opportunity to comment on any criticism.

7.3 The Delegate shall where appropriate seek advice on academic performance from an appropriate independent academic assessor.

7.4 If the Delegate is satisfied that all the required standards have been met, no further action will be taken.

7.5 If the Delegate is satisfied that not all the standards have been met, the Delegate may terminate the Staff Member's employment giving reasons for doing so, or may decide on other disciplinary action, or may give a further period of review at the end of which the process contained in this clause 7 will be repeated.

7.6 Any decision by the Delegate will be notified in writing to the Staff Member.

8. SUMMARY DISMISSAL

8.1 A Staff Member may be dismissed without notice for Serious Misconduct.

8.2 Where there is an alleged case of Serious Misconduct, the Staff Member may be suspended on full salary from his or her duties while an investigation is carried out.

8.3 The Delegate will conduct an investigation into the alleged Serious Misconduct and will call a meeting at which the Staff Member shall be entitled to bring a representative and will give the Staff Member an opportunity to comment on the alleged Serious Misconduct.

8.4 If the Delegate is satisfied that the Staff Member has committed Serious Misconduct, the Delegate may terminate the Staff Member's employment, giving reasons for doing so.

Appendix IV (cont'd)

8.5 The Delegate will notify any decision in writing to the Staff Member.

9. NON CO-OPERATION OF A STAFF MEMBER

9.1 The unreasonable failure of a Staff Member to attend any interview or investigation arranged in accordance with these procedures will not prevent:

- a. These procedures being followed to the extent that the absence permits; and
- b. With any representations by and on behalf of the Staff Member having been given due consideration, a decision being made by the Delegate to terminate the employment of the Staff Member or take any other disciplinary action.

10. EFFECTIVE DATE

10.1 These Procedures come into force on 1 October 1997 and all previous Disciplinary Guidelines cease to have effect on that date except for cases being considered in terms of those Guidelines.

SCHEDULE 7 REDUNDANCY PROVISIONS

(a) Where the employer carries out a review or restructure of any of the positions covered by this agreement, and such a review or restructure has the potential to affect the job security of any employee covered by this agreement, the employer will enter into a process of consultation with the union(s) and the affected employee(s). Such consultation shall commence as early in the process as possible, and at least one month prior to any final decisions being made, provided that in specific instances this period may be reduced by mutual agreement with the union(s) and employees(s) concerned. The purpose of such consultation is to allow the parties sufficient opportunity to investigate options in good faith which would prevent any loss of employment. Nothing in this appendix applies to casual employees.

(b) The University's approach to surplus situations shall be to explore the possibility of using redeployment, retraining and/or early retirement. Where reasonable efforts to place surplus staff through these options prove unsuccessful, redundancy provisions may be invoked.

(c) Employees shall receive not less than six months' notice of the termination of their employment by reason of redundancy, or such shorter or longer period as may be agreed between the employee and the University. They shall have the option to work out their notice where that is practicable.

Appendix IV (cont'd)

Employees who have been given notice of redundancy will within the period of notice be given reasonable time, on full pay to make arrangements to seek new employment. These arrangements may include, for example, help in the preparation of a CV, job training, counselling, financial management, or attendance at job interviews. The employer will meet reasonable costs.

(d) An employee who has been given notice of redundancy, and who is eligible at the time of such notice to apply for Voluntary Severance, may elect to terminate their employment by reason of Voluntary Severance by providing one month's notice to the University or such other notice as may be agreed. The employee shall be paid the compensation due under the Voluntary Severance scheme in lieu of compensation under these provisions.

Employment Protection Provision:

(e) Note: This clause shall apply in the event of restructuring of the Employer's business.

This clause applies to restructuring (as defined in Section 69L of the Employment Relations Act 2000) and therefore will apply where the Employer intends to enter into a contract or arrangement under which its business (or part of it) is to be undertaken by another person or business, or where the Employer's business (or part of it) is to be sold or transferred to another person or business.

In the event a restructuring will affect your position, the Employer shall, as soon as is reasonably practicable, (taking into account the commercial and confidentiality requirements of the business), commence negotiations with the other party involved in the restructuring (the "Other Party") concerning the impact of the restructuring on every employee.

In those negotiations, the Employer will, subject to any statutory, commercial confidence or privacy issues, provide the Other Party with all information about the employees who will be affected by the restructuring, including details of their current terms and conditions of employment. The Employer will encourage the Other Party to offer all affected employees, employment on no less favourable terms and conditions of employment than they currently enjoy with the University.

However, whether the Other Party offers the staff member ongoing employment and on what terms and conditions, will ultimately be the decision of that Other Party.

Two options may be offered. They are

Appendix IV (cont'd)

- The Other Party does offer the staff member employment on terms and conditions which are no less favourable than their existing terms and conditions. The staff member may accept this offer to transfer to the Other Party or the staff member may decline the offer. If the staff member accepts or declines the offer, then they will not be entitled to any redundancy compensation from the University.
- If the staff member is not offered employment, by the Other Party, then the Employer will consult with the staff member regarding whether there are any suitable alternative positions available. If none can be identified or offered to the staff member, then they will be entitled to two months' notice and redundancy compensation as per Schedule 7 in this agreement.

Redeployment:

(f) The conditions under which employees may be redeployed to alternative duties within the University are as follows:

- i. Employees may be deployed to a position at the same, higher or lower salary;
- ii. Where the new position is at a lower salary, an equalisation allowance will be paid for a period of two years to preserve the salary of the employee in the old position at the time of redeployment.

If the employee gives notice of their intention to retire within 5 years of redeployment to a position carrying a lower salary, there shall be no financial disadvantage with respect to non-salary entitlements.

(g) The equalisation allowance will be paid as an on-going allowance for two years equivalent to the difference between the present salary and the new salary. The allowance will be abated by any salary increase for the new position during the two year period.

(h) Employees who are offered a position in the University which by mutual agreement is comparable to their existing position, such agreement not to be unreasonably withheld by either party, and who decline appointment, will not be eligible for redundancy payments under this clause.

Appendix IV (cont'd)

(i) Where an employee agrees to be redeployed into a position that is not comparable to their existing position, or the employee has accepted a comparable position that is subsequently found by the employee to be not comparable to their existing position in good faith, the employee may within the first six months in the new position and after consultation with the employer to explore other options, elect to resign by giving the appropriate notice. The employee will receive a severance payment calculated on the salary and service of the employee immediately prior to the time he/she was initially redeployed.

(j) In the case of redeployment into a fixed term position which by mutual agreement is comparable to their existing position and which then ceases to exist, and the employee is not further redeployed, the employee's employment agreement shall terminate and the employee will be paid severance on the following basis:

- a. A sum equivalent to that provided under clause (k) below, or a sum equivalent to the salary due for the balance of the term of the agreement, whichever is the lesser, or
- b. Such other compensation as may be agreed in writing between the parties.

Redundancy:

(k) Upon leaving the University because of redundancy, the employee shall be offered a severance payment as follows based on continuous service with the University:

1. Six weeks ordinary pay for the first year (or less) of service to the University. Two weeks ordinary pay for the second and subsequent years or part thereof. The maximum severance payment under this sub-clause shall be 40 weeks ordinary pay.
2. Not less than 6 weeks pay in lieu of notice, where the employee and University mutually agree to an earlier termination date than that provided under clause (c).
3. The University shall make a payment in lieu of all outstanding leave.

The University may pay reasonable expenses associated with national or international travel associated with seeking new employment, or associated with relocating the employee, providing that such costs shall be deducted from the above severance payment.

(l) Severance payment for a fixed term position that ceases to exist will be calculated on the basis of salary and service of the employee, and will not be greater than the salary that would be due over the unexpired portion of the term.

Appendix IV (cont'd)

New Employment:

(m) Where the employment of an employee engaged in an activity of the University comes to an end because that activity is sold or transferred and the person who acquires that activity offers to employ that employee:

- a. on conditions that are the same as or no less favourable than the existing conditions; and
- b. on the basis that service with the University is treated as if it were service with the new employer and as if it were continuous;

and the employee accepts the offer, then the employee shall not be entitled to any severance payment under clause (k) of this agreement.

Where the employee declines to accept the position, the employee will consult with the employer over redeployment and other options contained in clauses (e) to (l), including the following option.

Where the person acquiring the activity offers a different role or employment on less favourable terms and conditions, the employee(s) and their representative(s) may, at their sole option, negotiate with the University over the terms and conditions surrounding termination of employment with the University and acceptance of employment with the new employer.

SCHEDULE 8 PROCEDURE FOR RESOLVING EMPLOYMENT RELATIONSHIP PROBLEMS

The Employment Relations Act 2000 requires that all collective and individual agreements contain a plain-language explanation of the services and processes available to resolve any employment relationship problems. The University and the AUS have agreed on the following procedure.

1. Employment relationship problems include:
 - a **personal grievance** (a claim of unjustifiable dismissal, unjustifiable disadvantage, discrimination, sexual or racial harassment, or duress in relation to membership or non-membership of a union or employee organisation).
 - a **dispute** (about the interpretation, application or operation of an employment agreement).

Appendix IV (cont'd)

- **any other problem** relating to or arising out of the employee's employment relationship with the University except matters relating to the fixing of new terms and conditions of employment.
2. If the employee believes there is a problem with his or her employment relationship with the University, the employee should tell the employee's manager, either personally or through the union or other representative, as soon as possible:
 - that there is a problem;
 - the nature of the problem; and
 - what action the employee wishes to be taken in relation to the problem.
 3. If for any reason the employee feels unable to raise the matter with his or her manager, other suggested contacts are: Dean or Director, the Director or other staff member of the Human Resources Registry, the EEO Advisor or the University Mediator.
 4. In the case of a personal grievance, the employee must raise the matter with the employer within 90 days of the grievance occurring or coming to the employee's notice, whichever is the later. A written submission is preferable but not necessary.
 5. The employee has the right to seek the support and assistance of his or her union or representative, or information from the Department of Labour Mediation Service at any time.
 6. The University will try to resolve the matter through discussion with the employee and/or his or her union or representative.
 7. If the problem cannot be resolved through discussion, then either the employee or the University can request assistance from the Department of Labour which may provide mediation services.
 8. If the problem is not resolved by mediation, the employee may apply to the Employment Relations Authority for investigation and determination.
 9. In certain circumstances, the decision of the Employment Relations Authority may be appealed by the employee or the University to the Employment Court.

Appendix V

Composition of the Council of UGC-funded institutions

Name	Relevant rule	Composition of Council	Total number of members
The Council of the City University of Hong Kong	Section 10, <i>City University of Hong Kong Ordinance</i> .	(a) the President; (b) the Deputy President; (c) not more than 15 members who are not students or employees of the University of whom: (i) not more than eight are appointed by the Chief Executive on the recommendation of the Council; and (ii) seven are appointed by the Chief Executive; (d) an academic member of the Senate nominated by the Senate and appointed by the Council; (e) two members of staff elected from among their number and appointed by the Council; (f) the Chairman of the Convocation; (g) the President of the Students' Union; and (h) one postgraduate student elected from among postgraduate students.	23

Appendix V (cont'd)

Composition of the Council of UGC-funded institutions (cont'd)

Name	Relevant rule	Composition of Council	Total number of members
The Council of the Hong Kong Baptist University	Section 15, <i>Hong Kong Baptist University Ordinance.</i>	(a) the President and Vice-Chancellor; (b) the Vice-Presidents; (c) the holder of the office of Dean of each of the Faculties, Schools and equivalent bodies of the University; (d) three members nominated by the Baptist Convention of Hong Kong and appointed by the Chief Executive; (e) 15 members appointed by the Chief Executive; (f) two members nominated by the Senate from among its number and appointed by the Council; (g) two members elected by the eligible staff from among their number and appointed by the Council; and (h) the President of the University's Student Union.	34

Appendix V (cont'd)

Composition of the Council of UGC-funded institutions (cont'd)

Name	Relevant rule	Composition of Council	Total number of members
The Council of Lingnan University	Section 12, <i>Lingnan University Ordinance.</i>	(a) the President; (b) the Vice-President; (c) seven members nominated by the Lingnan Education Organization Limited and appointed by the Chief Executive; (d) 18 members appointed by the Chief Executive; (e) two members elected by the Senate from among its members in accordance with statutes and appointed by the Council; (f) three members elected by the eligible staff among themselves in accordance with statutes and appointed by the Council; and (g) the President of the Students' Union.	33

Appendix V (cont'd)

Composition of the Council of UGC-funded institutions (cont'd)

Name	Relevant rule	Composition of Council	Total number of members
The Council of the Chinese University of Hong Kong	Statute 11, <i>Statutes of the Chinese University of Hong Kong.</i>	(a) the Chairman, who shall be appointed by the Chancellor on the nomination of the Council; (b) the Vice-Chancellor; (c) the Pro-Vice-Chancellors; (d) the Treasurer; (e) life members appointed by the Council; (f) two members elected by the Board of Trustees of each College from among its own members; (g) the Head of each College; (h) the Dean of each Faculty and of the Graduate School; (i) one Fellow of each College elected by the College's Assembly of Fellows; (j) three members elected by the Senate from among the academic members of the Senate; (k) six persons nominated by the Chancellor; (l) three persons elected by the Unofficial Members of the Legislative Council, other than Official Members, from among their own number; (m) not more than six other persons elected by the Council; and (n) not more than three members of the Convocation to be elected by the Convocation and appointed by the Council.	55

Appendix V (cont'd)

Composition of the Council of UGC-funded institutions (cont'd)

Name	Relevant rule	Composition of Council	Total number of members
The Council of the Hong Kong Institute of Education	Section 8, <i>The Hong Kong Institute of Education Ordinance.</i>	(a) the President; (b) the Vice Presidents; (c) at least one but not more than three public officers appointed by the Chief Executive; (d) at least one but not more than three persons nominated by the Academic Board from among its number and appointed by the Council; (e) three members elected from among their number by the full-time teaching staff and the administrative staff whose rank or grade is equivalent to that of full-time teaching staff; (f) not more than 14 persons appointed by the Chief Executive (i.e. "external members"); and (g) a full-time student of the Institute appointed by the Council.	28
The Council of the Hong Kong Polytechnic University	Section 10, <i>The Hong Kong Polytechnic University Ordinance.</i>	(a) the President and the Deputy President; (b) two Deans of the Faculties or equivalent bodies of the University nominated by the President; (c) three elected staff members appointed by the Council, two of whom shall be elected by the eligible staff from among their number, and one of whom shall be elected by and from the Senate; (d) 20 members appointed by the Chief Executive of whom not more than two shall be public officers; (e) one member from the alumni who is not an employee of the University and who shall be appointed by the Council; and (f) one member elected by and from the full-time students and who shall be appointed by the Council.	29

Appendix V (cont'd)

Composition of the Council of UGC-funded institutions (cont'd)

Name	Relevant rule	Composition of Council	Total number of members
The Council of the Hong Kong University of Science and Technology	Section 9, <i>The Hong Kong University of Science and Technology Ordinance</i> .	(a) the President; (b) the Vice-Presidents; (c) the holder of each office of Dean of a Faculty and Dean of a School; (d) not more than three public officers appointed by the Chief Executive; (e) not more than 18 members appointed by the Chief Executive; (not more than nine shall be appointed by the Chancellor; and not more than nine shall be appointed by the Chancellor on the recommendation of the Council). (f) not more than three academic members of the Senate nominated by the Senate and appointed by the Council; and (g) the Chairman of Convocation.	33

Appendix V (cont'd)

Composition of the Council of UGC-funded institutions (cont'd)

Name	Relevant rule	Composition of Council	Total number of members
The Council of the University of Hong Kong	Statute XVIII, <i>Statutes of the University of Hong Kong</i> .	(a) seven persons appointed by the Chancellor; (b) six persons appointed by the Council; (c) two persons elected by the Court; (d) the Vice-Chancellor; (e) the Treasurer; (f) four full-time teachers; (g) one full-time employee of the University; (h) one full-time undergraduate student; and (i) one full-time postgraduate student.	24

Appendix VI

A working definition of academic freedom and a list of specific academic freedom

"Academic freedom refers to the freedom of academic institutions, structures and individuals to study, teach, research and publish without being subject to undue interference, free of any authority or standard other than the rational methods by which truth is established. The notion of academic freedom reflects the belief that it enhances the pursuit, transmission and application of knowledge, and as such may be supported by society through the funding of academics and their institutions. Academic freedom embodies an acceptance of the need to encourage openness and flexibility in academic work, and of the accountability of academics to each other and to the norms of cooperative pursuit of knowledge."

....

Academic Freedoms and Related Responsibilities

The Institution

Freedom: To govern its own affairs, in particular, in teaching and research.

Responsibility: To maintain academic standards and independence of judgement; to promote and defend these freedoms.

Members of the University

Freedom: To question and test received wisdom and to put forward new ideas and controversial or unpopular opinions.

Responsibility: To support the same freedoms for those of differing views.

Freedom: To question the governance and conduct of University affairs at all levels.

Responsibility: To engage in rational and constructive debate to resolve issues.

Freedom: To discuss the University's affairs in appropriate media.

Responsibility: To do so with integrity and fairness, not representing personal opinions as those of the University.

Appendix VI (cont'd)

Members of the University (cont'd)

- Freedom:* To take an active part in the academic governance of the University.
- Responsibility:* To abide by decisions properly reached.
- Freedom:* To engage in study, teaching and research.
- Responsibility:* To adhere to the appropriate standards of reasoning, proof and integrity.
- Freedom:* To select methods and teaching course elements which have been properly agreed.
- Responsibility:* To take full cognizance of
- (i) the intellectual and professional needs of students, and
 - (ii) requirements for the integrity and coherence of an academic course.
- Freedom:* To select one's areas of research, to publish subject to academic judgment.
- Responsibility:* To maintain high standards of scholarship and to be responsive to reasoned discussion.
- Freedom:* To communicate and collaborate with colleagues and students anywhere in the world.
- Responsibility:* To respect the intellectual property of others.
- Freedom:* To abstain from research which is morally repugnant to the individual.
- Responsibility:* To be rational and consistent in such decisions.
- Freedom:* To propose, defend and pursue lines of enquiry.
- Responsibility:* To recognize constraints such as of time, resources and ethics.
- Freedom:* To question teaching, request explanation.
- Responsibility:* To apply due diligence in study to advance personal scholarship.
- Freedom:* To challenge assertions, dogma and assumptions.
- Responsibility:* To be rationally motivated in making those challenges, consider explanations charitably.

Appendix VI (cont'd)

Members of the University (cont'd)

- Freedom:* To manage delegated academic affairs at any level according to professional judgment.
- Responsibility:* To use that stewardship with integrity in an open, rational and equitable manner.
- Freedom:* To offer expert advice in academic contexts to colleagues and students.
- Responsibility:* To avoid simply using rank or positions as a means of imposing opinions or values.
- Freedom:* To offer expert advice in non-academic contexts.
- Responsibility:* To do so with integrity on the basis of evidence.
- Freedom:* To act as referee, advisor, editor or the like for appointments, promotions, reviews, discontinuations, grant applications, professional publications and so forth.
- Responsibility:* To use objective unbiased criteria in judging quality, suitability, content, merit, etc., free of political or personal considerations.

Source: Extract from HKU (2002).

Appendix VII

Chapter 10 – Communications and Correspondence

Introduction

10.1 The UGC (and the UGC Secretariat) is the principal channel of communication between the Government and the UGC-funded institutions. The UGC communicates with the Government mainly through the Education & Manpower Bureau (EMB). The Secretariat, as a Government department, comes under the policy and housekeeping responsibility of the EMB. The Secretary-General and Secretariat staff are, however, responsible both to the UGC and the Secretary for Education & Manpower (SEM).

10.2 Direct formal contacts between the institutions and the Government are normally limited to the following areas –

- (a) legislative matters regarding the institutions' ordinances;
- (b) performing functions and exercising powers as provided for in the institutions' ordinances;
- (c) land matters;
- (d) contracts for services rendered; and
- (e) course/programme (other than the ones which are totally self-financed) commissioning.

In all these areas, however, the UGC should be kept informed by copying correspondence and should, when appropriate, be consulted before final decisions are taken, particularly on matters which are likely to have funding implications for the institutions.

10.3 Government Secretariat Bureaux and Departments may have specific requests for the institutions to provide academic courses or training to meet specific manpower needs, and they may discuss possibilities for such courses or training informally with individual institutions. However, any formal request for the introduction of an academic course or a training programme which affect UGC student number targets may only be made to SEM in the first instance, and should be copied to the UGC Secretariat and the Financial Services and the Treasury Bureau. SEM shall then decide whether such request should be formally conveyed to the UGC.

Appendix VII (cont'd)

10.4 Informal contacts, sounding-out sessions, exchanges of information, etc. between individuals or groups in the institutions and Government officers, on a wide range of subjects, are of course inevitable and acceptable. It is, however, essential to recognise in good time whether these are likely to become formal, because at that point the UGC must be brought in. In case of doubt, it is always preferable to err on the side of caution and involve the UGC sooner rather than later.

10.5 When engaged in informal discussions, it is important that both sides should recognise the extent to which they differ in respect of formal responsibilities. A Government officer normally has a clear idea of how far his responsibilities extend, how far he has to refer to senior officers (and to which senior officers), and what their reactions are likely to be. He is required to assess these factors, and normally does so, independently of his personal views; but it is difficult, in informal discussions, to keep personal views wholly to one side. There is therefore a danger of the institution person misreading the Government officer's apparent views and subsequently being surprised by the more formal outcome.

10.6 The likelihood of this happening is increased by the fact that the institution person may not have, in the Government sense, a senior officer able directly to confirm or overrule a decision; and even where this is so, personal views and commitments may play a bigger part. Plans or ideas in an institution have to be developed in the context of internal institutional politics, and the personal opinion and personal standing of their sponsors play a relatively large part in their success or failure. These factors cannot, of course, be excluded from Government decision making, but they have a different balance. It is not uncommon for Government officers to be surprised by finding views expressed to them with apparent authority by an institution person subsequently being seriously modified, or even overturned in Senate, Academic Board or Council decisions.

10.7 Furthermore, it must be recognised that the UGC, as an independent advisory body, may take a different position from both parties. It cannot therefore safely be assumed that the UGC will automatically support either party. In these circumstances, it is essential to follow the guidelines in GR 760 - 762, and outlined in paragraphs 10.2 and 10.3 above, regarding formal contacts between the institutions and Government.

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Source: UGC (2007).

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