

CTU-ATU COMMENT ON PREVENTION OF RE-EMPLOYMENT OF FORMER EDUCATORS DISMISSED OR DEEMED DISMISSED FOR MISCONDUCT OR DEEMED RESIGNED

1. Heading of document and heading of clause 4

It is proposed that the words “**PERIOD OF**” be inserted at the beginning of the headings, otherwise it seems as if the intention is to prevent all employees in the groups mentioned from being re-employed. It is furthermore proposed that the words “**DEEMED DISMISSED**” be replaced by the words “**DEEMED DISCHARGED**” to keep it consistent with the wording of the EEA (also to be amended where it is used in the text)

2. Clause 5.1.1

The manner in which the clause is crafted, suggests that after the period of prevention the former employee merely submits a request for re-employment. The same applies for clause 5.1.5. Is it not that the former employee should be an applicant for a vacant funded post?

3. Clause 5.1.3

It is not clear at what point this request is to be lodged. Also, if the SCC can be effected by the PERSAL functionary of the department it should be fine, but if the request must actually be lodged with National Treasury it could delay the appointment process.

4. Clause 5.1.4

It should be clarified that the appointment/ re-employment becomes effective after *inter alia* “**acceptance of an offer** of employment by the employing department” - not after the offer **was issued**. A further proviso should be that it only becomes effective after the SCC has been effected – otherwise a situation can occur where the employee has been appointed but because no SCC has been effected, the employee cannot be paid.

5. Clause 5.1.5

It is proposed that this clause becomes the first clause under section 5 of the document and that it reads “When a dismissed, deemed discharged or deemed resigned educator applies for a funded vacant post,...”

6. Clause 6

It must be clarified which of the mandatory periods apply to education only and which to appointment in the whole of the public service. Whilst the indefinite mandatory period for sexual misconduct in education is understood, it surely cannot apply in respect of possible employment in the rest of the public service where the former

employee will not work with children. A separate mandatory period should apply in those instances.

7. **No.2 under clause 6**

It is not clear under which circumstances a name can be removed from a Register, or if it is even possible? If it has to do with rehabilitation, it seem unfair that such a person (if not a former educator) could potentially be employed in education, whilst an educator dismissed for sexual misconduct, and whose name might not even have appeared on a Register, is indefinitely barred from appointment in education.

8. **No.3 under clause 6**

17(1)(c) - Why are we not using the full description of the act of misconduct as per the EEA?

17(1)(e) – Whilst agreeing that it is a dismissible offence, the indefinite period seems excessive

Court finding and conviction for murder etc. – S. 18 (1)(dd) creates the committing of a common law or statutory offence as an act of misconduct (see No.5 under clause 6). It is understood that we would not want former educators convicted of certain crimes (not related to learners) to be re-employed. To, however, try and unbundle this general act of misconduct could be problematic. For example one could have a former educator who killed someone, but because it was not pre-meditated the conviction could have been for manslaughter. Because it would not have been covered, such educator could probably qualify for re-employment.

9. **No.5 under clause 6**

Is there a reason why only certain common law or statutory offences are mentioned? There could be a host of others equally serious. The wording of Public Service Regulations (PSR) 61(1), No 1(d) and No 3(b) should be considered.

10. **No. 6 under clause 6**

S.18(1)(e) – seems harsh for disregarding safety rules or regulations (also where the employee endangered only him/herself).

S.18(1)(h) – how does this differ from s.18(1)(n) that only carries a 3 year penalty?

S. 18 (1)(m) – seems harsh – shouldn't it rather be the issue of not conducting business with an organ of state (see PSR 61(1), No.1(c)?

11. **No.7 under clause 6**

S. 18(1)(r) – seems harsh especially taking into account the how wide the definition is interpreted? Also for a threat only.

S.18(1)(s) - seems harsh for incitement.

12. **No.8 under clause 6**

S.18(1)(p) – seems harsh if compared to PSR 61(1), No.4 read with PSR 14(o).