

rae2008

Research Assessment Exercise

Equality briefing for panel chairs, members and secretaries

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Cyngor Cyllido Addysg
Uwch Cymru



RAE 2008: Equality briefing for panel chairs, members and secretaries

To	RAE main and sub-panel chairs and members and RAE panel secretaries Heads of HEFCE-funded higher education institutions Heads of HEFCW-funded higher education institutions Heads of SHEFC-funded higher education institutions Heads of universities in Northern Ireland
Of interest to those responsible for	Research assessment, Research policy, Human resources, Planning
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Executive summary

Purpose

1. This document provides a briefing on equal opportunities issues for main and sub-panel chairs and members and panel secretaries in the 2008 Research Assessment Exercise (RAE).

Key points

2. The RAE team based at HEFCE has commissioned this briefing from the Equality Challenge Unit. The briefing alerts panel chairs, members and secretaries to the scope and implications of equalities legislation for the next RAE in 2008.
3. Through this briefing and through its 'Guidance to panels' (RAE 01/2005), the RAE team will guide main and sub-panels to develop working methods and assessment criteria that encourage higher education institutions (HEIs) to submit the work of all of their excellent researchers in the 2008 RAE, including those whose volume of research output may have been limited for reasons covered by equal opportunities legislation. Main and sub-panel chairs will be personally briefed on the content of this document before they meet to draft working methods and criteria for the 2008 RAE. We will deliver an update of it to main and sub-panel chairs before the assessment phase of the RAE in 2008.
4. We will encourage HEIs to submit in the 2008 RAE the work of all their excellent researchers, including those whose volume of research output has been limited for reasons covered by equal opportunities guidelines. To comply with equal opportunities monitoring legislation, we will require HEIs to confirm that they have developed, adopted and documented an appropriate internal code of practice in preparing submissions and selecting staff for inclusion in RAE submissions. Further details on this will be published in 'Guidance on submissions' in summer 2005.

Action required

5. No action is required of HEIs at this stage. This document is aimed at RAE panel chairs, members and secretaries. Specific guidance for institutions on the RAE will be published in summer 2005; this will include information about the code of practice that we will require HEIs to develop and adopt in preparing RAE submissions and selecting staff for inclusion.

The legal framework for the RAE: a changing context

6. Since the last RAE there has been an increase in the scope and application of equalities legislation that encompasses all functions of HEIs and of the UK higher education (HE) funding bodies, including the RAE.

7. This means that, throughout all stages of the planning and implementation of the RAE, legislative requirements must be met by HEIs and the funding bodies. HEIs, funding bodies and panels acting on behalf of the funding bodies may be open to external scrutiny. HEIs and funding bodies may be open to challenges in respect of their operation of the law.

8. HEIs will need to meet legislative requirements in selecting their staff for inclusion in RAE submissions. The funding bodies, through the RAE team, will require HEIs to confirm that they have developed, adopted and documented an appropriate internal code of practice in preparing RAE submissions and selecting staff for inclusion. Separate information on this will be given to HEIs in 'Guidance on submissions' to be published in summer 2005.

9. The funding bodies will need to be explicit about how the assessment criteria adopted and operated by RAE panels acting on their behalf both recognise the requirements on HEIs in respect of equalities legislation and are themselves consistent with the law.

10. The purpose of this briefing is to alert panel chairs, members and secretaries to the scope and implication of these requirements, before they meet to draft assessment criteria. As the courts have not tested all the new provisions, it is not possible to provide definitive comment on the legality or otherwise of actions that the funding bodies might take in the course of their assessment of research in the next exercise. However, panels should be aware of the substantial changes that have been made and understand their possible implications. This is essential at this early stage in order that the panel criteria and procedures may be appropriately framed.

11. RAE panel secretaries and the RAE team will guide panels and monitor their actions to ensure their adherence to the guiding framework and regulations for the 2008 RAE, including each panel's own statement of criteria for assessment, which will be framed in the context of this equality briefing document. The ensuing information is addressed directly to RAE panels and panel secretaries.

12. This document provides information on current equalities legislation. In 2007, before the panels convene to conduct the assessments, there will be an update incorporating all legal developments that have come into force in the interim. These are almost certain to include a positive duty to promote gender and disability equality, and legislation prohibiting discrimination on the grounds of age.

13. It should be understood that, even though there is no hierarchy of equality rights, the legislation that applies to each equality area is not the same. Table 1 shows the areas that share common principles and definitions, and those that do not.

14. Legal provision extends, or will extend by 2008, to six distinct equalities areas or strands. These are: age; disability; race; religion or belief; sex; and sexual orientation. All of these can be said to relate to personal characteristics. Each is considered separately in the 'Discrimination law' section of this publication (paragraphs 18-27).

15. In addition, there is relatively recent legislation that relates to fixed-term contract and part-time working. This is dealt with in the section 'Law relating to mode and terms of employment' (paragraphs 28-32).

16. Panels will need to be aware of the extent and relevance of both the law relating to personal characteristics and applicable employment provisions that HEIs will be bound by in preparing their submissions.

17. The laws that apply to England, Scotland and Wales are the same in basic principle, and this briefing should be assumed to apply to all jurisdictions. Even though legislation in Northern Ireland is, in some respects, differently framed, there is no essential difference in the standards required.

Table 1

Summary of equality legislation

	Direct discrimination	Indirect discrimination (The wording in respect of indirect discrimination is taken directly from the relevant legislation.)
Age	Forthcoming in 2006	
Disability	Occurs when a disabled person is treated less favourably for a reason relating to his/her disability than someone of whom that reason does not or would not apply.	
Race*	A person is treated less favourably than other people on racial grounds.	<p>1. A person discriminates against another if he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but:</p> <p>(i) which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and</p> <p>(ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and</p> <p>(iii) which is to the detriment of that other because he cannot comply with it.</p> <p>2. A person discriminates against another if he applies a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins to that other person:</p> <p>i) which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons,</p> <p>ii) which puts that other at that disadvantage, and</p> <p>iii) which he cannot show to be a proportionate means of achieving a legitimate aim.</p>
Religion or belief	A person is treated less favourably than other people on grounds of his or her religion or belief.	<p>A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same religion or belief as B, but:</p> <p>i) which puts or would put persons of the same religion or belief as B at a particular disadvantage when compared with other persons,</p> <p>ii) which puts B at that disadvantage, and</p> <p>iii) which A cannot show to be a proportionate means of achieving a legitimate aim.</p>

Table 1 (continued)

Sex**	A man or woman is discriminated against when he or she is treated less favourably than a woman or man would be, respectively.	<p>1. A person discriminates against a woman [or a man] if he applies to her [or him] a requirement or condition which he applies or would apply equally to a man [or woman] but:</p> <ul style="list-style-type: none"> i) which is such that the proportion of women [or men] who can comply with it is considerably smaller than the proportion of men [or women] who can comply with it, and ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and iii) which is to her [or his] detriment because she [or he] cannot comply with it. <p>2. A person discriminates against a woman [or a man] if he applies to her [or him] a provision, criterion or practice which he applies or would apply equally to a man [or a woman], but</p> <ul style="list-style-type: none"> i) which is such that it would be to the detriment of a considerably larger proportion of women than of men, [or men than of women] and ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and iii) which is to her [or his] detriment.
Sexual orientation	A person is treated less favourably than other people on grounds of his or her, actual or perceived, sexual orientation.	<p>A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same sexual orientation as B, but:</p> <ul style="list-style-type: none"> i) which puts or would put persons of the same sexual orientation as B at a particular disadvantage when compared with other persons, ii) which puts B at that disadvantage, and iii) which A cannot show to be a proportionate means of achieving a legitimate aim.

* The Race Relations Act 1976 was amended by the EU Race Directive in 2003. This has resulted in an anomaly in that the amendment refers to persons of the same race or ethnic or national origins, while the original Act, which has not been repealed, refers to persons of the same colour or nationality.

** Wording has been added, denoted by square brackets, which does not appear in the Act. This is to make explicit the fact that the Act covers men as well as women.

Discrimination law

18. At the moment, there is no anti-discrimination law relating to **age**. The European Employment Directive requires the UK to introduce legislation on age by December 2006. Information about the law and the impact it might have on the working of the panels will be included in an update of this document. However, it may have the greatest potential to provide grounds for major challenges to institutional selection processes. Most particularly, institutions will have to ensure that their treatment of new researchers is applied consistently to those both young in age and new in the profession.

19. **Disability** legislation is undergoing a re-appraisal; a positive duty to promote equality of opportunity for disabled people is to be introduced before the 2008 RAE. This is a major and far-reaching development that goes beyond the limits of current legislation, which imposes a largely reactive duty on organisations not to discriminate in the areas of: employment; goods, facilities and services; and education and transport.

20. Even now, however, the Disability Discrimination Act (DDA), as amended, requires that when any provision, practice or criterion¹ is applied by or on behalf of an employer, reasonable steps must be taken to prevent a person being disadvantaged because of a disability. For example, if, for a reason related to their disability, a disabled person were unable to submit the maximum number of publications to the RAE, then they must not be unfavourably treated in the assessment for that reason.

21. The law relating to **race** has changed substantially since the last RAE. In response to the Macpherson Report into the death of Stephen Lawrence, the Race Relations (Amendment) Act 2000 introduced, inter alia, a positive duty on public sector organisations to promote race equality.

22. This produced the first example of legislation being used to drive a cultural shift from passive to active attitudes in any of the equalities strands. One of the Act's specific duties is for public bodies to assess the impact of their policies and functions on race equality. Clearly, RAE 2008 is a major policy initiative for the funding bodies and one which could have a large impact on the duty to promote race equality. The funding bodies will assess the impact of RAE 2008, both before and after the process. HEIs must also impact assess their own RAE management and selection processes to ensure there is no adverse impact on race equality within individual institutions².

23. In 2003, the Race Relations Act was again amended to incorporate the requirements of the European Race Directive.

24. Part of the context of the areas in which panels will be working is that the funding bodies will be required to monitor the ethnicity of the people whose work is submitted to the RAE. Even though panel members will not see the results of the monitoring while they are assessing submissions, nor be given information about the ethnicity of those staff submitted to the exercise, they should be aware that monitoring is taking place.

25. Legislation relating to **religion or belief** was introduced in December 2003. It requires that no-one is discriminated against because of their religion, belief or non-belief.

26. As with all the other areas, it is illegal to discriminate against someone because of their **sex**. Panels will have to take account of career breaks for childbirth and care.

27. It is illegal to discriminate against anyone because of their actual or perceived **sexual orientation**.

¹ A provision, practice or criterion would include selection criteria for recruitment or promotion, and conditions of employment, for example, and they extend to informal workplace practices.

² It is likely that by 2008 impact assessment will be required for disability and gender, on the assumption that the positive duty will be embedded by then.

Law relating to mode and terms of employment

28. Under the Fixed-term Employees Regulations a fixed-term employee has the right not to be treated by his or her employer less favourably than the employer treats a comparable permanent employee. This applies to the terms of the employee's contract, and requirement that the employer must not subject the employee to any other detriment caused by either acting, or failing to do so.

29. Women on fixed-term contracts are entitled to take ordinary maternity leave.

30. An adopter who is on a fixed-term contract is entitled to take adoption leave.

31. A part-time worker has the right not to be treated less favourably than a comparable full-time worker by his or her employer. Again, this applies to the terms of the employee's contract and the requirement that the employee should not suffer any detriment because the employer has done, or failed to do, something.

32. The law relating to part-time workers applies to those who return to work part-time after an absence, which would include maternity and adoption leave.

Instructions to panels

33. To ensure a consistent and fair assessment of contributions, each main and sub-panel will adhere to the baseline statement that follows. This statement should be read in conjunction with 'Guidance to panels' (RAE 01/2005), in particular paragraphs 47, 48, 69 and 100.

34. In assessing submissions, all sub-panels will take account of the following circumstances:

- a. Absence due to maternity/adoption leave.
- b. Women returning to part-time work after maternity leave in the same assessment period.
- c. Adoptive parents returning to part-time work after adoptive leave in the same assessment period.

- d. Part-time work.
- e. Disability, including temporary incapacity that lasts for at least 12 months.
- f. Young staff who entered the profession during the census period.
- g. Mature staff who were new entrants to the profession during the census period.
- h. Ill-health or injury.

35. In addition, sub-panels considering subjects that require laboratory-based research will be mindful of health and safety restrictions imposed on pregnant and nursing women which may have prevented them from undertaking some types of research during the assessment period.

36. Further information, including the text of legislation, can be accessed through the Equality Challenge Unit's web-site at www.ecu.ac.uk.

37. Specific queries should, however, be addressed to the RAE team in the first instance. In the case of RAE panel chairs and members, queries should be addressed to your RAE panel secretary in the first instance.

