

July 2011

Research Excellence Framework

Equality briefing for panels



Higher Education Funding Council for England

Scottish Funding Council

Higher Education Funding Council for Wales

Department for Employment and Learning, Northern Ireland

Research Excellence Framework: Equality briefing for panels

Executive summary

Purpose

1. This document provides a briefing on equality issues for main and sub-panel chairs, members, observers and panel advisers and secretaries of the Research Excellence Framework (REF) 2014 (hereafter, 'REF panels'). It also touches on employment issues as they relate to equality.
2. It deals specifically with equality issues in relation to panels developing their criteria and working methods. We expect to provide an updated equality briefing to panels for the assessment phase of the exercise and to provide updates as necessary on any relevant developments in equalities and employment legislation.

Key points

3. The UK higher education funding bodies encourage higher education institutions (HEIs) to submit in REF 2014 the work of all their excellent researchers, including those whose individual circumstances significantly constrained their ability to produce four outputs during the REF publication period. These circumstances include issues covered by equalities and employment legislation.
4. Through this briefing and through its 'Guidance to panels' on developing their criteria and working methods (available at www.ref.ac.uk), the REF team will guide main and sub-panels in the development of assessment criteria and working methods that will support this aim. This briefing document sets out the legislative framework of which REF panels should be aware, and provides guidance on specific equality issues for panels to consider in developing their criteria and working methods.
5. HEIs will be required to confirm that they have developed, documented and applied an internal code of practice on the fair and transparent selection of staff for inclusion in REF submissions. Further details on this are published in 'Assessment framework and guidance on submissions' (REF 02.2011, available at www.ref.ac.uk).

Action required

6. This document is aimed at REF panels to inform their development of the panel criteria and working methods. Specific guidance for institutions on the REF is available in REF 02.2011.

The legal framework for the REF

7. Since the 2008 Research Assessment Exercise, equalities legislation in England, Scotland and Wales has been simplified and strengthened with the introduction of the

Equality Act 2010. Equalities legislation in Northern Ireland remains the same. Across the UK, equalities legislation encompasses all functions of higher education institutions (HEIs) and of the UK higher education (HE) funding bodies, including the 2014 Research Excellence Framework (REF 2014).

8. Consequently, at all stages of the planning and implementation of the REF, HEIs and the funding bodies must meet legal requirements. HEIs, funding bodies and panels acting on behalf of the funding bodies may be open to external scrutiny and challenge in respect of their operation of the law.

9. The assessment criteria adopted by panels will need to be consistent with equalities and employment law. The courts have not tested all provisions, so it is not possible to provide definitive comment on the precise legality of actions that the funding bodies might take in the REF 2014 process. However, panels should be aware of the implications of changes in equalities and employment law. This is essential at this early stage to ensure that panel criteria and procedures are appropriately framed.

10. The REF team, REF panel advisers and secretaries will guide and support panels in adhering to the guiding framework and regulations for REF 2014, including each panel's own statement of criteria for assessment, which should be framed in the context of this equalities briefing document. In 2013, before the panels convene to conduct the assessments, we expect to provide an updated briefing to panels, incorporating any legislative or relevant case law developments that have come into force in the interim.

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

12. Table 1 summarises the requirements of current equalities legislation. Equalities legislation in Northern Ireland is different to equalities legislation in England, Scotland and Wales, but there is essentially no difference in the standards required.

Table 1: Summary of equalities legislation

Age	<p>All employees within the higher education sector are protected from unlawful age discrimination and harassment in employment under the Equality Act 2010 and the Employment Equality (Age) Regulations (Northern Ireland) 2006. Individuals are also protected if they are perceived to be or if they are associated with a person of a particular age group. (The provisions in the Equality Act (2010) are partially in force, but should be fully in place by April 2012).</p> <p>Age discrimination can occur when people of a particular age group are treated less favourably than people in other age groups. An age group could be, for example, people of the same age, the under 30s or people aged 45-50. A person can belong to a number of different age groups.</p> <p>Age discrimination will not be unlawful if it is a proportionate</p>
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	<p>means of achieving a legitimate aim. However, in the context of the REF, the view of the funding bodies is that if a researcher produces excellent research an HEI will not be able to justify not submitting them because of the researcher's age group.</p> <p>It is important to note that early career researchers are likely to come from a range of age groups. The definition of early career researcher used in the REF is not limited to young people.</p> <p>Panels should also note that, given developments in equalities law in the UK and Europe, the default retirement age will be abolished from 1 October 2011 in England, Scotland, Wales and Northern Ireland.</p>
Disability	<p>The Equality Act 2010, the Disability Discrimination Act (1995) (Northern Ireland only) and the Disability Discrimination (Northern Ireland) Order 2006 prevent unlawful discrimination relating to disability. Individuals are also protected if they are perceived to have a disability or if they are associated with a person who is disabled. For example, if they are responsible for caring for a disabled family member.</p> <p>A person is considered to be disabled if they have or have had a physical and/or mental impairment which has 'a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities'. Long-term impairments include those that last or are likely to last for at least 12 months.</p> <p>Cancer, HIV, multiple sclerosis and progressive/degenerative conditions are disabilities too, even if they do not currently have an adverse effect on the carrying out of day-to-day activities.</p> <p>The definition of disability is different in Northern Ireland as a list of day-to-day activities is referred to. There is no list of day-to-day activities for England, Scotland and Wales but day-to-day activities are taken to mean activities that people, not individuals, carry out on a daily or frequent basis.</p> <p>While there is no definitive list of what is considered a disability, it covers a wide range of impairments including:</p> <ul style="list-style-type: none"> • sensory impairments • impairments with fluctuating or recurring effects such as rheumatoid arthritis, depression and epilepsy • progressive impairments, such as motor neurone disease, muscular dystrophy, HIV and cancer • organ-specific impairments, including respiratory

	<p>conditions and cardiovascular diseases</p> <ul style="list-style-type: none"> • developmental impairments, such as autistic spectrum disorders and dyslexia • mental health conditions such as depression and eating disorders • impairments caused by injury to the body or brain. <p>Equality law requires HEIs to anticipate the needs of disabled people and make reasonable adjustments for them. Failure to make a reasonable adjustment constitutes discrimination. If a disabled researcher's impairment has affected the quantity of their research outputs, they may be submitted with a reduced number of outputs.</p> <p>For the purpose of the REF census period it is important to note that people who have had a past disability are also protected from discrimination, victimisation and harassment because of disability.</p>
Gender reassignment	<p>The Equality Act 2010 and the Sex Discrimination (Northern Ireland) Order 1976 protect from discrimination trans people who have proposed, started or completed a process to change their sex. Staff in HE do not have to be under medical supervision to be afforded protection because of gender reassignment and staff are protected if they are perceived to be undergoing or have undergone gender reassignment. They are also protected if they are associated with someone who has proposed, is undergoing or has undergone gender reassignment.</p> <p>Trans people who undergo gender reassignment will need to take time off for appointments and in some cases, for medical assistance. The transition process is lengthy, often taking several years and it is likely to be a very difficult period for the trans person as they seek recognition from their family, friends, employer and society as a whole of their new gender.</p> <p>The Gender Recognition Act 2004 gave enhanced privacy rights to trans people who undergo gender reassignment. A person acting in an official capacity who acquires information about a person's status as a transsexual may commit a criminal offence if they pass the information to a third party without consent. Consequently, panel members must ensure that information they may receive about gender reassignment is kept confidential.</p> <p>It is easy for people to change their names. While not all people</p>

	<p>undergoing gender reassignment will choose to change their name, where they do, panels should be aware that this may affect citation data.</p> <p>Staff whose ability to work productively throughout the REF assessment period has been constrained due to gender reassignment may be submitted with a reduced number of research outputs.</p>
Marriage and civil partnership	<p>Under the Equality Act 2010 and the Sex Discrimination (Northern Ireland) Order 1976 as amended, individuals are protected from unlawful discrimination on the grounds of marriage and civil partnership status. The protection from discrimination is to ensure that people who are married or in a civil partnership receive the same benefits and treatment in employment. The protection from discrimination does not apply to single people.</p> <p>If REF panels use citation data it is important that they are aware that people entering a civil partnership or marriage may change their name, and this may affect the citation data associated with their research outputs.</p>
Political opinion	<p>The Fair Employment and Treatment (Northern Ireland) Order 1998 protects staff from unlawful discrimination on the grounds of political opinion.</p> <p>Panels should be aware of not making any judgements on the quality of outputs based on a researcher's political opinion.</p>
Pregnancy and maternity	<p>Under the Equality Act 2010 and the Sex Discrimination (Northern Ireland) Order 1976 women are protected from unlawful discrimination related to pregnancy and maternity.</p> <p>Consequently, if a researcher has taken time out of work because of pregnancy and/or maternity this should be taken into consideration when deciding how many research outputs they are expected to contribute to the submission.</p> <p>In addition, researchers who are pregnant or on maternity leave should not be overlooked during an HEI's submissions process.</p> <p>For the purposes of this briefing it is important to note that primary adopters have similar entitlements to women on maternity leave.</p>
Race	<p>The Equality Act 2010 and the Race Relations (Northern Ireland) Order 1997 protect HEI staff from unlawful discrimination connected to race. The definition of race includes colour, ethnic or national origins or nationality. Individuals are also protected if they are perceived to be or</p>

	<p>are associated with a person of a particular race.</p> <p>Panels should be aware of not making any judgements on the quality of outputs based on a researcher's race or assumed race (for example based on their name).</p>
Religion and belief including non-belief	<p>The Equality Act 2010 and the Fair Employment and Treatment (Northern Ireland) Order 1998 protect HEI staff from unlawful discrimination to do with religion or belief. Individuals are also protected if they are perceived to be or are associated with a person of a particular religion or belief.</p> <p>Panels should be aware of not making any judgements on the quality of outputs based on a researcher's actual or perceived religion or belief, including non-belief. 'Belief' includes any structured philosophical belief with clear values that has an effect on how its adherents conduct their lives.</p>
Sex (including breastfeeding and additional paternity and adoption leave)	<p>The Equality Act 2010 and the Sex Discrimination (Northern Ireland) Order 1976 protect HEI staff from unlawful discrimination to do with sex. Employees are also protected because of their perceived sex or because of their association with someone of a particular sex.</p> <p>The sex discrimination provisions of the Equality Act explicitly protect women from less favourable treatment because they are breastfeeding. Consequently the impact of breastfeeding on a women's ability to conduct research needs to be considered in the context of the REF.</p> <p>From 3 April 2011, partners of new mothers and secondary adopters will be entitled to up to 26 weeks of additional paternity and adoption leave. People who take additional paternity or adoption leave will have similar entitlements to women on maternity leave and barriers that exist to taking the leave, or as a result of having taken it, could constitute unlawful sex discrimination. Consequently in the context of the REF, additional paternity and adoption leave should be taken into consideration when deciding how many outputs the partners of new mothers are expected to contribute to the submission.</p>
Sexual orientation	<p>The Equality Act 2010 and the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 protect HEI staff from unlawful discrimination to do with sexual orientation. Individuals are also protected if they are perceived to be or are associated with someone who is of a particular sexual orientation.</p>

	<p>Panels should be aware of not making any judgements on the quality of outputs based on a researcher's actual or perceived sexual orientation.</p>
Welsh language	<p>The Welsh Language Act 1993 places a duty on public bodies in Wales to treat Welsh and English on an equal basis. This is reinforced by the provisions of the Welsh Language (Wales) Measure 2011.</p> <p>Panels should treat submissions made in Welsh equally to those made in English.</p>

Law relating to mode and terms of employment

13. 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 permanent employee. In addition, a part-time worker has the right not to be treated less favourably than a comparable full-time worker.

14. There are equalities considerations to mode and terms of employment. For example, Equality Challenge Unit's 'Equality in higher education: Statistical report 2010'¹ shows that while on average 35.3 per cent of academic staff are on fixed-term contracts, 70.9 per cent of academic staff aged 26 to 30 and 65.5 per cent of academic staff aged 66 and over are on fixed-term contracts. The report also highlights that part-time academic staff are more likely to be female than male. One reason for this is that, due to childcare commitments, women are more likely than men to reduce their contractual hours after having children.

Guidance to panels

15. To support the REF's aim of promoting equality and diversity in research careers and ensure the assessment process takes account of relevant equality and employment legislation, the panels should give specific consideration to the issues set out below, in developing their criteria and working methods.

Individual staff circumstances

16. In order to encourage institutions to submit the excellent research of all their eligible staff, individuals whose circumstances significantly constrained their ability to produce four outputs during the publication period may be submitted with fewer than four outputs without any penalty in the assessment. The 'Guidance on submissions' (to be published in July 2011) identifies a range of types of circumstances that apply, and sets out the arrangements that will be applied consistently in all units of assessment:

¹ 'Equality in higher education: statistical report 2010' (Equality Challenge Unit, November 2010) is available at www.ecu.ac.uk/publications/equality-in-he-stats-10

- a. Where the circumstances are 'clearly defined' (including part-time working and early career researchers), there will be standard tariffs for determining the appropriate number of outputs that may be reduced without penalty.
 - b. For more complex circumstances that require a judgement about the appropriate reduction in outputs, the main panel chairs will make decisions about the appropriate reduction in outputs, on the advice of the Equalities and Diversity Advisory Panel. This panel will be established during 2013 and its membership will include representatives from each main panel area.
17. In setting out their criteria and working methods the panels should confirm that they will apply this guidance; and that:
- where an individual is submitted with fewer than four outputs according to the tariffs set out in guidance on submissions, the panel will assess the individual's contribution to the submission without any penalty
 - decisions on the appropriate number of outputs that may be reduced in relation to an individual's circumstances will be taken separately to, and will not be a factor in, the panels' judgements about the quality of those outputs that are assessed.
18. Note that we expect to provide the panel secretariat with specific training for the assessment phase, to support their work in advising panels about submissions meeting the criteria for 'clearly defined' circumstances.

The research environment

19. In developing their criteria, panels are invited to describe what forms of evidence institutions should submit within the environment template. One of the sections of the environment template relates specifically to 'people', and the guidance on submissions states that within this section, institutions should submit evidence of how the unit has promoted equality and diversity among its staff. Panels should consider and describe what specific forms of evidence should be encouraged, taking account of the following points:

- what specific kinds of evidence or examples could be encouraged, and whether these might be verifiable
- how to focus on the activity of the submitted unit specifically, rather than general institutional policy (noting that this might include activity to implement institutional policy within the unit)
- whether there are specific aspects of equality and diversity among the population of researchers within their discipline that might be addressed in the panel criteria.

Use of citation data

20. We expect some sub-panels to make use of data about the number of times individual outputs have been cited, to inform judgements about the quality of those outputs. Panels making use of such data should:

- consider the potential equality implications of using citation data, and in particular the analysis of the REF bibliometrics pilot exercise, available at www.hefce.ac.uk/pubs/hefce/2011/11_03/
- develop criteria for making use of citation data that avoid any potential bias in the assessment in terms of the equality characteristics of staff that may arise from making use of such data.

Further information

21. Further general information on equality can be accessed through Equality Challenge Unit's web-site at www.ecu.ac.uk.

22. Panel chairs and members should address queries on this guidance to their REF panel secretary or adviser in the first instance.

23. Other queries relating to the REF should be addressed to the REF team, e-mail info@ref.ac.uk.