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July 2018

Draft guidance on codes of practice

This document sets out the draft guidance to UK higher education institutions about submitting codes of practice in REF 2021. It is published alongside the consultation on the draft 'Guidance on submissions', and will be published in final form in early 2019.

This document is for information.

REF 2021: Guidance on codes of practice

To	Heads of higher education institutions in the UK
Of interest to those responsible for	Research
Reference	REF 2018/03
Publication date	
Enquiries from staff at UK higher education institutions	Email your institutional REF contact. (These are listed at www.ref.ac.uk under Contact.)
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Executive summary

Purpose

1. This document sets out guidance on drawing up a code of practice on:
 - the fair and transparent identification of staff with significant responsibility for research
 - determining who is an independent researcher
 - the selection of outputs.

Key points

2. Each institution making a submission is required to develop, document and apply a code of practice on the fair and transparent identification of staff with significant responsibility for research (where an HEI is not submitting 100% of Category A eligible staff); determining who is an independent researcher; and the selection of outputs.
3. Both as employers and public bodies, HEIs need to ensure that their REF procedures do not discriminate unlawfully against, or otherwise have the effect of harassing or victimising individuals because of age, disability, gender identity, marriage and civil partnership, race, religion or belief, sex or sexual orientation or because they are pregnant or have recently given birth. In addition, in Northern Ireland, HEIs must ensure that their procedures do not discriminate on the grounds of political opinion.
4. The guidance set out in this document is intended to assist HEIs in drawing up a code of practice that frames their decision-making processes in relation to REF 2021 in the context of the principles of equality and diversity, and all relevant legislation.
5. The deadline for submitting codes of practice is noon, 7 June 2019. EDAP will examine the codes and advise the UK funding bodies on their adherence to the guidance, prior to approval and publication. All submitted and approved codes of practice will be published before the submission deadline. The provisional publication date is December 2019.

Action required

6. This document is in draft, for information.

Further information

7. Further information about the REF is available at www.ref.ac.uk.
8. Enquiries from members of staff at UK higher education institutions should be directed in the first instance to their institutional REF contact. These contacts for each institution are listed at www.ref.ac.uk under Contact.
9. Other enquiries should be addressed to info@ref.ac.uk.

Introduction

10. The purpose of this guidance document is to support institutions in drawing up and implementing a code of practice on: the fair and transparent identification of staff with significant responsibility for research; determining who is an independent researcher; and the selection of outputs. This will aid institutions in promoting equality and diversity, complying with legislation and avoiding discrimination, when preparing submissions to the REF.

11. Each institution making a submission is required to develop, document and apply a code of practice on determining who is an independent researcher and the selection of outputs in their REF submissions. Those institutions not submitting 100 per cent of Category A eligible staff will be required to include in the code of practice the criteria and processes, agreed with staff, for identifying staff with significant responsibility for research. The code of practice should be effective from the point at which it is approved. On making submissions, the head of institution will be required to confirm adherence to this code.

12. The funding bodies require that institutions' codes of practice be submitted to the REF team by noon, 7 June 2019. The Equality and Diversity Advisory Panel (EDAP) will examine these and will provide advice to the funding bodies on approving the codes. There will be an opportunity for institutions to revise codes where the need is identified as part of the approval process. We will publish approved codes of practice by the end of 2019.

13. If an HEI identifies an exceptional need to make significant changes to the content of its code of practice after it has been approved by the relevant funding body, the HEI must provide a revised code to the REF team. Final versions of codes of practice will be collected from all submitting institutions in early 2021, for publication along with the submissions in 2022.

14. We have developed the guidance to institutions set out below with advice from EDAP. It is intended to assist HEIs in drawing up a code of practice that frames their decision-making processes in relation to REF 2021 in the context of the principles of equality and diversity, and all relevant legislation.

15. We understand that most institutions taking part in REF 2021 will have submitted a code of practice on staff selection as part of the 2014 exercise. While the changes to the submission process for REF 2021 require institutions to focus their codes differently, in most cases we consider there will be aspects of previous codes that participating institutions will build upon for this exercise. We recommend institutions consult the overview report which identified areas of good practice found in the 2014 exercise (<http://www.ref.ac.uk/2014/pubs/refcodesofpracticegoodpracticereport/#d.en.75885>), as an aid to development. We also encourage institutions to review their REF 2014 impact assessments and any actions that they committed to that were identified through that process.

The legislative context

16. The Equality Act 2010 harmonised and consolidated previous anti-discrimination legislation. The Act covers the protected characteristics of:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion and belief
- sex
- sexual orientation.

17. As well as prohibiting direct discrimination the Act prohibits indirect discrimination – that is following a policy that, although applied equally to everyone, is harder for those with a protected characteristic to comply with. Indirect discrimination is not a breach of the Act if it is a proportionate means of achieving a legitimate aim. Direct discrimination on the grounds of age will not be unlawful if it is a proportionate means of achieving a legitimate aim.

18. With the exceptions of marriage and civil partnership and pregnancy and maternity, protection from discrimination extends to people who are perceived to have or are associated with someone who has a protected characteristic. For example, if a researcher is treated less favourably because they care for their disabled parent, that could be unlawful disability discrimination.

19. Similarly to previous legislation, it is lawful to treat a disabled person more favourably than a non-disabled person, and public bodies including HEIs are required to make reasonable adjustments for disabled people.

20. The Equality Act places requirements on the funding bodies as public sector organisations and on HEIs as public sector organisations and employers. Most of the Act, as it relates to public functions and employment, came into force in October 2010. The Act covers England, Scotland and Wales. Apart from minor provisions, Northern Ireland is not covered by the Act.

21. The public sector equality duty of the Act came into force in April 2011. Under the public sector equality duty, the higher education funding bodies and HEIs in England, Scotland and Wales, in carrying out their functions, must have due regard to the need to:

- a. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- b. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- c. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

22. (In this context a 'relevant' protected characteristic is one other than marriage and civil partnership.)

23. There are specific duties in force for England, Scotland and Wales, to meet the public sector equality duty: in England, the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017; in Scotland, the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, and Amendment Regulations 2015 and 2016; in Wales, the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

24. The scope of equality legislation in Northern Ireland is similar to the Equality Act. In addition, it is unlawful to discriminate against people on the grounds of political opinion. Section 75 of the Northern Ireland Act 1998 also places a statutory obligation on the Department for the Economy Northern Ireland and HEIs in Northern Ireland in carrying out their public functions to have due regard to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without.

Funding bodies' legal responsibilities

25. In order to demonstrate compliance with the public sector equality duty, and section 75 of the Northern Ireland Act, the higher education funding bodies need to consider and understand the impact of their policies on equality. The funding bodies have considered the equality impact of previous exercises in the development of the REF, and equality has been embedded into all relevant elements of the REF. The funding bodies will publish an analysis examining any equality impacts at sector level to inform their future work.

HEIs' legal responsibilities

26. The funding bodies have made every effort to try to eliminate any incentives towards discriminatory practices by HEIs in the process, but to the extent that there are any such inadvertent incentives, it is HEIs' responsibility as employers and public bodies to ensure that they avoid engaging in discriminatory practices.

27. Both as employers and public bodies, HEIs need to ensure that their REF procedures do not discriminate unlawfully against, or otherwise have the effect of harassing or victimising individuals because of age, disability, gender identity, marriage and civil partnership, race, religion or belief, sex or sexual orientation or because they are pregnant or have recently given birth. In addition, in Northern Ireland, HEIs must ensure that their procedures do not discriminate on the grounds of political opinion.

28. When developing their REF procedures, HEIs will also need to be mindful that under fixed-term employee and part-time workers regulations, fixed-term employees and part-time workers have the right not to be treated by an employer any less favourably than the

employer treats comparable employees on open contracts or full-time workers. The relevant regulations are:

- Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000
- Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000
- Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002
- Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002.

29. As public sector organisations, in order to show compliance with the requirements of the public sector equality duty in the Equality Act 2010, HEIs in England, Scotland and Wales need to consider and understand the effect of their REF policies on equality. Equalities legislation in Scotland, Northern Ireland and Wales places a specific duty on HEIs to conduct equality impact assessments (EIAs) on new and existing policies, and on HEIs in England to show due regard to the general duty. Consequently, the funding bodies require all HEIs to conduct EIAs on their policies for selecting staff for the REF.

Summary of legislation

30. A summary of the equality legislation with which institutions have to comply generally, and which they should take into account when preparing REF 2021 submissions is included in Table 1. Panel chairs, members, advisers and secretaries have received a briefing about this legislation to inform their development of the panel criteria and working methods. The 'Equality briefing for REF panels' is available at www.ref.ac.uk, under Publications.

Table 1: Summary of equality legislation

<p>Age</p>	<p>All employees within the higher education sector are protected from unlawful age discrimination, harassment and victimisation 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.</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 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 selecting their outputs because of the their 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 (see 'Guidance on submissions', paragraphs 144 to 147) is not limited to young people.</p>
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	<p>HEIs should also note that, given developments in equalities law in the UK and Europe, the default retirement age has been abolished from 1 October 2011 in England, Scotland, Wales and Northern Ireland.</p>
<p>Disability</p>	<p>The Equality Act 2010, the Disability Discrimination Act (1995) (Northern Ireland only) and the Disability Discrimination (Northern Ireland) Order 2006 prevent unlawful discrimination, victimisation and harassment 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. An impairment which is managed by medication or medical treatment, but which would have had a substantial and long-term adverse effect if not so managed, is also a disability.</p> <p>The definition of disability is different in Northern Ireland in that a list of day-to-day activities is referred to.</p> <p>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 conditions and cardiovascular diseases • 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>It is important for HEIs to note that people who have had a past disability are also protected from discrimination, victimisation and harassment because of disability.</p> <p>Equality law requires HEIs to anticipate the needs of disabled people and make reasonable adjustments for them. Failure to make a reasonable</p>

	<p>adjustment constitutes discrimination. If a disabled researcher's impairment has affected the quantity of their research outputs, the submitting unit may return a reduced number of outputs (see 'Guidance on submissions', Part 3, Section 1, 'Staff circumstances').</p>
<p>Gender reassignment</p>	<p>The Equality Act 2010 and the Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999 protect from discrimination, harassment and victimisation of 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 they are trans and staff are protected if they are perceived to be undergoing or have undergone related procedures. 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 difficult period for the trans person as they seek recognition of their new gender from their family, friends, employer and society as a whole.</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.</p> <p>Consequently, staff within HEIs with responsibility for REF submissions must ensure that the information they receive about gender reassignment is treated with particular care.</p> <p>If a staff member's ability to work productively throughout the REF assessment period has been constrained due to gender reassignment, the unit may return a reduced number of research outputs (see 'Guidance on submissions', Part 3, Section 1, 'Staff circumstances'). Information about the member of staff will be kept confidential as described in 'Guidance on submissions', paragraph 191.</p> <p>HEIs should note that the Scottish government recently consulted on, and the UK government is currently consulting on, reform of the Gender Recognition Act 2004, which may include streamlining the procedure to legally change gender.</p>
<p>Marriage and civil partnership</p>	<p>Under the Equality Act 2010 and the Sex Discrimination (Northern Ireland) Order 1976 as amended, individuals are protected from unlawful discrimination, harassment and victimisation 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</p>

	<p>and treatment in employment. The protection from discrimination does not apply to single people.</p> <p>HEIs must ensure that their procedures and decision-making processes in relation to REF 2021 do not inadvertently discriminate against staff who are married or in civil partnerships.</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>HEIs must ensure that their procedures and decision-making processes in relation to REF 2021 do not inadvertently discriminate against staff based on their 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, harassment and victimisation related to pregnancy and maternity.</p> <p>Consequently, where researchers have taken time out of work, or their ability to work productively throughout the assessment period has been affected, because of pregnancy and/or maternity, the submitting unit may return a reduced number of research outputs, as set out in 'Guidance on submissions', paragraphs 169 to 172.</p> <p>In addition, HEIs should ensure that female researchers who are pregnant or on maternity leave are kept informed about and included in their submissions process.</p> <p>For the purposes of this summary 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, harassment and victimisation 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 are associated with a person of a particular race.</p> <p>HEIs must ensure that their procedures and decision-making processes in relation to REF 2021 do not discriminate against staff based on their 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, harassment and victimisation related to 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>HEIs must ensure that their procedures and decision-making processes in relation to REF 2021 do not discriminate against staff based on their actual</p>

	<p>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>
<p>Sex (including breastfeeding and additional paternity and adoption leave)</p>	<p>The Equality Act 2010 and the Sex Discrimination (Northern Ireland) Order 1976 protect HEI staff from unlawful discrimination, harassment and victimisation related to 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 woman's ability to work productively will be taken into account, as set out in 'Guidance on submissions', Part 3, Section 1, 'Staff circumstances'.</p> <p>If a mother who meets the continuity of employment test wishes to return to work early or shorten her maternity leave/pay, she will be entitled to shared parental leave with the father or her partner within the first year of the baby's birth. Partners may also be eligible for shared parental leave or pay. Fathers/partners 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 where researchers have taken additional paternity and adoption leave, the submitting unit may return a reduced number of outputs, as set out in 'Guidance on submissions', paragraphs 169 to 172.</p> <p>HEIs need to be wary of implementing procedures and decision-making processes in relation to REF 2021 that would be easier for men to comply with than women, or vice versa. There are many cases where a requirement to work full-time (or less favourable treatment of people working part-time or flexibly) has been held to discriminate unlawfully against women.</p> <p>HEIs should note that there are now requirements under UK and Scottish legislation for public authorities (including HEIs) to report information on the percentage difference amongst employees between men and women's average hourly pay (excluding overtime).</p>
<p>Sexual orientation</p>	<p>The Equality Act 2010 and the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 protect HEI staff from unlawful discrimination, harassment and victimisation related to sexual orientation. Individuals are also protected if they are perceived to be or are associated with a person who is of a particular sexual orientation.</p> <p>HEIs must ensure that their procedures and decision-making processes in relation to REF 2021 do not discriminate against staff based on their 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 and the Welsh Language Standards (No 6) Regulations 2017.</p> <p>The arrangements for the assessment of outputs in the medium of Welsh by the REF panels are set out in 'Guidance on submissions', paragraphs 278 and 279.</p>
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Guidance to institutions

Overview

31. It is a requirement of the REF that each submitting institution establishes a code of practice. This will need to cover the processes for identifying staff with significant responsibility for research (where applicable), for determining research independence, and on the selection of outputs for REF submissions. The guidance here provides a common framework for institutions' development of policies and procedures within the REF, but does not generate obligations beyond those that HEIs will in any case need to address. It is the responsibility of HEIs to ensure that their codes of practice, and the manner in which they participate in the REF, are lawful.

32. Working with EDAP, we have developed a template for codes of practice (Annex A), which can be used alongside this guidance in developing, documenting and applying a code of practice. The template is divided into five main sections.

- a. Introduction, covering:
 - i. The code of practice in the context of other institutional policies concerning equality and diversity.
 - ii. An update on any relevant actions taken since REF 2014.
 - iii. Information about how the code is communicated to staff across the Institution.

- b. Where applicable, the agreed policy and procedures for **identifying staff with significant responsibility for research** in REF2021, in accordance with the REF guidance ('Guidance on submissions, paragraphs 137 to 142).
 - i. This section will only be required for institutions which have units that do not include 100 per cent of Category A eligible staff.
 - ii. Where an institution has more than one process for identifying staff with a significant responsibility for research in the REF (for example, where employment practices vary at the submitting unit level), this should be reflected in the code of practice.

- c. Policy and procedures for **determining whether staff meet the definition of an independent researcher**.
 - i. All participating institutions are required to complete this section.

- ii. The code of practice should describe the fair and transparent **processes** for determining research independence, in accordance with the REF guidance ('Guidance on submissions, paragraphs 128 to 133).
- d. The policy and procedures for **the selection of outputs** in REF2021. All institutions taking part in the REF process will be required to complete this section.
- e. Completed Codes of Practice should contain any referenced appendices.

33. In some cases we would envisage that processes described in Parts 2, 3 and 4 might be shared (for example, the process for appointing committees that make decisions around significant responsibility may be the same as those that make decisions about research independence, or processes for EIAs may be the same). In such cases, codes of practice may cross-reference this, rather than duplicating text.

34. Institutions that conduct mock REF exercises might consider using them as an opportunity to apply their draft code and refine it further. Where external advisers are used in such exercises, institutions should brief them about their developing REF codes of practice. Mock exercises should include equality impact assessments as part of the process, and the implications of these should be considered when preparing the final submission (see paragraphs 55 to 67).

35. More broadly EIAs should contribute to and be conducted periodically during the development of policies and procedures, and the process and effect on policy be incorporated in each section for i). identification of staff with significant responsibility for research ii). determining research independence, and iii). the selection of outputs. Codes of practice should document the frequency and timing of EIAs and describe how the results of the assessments are used to inform processes. An EIA should be conducted on the final submission of staff and outputs (see paragraphs 65 to 67).

36. Codes of practice should include all the relevant information; the funding bodies do not consider that links to organisation intranet pages provide appropriate evidence of any aspect of a code of practice.

Principles

37. Each institution's code of practice should demonstrate fairness to its staff by addressing the following principles:

- a. **Transparency:** All processes for identifying staff with significant responsibility for research (where applicable), determining research independence, and selecting outputs for inclusion in REF submissions should be transparent. Codes of practice should be drawn up and made available in an easily accessible format and publicised to all academic staff across the institution, including on the staff intranet, and drawn to the attention of those absent from work. We would expect there to be a programme of communication activity to disseminate the code of practice and explain

the processes related to i). identifying staff with significant responsibility for research (where applicable), ii). determining research independence and iii). selecting outputs for submission. This programme should be documented in the code. We encourage institutions to publish their codes of practice on their external website. They will be published by the REF team by the end of 2019 and any changes to final codes will be published as part of the submissions in 2022.

b. **Consistency:** The principles governing the processes covered by codes of practice should be consistent across the institution. We would expect that the approach to identifying staff with significant responsibility for research (where applicable) would only vary by unit of assessment where employment practices vary at this level, and the difference in practice can be verified. The code of practice should set out the principles to be applied to all aspects/stages of the process at all levels within the institution where decisions will be made.

c. **Accountability:** Responsibilities should be clearly defined, and individuals and bodies that are involved in i). identifying staff with significant responsibility for research, ii). determining research independence and iii). selecting outputs for REF submissions should be identified by role. Codes should also state what training those who are involved in the processes have had. Operating criteria and terms of reference for individuals, committees, advisory groups and any other bodies concerned with these processes, should be made readily available to all individuals and groups concerned.

d. **Inclusivity:** The processes described in the code should promote an inclusive environment, enabling institutions to identify all staff who have significant responsibility for research, all staff who are independent researchers, and the excellent research produced by staff across all protected groups.

Policies and procedures

38. Parts 2, 3 and 4 of an institution's code of practice should detail the policies and procedures the institution will follow for submission in REF. This should include information about criteria used for decision-making and the process by which decisions will be made, including the timescales for delivering decisions and the method and timescale in which feedback will be provided in respect of the decisions made.

Evidence relating to the development of policies and processes

39. As set out in 'Guidance on submissions' (paragraph 141), it is a requirement that any processes established to identify staff with significant responsibility for research are agreed with staff, through appropriate staff representation mechanisms within the HEI. Where applicable, therefore, in part 2 the code of practice should describe the development of the policy and procedures, including details about the staff representative mechanisms in place in the HEI, how the appropriate staff representatives were engaged in the process, and evidence of agreement with appropriate staff representation.

40. Any consultations undertaken during the development of processes should detail how staff were communicated with (including staff who are absent from work, and the

provision of information in accessible formats), the verdict of the consultation and how this has impacted upon the final process.

Staff, committees and training

41. Structural differences between HEIs mean that the method of developing submissions and the positions of individuals responsible for identifying staff, and for output selection, will not be uniform across the sector. The procedures for appointing designated staff (even a senior officer such as the Pro-Vice-Chancellor/Vice-Principal for Research) and establishing committees responsible for identifying staff with significant responsibility for research (where applicable), determining research independence and selecting outputs should be clearly documented in the code of practice, as should their terms of reference. The rationale for these procedures must be outlined.

42. Codes of practice should detail the staff and committees involved in all processes covered by the code. Staff should be referenced according to their role within the HEI and where that role fits in the institutional management framework. Codes of practice should indicate whether involved staff hold advisory or decision-making responsibilities. Timelines and schematics may be included as an aid, representing committee and group structures, interdependencies and processes.

43. Where a committee, panel, or group has designated REF responsibilities – whether it is at departmental, faculty, UOA or central level – these should be detailed in the code of practice, including, for each committee:

- its membership
- how the committee has been formed, including steps taken to consider and reflect on representativeness
- its responsibilities (including whether advisory or decision-making) with respect to the institution's policy and procedures relating to identifying staff, determining research independence, and / or output selection
- the steps taken to ensure that members are well informed about their own and the institution's legal obligations regarding equality, including any relevant training.

44. Where committees consider reports from other committees or designated staff reporting to them, the basis of the discussion must be clear, and records must be kept.

45. Staff involved in the processes described in codes of practice must be provided with training on equality and diversity, which we recommend is tailored to the REF processes. The code should detail the equality training that designated persons will either undertake or have undertaken during the assessment period, or the level of understanding of the issues they will be required to attain. Training schedules for staff and committees should be included, with criteria for training clearly recorded

Disclosure of individual staff circumstances

46. Proposals are set out in the 'Guidance on submissions' (Part 3, Section 1: 'Staff circumstances') on measures whereby a unit may optionally request a reduction without penalty in the total number of outputs required for submission, where the individual

circumstances of Category A submitted staff have constrained their ability to produce outputs or to work productively throughout the assessment period. This includes measures to remove the minimum of one requirement where an individual's circumstances have had an exceptional effect on their ability to work productively, so that the individual has not been able to produce an eligible output.

47. In part 4 of the code of practice, relating to the selection of outputs, the institution must draw attention to the guidance on circumstances and be clear on how such circumstances may be declared by staff.

48. Codes of practice must provide guidance on how circumstances will be taken into account in determining whether a reduction should be sought to the total number of outputs required for submitting units. This should include a description of: an institution's procedures, policies, and personnel involved in managing and making decisions; and a list of circumstances that will be taken into account. The institution's approach must be consistent with the range of circumstances and procedures set out in the 'Guidance on submissions', and must be standard across all departments. EIAs should include the impact these of policies and processes. Where applying reductions, the code of practice must set out how the institution will ensure that the reductions are reflected in the institution's expectations of the affected researchers' contributions to the output pool.

49. Where a unit reduction is not being requested, codes of practice must describe how the effect of any individual circumstances will be taken into account in the output selection process.

50. Codes of practice should also provide a clear and transparent description of an institution's procedures, policies, and personnel involved in managing and making decisions that take account of exceptional effects that staff circumstances may have had upon an individual's ability to research productively throughout the period and produce the required minimum of one output.

51. Institutions should have robust procedures in place to enable staff to disclose their circumstances confidentially. Particular regard should be had to the disclosure of sensitive issues such as ongoing illness or mental health conditions. To enable individuals to disclose circumstances in confidence, institutions should normally manage this process centrally.

52. At each selection stage, institutions are encouraged to formally monitor the process for identifying individuals whose circumstances might need special consideration, and to evidence decisions and actions.

Fixed term and part-time staff

53. In the light of the Fixed-term and Part-time Regulations (see paragraph 28), consideration will also need to be given to how the institution can demonstrate the implementation of equality for those on fixed-term (relative to open) and part-time (relative to full-time) contracts.

54. The code of practice should therefore include a statement about how the institution supports its fixed-term and part-time staff, including contract research staff, in relation to equality and diversity.

Equality impact assessment

55. The funding bodies require all HEIs to conduct an equality impact assessment (EIA) on their policy and procedures for identifying staff with significant responsibility for research (where applicable), determining research independence and for selecting outputs for the REF.

56. An EIA should be a thorough and systematic analysis to determine whether the institution's processes for identifying staff, determining research independence and output selection for the REF may have a differential impact on particular groups. Where the analysis involves small numbers that can heavily influence percentages reported in statistical data, EIAs should reflect this where appropriate, highlighting instances that have a marked impact for particular groups.

57. EIAs should inform the institution's code of practice and be kept under review as submissions are prepared. The code of practice should clearly set out information about the findings of EIAs with respect to each part of the code, and how the analysis informed the final policy and procedures documented in the code. Any completed EIAs may be included in the appendices of the code of practice.

58. EIAs should enable HEIs to identify where discrimination may inadvertently occur within their REF processes. They will also enable HEIs to identify where a particular policy or practice has a positive impact on the advancement of equality. Where potential discrimination is identified HEIs will need to justify the policy or practice within the constraints of the law or they will need to take actions to change the policy or practice. If a particular policy or practice is found to have a positive impact on equality, HEIs can seek to apply it to other areas of their REF work.

59. The funding bodies recognise that it is best practice to use information gained from engaging, consulting or involving staff from protected groups to inform an EIA. (Consultation is a requirement of section 75 of the Northern Ireland Act 1998 and engagement is a requirement of the Welsh specific duties of the Equality Act 2010. Engagement is also key to showing due regard to the requirements of the public sector equality duty in England and Scotland.)

60. For all policies and procedures set out in the code of practice, EIAs should be informed by an analysis of data in respect of all the protected characteristics for which data are available. Additionally:

- For processes related to identifying staff, the assessment should consider data on the characteristics of staff considered to meet the criteria for having significant

responsibility for research in the context of all staff who are eligible for submission, and all academic staff.

- For policy and procedures relating to the identification of independent researchers, the assessment should consider data on the characteristics of staff determined to meet the definition, in the context of an appropriate comparator pool for junior academic staff (as appropriate to the institution's context).
- For policy and procedures relating to output selection, the assessment should consider data on the distribution of selected outputs across staff, by protected characteristic, in the context of the characteristics of the submitted staff pool.

61. Overall consideration should be given to the combined impact of policies and procedures relating to the identification of i). staff with significant responsibility for research, ii). staff who are considered independent researchers, and iii) the selection of outputs.

62. HEIs who conduct mock exercises can use the process to inform their EIA(s), and HEIs can also consider information on equality from the previous REF and RAEs in identifying possible barriers to participation and opportunities to advance equality.

63. The EIA should be reviewed at key stages of the process, to ensure that any necessary changes to prevent discrimination or promote equality are taken prior to the submission deadline. Examples of appropriate points to review the EIA are:

- when identifying staff with a significant responsibility for research
- when determining research independence
- when selecting outputs for submission
- when considering appeals against identification of staff who do not have significant responsibility for research
- when preparing the final submission.

64. Where data are sufficient, and further in-depth analysis is required, the HEI may wish conduct analysis at UOA level.

65. The funding bodies will require HEIs to submit the final version of their EIA, after the submission deadline. This should include: the final analysis of data comparing the characteristics of staff with significant responsibility for research, with the characteristics of all eligible staff (where applicable); the final analysis of data comparing the characteristics of those determined to be independent researchers, with an appropriate comparator pool; and an examination of the distribution of outputs across staff in the unit. It should also include any actions taken to prevent discrimination or advance equality during the submission process and their outcomes, including the justification for and/or actions taken to address any differential impact that staff identification and output selection processes may have had on particular groups, and information about any policies or practices that had a positive impact on equality during the submission process.

66. The EIAs we collect will be used by EDAP to assist with evaluating the overall effectiveness of the equality and diversity aspects of the REF at sector level, and lessons learned for the future. EDAP will not formally assess or comment on individual institutions' EIAs.

67. The funding bodies expect HEIs to publish these final equality impact assessments after the submissions have been made, as a matter of good practice. The published information should also include the outcomes of any actions taken to prevent discrimination or advance equality. Where a significant impact has been identified full information should be published. Publication is a legal requirement in Northern Ireland and in Wales where a policy or practice is regarded as having a significant impact.

Feedback and appeals

68. The funding bodies expect all institutions that are implementing processes to identify staff with significant responsibility for research and determining research independence to have in place an appeals mechanism.

69. Appropriate and timely procedures should be put in place to inform staff who are not considered to have significant responsibility for research, or to be independent researchers of the reasons behind the decision in accordance with the established criteria, and of the appeals process.

70. The funding bodies expect HEIs' appeals procedures to:

- a. Allow members of staff to appeal after they have received this feedback, and for that appeal to be considered by the HEI before the final submission is made.
- b. Ensure that the individuals that handle appeals are independent of the decisions about identifying staff and receive appropriate training.

71. The code of practice should include details of the appeals procedures. Institutions should consider carefully before deciding to use existing complaint reporting mechanisms, and should only do so if these are appropriate for the purpose and can be concluded prior to the REF submission deadline.

Joint submissions

72. Institutions making joint submissions may wish to make their code of practice available to collaborating institutions. In any case, they should ensure that joint decision-making across institutions does not compromise their adherence to their respective codes of practice. Collaborating institutions may choose to agree on a shared approach to equality, so that one code of practice is approved by and used on behalf of the other institution for the management of the joint submitting unit.

Submitting codes of practice

73. Codes of practice should be submitted to the REF team on or before noon, Friday 7 June 2019. EDAP will examine the codes and advise the UK funding bodies on their adherence to this guidance, prior to approval and publication. HEIs will have an opportunity to revise their code of practice after guidance from EDAP. If EDAP advises that an institution's code of practice does not adhere to this guidance the funding bodies will take appropriate action.

74. All submitted and approved codes of practice will be published before the submission deadline. The provisional publication date will be December 2019.

75. The funding bodies plan to undertake an evaluation of the codes of practice after the REF has concluded. As with the previous exercise, we anticipate this will identify areas of good practice.

Useful resources

76. Guidance from AdvanceHE regarding EIAs - <https://www.ecu.ac.uk/guidance-resources/governance-and-policies/equality-impact-assessment/> (see also <https://www.advance-he.ac.uk/>).

Annex A: Code of practice template

1. This annex provides the template for institutions' codes of practice, annotated with guidance about the information required in each of its sections. This should be read alongside the full guidance on codes of practice in the main document. The code of practice template will also be available in Word.
2. Links to HEI intranet pages should not be used as evidence of any aspect of a code of practice.

<p>Part 1: Introduction</p> <p><i>Codes should address the following:</i></p>
<ul style="list-style-type: none">• How the code relates to broader institutional policies / strategies that promote and support E&D.• An update of actions taken since REF 2014.• How the institution is addressing the principles of Transparency, Consistency, Accountability, and Inclusivity in demonstrating fairness (see paragraph 37).• Reference to these principles should also be made, as appropriate, in completing the sections below.• How the code is being communicated to staff across the institution (including to those on leave of absence), through various mechanisms and channels, including the staff intranet.
<p>Part 2: identifying staff with significant responsibility for research</p> <p>Part 2 need only be completed where the institution will not be submitting 100% of Category A eligible staff in one or more UOA.</p> <p><i>Codes should address the following:</i></p>
<p>Policies and procedures – where not submitting 100% of eligible staff (see paragraph 38).</p> <ul style="list-style-type: none">• Criteria used for identifying staff with significant responsibility for research, including information about how the criteria are being applied, and grounds for decisions taken.• How decisions are being made and communicated to staff, including timescale.• If the approach to identifying staff with significant responsibility for research varies, according to variation in employment practices by UOA, codes of practice should outline each process used.• Codes of practice should describe stages of approval (diagrams, schematics & timelines might be included as an aid).

<p>Development of process(es) (see paragraphs 39 to 40).</p> <ul style="list-style-type: none"> • How processes to be followed have been consulted on and agreed with staff representative groups • How the final agreed processes have been / are being communicated to staff, if different to that described in Part 1: Introduction.
<p>Staff, committees and training (see paragraphs 41 to 45).</p> <ul style="list-style-type: none"> • Procedures for appointing designated staff and committees / panels responsible for identifying staff with significant responsibility for research (distinguishing between those with advisory and those with decision making roles). • Information provided should include role descriptions for individuals and terms of reference for committees / panels, modes of operation, and record-keeping procedures, as well as information about where these roles / committees / panels fit into the wider institutional management structure. • Details of training provided to individuals and committees involved in identifying staff, the timescale for delivery, and content (including how it has been tailored to REF).
<p>Appeals (see paragraphs 68 to 71).</p> <ul style="list-style-type: none"> • How the appeals process has been communicated to staff. • Details of the process, including how cases are submitted, eligible grounds for appeal. • Details of those involved in hearing any appeals (demonstrating their independence from earlier decision processes), timescales, and how decisions are being communicated to staff.
<p>Equality impact assessment (see paragraphs 55 to 67).</p> <ul style="list-style-type: none"> • How an equality impact assessment has been used to inform the identification of staff and make final decisions.
<p>Part 3: Determining research independence.</p>
<p>Policies and procedures (see paragraph 38).</p> <ul style="list-style-type: none"> • Criteria used for determining staff who meet the definition of an independent researcher, including information about how the criteria are being applied. • How decisions are being made and communicated to staff, including timescale. • Codes of practice should describe stages of approval (diagrams, schematics & timelines might be included as an aid).
<p>Staff, committees and training (see paragraphs 41 to 45).</p> <p><i>(Where such staff and committees are the same as those outlined in Part 2, institutions can cross-refer to that section)</i></p>

<ul style="list-style-type: none"> • Procedures for identifying designated staff and committees / panels responsible for determining research independence (distinguishing between those with advisory and those with decision making roles). • Information provided should include role descriptions for individuals and terms of reference for committees / panels, modes of operation, and record-keeping procedures, as well as information about where these roles / committees / panels fit into the wider institutional management structure. • Details of training provided to individuals and committees involved in identifying staff, the timescale for delivery, and content (including how it has been tailored to REF).
<p>Appeals (see paragraphs 68 to 71).</p> <p><i>(Where the process follows that outlined in Part 2, institutions can cross-refer to that section)</i></p> <ul style="list-style-type: none"> • How the appeals process has been communicated to staff. • Details of the process, including how cases are submitted, eligible grounds for appeal. • Details of those involved in hearing any appeals (demonstrating their independence from earlier decision processes), timescales and how decisions are being communicated to staff.
<p>Equality impact assessment (see paragraphs 55 to 67).</p> <p>How an equality impact assessment has been used to inform the identification of staff and make final decisions.</p>
<p>Part 4: Selection of outputs</p> <p><i>Codes should address the following:</i></p>
<p>Policies and procedures (see paragraph 38).</p> <ul style="list-style-type: none"> • Details of procedures that have been developed to ensure the fair and transparent selection of outputs • Information should be provided about the procedure development process and the rationale for adopted methods. • Codes of practice should describe stages of approval (diagrams, schematics & timelines might be included as an aid).
<p>Staff, committees and training (see paragraphs 41 to 45).</p> <p><i>(Where such staff and committees are the same as those outlined in Parts 2 or 3, institutions can cross-refer to that section)</i></p> <ul style="list-style-type: none"> • Procedures for identifying designated staff and committees / panels responsible for selecting outputs (distinguishing between those with advisory and those with decision making roles).

<ul style="list-style-type: none"> • Information provided should include role descriptions for individuals and terms of reference for committees / panels, modes of operation, and record-keeping procedures, as well as information about where these roles / committees / panels fit into the wider institutional management structure. • Details of training provided to individuals and committees involved in the output selection process, the timescale for delivery, and content (including how it has been tailored to REF).
<p>Disclosure of circumstances (see paragraphs 46 to 52).</p> <ul style="list-style-type: none"> • Procedures for taking into account staff whose circumstances have affected their ability to research productively throughout the period in relation to the unit's total output requirement. • Procedures for taking into account the effect of circumstances that have had an exceptional effect on the ability of an individual staff member to research productively throughout the period so that they do not have the required minimum of one output. • For both of the above cases, procedures for staff to disclose circumstances in a confidential manner.
<p>Equality impact assessment (see paragraphs 55 to 67).</p> <ul style="list-style-type: none"> • How an equality impact assessment on the spread of outputs across staff (in relation to their protected characteristics) has been used to inform the final selection of outputs to be submitted.
<p>Part 5: Appendices</p>
<p>Attach any relevant appendices</p>



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