

The Society of Legal Scholars welcomes the opportunity to respond to the draft documentation with respect to the forthcoming RAE. The Society regards this consultation exercise as an important event that is central to the process of ensuring the creation of a mechanism that provides an accurate method of judging research quality involving the greatest degree of transparency possible. The legitimacy of the RAE as a device for dispersing research funding to law schools has hitherto lain in the fact that the mechanisms for reaching judgements about research quality and the judgements made by previous panels have, broadly speaking, had the support of the academic community. Preserving widespread respect for the manner in which the RAE is implemented is fundamental to its success.

Many aspects of the draft criteria the Society has considered will meet with the broad approval of the academic community and, insofar as the projected exercise is consistent with previous exercises, the Society would expect the RAE to be accepted as a necessary feature of the present architecture of higher education. That having been said the Society notes some continuing disquiet amongst its members about matters that are longstanding features of the RAE. Thus, for example, that statement that the panel will not rank either publishers or journals continues to be regarded with suspicion in some quarters. The Society accepts that judgements made in past exercises, involving the award of high grades to very different types of law school, supports previous panel's contention that no ranking of journals or publishers has taken place. However, given the fact that any ranking of either journals or publishers would gravely impede the development of the ever more fractured nature of research into law, the Society believes it is important for the panel to underscore the fact that it intends to continue the past practice of not ranking publishers and journals. Equally not all members of the Society appear to be convinced that outputs submitted are in fact given consideration. Here again the Society believes that it is important that the panel emphasise its intention to give individual attention to each submitted research output before judgements about quality in any particular law school are made.

The suggestion that each output will be looked at on its own without reference to the other submitted outputs by the author but with reference to the submitted output of the department as a whole has created confusion, has been met with some hostility and in some instances seems to be incapable of sensible application. The Society accepts that the intention of the exercise is and should be to judge research from a department not to rank individuals within the department. However,

research outputs cannot, or cannot always, be regarded as atomised entities separate from their author. A submitted output that makes explicit reference to the author's own previous work, drawing upon it and developing it, cannot be assessed separate of that author. Works that implicitly draw upon previous work similarly cannot be judged without reference to the author. Given the fact that most academics work, at least for periods of time, within particular areas and on particular problems or issues, such explicit and implicit referencing is likely to characterise the nature of submissions made by most established academics. As importantly the exercise is an assessment of research done within a fixed period of time. Ranking outputs must in part involve a consideration of what an individual researcher could reasonably be expected to do in the time given. This is implicit in the special arrangements that are made for new career academics and others but must logically also being the case for all academics. This being so ranking involves a consideration of both output and individual. If this is not done an individual who produced one contribution of the very highest quality, involving considerable work (not necessarily in terms of the quantity of material produced but also, for example, the prolonged intellectual endeavour that was necessary for the output to be published) and three other outputs, perhaps related to and necessary for the first, of lesser quality could be of less value to a law school in its overall RAE profile than an individual who produced four works which were each of reasonable quality but which did not reach the very highest standards; a tendency towards mediocrity or a tendency to discourage the production of excellence could result from the application of such a policy. The Society does not believe that academics always judge the research quality of a particular output outside the context of their author nor does it believe they always should. Questions of individual bias in making such complex judgements are important. Nevertheless the Society regards the panel's present statements on this matter as overly simplistic and probably not reflective of the manner in which the panel can or will operate. Finally on this point the Society is unclear why outputs should be judged in the context of the work submitted by the department as a whole. Does, for example, high quality work become even more meritorious if other work submitted by the department is of a low quality or does it lose some if its merit? In either case the Society does not see why the departmental context should alter the judgement about the value of the output.

The weighting to be given to the research environment and to esteem factors and the mechanisms that may be used in making judgements about these matters has been criticised. Research environment, what the law school is doing to facilitate research, and esteem factors, what others

think about members of the law school's ability to do research, do not appear to law schools to be as important as outputs, what research has actually been done. Profiles that contribute 25 per cent to the final overall profile clearly bring with them the possibility of having a considerable impact on that overall profile. Previous exercises in relation to law do not appear to have given a significant weight to these matters and law schools, including those that might reasonably be seen as being likely to score well in terms of environment and esteem, seem to be unconvinced that any significant change should be made. This becomes even more the case when the method of reaching judgements about these matters is unclear. The draft documentation for the RAE process as a whole makes it clear in Annex A that, as with its research output, the panel will be drawing up a profile with respect to esteem and environment for each law school. However, whilst the submission mechanisms mean that the panel will receive individual data about all members of the law school submitted no such data will be available in relation to environment and esteem. The narrative parts of submissions, which must also include details about matters such special circumstances of staff, will not give law schools sufficient space to report on all their members of staff. How profiles can accurately be drawn up in the absence of such information and how the panel will be able to defend the accuracy of such a profile if challenged is somewhat mysterious. The draft documentation for Panel J says that "sub-panels will initially assign 100% of the profile allocated to each element to one of the quality levels...[but] [i]n certain circumstances...the sub-panels may decide to allocate a profile across two or more quality levels". Here again how the law panel could judge these circumstances to have arisen is unclear. Reducing the degree of attention that is paid to such matters is desirable and clarification of how such profiles can be justified is necessary.

The Society notes that the panel intends to continue the previous practice of making allowances for the special circumstances of some academics including, in particular, to make "proportionate adjustment" for the number of expected outputs for those academics who are in the first stages of their career. Whilst the Society accepts that it would, in the nature of these things, be impossible to give precise indications of the form of all the allowances that will be made the position of new academics seems to be different. A general indication of what kind of allowance would be made depending on years of service would be useful and might in some instances reduce the pressure brought to bear on new academics.

The Society notes a particular problem in relation to multi-authored work where individual chapters are written by named authors. The Society believes that such individual chapters should be treated in the same fashion as essays in edited collections and judged on their own merits rather than by reference to other chapters in the work except where the content of the individual chapter is such as to make it impossible to read outside the context of the book taken as a whole. If this is not done some scholars, for example those who choose to write with practitioners, may be unfairly disadvantaged.

In the past RAE returns have included the possibility of Scottish authors indicating when a piece, because of its jurisdictional context, needed to be assessed by a Scots law specialist. The Society believes that it is important that this practice be retained in the present exercise.

Finally, on a technical matter the Society notes the intention to ask for articles and book chapters to be submitted in electronic form (RAE 03/2005 para 96). Academics in law schools do not hold material in this form and scanning in such material will probably create more problems than in solves.

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On behalf of the Society of Legal Scholars