

## Closing the public sector pay gap – UCEA's response

The Universities and Colleges Employers Association (UCEA) represents the interests of 170 UK higher education employers. Most of our members are subject to the Public Sector Equality Duty and a few are private institutions that are outside the scope of this consultation.

**QUESTION 1: Do you agree that the new GPG requirements should apply to the same public bodies, with 250 or more employees, which are currently listed at Schedules 1 and 2 to the Specific Duties Regulations? Yes / No If no, please explain why.**

Yes.

**QUESTION 2: Are there any other public bodies that should be included at Schedules 1 and 2 to the Specific Duties Regulations? Yes / No If yes, please provide further details.**

No.

**QUESTION 3: Is it appropriate to rely on the definition of 'employment' in section 83 of the Equality Act 2010 for public sector employers? Yes / No If no, please explain why.**

No. It would be helpful to have guidance with examples on what is considered 'employment', in particular where the employment is 'a contract personally to do work'.

In the higher education sector, atypical staff are members of staff whose contracts are those with working arrangements that are not always permanent, involve complex employment relationships and/or involve work away from the supervision of the normal work provider. These may be characterised by a high degree of flexibility for both the work provider and the working person, and may involve a triangular relationship that includes an agent. Examples include student ambassadors, graduate teaching assistants, guest lecturers, and external examiners. While payment may be made through the University payroll, contract details (e.g. hours worked or rate per hour) for atypical workers are not necessarily centralised and in some cases there are no hours assigned to the work.

In particular, our members would like guidance from the Government in the following areas, so that they can calculate the gender pay gap correctly:

1. **Multiple contracts with the same employer.** Would an employee with two part-time employment contracts with the same employer be counted as one employee or two employees for the purpose of gender pay gap reporting?
2. **Fixed fee consultants personally contracted to do work.** Can those 'on contract personally to do work' that is 'piecework' be excluded from the calculation? If not, is it OK to attach a nominal hourly rate for them? For example:

*"Sometimes we might engage an external consultant where they are genuinely self-employed but we have selected them on the basis of their personal experience and expertise, so we expect them to personally carry out the work. Trying to determine an hourly rate of pay for people who may be employed on a fixed fee basis regardless of hours worked would be very difficult and it would be better if the legislation could specifically exclude those who are engaged on a genuinely self-employed basis."*

**QUESTION 4: Do the proposed elements of pay raise any particular issues for the public sector? Yes / No If yes, please provide further details**

Yes. On the whole our members are supportive of the gender pay gap reporting requirements but have concerns about the clarity and scope of the elements of pay.

We ask that the Government extend the list of examples of what is included or excluded from the definition of 'pay' in a FAQ or guidance, in particular in the following areas:

1. **Should an allowance for additional piecework beyond the contracted hours be considered overtime pay and excluded from the calculations?** We are aware that some of our members pay an allowance for employees who undertake additional work, or example lecturing at a partner institution. Where this work could involve more than the contracted hours, should this be considered piecework within the definition of pay, or should it be excluded because it is overtime pay?
2. **Some staff are paid through their employer's payroll for consultancy work that they do for third parties – should this payment be included in the definition of pay?** Our reading of the draft regulations is that this payment should be included in the gender pay gap calculations and we would appreciate if the guidance can clarify this.
3. **Will payments on behalf of a third-party employer be included for gender pay gap reporting purposes?** For example, our members referred to Clinical Excellence Awards (merit-based and pensionable awards) which are significant additions to basic salary paid by the NHS to eligible clinical academics. Guidance on this is therefore important.
4. **Special responsibility allowances.** Our reading of the draft regulations is that an allowance to compensate individuals for taking on additional responsibilities for a period of time should be included in the definition of pay and not bonus pay. We would appreciate it if the guidance can confirm if this is correct.
5. **Bonus pay is limited to one-off non-consolidated payments.** We were informed at the Roundtable meeting on 26 September that performance-related or contribution-related pay increases are not bonus payments but should be included in the definition of pay. We would appreciate if the guidance clarifies this point with examples.
6. **Leave where an employee is paid less than usual.** A common misunderstanding is that such employees should be included in the calculations. Our reading of the consultation is that employees on unpaid or partially-paid sabbatical leave should be excluded from the calculations. To avoid confusion, it would be helpful if the guidance provides illustrative examples where an employee on leave should or should not be included in the calculations.
7. **Car allowance.** We maintain the view that it seems inconsistent to include car allowance within the definition of pay but classify company cars as benefits in kind. We had previously raised this comment in our response for the Mandatory Gender Pay Gap consultation in March 2016.
8. **Pay does not include the value of salary sacrifice schemes.** It was clarified at the Roundtable meeting on 26 September that pay should be gross pay \*after\* the value of salary sacrifice schemes such as childcare vouchers and pensions. This could introduce

additional administrative complexity. We would appreciate it if the guidance can clarify this point with examples.

We are pleased to see that this consultation clarifies that, in addition to maternity leave, paternity, adoption or parental leave are also included in the definition of pay.

**QUESTION 5: Do you agree that the same deadline should be introduced for all reporting requirements under the amended Specific Duties Regulations? Yes / No If no, please explain why**

Yes.

**QUESTION 6: Do these reporting requirements pose any particular issues for public sector employers? Yes / No If yes, please provide further details**

Yes. Most of our 170 UK member higher education institutions are subject to the Public Sector Equality Duty and a few are private institutions that are outside the scope of this consultation.

We applaud the Government's determination to close the gender pay gap more quickly but are concerned that the very short notice and lead preparation time will jeopardise the success of this initiative. Our members have been asking us for the Government's final guidance since early 2016 in preparation for the mandatory reporting requirements.

It is now the end of September and even if the final guidance for the private sector is published in November, this would in practice give employers only three months to prepare, once Christmas and Easter holiday periods are excluded. While the private sector guidance is helpful, our members would also need clarification on public sector specific queries in order to calculate the gender pay gap (see answers to questions 3 and 4 of this consultation response). This is very short notice compared for example to the pension auto-enrolment requirement, which was rolled out in stages depending on the number of employees.

Secondly, while the Higher Education sector has a good track record of voluntarily conducting equal pay reviews that include gender pay gap analysis, it is worth noting that analysis has typically focused on the core workforce. Our 2013 survey found that 67.7% of Higher Education Institutions have conducted gender pay gap analysis (up from 64.8% in 2010) but 45% of them exclude casual staff/short-term temporary staff from the calculations. Many of our members would need time to change their data collection processes to meet the new gender pay gap requirements:

<http://www.ucea.ac.uk/en/publications/index.cfm/inchesep2013>

We therefore recommend taking the first gender pay gap 'snapshot' from April 2018 (instead of April 2017) for public sector employers for the following reasons:

1. Enables payroll technology to be updated to meet the new requirements.
2. Allows sufficient time for employers to communicate to hiring and line managers at all levels so that they fully understand the new requirements, in particular where the current practice is that contract details and payments are not centrally recorded. By communicating in advance, it avoids the complication of retrospectively identifying relevant workers and payments because all stakeholders are aware of the information that needs to be recorded during the reporting period and any issues with calculating hourly rates can be settled in advance.
3. The new requirements do not significantly disrupt Higher Education Institutions' existing statutory and voluntary reporting obligations, e.g. HEFCE (funding body), HESA

(statistics agency), Athena SWAN (charter mark application to promote the advancement of women's career in Higher Education).

A number of our members also expressed concerns over additional bureaucracy and significant investment required to ensure data accuracy. For example:

"The guidance suggests no significant additional costs for employers by using the same dataset as used for the Annual Survey of Hours and Earnings (ASHE) sent to the Office of National Statistics (ONS). The ASHE survey is a sample dataset (for us between 100-150 employees) and Payroll construct/validate the data manually. For a full employee survey we will need to develop and test a Business Intelligence extract to facilitate pay analysis. We will also need to consider how much resource to put into the validation of the data."

One member highlighted that the Government can retrieve gender pay gap data from the Higher Education Statistics Agency (HESA) which will enable a level of benchmarking already among higher education employers in receipt of public funding without additional investment in resources. The data, however, is based on basic pay and the reference date is July.

**QUESTION 7: Do you have any other comments on these measures and/or our proposed approach?**

We ask that the Government note our response to question 1 of the Closing the Gender Pay Gap consultation in 2015 that higher education employers already do a significant amount of gender pay gap reviews, benchmarking and initiatives to progress women's careers. Good practices in the sector were summarised in our joint report with the trade unions last year (see p14 to p17):

<http://www.ucea.ac.uk/en/publications/index.cfm/nigender>

More recently, the higher education sector has proposed a separate set of benchmarks to monitor gender pay gaps annually, described in the 'New JNCHES: Higher education gender pay gap data' report (published in September 2016). This includes benchmarks which use the Higher Education Statistics Agency's (HESA) staff records and the Office for National Statistics' (ONS) Annual Survey of Hours and Earnings:

<http://www.ucea.ac.uk/en/publications/index.cfm/hegenderpaygap>

There is a danger that organisations that do not fully understand equality and diversity will put in measures which could be discriminatory. For example, Brainlabs has given a flat 8.6% pay rise to all female employees to close the gender pay gap but this could have unintentionally created equal pay for equal work issues if investigated:

<http://www.breitbart.com/tech/2016/05/31/british-tech-firm-gives-women-8-6-percent-pay-rise-eradicate-pay-gap/>

As part of communications for the new reporting requirements, the Government could play a role in educating the public and media not to conflate the gender pay gap with unequal pay.