

UCEA's response

What, if any, modifications should be made to these draft regulations? To inform our consideration of any proposed modification(s), please explain your response and provide supporting evidence where appropriate.

Regulation 1 – employee

1. The definition of a **‘relevant employee... whose contract of employment is governed by UK legislation’** needs to be clarified. A FAQ or guidance with further examples which accompanies the draft regulations would be helpful:
 - a. We assume the term ‘employee’ has been chosen specifically to exclude ‘workers’ but this needs clarifying. For example are atypical and casual staff excluded from the definition of a relevant employee? In the higher education sector, atypical staff are members of staff whose contracts are those with working arrangements that are not permanent, involve complex employment relationships and/or involve work away from the supervision of the normal work provider. Examples include student ambassadors, guest lecturers, and external examiners. Payment for this group is not necessarily through a centralised payroll.
 - b. It may be worth stating explicitly that contractors and self-employed individuals are on contract for service and are therefore excluded from the definition of ‘relevant employee’, e.g. in the guidance.
 - c. How should employees with multiple contracts of employment with the same employer be counted? For example would an employee with two part-time employment contracts be counted as one employee or two employees for the purpose of gender pay gap reporting?

Regulation 2 – pay and bonus pay

1. Consider extending the list of examples of what is included or excluded from the definition of ‘pay’ and ‘other pay’. A FAQ or guidance with further examples which accompanies the draft regulations would be helpful:
 - a. Paternity pay and shared parental pay should also be included because maternity pay is within the definition.
 - b. Responsibility allowances and market supplements. Our reading is that these payments fall within the definition of ‘other pay’ but there is confusion among our members as to whether this is indeed the case. A responsibility allowance is an allowance received on top of basic pay for individuals who undertake additional duties, for example, leadership and management responsibilities. A market supplement is a one-off or time-limited payment on top of basic pay to bring the individual’s basic pay to market rate, to address a recruitment or

retention issue for the role.

- c. It seems inconsistent that car allowance is included within the definition of pay but company car is considered benefit in kind.
2. The definition of what is included and excluded from **bonus pay** needs to be clarified. Is bonus pay limited to one-off payments? For example if an individual is awarded a performance-related or contribution-related pay increase which is consolidated into basic pay would this increase be considered bonus pay or basic pay? A FAQ or guidance with further examples would be helpful.

Regulation 4 – mean pay between male and female employees

1. Unpaid leave – Would the weekly basic paid hours for the relevant employee be lower if they took a few days of unpaid leave during the pay period? For example, if an employee is contracted to work a 35-hour week but took one day of unpaid leave during the pay period, would their weekly paid hours reduce to 28 hours for the purpose of calculating their hourly rate of pay? Clarification in the draft regulations or examples in a separate guidance or FAQ would be helpful.

General comments

On the whole the changes are welcomed by our member higher education employers, some of whom receive public funding and some are private institutions.

However a number of our members 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.