

Good Work Plan: Proposals to support families

Government consultation on:

- neo-natal leave and pay; and
- measures to improve transparency around family related and flexible working policies.

UCEA Consultation Response

UCEA

This is the response from the Universities and Colleges Employers Association (UCEA) to the government consultation – “Proposals for new employment rights to neonatal leave and pay”. The response is based on views provided by 36 of our member higher education (HE) employers.

UCEA represents the views of higher education institutions (HEIs) across the UK in their capacity as employers. UCEA is a membership body funded by subscriptions from 163 HEIs in the UK, in addition to eight sector associate members. Our purpose is to support our member HE employers in delivering excellent and world-leading higher education and research by representing their interests as employers and facilitating their work in delivering effective employment and workforce strategies.

HEIs are independent employers and determine their own employment policies, often in consultation with recognised trade unions; therefore, there are a variety of HR practices in place in the sector. HEIs tend to pay occupational maternity and paternity pay at a higher rate than statutory pay.

Consultation – neo-natal leave and pay

Section 1: Eligibility for neonatal leave and pay – mothers, fathers and partners.

The Government has concluded that neonatal leave should be restricted to those who would have had the main responsibility for caring for the baby, had it not been admitted to neonatal care. Those who would be potentially eligible are:

- *The mother and father of the baby or babies*
- *The mother’s spouse, civil partner or partner who will be living with the mother and baby that is in neonatal care in an enduring family relationship*
- *The intended parents in a surrogacy arrangement (where they are eligible for and intend to will apply for a Parental Order)*
- *The intended parents in cases of adoption where the intention was that the baby would be placed with the individuals they have been matched with at or shortly after birth.*

Question 1: Do you agree with the principle that entitlement to neonatal leave and pay should be restricted to those who will have the main responsibility for caring for the child i.e. those listed above?

HEIs strongly agreed with this principle, noting that it should not be restricted to just one primary carer.

Ensuring the new entitlement is aimed at those parents who are most in need.

Question 2: Do you agree that parents of babies who need to spend time in neonatal care should have access to additional pay and leave?

HEIs agreed with this proposal, while requesting clarity over how neonatal leave would fit with shared parental leave. HEIs agreed that, in principle, parents should have additional paid time off with their child to compensate for the time spent in neonatal care.

Question 3: Do you agree that access to neonatal leave and pay should be restricted to parents whose children have spent a minimum of two weeks in neonatal care, i.e. are seriously ill or likely to be in hospital for an extended period of time?

HEIs agreed with this proposal, although there were some reservations as to whether time spent in neonatal care is a reliable metric. The fact that an infant has spent a minimum of two weeks in neonatal care is not necessarily indicative of specific needs. HEIs recognise that the majority of babies spend less than two weeks in neonatal care, meaning a two-week minimum threshold would only benefit a minority of parents.

Question 4: If you agree that access to neonatal leave and pay should be restricted to parents whose babies are most seriously ill, after what length of time in neonatal care should the entitlement to neonatal leave and pay come into effect?

On balance, HEIs felt that two weeks was an appropriate length of time.

Please provide your reasons.

Some of our members commented on the need to ensure that neonatal leave and pay provisions are consistent with compulsory maternity leave and paternity leave. Our members also commented that parents should not have to spend all their time off in hospital.

Other circumstances

The government's internal review of the current regime identified that it's not working for parents of babies who are admitted to neonatal care for a prolonged, continuous period immediately after birth. The government recognises however that there may be other circumstances where parents face significant barriers to returning to and remaining in work once they've exhausted their statutory leave and pay entitlements.

Question 5: Are there any other circumstances that you think should be included in the scope of neonatal leave and pay? What are they? Please provide a reason for your answer.

Our members who commented put forward a range of ideas, the most common themes being as follows:

- Premature babies are at higher risk of health issues and parents of premature babies may need greater flexibility surrounding flexible working and making flexible working requests.
- Consideration needs to be given to circumstances where a baby is admitted to hospital during the year after birth.
- Our members acknowledge that medical rehabilitation appointments can be extensive for children with increased needs.

Question 6: Do you agree that neonatal leave should be a 'day one right' in line with Maternity Leave, Adoption Leave and Parental Bereavement Leave?

HEIs strongly agree that the leave should be a day one right. Some commented that the imposition of a qualifying period would be unhelpful to parents whose circumstances are beyond their control. Above all, our members have for called for consistency with other statutory leave provisions.

Question 7: Do you agree that the qualifying period of services for Statutory Neonatal Pay should mirror the qualifying period for Statutory Paternity and Shared Parental Pay?

HEIs agreed with this proposal in the interests of creating consistency.

Section 2: Neonatal Leave and Neonatal Pay – length of entitlement and pay

Question 8: Do you agree that entitlement to Neonatal Leave should be capped?

HEIs agreed with this proposal.

Please provide reasons for your answer.

The most common reason cited by our members was that a cap should help to establish clarity. Our members commented that a cap would help employers to maintain operational stability and enable reasonable workforce planning.

Question 8a: If you agree that the number of weeks of Neonatal Leave that are available should be capped what is the optimal maximum number of weeks that it should be available?

Overall, HEIs felt that 12 weeks was appropriate. However, there was some support for a lower number of weeks.

Please provide reasons for your answer.

Our members who commented were supportive of setting the cap to the number of weeks of statutory leave in neonatal care. Members noted the statistics produced by the charity Bliss, commenting that 12 weeks reasonably encompasses the maximum time a baby is likely to spend in neonatal care.

Question 9: Do you agree that the maximum number of weeks of Neonatal Leave should be the same as the maximum number of weeks of Neonatal Pay in order to ensure that parents receive pay throughout the leave period?

HEIs mostly agreed with this principle.

Please provide reasons for your answer.

Our members acknowledged that neonatal leave will be a difficult time for parents, when they may be unable to work. It is felt that the aim should be to lessen the emotional and financial burden as much as possible, as many families cannot afford to take unpaid leave. Our members supported the Government's proposal that employers would be reimbursed for statutory neonatal pay, as they are for statutory maternity pay.

Question 9a: If you disagree with question 9 do you agree that the number of weeks of Statutory Neonatal Pay that is available to parents should be capped?

N/A

Question 10: If you agree that the number of weeks of Statutory Neonatal Pay that is available should be capped what is the optimal maximum number of weeks of Pay?

Overall, HEIs felt that 12 weeks was the most appropriate proposal.

Please provide reasons for your answer.

This reflects the 12 weeks leave supported in our response to question 8a above.

When Neonatal Leave and Neonatal Pay can be taken

Question 11: Do you agree that Neonatal Leave and Neonatal Pay should be taken in a continuous period at the end of existing entitlements to family related leave e.g. Maternity or Paternity Leave?

HEIs agreed with this approach.

Please provide reasons for your answer.

HEIs felt that one continuous period of leave would help to employers better implement and plan cover. Our members would support a restitutionary approach, compensating families for time spent in neonatal care during maternity/paternity leave. However, our members have highlighted the need for clarification of how neonatal leave and pay would sit with other types of statutory leave, such as shared parental leave.

Section 3: Notice and Evidence requirements

Question 12: Do you agree that a father/partner should be required to give notice in advance of the end of their other statutory leave entitlement to Paternity Leave in order to take their Neonatal Leave?

HEIs agreed with this proposal.

Please provide reasons for your answer.

Having advance notice will help employers to implement neonatal leave and plan or extend cover. Members commented that most other types of leave require a notice period. However, it is also recognised that there is limited opportunity to provide notice during a two-week paternity leave period.

Question 13: Do you agree that a mother should be required to give notice in advance of the end of her other statutory leave entitlement to Maternity Leave in order to take Neonatal Leave?

Overall, HEIs agreed with this proposal.

Please provide reasons for your answer.

Notice would be beneficial, making it easier for employers to implement the leave and plan cover. Members pointed out that this approach is consistent with mothers being required to provide notice of changes to their maternity leave dates.

Question 14: What would be a reasonable notice period for Neonatal Leave:

A. For fathers/partners taking Neonatal Leave at the end of Paternity Leave?

There were differing views on the most appropriate period of notice, but there was most support for a one-week notice period.

B. For mothers taking Neonatal Leave at the end of Maternity Leave?

The majority of HEIs that responded felt that at a notice period of at least 4-8 weeks was appropriate. However, there was some support for a longer notice period.

Please provide reasons for your answers.

It is recognised that those qualifying for maternity leave will have more opportunity to provide notice than those who are taking statutory paternity leave. Our members have highlighted the importance of keeping channels of communication open. This is to ensure that the employer is kept updated on the situation for operational reasons.

Question 15: What level of communication could be expected between a father/partners wishing to take Neonatal Leave at the end of Paternity Leave on a week-to-week basis whilst their baby is in hospital and their employer?

While most of our members favoured a light touch approach, there was also some keen support for weekly communication.

Please provide reasons for your answers.

Some of our members commented that organisations need to be able to plan. It is felt that the aim should be to maintain regular contact without being too rigid.

Section 4: Evidence of entitlement to Neonatal Leave and Pay

Question 16: Do you agree that employers should be allowed to ask for evidence of entitlement to Neonatal Leave and Pay:

A. From fathers and partners taking Neonatal Leave and pay at the end of Paternity Leave?

HEIs felt that employers should be able to ask for evidence.

B. From mothers taking Neonatal Leave and Pay

HEIs felt that employers should be able to ask for evidence.

Please provide reasons for your answers.

HEIs felt that evidence is needed for governance reasons and to provide an audit trail.

C. If you agree/strongly agree, what evidence would it be reasonable for an employer to request?

Of our members who commented, the majority were in favour of some form of documentary evidence such as a modified medical certificate issued on admission and discharge, similar to a MATB1 form issued during pregnancy.

Section 5: The right to return

Question 17: Do you agree that parents on Neonatal Leave should have the same protections as employees on parental leave in respect of older children?

HEIs agreed with this proposal.

Please provide reasons for your answer.

HEIs feel that both situations should be treated equally. It is felt that this is the most equitable approach, which avoids inconsistency and confusion between the rights accorded to different types of leave, as well as avoiding potential discrimination claims.

Question 18: Do you agree that parents on Neonatal Leave should have the same right to return to work as employees on parental leave in respect of older children?

HEIs agreed with this proposal.

Please provide reasons for your answers.

Of our members who commented, the main consensus is that it is equitable to treat the situations equally. Some commented that to do otherwise could lead to inconsistency and potentially to discrimination.

Consultation – measures to improve transparency around family related and flexible working policies

Section 1: Publishing family related leave and pay and flexible working policies

Question 1: Do you agree that large employers (250+ employees) should publish their family-related leave and pay policies and flexible working policies on their websites?

HEIs agreed with this proposal.

Please provide reasons for your answer.

HEIs are largely supportive of increasing transparency surrounding flexible working and feel that this could help to attract a wider pool of job applicants but felt that the Government should not prescribe exactly how employers should publish their policies. Many HEIs have already adopted the practice of publishing flexible working policies on their websites.

Question 2: Do you agree that transparency of these policies will help employers to recruit and retain staff?

On balance, HEIs agreed with this principle.

Please provide reasons for your answer.

Employers in the HE sector are supportive of increasing transparency surrounding flexible working. It is largely felt that this will help to improve recruitment and retention across most sectors. However, HEIs have highlighted that the existence of a dedicated written policy is unlikely to influence the outcome of flexible working requests.

Question 3: Do you agree that, where an employer's family related leave and policies exceed the statutory minima, reworking and publishing the internal policy document and publishing on a public-facing website would not be a significant or expensive task?

HEIs agreed with this proposal in principle, albeit acknowledging that this will depend on the size and type of organisation.

Please provide reasons for your answer.

HEIs feel that the suggested approach would be simple and economic to implement in theory and could have beneficial outcomes. Our members have already moved towards publishing flexible working policies on their websites.

Question 4: Do you agree that, the same as for family related leave and pay, reworking and publishing a flexible working policy on a public-facing website would be simple and inexpensive?

Overall, HEIs agreed with this.

Please provide reasons for your answer.

Many HEIs already publish their policies online. Our members commented that the size and type of organisation are relevant factors when considering available resources and complexity. What may be a simple and inexpensive exercise for a large/medium sized enterprise, could be a considerable challenge for a small business.

Question 5: Would the information below be helpful if it was held (and viewable) on a central database, e.g. the Gender Pay Gap Reporting Portal?

- **Whether flexible working is available from the start of employment**
- **Approach to place, hours and times of work**
- **Approach to informal flexible working (such as later starts to accommodate health and other appointments)**
- **Enhancements to different types of family-related leave**

On balance, our members support disclosing opportunities for flexible working from the outset of the recruitment process. HEIs feel it would be quite helpful if this were to include information relating to the specific place, hours and patterns of work. There is relative support among HEIs for setting out details of an employer's organisational approach to informal flexible working. On balance, HEIs are in favour of including information relating to enhanced family leave.

Question 6: To what extent do you believe that a job applicant's decision on whether to apply for a job depends on the publication of the information mentioned above?

From an HEI perspective, the publication of such information will somewhat influence a job applicant's decision.

Please provide reasons for your answer.

Our members commented that applicants would be more likely refer to the employer's website than a central database. Having said that, HEIs feel that any information provided at the outset of the recruitment process will be helpful for the applicant. Our members pointed out that the answer to this question will depend on the specific needs of the candidate and demands of the role.

Section 2: A requirement to attach a report or a voluntary approach?

Question 7: How effective do you believe a voluntary approach to encourage greater transparency about an employer's approach to flexible working and family related leave and pay might be in providing information about employers' policies?

There are mixed views from within the HE sector on this question. Whilst a majority of HEIs feel that a voluntary approach would be fairly effective in relation to improving recruitment and retention, several disagreed and felt that a voluntary approach would not be effective.

Please provide reasons for your answer.

Some of our members have highlighted the potential downside to a voluntary approach where only employers with attractive arrangements will have an incentive to participate. However,

the introduction of a requirement to publish could lead employers to publish meaningless information.

Question 8: How effective do you believe that creating a facility on the Gender Pay Gap (GPG) Reporting Portal to record information about employers' policies on flexible working and family related leave and pay would be?

- **To provide a central point of information for employees or prospective employees**

While HEIs believe that the proposed approach could be fairly effective, our members are divided in their responses to this question. There are reservations concerning the administrative burden this would place on employers.

- **To enable employers to record the information as part of the annual cycle of GPG reporting**

On balance, HEIs believe that the proposed approach could be fairly effective, but several felt that it would not be very effective.

Please provide reasons for your answers.

HEIs support this approach to some extent and are hopeful that it could lead to greater consistency, clarity and good working practice. However, our members do have reservations and have highlighted the risk of duplicating information. Also, applicants are more likely to approach organisations directly, rather than referring to a central portal.

Question 9: How effective do you believe it might be to encourage employers to set out how they are using greater transparency about their employment policies as part of their gender pay gap action plans?

The sector feels that this approach would be fairly effective.

Please provide reasons for your answer.

HEIs offered a range of ideas in response to this proposal. Our members feel that this approach could offer opportunities to demonstrate positive organisational culture and inform strategic business planning. While the sector is open to exploring this proposal, HEIs are keen to ensure that this approach does not detract from efforts to take action to address the underlying issues.

Question 10: Do you agree that it would make sense to enforce a reporting requirement of this kind in the same way as gender pay gap (GPG) reporting i.e. a requirement to provide this information as part of the GPG reporting process?

On balance, HEIs are not supportive of this proposal.

Please provide reasons for your answer.

Our members feel that the proposal would present too onerous a task for employers and are concerned that this could result in an unhelpful tick box exercise. Should the proposal become mandatory, HEIs take the view that such requirement should be combined with GPG reporting, as it is hoped that this would reduce the administrative burden on employers.

Question 11: Considering the balance between what it is practical to provide in a job advert and what is useful to a candidate, which of the following is the best option? (please select one).

HEIs preferred a simple statement and link to the main policy. The option of a simple statement alone was also popular.

Please provide reasons for your answer

Our members have emphasised a desire for simplicity and are not supportive of a mandatory approach to this proposal.

Question 12: If a requirement was introduced to state in job adverts whether flexible working was available or not:

- **Who might the enforcement power sit with? Please describe.**

The sector did not feel best placed to respond to this question. Our members who did provide views on this suggested that enforcement should reside with the Equality and Human Rights Commission or Government Equalities Office.

- **What should be the process for reporting a breach? Please describe.**

Our members did not feel best placed to respond. However, some ideas put forward were the Equality and Human Rights Commission and the Equality Advisory and Support Service.

- **What should be the penalty for a breach? Please describe.**

Our members did not feel best placed to respond. Some HEIs have suggested a strike system, which would include a series of pre-penalty warnings. If this proposal goes ahead, HEIs would support the inclusion of an implementation period to embed the new approach.

Question 13: If a requirement to provide a link to your flexible working policy on the GPG reporting portal was introduced would it be helpful also to ask employers to record whether they had advertised jobs as open to flexible working?

HEIs do not have a strong view on this proposal, with the majority neither agreeing nor disagreeing.

Please provide reasons for your answer.

Some of our members commented that the suggested approach is unlikely to add value. Members raised the question as to whether an employer could “tick this box”, if they had only advertised one flexible role amongst hundreds of other non-flexible roles. This would arguably render the information meaningless. HEIs have called for greater clarification regarding this proposal.