

Draft Regulations laid before Parliament under section 208 of the Equality Act 2010, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2017 No. 0000

EQUALITY

**The Equality Act 2010 (Gender Pay
Gap Information) Regulations 2017**

Made - - - - 2017
Coming into force - - 6th April 2017

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 78 and 207(1) and (4) of the Equality Act 2010⁽¹⁾.

In accordance with section 208(4), (5)(b) and (8) of the Equality Act 2010⁽²⁾, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 and come into force on 6th April 2017.

(2) In these Regulations—

“bonus pay” has the meaning given in regulation 4;

“full-pay relevant employee” means a relevant employee who is not, during the relevant pay period, being paid at a reduced rate or nil as a result of the employee being on leave;

“hourly rate of pay” has the meaning given in regulation 6;

“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003⁽³⁾;

“leave” includes—

(a) annual leave;

(b) maternity, paternity, adoption, parental or shared parental leave;

(c) sick leave; and

(d) special leave;

“ordinary pay” has the meaning given in regulation 3;

(1) 2010 c. 15.

(2) There are amendments to section 208, not relevant here.

(3) 2003 c. 1.

“pay period” has the meaning given in regulation 5(1);

“piecework” means work in respect of which an employee is entitled to be paid by reference to a number of pieces made or processed, or a number of tasks performed, instead of by reference to a period of time worked;

“relevant employee” means (subject to paragraph (4)) a person who is employed by the relevant employer on the snapshot date;

“relevant employer” means (subject to paragraph (6)) an employer who has 250 or more employees on the snapshot date;

“relevant pay period” has the meaning given in regulation 5(2);

“snapshot date” means the 5th April in the year to which the information required by regulation 2 relates.

(3) For the purposes of these Regulations, the amount of an employee’s ordinary pay or bonus pay is to be calculated before deductions made at source (for example deductions in relation to income tax).

(4) In paragraph (2), a “relevant employee” does not include a partner in a firm.

(5) For the purposes of paragraph (4)—

(a) “firm” has the same meaning as in the Income Tax (Trading and Other Income) Act 2005(4), and

(b) “partner” includes a member of a limited liability partnership to which section 863(1) of the Income Tax (Trading and Other Income) Act 2005 applies.

(6) In paragraph (2), a “relevant employer” does not include—

(a) a person specified in Schedule 19 to the Equality Act 2010; or

(b) a government department or part of the armed forces not specified in that Schedule.

Duty to publish annual information relating to pay

2.—(1) A relevant employer must publish, for 2017 and each subsequent year, the following information—

(a) the difference between the mean hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees (see regulation 8);

(b) the difference between the median hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees (see regulation 9);

(c) the difference between the mean bonus pay paid to male relevant employees and that paid to female relevant employees (see regulation 10);

(d) the difference between the median bonus pay paid to male relevant employees and that paid to female relevant employees (see regulation 11);

(e) the proportions of male and female relevant employees who were paid bonus pay (see regulation 12); and

(f) the proportions of male and female full-pay relevant employees in the lower, lower middle, upper middle and upper quartile pay bands (see regulation 13).

(2) The relevant employer must publish the information required by paragraph (1) within the period of 12 months beginning with the snapshot date.

(3) In compiling the information required by paragraph (1), the relevant employer is not required to include data relating to a relevant employee if—

(4) 2005 c. 5. The definition of “firm” is in sections 847(1) and 863.

- (a) the employee is employed under a contract personally to do work, and
- (b) the employer does not have, and it is not reasonably practicable for the employer to obtain, the data.

Meaning of “ordinary pay”

- 3.—(1) In these Regulations, “ordinary pay” means (subject to paragraph (2))—
- (a) basic pay;
 - (b) allowances;
 - (c) pay for piecework;
 - (d) pay for leave;
 - (e) shift premium pay.
- (2) “Ordinary pay” does not include—
- (a) remuneration referable to overtime,
 - (b) remuneration referable to redundancy or termination of employment,
 - (c) remuneration in lieu of leave, or
 - (d) remuneration provided otherwise than in money.
- (3) In paragraph (1)—
- (a) “allowances” includes any sum paid with respect to—
 - (i) any duty of the employee, such as a duty in connection with the role of fire or bomb warden, that is ancillary to the main duties of the employee’s employment;
 - (ii) the location of the employment in a particular area;
 - (iii) the purchase, lease or maintenance of a vehicle;
 - (iv) the recruitment and retention of an employee; and
 - (v) the purchase, lease or maintenance of an item;but excludes any payment to reimburse expenditure wholly and necessarily incurred by the employee in the course of his or her employment.
 - (b) “shift premium pay” means the difference between basic pay and any higher rate paid by the employer for work during different times of the day or night.

Meaning of “bonus pay”

- 4.—(1) In these Regulations, “bonus pay” means (subject to paragraph (2)) any remuneration that—
- (a) is in the form of money, vouchers, securities, securities options, or interests in securities,
 - (b) relates to profit sharing, productivity, performance, incentive or commission.
- (2) “Bonus pay” does not include—
- (a) ordinary pay,
 - (b) remuneration referable to overtime, or
 - (c) remuneration referable to redundancy or termination of employment.
- (3) For the purpose of paragraph (1), remuneration in the form of securities, securities options and interests in securities is to be treated as paid to the employee at the time, and in the amounts in respect of which, the securities, securities options and interests in securities give rise to (or would

give rise to, if the employee were an employee for the purposes of Part 2 of ITEPA 2003 (employment income))—

- (a) any taxable earnings within the meaning of section 10(2) of ITEPA 2003⁽⁵⁾; or
- (b) any taxable specific income within the meaning of section 10(3) of ITEPA 2003⁽⁶⁾.

(4) In this regulation, “securities”, “securities options” and “interests in securities” have the same meaning as in section 420 of ITEPA 2003⁽⁷⁾.

Meaning of the “pay period” and the “relevant pay period”

5.—(1) In these Regulations, the “pay period”, in relation to a relevant employee, means—

- (a) the period in respect of which the relevant employer pays the employee basic pay, whether weekly, fortnightly, monthly or any other period, or
- (b) if the relevant employer does not pay the employee basic pay, the period in respect of which the employer most frequently pays the employee one of the elements of ordinary pay mentioned in regulation 3(1)(b) to (e).

(2) In these Regulations, the “relevant pay period” means the pay period within which the snapshot date falls.

Meaning of “hourly rate of pay”

6.—(1) The “hourly rate of pay”, in relation to a relevant employee, is to be determined as follows—

Step 1

Identify all amounts of ordinary pay and bonus pay paid to the employee during the relevant pay period.

Step 2

Where an amount identified under Step 1 is an amount of ordinary pay, exclude any amount that would normally fall to be paid in a different pay period.

Step 3

Where an amount identified under Step 1 is an amount of bonus pay, and is paid in respect of a period (“the bonus period”) which is not the same length as the relevant pay period, divide the amount by the length of the bonus period (in days) and multiply it by the length of the relevant pay period (in days).

Step 4

Add together the amounts identified under Step 1 (as adjusted, where necessary, under Steps 2 and 3).

Step 5

Multiply the amount found under Step 4 by the appropriate multiplier (see paragraphs (2) and (3)).

Step 6

Divide the amount found under Step 5 by the number of working hours in a week for that employee (see regulation 7).

(5) Section 10(2) was amended by paragraph 4(2) of Schedule 7 to the Finance Act 2008 (c. 9).

(6) Section 10(3) was amended by paragraph 6(2) of Schedule 2 to the Finance Act 2011 (c. 11).

(7) 2003 c. 1. Section 420 was substituted by paragraph 2(1) of Schedule 22 to the Finance Act 2003 (c. 14).

(2) In this regulation, “the appropriate multiplier” means 7 divided by the number of days in the relevant pay period.

(3) In determining for the purposes of this regulation the number of days in the relevant pay period or bonus period where those periods are (or are determined by reference to) a month or a year—

- (a) a month is treated as having 30.44 days;
- (b) a year is treated as having 365.25 days.

Employee’s working hours in a week

7.—(1) The number of working hours in a week for a relevant employee, for the purposes of Step 6 in regulation 6, is to be determined as follows.

(2) Subject to paragraph (6), where an employee has normal working hours that do not differ from week to week or over a longer period, the number of working hours in a week for a relevant employee is the number of the normal working hours in a week for that employee under the employee’s contract of employment, or terms of employment, in force on the snapshot date.

(3) Subject to paragraph (6), where the employee has no normal working hours, or the number of the normal working hours differs from week to week or over a longer period, the number of working hours in a week for the employee is—

- (a) the average number of working hours calculated by dividing by twelve the total number of the employee’s working hours during the period of twelve weeks ending with the last complete week of the relevant pay period, or
- (b) where the employee has not been at work for a sufficient period, or for some other reason the employer is not reasonably able to make the calculation under paragraph (a), a number which fairly represents the number of working hours in a week having regard to such of the considerations specified in paragraph (5) as are appropriate in the circumstances.

(4) In calculating the average number of working hours for the purposes of paragraph (3)(a), no account is to be taken of a week in which no hours were worked by the employee, and hours worked in earlier weeks must be brought in so as to bring up to twelve the number of weeks of which account is taken.

(5) The considerations referred to in paragraph (3)(b) are—

- (a) the average number of working hours in a week which the employee could expect under the employee’s contract of employment, or terms of employment; and
- (b) the average number of working hours of other employees engaged in comparable employment with the same employer.

(6) Where the employee is paid on the basis of piecework, the number of working hours in a week for the employee is the number of hours of output work for that employee in the week during the relevant pay period within which the snapshot date falls, determined in accordance with Chapter 4 of Part 5 of the National Minimum Wage Regulations 2015(8).

(7) In its application by virtue of paragraph (6), Chapter 4 of Part 5 of the National Minimum Wage Regulations 2015 has effect as if—

- (a) references to a worker were references to an employee, and
- (b) references to a pay reference period were references to a week.

(8) In this regulation, “working hours”—

- (a) includes hours when an employee is available, and required to be available, at or near a place of work for the purposes of working unless the employee is at home, and

(b) excludes any hours for which an employee is entitled to overtime pay.

(9) In paragraph (8), hours when a worker is “available” only includes hours when the worker is awake for the purposes of working, even if a worker by arrangement sleeps at or near a place of work and the employer provides suitable facilities for sleeping.

Difference in mean hourly rate of pay

8. The difference between the mean hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees must be expressed as a percentage of the mean hourly rate of pay of male full pay relevant employees and is to be determined as follows—

$$\frac{(A - B)}{A} \times 100$$

where—

A is the mean hourly rate of pay of all male full-pay relevant employees; and

B is the mean hourly rate of pay of all female full-pay relevant employees.

Difference in median hourly rate of pay

9. The difference between the median hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees must be expressed as a percentage of the median pay of male full-pay relevant employees and is to be determined as follows—

$$\frac{(A - B)}{A} \times 100$$

where—

A is the median hourly rate of pay of all male full-pay relevant employees; and

B is the median hourly rate of pay of all female full-pay relevant employees.

Difference in mean bonus pay

10.—(1) The difference between the mean bonus pay paid to male relevant employees and that paid to female relevant employees must be expressed as a percentage of the mean bonus pay paid to male relevant employees and is to be determined as follows—

$$\frac{(A - B)}{A} \times 100$$

where—

A is the mean bonus pay paid during the relevant period to male relevant employees who were paid bonus pay during that period; and

B is the mean bonus pay paid during the relevant period to female relevant employees who were paid bonus pay during that period.

(2) In this regulation “the relevant period” means the period of 12 months ending with the snapshot date.

Difference in median bonus pay

11.—(1) The difference between the median bonus pay paid to male relevant employees and that paid to female relevant employees must be expressed as a percentage of the median bonus pay paid to male relevant employees and is to be determined as follows—

$$\frac{(A - B)}{A} \times 100$$

where—

A is the median bonus pay paid during the relevant period to male relevant employees who were paid bonus pay during that period; and

B is the median bonus pay paid during the relevant period to female relevant employees who were paid bonus pay during that period.

(2) In this regulation “the relevant period” means the period of 12 months ending with the snapshot date.

Proportion of male and female employees who received bonus pay

12.—(1) The proportion of male relevant employees who were paid bonus pay must be expressed as a percentage of male relevant employees and is to be determined as follows—

$$\frac{A}{B} \times 100$$

where—

A is the number of male relevant employees who were paid bonus pay during the relevant period; and

B is the number of male relevant employees.

(2) The proportion of female relevant employees who were paid bonus pay must be expressed as a percentage of female relevant employees and is to be determined as follows—

$$\frac{A}{B} \times 100$$

where—

A is the number of female relevant employees who were paid bonus pay during the relevant period; and

B is the number of female relevant employees.

(3) In this regulation “the relevant period” means the period of 12 months ending with the snapshot date.

Proportion of male and female employees according to quartile pay bands

13.—(1) The proportions of male and female full-pay relevant employees in the lower, lower middle, upper middle and upper quartile pay bands is to be determined as follows.

Step 1

Determine the hourly rate of pay for each male and female full-pay relevant employee and then rank those employees in order from lowest paid to highest paid.

Step 2

Divide the employees, as ranked under Step 1, into four sections, each comprising (so far as possible) an equal number of employees, to determine the lower, lower middle, upper middle and upper quartile pay bands.

Step 3

The proportion of male full-pay relevant employees within each quartile pay band must be expressed as a percentage of the full-pay relevant employees within that band as follows—

$$\frac{A}{B} \times 100$$

where—

- A is the number of male full-pay relevant employees in a quartile pay band; and
- B is the number of full-pay relevant employees in that quartile pay band.

Step 4

The proportion of female full-pay relevant employees within each quartile pay band must be expressed as a percentage of the full-pay relevant employees within that band as follows—

$$\frac{A}{B} \times 100$$

where—

- A is the number of female full-pay relevant employees in a quartile pay band; and
- B is the number of full-pay relevant employees in that quartile pay band.

(2) Where employees receiving the same hourly rate of pay fall within more than one quartile pay band, the employer must (so far as possible) ensure that, when ranking the employees under Step 1, the relative proportion of male and female employees receiving that rate of pay is the same in each of those pay bands.

Information to be accompanied by signed statement

14.—(1) The information published under regulation 2 must be accompanied by a written statement which—

- (a) confirms that the information is accurate; and
 - (b) is signed in accordance with paragraph (2).
- (2) Where the relevant employer is—
- (a) a body corporate other than a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2000⁽⁹⁾, the written statement must be signed by a director (or equivalent);
 - (b) a limited liability partnership, the written statement must be signed by a designated member (see section 8 of that Act⁽¹⁰⁾);
 - (c) the partners in a limited partnership registered under the Limited Partnerships Act 1907⁽¹¹⁾, the written statement must be signed by a general partner (see section 3 of that Act);
 - (d) the partners in any other kind of partnership, the written statement must be signed by a partner;
 - (e) the members or officers of an unincorporated body of persons other than a partnership, the written statement must be signed by a member of the governing body or a senior officer;
 - (f) any other type of body, the written statement must be signed by the most senior employee.
- (3) In this regulation, “partnership” means—

⁽⁹⁾ 2000 c. 12.

⁽¹⁰⁾ There are amendments to section 8, not relevant here.

⁽¹¹⁾ 1907 c. 24.

- (a) a partnership within the Partnership Act 1890(12);
- (b) a limited partnership registered under the Limited Partnerships Act 1907; or
- (c) a firm, or an entity of a similar character, formed under the law of a country outside the United Kingdom.

Form and manner of publication

15.—(1) The requirement in regulation 2 to publish information, and the requirement in regulation 14 for the information to be accompanied by a written statement, are requirements that that information and statement be published on the employer’s website—

- (a) in a manner that is accessible to all its employees and to the public; and
- (b) for a period of at least three years beginning with the date of publication.

(2) A relevant employer must also publish on a website designated for that purpose by the Secretary of State—

- (a) the information required by regulation 2, and
- (b) the name and job title of the person who signed the statement required by regulation 14.

Review

16.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusion of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Date

Name
Secretary of State for Education and Minister for
Women and Equalities
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose obligations on employers with 250 or more employees to publish information relating to the gender pay gap in their organisation. In particular, employers are required to publish the difference between the average hourly rate of pay paid to male and female employees; the difference between the average bonus paid to male and female employees; the proportions of male and of female employees who receive bonuses; and the relative proportions of male and female employees in each quartile pay band of the workforce.

For the purposes of these Regulations, ‘employment’ is defined in section 83 of the Equality Act 2010, and includes employment under a contract of employment, a contract of apprenticeship or a contract personally to do work.

Regulation 1 defines key terms used in the Regulations and makes clear that an employee’s ordinary pay or bonus pay is to be calculated before deductions made at source, such as deductions in relation to income tax.

Regulation 2 imposes a duty on relevant employers (those with 250 or more employees on the 5th April of a given year) to publish specified information relating to the difference in pay between male and female employees. Further detail about how the information is to be expressed is found in regulations 8 to 13. The information must be published within the period of 12 months beginning with the ‘snapshot date’ of 5th April each year.

Regulations 3 to 5 define ‘ordinary pay’, ‘bonus pay’, ‘pay period’ and the ‘relevant pay period’.

Regulation 6 determines how to calculate an employee’s hourly rate of pay, and regulation 7 sets out how to determine the number of working hours in a week.

Regulation 8 sets out the way in which a relevant employer must calculate the difference between the mean average hourly rate of pay of male full-pay relevant employees, and that of female full-pay relevant employees. Those employees being paid at a reduced rate or nil as a result of being on leave are excluded from the calculation (see the definition of ‘full-pay relevant employee’ in regulation 1). Regulation 9 makes the same provision in relation to the median average hourly rate of pay.

Regulation 10 sets out the way in which a relevant employer must calculate the difference between the mean average bonus pay of male employees, and that of female employees. Regulation 11 makes the same provision in relation to median average bonus pay.

Regulation 12(1) sets out the way in which employers must determine the proportion of male employees who were paid bonus pay during the period of 12 months ending with the snapshot date of 5th April, and regulation 12(2) makes the same provision for female employees.

Regulation 13 sets out the way in which employers must determine the proportions of male and female full-pay employees in each of the lower, lower middle, upper middle and upper quartile pay bands.

Regulation 14 requires the employer to make and sign a written statement to confirm that the information published in accordance with regulation 2 is accurate.

Regulation 15 explains that the information required by regulation 2 must be published on the employer’s own website for at least 3 years from the date of publication, and must also be published on a website designated by the Secretary of State.

Failure to comply with an obligation imposed by these Regulations constitutes an ‘unlawful act’ within the meaning of section 34 of the Equality Act 2006 (c. 3), which empowers the Equality and Human Rights Commission to take enforcement action.

Regulation 16 provides for a review of these Regulations by the Secretary of State as required by the Small Business, Enterprise and Employment Act 2015 (c. 26).

A full impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available from <https://www.gov.uk/government/consultation/closing-the-gender-pay-gap> and is published with an Explanatory Memorandum alongside the instrument on www.legislation.gov.uk. A hard copy of the full impact assessment can be obtained from the Government Equalities Office, Sanctuary Buildings, 20 Great Smith Street, SW1P 3BT.