
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 139A and 207(1) and (4) of the Equality Act 2010 (c.15) (“the Act”). They require an employment tribunal (“tribunal”) to order a respondent to carry out an equal pay audit (“audit”) after a finding that there has been an equal pay breach. An equal pay breach is defined in section 139A of the Act as a breach of an equality clause or a contravention of sections 39(2), 49(6) or 50(6) of the Act so far as they relate to sex discrimination in relation to pay.

Regulation 2 requires a tribunal to order the respondent to carry out an audit unless one of the exceptions in regulation 3 or 4 applies. An audit is defined in section 139A(3) of the Act as an audit designed to identify action to be taken to avoid equal pay breaches occurring or continuing.

Regulations 3 and 4 set out the circumstances in which a tribunal must not order an audit. Regulation 3 sets out four exceptions to the requirement to order the respondent to carry out an audit. Regulation 4 exempts new businesses and micro-businesses from the requirement to carry out an audit during the exemption period. The Schedule defines those kinds of businesses and the exemption period (a period of ten years from the commencement date of the Regulations).

Regulation 5 makes provision in relation to the content of the tribunal’s order under regulation 2 and requires the order to specify the persons about whom information should be included in the audit, the period of time to which the audit must relate and the time by which an audit must be received by the tribunal.

Regulation 6 sets out the information which an audit must include. It requires an audit to include information relating to the pay of men and women in respect of whom the respondent could be liable for an equal pay breach under the Act (“relevant gender pay information”). The audit must also explain the content of the audit. Finally, an audit must set out an action plan for avoiding equal pay breaches occurring or continuing.

Regulation 7 sets out the powers of the tribunal to determine, on the papers, whether an audit received by the tribunal by the date set out in its order complies with that part of its order relating to the content of the audit. Where a tribunal is satisfied that the audit is compliant, it must provide a copy of the order to the respondent.

Regulation 8 sets out the procedure applicable where the tribunal is not satisfied that an audit complies with that part of its order relating to the content of the audit, or where no audit has been received.

Regulation 9 sets out the manner in and time by which the respondent must publish the audit and send evidence of publication to the tribunal. Regulation 9(3) provides that where publication would result in a breach of a legal obligation, the respondent must publish the audit with any revisions to avoid it having that effect or, where it would not be possible to do so, not publish the audit. The respondent must send to the tribunal written reasons why publication would be likely to result in a breach of a legal obligation and the tribunal must consider whether the reasons are adequate.

Regulation 10 sets out the procedure applicable to the tribunal when determining whether the respondent has complied with its order in so far as it relates to the requirement to publish the order.

Regulation 11 provides that a tribunal may order the respondent to pay a penalty to the Secretary of State where the respondent fails to comply with an order made under regulation 2 or 8. A penalty may be imposed on more than one occasion where the failure to comply with such an order continues. The amount of any individual penalty may not exceed £5,000.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Equality Act 2010 (Equal Pay Audits) Regulations 2014 No. 2559

The instrument has effects on the costs of business, charities or voluntary bodies. A full impact assessment of the effect that this instrument will have on the costs of business, charities and voluntary bodies is available at <https://www.gov.uk/government/consultations/equal-pay-audits-a-further-consultation?4544> and is published along with the Explanatory Memorandum at <http://www.legislation.gov.uk/ukdsi/2014/978011116753/memorandum/contents>.