
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.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 No. 172

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.