

EXPLANATORY MEMORANDUM TO
THE EQUALITY ACT 2010 (SPECIFIC DUTIES AND PUBLIC AUTHORITIES)
REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (“the Regulations”) have three linked purposes:

- (a) to impose new gender pay gap reporting requirements on the public authorities specified in Schedule 2;
- (b) to consolidate the new gender pay gap reporting requirements with the existing obligations imposed by the Equality Act 2010 (Specific Duties) Regulations 2011 (S.I. 2011/2260);
- (c) to update Schedule 19 to the Equality Act 2010 (“the Act”) (public authorities subject to the public sector equality duty in section 149(1) of the Act).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

- 4.1 These Regulations are one of two instruments that impose requirements for employers to report on the gender pay gap within their organisation. The other instrument (the draft Equality Act 2010 (Gender Pay Gap Information) Regulations 2017), to be made under section 78 of the Equality Act 2010, was laid in both Houses of Parliament on 6th December 2016. Regulations under section 78 do not apply to government departments, the armed forces, or any other public authority listed in Schedule 19 to the Act. These Regulations fill that gap.
- 4.2 The principle of greater transparency on gender pay differences has cross party support, having been the subject of Parliamentary debate and of a recent report (published on 22 March 2016) by the Women and Equalities Select Committee. In July 2015, the previous Prime Minister set out his ambition to close the gender pay gap in a generation. To meet this commitment, the Government will take a range of measures to tackle the drivers of the pay gap; this includes the manifesto commitment to require larger employers to publish the difference between the average pay of their

male and female employees. The decision to extend gender pay gap reporting obligations to the public sector was announced by the then Prime Minister in October 2015, to ensure parity with the private and voluntary sectors.

5. Extent and Territorial Application

- 5.1 This instrument extends to Great Britain.
- 5.2 This instrument applies to specified public authorities in England, specified cross-border Welsh authorities and specified public authorities operating across Great Britain in relation to non-devolved functions.
- 5.3 Separate regulations made by the Welsh and Scottish Ministers under section 153(2) and (3) of the Act apply to relevant Welsh and Scottish authorities respectively.

6. European Convention on Human Rights

- 6.1 The Secretary of State for Education and Minister for Women and Equalities has made the following statement regarding Human Rights:
- 6.2 In my view the provisions of the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 The objective behind the public sector equality duty in section 149 of the Equality Act 2010 is to ensure that consideration of equality issues forms part of the routine, day-to-day decision making and operational delivery of public authorities. The purpose of the specific duties is to ensure better performance of the public sector equality duty. As well as replicating (with minor amendments) the existing obligations in the Equality Act 2010 (Specific Duties) Regulations 2011, these Regulations impose new gender pay gap reporting requirements. Both the existing obligations and the new requirements are intended to drive better performance by increasing transparency and providing authorities with the data needed to target action more effectively.
- 7.2 The gender pay gap is a measurement of the difference between men and women's average salaries. It is not about men and women being paid differently for the same job, which has been prohibited by equal pay legislation since 1975.
- 7.3 The UK's gender pay gap has fallen over time: the overall UK gender pay gap was 25% ten years ago and stood at 18.1% according to statistics published in October 2016 by the Office for National Statistics (ONS).
- 7.4 Although the pay gap is lower in the public sector than in the private sector, the difference between the two has narrowed over the last year. Women working in the private sector were paid 24.5% less on average than men (compared to 25.6% in 2015), whereas for public sector employees the pay gap was 18.3% (compared to 18.8% in 2015).
- 7.5 The Equality Act 2010 (Specific Duties) Regulations 2011 included an obligation for those public authorities with 150 or more employees to report on the diversity of their workforce. The requirement to publish workforce data is reproduced unchanged (except that reporting dates are aligned) and will continue to apply to public authorities listed in Schedule 2 to the Regulations if they have 150 or more

employees. This requirement complements the explicit gender pay gap reporting requirements for organisations with 250 or more employees.

- 7.6 Although the requirement to publish diversity data on workforces did not prescribe the data to be published, accompanying guidance from the Government Equalities Office and the Equality and Human Rights Commission encouraged public bodies to publish data on gender pay differences. As gender pay gap data was published on a voluntary basis, the nature of the data collected and published could vary considerably.
- 7.7 Introducing two sets of regulations requiring compulsory gender pay gap reporting will ensure consistency and provide a comparable dataset for large employers across the public, private and voluntary sectors.
- 7.8 These Regulations require the public authorities specified in Schedule 2 to the Regulations, if they have at least 250 employees, to publish the following four measures of information, based on a ‘snapshot’ of pay information taken on 31 March each year:
- The difference between the average (mean and median) hourly rate of pay for male and female employees (excluding employees being paid at less than their usual rate because of maternity leave, for example);
 - The difference between the average (mean and median) bonuses paid to male and female employees over the period of 12 months ending with the ‘snapshot’ date of 31 March;
 - The proportion of male employees, and of female employees who were paid bonuses during the period of 12 months ending with the snapshot date;
 - The proportions of male and female employees in each quartile of the pay distribution.
- 7.9 These Regulations use a ‘snapshot’ date of 31 March each year, whereas the regulations under section 78 of the Act use a date of 5 April. The different dates reflect responses to the public consultations on the proposals. For the public authorities subject to these Regulations, 31 March better aligns with existing reporting obligations and practices.
- 7.10 Mean and median figures will give public authorities better understanding of their gender pay gap, whilst facilitating comparison with national and international figures.
- 7.11 The definition of ‘ordinary pay’ and the methodology is intended to mirror as closely as possible that used by ONS in its Annual Survey of Hours and Earnings, to enable meaningful comparison of the data.
- 7.12 Bonus payments can be a significant element of overall remuneration in some sectors. Requiring the reporting of bonuses will encourage public authorities to scrutinise their remuneration policies and ensure that their practices for bonuses are fair and transparent.
- 7.13 A key driver of the gender pay gap is that fewer women than men are employed in senior and higher paid positions. The specified public authorities will be required to report on the number of men and women in each quartile of their pay distribution. This will help authorities consider where women are concentrated in terms of their remuneration and whether there are any blockages to their progression.

- 7.14 The information must be published on the public authority’s own website and provided on a digital portal to be maintained by the Secretary of State, within 12 months of the 31 March snapshot date each year.
- 7.15 Given the potential media interest and reputational risk where gaps are shown to be large, it is anticipated that many authorities will want to supply additional narrative that provides context, explains any pay gaps and sets out what actions the organisation will take.
- 7.16 **Enforcement.** The Equality and Human Rights Commission is responsible for monitoring how public authorities are complying with the specific duties and can take enforcement action. The Commission has powers to issue a compliance notice to a public body that it believes has failed to comply with the Regulations, and can apply to the courts for an order requiring compliance (sections 31 and 32 of the Equality Act 2006 (c. 3)).
- 7.17 **Amendments to Schedule 19.** Schedule 19 contains a list of public authorities subject to the public sector equality duty in respect of all their functions. Schedule 3 to these Regulations updates the list in Schedule 19 to reflect changes since the Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 (S.I. 2010/1060) was made. Some additional authorities have been added to Schedule 19 (see Schedule 3 to the Regulations) and some authorities have been removed.
- 7.18 Most of the organisations that have been omitted from Schedule 19 to the Act and Schedule 2 to the Regulations no longer exist. The only exceptions to this are:
- Two entries have been removed from Schedule 19 as they have no continuing public functions (the Association of Authorised Public Accountants and the Association of International Accountants).
 - The Competition and Markets Authority has been removed from Schedule 19 as it is a government department and therefore does not require a separate listing. As a government department, it is required to comply with the Regulations.
 - NHS Blood and Transplant and the NHS Business Services Authority have been removed from Schedule 2 as they are both Special Health Authorities and therefore do not require a separate listing. They are still required to comply with the Regulations. These two Special Health Authorities are separately listed in Schedule 19 Part 4 (cross-border authorities) whereas the other Special Health Authorities are listed in Part 1.

Consolidation

- 7.19 The Equality Act 2010 (Specific Duties) Regulations 2011 (S.I. 2011/2260) are revoked and the obligations imposed by those Regulations are reproduced (with minor amendments) in these Regulations, creating one consolidated instrument.

8. Consultation outcome

- 8.1 Two public consultations were held on the proposed gender pay gap reporting requirements under section 78 of the Act. On 14 July 2015 the previous Prime Minister launched the first “Closing the Gender Pay Gap” consultation. There were nearly 700 responses to the consultation, including over 200 from employers and

business organisations. Around three-fifths of employers who responded to the consultation said they could already calculate an overall gender pay gap figure.

- 8.2 On 12 February 2016, the then Secretary of State for Education and Minister for Women and Equalities published a response to the first consultation and also launched the second gender pay gap consultation. The second consultation invited feedback on a draft set of Regulations. There were nearly 150 responses to the consultation, with the vast majority being from employer, business organisations and legal bodies. The results of both consultation exercises are outlined in the Explanatory Memorandum to the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 and the full documents can be accessed from the Gov.uk website.
- 8.3 The Government conducted a public consultation on the proposed public sector gender pay gap reporting requirements from 18 August to 30 September 2016. The consultation set out the overall policy aim of ensuring that the reporting requirements for the public sector would mirror those being introduced under section 78 of the Act as closely as possible in order to achieve a consistent approach towards data collection. The consultation did, however, seek comments on the methodology and asked respondents to highlight any particular issues which affect public sector workforces.
- 8.4 There were 125 responses to the public consultation, including over 85 from organisations, including employers in the public sector and trade unions. The written consultation was complemented by roundtables with legal advisers, expert HR practitioners, payroll professionals and trade unions.
- 8.5 A summary of the quantitative analysis:
- Q1. A total of 77% of all respondents who answered this question agreed that the reporting requirements should apply to the same public authorities who are subject to the specific duties regulations in England if they have 250 or more employees. Breaking this down by type of respondent, 72% of organisations and 87% of individuals agreed.
- Q2. A total of 65% of all respondents who answered this question did not think there were any other public authorities that need to be listed in the schedules to the Regulations. By type of respondent, 65% of organisations and 63% of individuals did not suggest any additions to the schedules.
- Q3. A total of 80% of all respondents who answered this question agreed that it was appropriate to rely on the definition of employment in section 83 of the Act for the purposes of the Regulations. By type of respondent, 83% of organisations and 72% of individuals agreed.
- Q4. A total of 53% of all respondents who answered this question did not think that the proposed elements of pay, as set out in the consultation, raised any particular issues for the public sector. By type of respondent, 51% of organisations and 58% of individuals did not foresee any problems with the pay elements.
- Q5. A total of 97% of all respondents who answered this question agreed that the same reporting deadline should be introduced for all reporting requirements. By type of respondent, 98% of organisations and 95% of individuals answered yes to this question.

Q6. A total of 66% of all respondents who answered this question did not think that the reporting requirements would cause any particular issues for public sector employers. 59% of organisations and 79% of individuals did not foresee any issues with the proposed obligations.

9. Guidance

9.1 Supporting non-statutory guidance to help authorities meet the regulatory requirements will be published after Parliament has approved the Regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The Regulations will affect around 1,000 public sector employers in England with around 3.8 million employees.

10.3 The Impact Assessment produced for the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (under section 78 of the Act) is published alongside the Explanatory Memorandum for that instrument on the legislation.gov.uk website. It estimates yearly running costs of under £500 per organisation for complying with the gender pay gap obligations.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Secretary of State will review the gender pay gap reporting requirements within five years of commencement.

13. Contact

13.1 Jisha Hales at the Government Equalities Office, Department of Education (Telephone: 02073407409 or email: Jisha.Hales@geo.gov.uk) can answer any queries regarding the instrument.