

EXPLANATORY MEMORANDUM TO
THE EQUALITY ACT 2010 (GENDER PAY GAP INFORMATION) REGULATIONS
2017

2017 No. 172

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.
- 1.2 This explanatory memorandum has been re-laid before Parliament, and the original version has been withdrawn, on 17th February 2017 for information only to correct paragraph numbering errors in section 7 of this memorandum.

2. Purpose of the instrument

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (“the Regulations”) will require employers with at least 250 employees to publish annual information to show whether there is a difference in the average pay of their male and female employees.

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 Section 78 of the Equality Act 2010 (“the 2010 Act”) confers power to make regulations requiring employers in Great Britain with at least 250 employees (excluding certain public authorities) to publish information showing whether there are differences in pay between their male and female employees. These Regulations are the first use of the power under section 78.
- 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 report (published on 22 March 2016) by the Women and Equalities Select Committee. In July 2015, the then 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.
- 4.3 Section 78 does not apply to government departments, the armed forces or other public authorities listed in Schedule 19 to the 2010 Act. In October 2015, the then Prime Minister announced that these large public sector organisations would also be required to publish details of their gender pay gaps to ensure parity with the private

and voluntary sectors. It is intended that regulations (to be made in 2017 under section 153 of the 2010 Act) will impose equivalent gender pay gap reporting obligations on public authorities in England, and cross-border authorities. Scottish and Welsh public authorities are subject to devolved arrangements under section 153 of the 2010 Act.

5. Extent and Territorial Application

- 5.1 These Regulations extend to Great Britain.
- 5.2 The territorial application of this instrument is to Great Britain.

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 (Gender Pay Gap Information) Regulations 2017 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 The gender pay gap is a measurement of the difference between men and women's average earnings. It is not about men and women being paid differently for the same job, which has been prohibited by equal pay legislation since 1975.
- 7.2 The UK's gender pay gap has fallen over time: the overall UK gender pay gap was 25% ten years ago and is now 18.1% according to statistics by the Office for National Statistics (ONS) in October. However, a voluntary approach to employer reporting has not led to sufficient progress. The voluntary initiative *Think, Act, Report* was introduced in 2011 to promote greater transparency. Whilst over 300 organisations signed up to this initiative, we are aware of only around 11 of those that have voluntarily published gender pay information.
- 7.3 The aim of compulsory gender pay gap reporting is to use transparency as a tool for raising awareness, to incentivise employers to analyse the drivers behind their gender pay gap and to explore the extent to which their own policies and practices may have contributed to that gap.
- 7.4 Following two public consultations and extensive engagement with a wide cross-section of stakeholders, these Regulations require employers with at least 250 employees to publish the following four measures of information, based on a 'snapshot' of pay information taken on 5 April 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 5 April;
 - 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.
- 7.5 Mean and median figures will give employers better understanding of their gender pay gap, whilst facilitating comparison with national and international figures.
- 7.6 The definition of ‘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.
- 7.7 ONS collects information on the hours and earnings of employees during April each year, because an April reference date largely avoids seasonal fluctuations in the workforce. In the Regulations, 5th April has been selected as the ‘snapshot’ date on which employers must capture pay data to reduce the extent to which employers are required to collate data from more than one tax year.
- 7.8 Bonus payments are a significant element of overall remuneration in some sectors. ONS figures show that over £44 billion was paid out in bonuses across the UK economy during the 2015-2016 financial year. Requiring the reporting of bonuses will encourage employers to scrutinise their remuneration policies and ensure that their practices for bonuses are fair and transparent.
- 7.9 Fewer women than men are employed in senior and higher paid positions. Employers will be required to report on the number of men and women in each quartile of their pay distribution. This will help employers consider where women are concentrated in terms of their remuneration and whether there are any blockages to their progression. It could also be valuable in making comparisons with those competitor employers that are actively nurturing female talent.
- 7.10 The information must be confirmed as accurate by a senior employee or officer within the organisation, and must be published on the employer’s own website and provided on a digital portal to be maintained by the Secretary of State, within 12 months of the 5 April snapshot date each year.
- 7.11 Given the potential media interest and reputational risk where gaps are shown to be large, it is anticipated that many employers will want to supply additional narrative that provides context, explains any pay gaps and sets out what actions the organisation will take.
- 7.12 **Penalties for non-compliance.** The requirements for the information to be signed and published are intended to ensure reliability of, and accountability for, the data and to identify for the public record those employers who have complied. Failure to comply with these Regulations would be an “unlawful act” for the purposes of Part 1 of the

Equality Act 2006 and would fall within the existing enforcement powers of the Equality and Human Rights Commission under that Act.

- 7.13 Accordingly, the Regulations do not create any specific additional civil or criminal penalties. Levels of compliance with the Regulations will be monitored so that the Government can consider alternative enforcement mechanisms if necessary.

8. Consultation outcome

8.1 Since July 2015 the Government has conducted two public consultations.

8.2 On 14 July 2015 the then Prime Minister launched the first “Closing the Gender Pay Gap” consultation. This seven-week consultation sought views on what more could be done to accelerate the rate of progress, including exploring exactly what, when and how often information should be published under section 78 of the 2010 Act. 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.

8.3 The written consultation was complemented by meetings with business stakeholders and workshops with think tanks, expert HR practitioners, academics, voluntary and charity sector employers, women’s civil society organisation, employment lawyers and trade unions.

8.4 Summary of analysis:

- 82 % of organisations agreed the publication of gender pay information will encourage employers to take action to close the gender pay gap.
- 42% of organisations agreed there is no alternative way to increase transparency on gender pay that would limit the cost to employers (e.g. reporting to the Government via the existing PAYE system).
- 68% of organisations agreed that there were no risks or unintended consequences that warranted dropping or modifying the proposed Regulations.
- Over half of organisations agreed that the threshold of 250 employees was appropriate.
- 68% of organisations within scope of the Regulations stated they can currently calculate an overall gender pay gap figure.

8.5 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. This further 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.

As with the first consultation, the second consultation was supplemented by extensive stakeholder engagement, including meetings, workshops and presentations.

8.6 The data produced from the second consultation was qualitative rather than quantitative because open-ended questions were asked. Overall, respondents to the second consultation were satisfied with the presentation of the requirements. Some

responses offered suggestions for improving or clarifying specific elements of the Regulations (e.g. amending the definitions of “pay” and “relevant employees”) which have now been considered and addressed. Changes have also been made to the methodology for presenting workforce demographic data in quartiles, and to include both the mean *and* median bonus gap average calculations (previously only the mean average was proposed for bonuses). The Government agrees that the two figures complement each other as together they provide greater transparency around the distribution of bonuses in an organisation.

9. Guidance

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

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is estimated to be £3.8 million per annum with a transitional cost of about £2.3 million in the first year. The Regulations will affect around 7,960 employers with around 11 million employees. This represents approximately 34% of the total workforce.
- 10.2 The impact on the public sector for compliance and enforcement is £90,073 per annum with a transitional cost in the first year of £285,073.
- 10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

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

12. Monitoring & review

- 12.1 As required by the Small Business, Enterprise and Employment Act 2015, within five years of commencement, the Secretary of State will review these Regulations and publish a report on whether they meet the Government’s policy objectives or impose an unnecessary burden on employers.

13. Contact

- 13.1 Daniel Coles at the Government Equalities Office, Department of Education
Telephone: 02073407701 or email: Daniel.Coles@geo.gov.uk can answer any queries regarding the instrument.