



Government
Equalities Office

Mandatory Gender Pay Gap Reporting

**Government Consultation on Draft
Regulations**

Issue date: 12 February 2016

Respond by: 11 March 2016

Contents

About this Consultation	3
Ministerial Foreword	5
Introduction	7
Consultation Question	7
Summary of the Draft Regulations	8
Draft Regulations	11

About this Consultation

Deadline

The consultation was issued on 12 February 2016 and closes at midnight on 11 March 2016.

Respond Online

To help us analyse the responses please use the online system. To submit your response online, visit the [consultation website](#).

Other Ways to Respond

If for exceptional reasons, you are unable to use the online system (e.g. because you use specialist accessibility software that is not compatible), you may download a word version of the form and email it or post it.

By email: GenderPayGapConsultation@geo.gov.uk

By post:

Gender Pay Gap Consultation
Government Equalities Office
1st Floor

Sanctuary Buildings
20 Great Smith Street
London SW1P 3BT

Government Response

The results of the consultation will be published on gov.uk this summer.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team directly: GenderPayGapConsultation@geo.gov.uk

If your enquiry is related to the Department for Education (DfE) e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email:

Coordinator.CONULTATIONS@education.gsi.gov.uk

Foreword by the Secretary of State for Education and Minister for Women and Equalities



Tackling the gender pay gap is an absolute priority for this Government, as the Prime Minister has said; you cannot have true opportunity without real equality. We have made significant progress in recent years with the current gender pay gap the lowest on record, but we are not complacent. There is no place for any gender pay gap in today's society - fully capitalising on the talent and experience of women is good for individuals, employers and our economy. That is why this government is taking bold steps to tackle the gender pay gap.

Our consultation, *Closing the Gender Pay Gap*, sought views on how best to increase transparency around gender pay differences, alongside wider questions about girls' aspirations, women returning to work and older working women. I was delighted that the consultation received nearly 700 responses, including over 200 employers and business organisations.

We have published a response that summarises the findings of that consultation. That response should be read alongside this follow-up consultation focusing on our commitment that large employers should publish the differences between the average pay and bonuses of their male and female employees. The first consultation and our continued stakeholder engagement have ensured that our proposals will be proportionate and effective.

This follow-up consultation invites feedback on the details of the draft regulations that will apply to those employers with at least 250 employees. We are especially keen to hear from employers, business organisations, the voluntary and charity sector, women's civil society organisations, expert HR practitioners, trade unions, employment lawyers and think tanks. Once we have considered any issues emerging from this

consultation, we will lay the draft regulations in Parliament. To maintain momentum and drive real changes in workplaces across Great Britain, we want to commence the regulations at the earliest opportunity.

The Prime Minister has also announced that we will extend mandatory reporting to the public sector, and we will consult with relevant bodies shortly to ascertain how those requirements will work in practice.

These regulations are only one element of our strategy to tackle the complex drivers of the pay gap, and we are committed to promoting gender equality. This government will ensure that women are given the support they need to progress from the classroom to the boardroom.

A handwritten signature in black ink that reads "Nicky Morgan". The signature is written in a cursive, flowing style.

The Rt Hon Nicky Morgan MP

Secretary of State for Education and Minister for Women and Equalities

Introduction

A summary of the regulations that will introduce mandatory gender pay gap reporting for large employers can be found on pages 8-10, and the full text of the draft regulations follows on pages 11-16. These regulations will apply to private and voluntary sector employers in England, Wales and Scotland with at least 250 employees.

A database of complying employers will be built up as employers link their published information to a government-sponsored website, with examples of compliance and non-compliance identified. We do not intend to create any additional civil penalties in the regulations at present, but we will be closely monitoring levels of compliance with the regulations during the initial years of implementation.

Supporting guidance to help employers implement the regulations will be published this year. This will set out how to account for different governance structures (such as subsidiaries and parent companies) and advice on providing voluntary narrative that explains any pay gaps and what actions the employer is taking.

Consultation Question

The purpose of this consultation is to gather views on the detail of the draft regulations. Having considered both the following summary and the full text of the draft regulations, we are seeking views on the following question:

What, if any, modifications should be made to these draft regulations? To inform our consideration of any proposed modification(s), please explain your response and provide supporting evidence where appropriate.

Summary of the Draft Regulations

Commencement and scope

Subject to the approval of Parliament, the regulations will come into force on the earliest relevant common commencement date (1 October 2016), although employers will not be expected to publish the required information immediately.

Employers with 250 or more relevant employees will fall within scope of the regulations. A relevant employee means someone who ordinarily works in Great Britain and whose contract is governed by UK legislation (regulation 1).

Defining Pay

To ensure comparability with national gender pay gap figures, we have been consistent with the definition of pay used by the Office of National Statistics (ONS) for the Annual Survey of Hours and Earnings (ASHE). As such “pay” includes basic pay, paid leave, maternity pay, sick pay, area allowances, shift premium pay, bonus pay and other pay (including car allowances paid through the payroll, on call and standby allowances, clothing, first aider or fire warden allowances). It does not include overtime pay, expenses, the value of salary sacrifice schemes, benefits in kind, redundancy pay, arrears of pay and tax credits (regulation 2).

Publication timetable

Employers may need to introduce new systems or processes to analyse their gender pay gaps. To ensure that employers have sufficient lead-in time, they will have about 18 months after commencement to publish the required information for the first time and must then publish annually thereafter (regulation 3).

Calculating gender pay gaps

The regulations will require employers to publish their overall mean and median gender pay gaps as they are complementary indicators. As well as giving employers a better understanding of any pay gaps identified, this will facilitate comparisons with national and international figures:

- Reflecting the full earnings distribution, the mean can be useful because women are often over-represented at the low earning extreme and men overrepresented at the high earning extreme (regulation 4).
- By identifying the wage of the middle earner, the median is the best representation of the 'typical' difference as it is unaffected by a small number of very high earners (regulation 5).

The regulations will require employers to calculate gender pay gaps using data from a specific pay period every April from 2017 (see regulation 1). An April reference date largely avoids seasonal fluctuations in the workforce. This avoids overly complex calculations to capture all those employed during a twelve-month period, including those individuals that get promoted or leave.

To generate average earnings figures unaffected by the number of hours worked, employers will need to calculate an hourly pay rate for each relevant employee. Offering the most accuracy, this approach mirrors the familiar and tested methodology used by the ONS. From our discussions with employers and HR experts, we do not believe there will be significant additional costs in calculating two gender pay gap figures using the same set of HR data.

Gender bonus gap

Employers within scope will need to publish the difference between the mean bonus payments paid to men and women (regulation 6). The mean takes into account the full distribution of bonuses paid by an employer. Only those employees who receive

bonuses should be included in the calculation. Employers will also be required to publish the proportion of male and female employees that received a bonus.

Salary quartiles

Employers will be required to report on the number of men and women in each quartile of their pay distribution (regulation 7). Quartiles split an ordered data set into four equal groups, where each group contains a quarter of the data. Employers will calculate their own salary quartiles based on their overall pay range. The objective is to identify the numbers of women and men in each quarter by the overall pay distribution. This is straightforward to produce and will help employers consider where women are concentrated in terms of their remuneration and if there are any blockages to their progression.

Where to publish

A written statement confirming that the information is accurate must accompany the required information (regulation 8). Employers must publish the information in English on their searchable UK website that is accessible to employees and the public. Employers will be required to retain this information online for three years in order to show the progress made, and we will be working with employers to ensure that data is accessible. In addition, employers must upload the information to a government sponsored website (regulation 9).

Review

Within five years of commencement, the Secretary of State will review these regulations and publish a report on whether they meet our policy objectives or impose an unnecessary burden on employers (regulation 10). We will closely monitor the levels of compliance by employers to ensure that the measures in place are effective.

2016 No.

EQUALITY

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2016

Made - - - - 2016

Laid before Parliament 2016

Coming into force - - - - *1st*
October 2016

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 that Act, 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 2016 and come into force on 1st October 2016.

(2) In these Regulations—

“gross hourly rate of pay” has the meaning given in regulation 4(2);

“mean” means the sum of all the values in a list divided by the number of values; “median” means the middle value in a list where the values are listed in numerical order, from lowest to highest;

“pay period” in relation to an employee means the period—

(a) in respect of which the relevant employer usually pays that relevant employee, whether weekly, fortnightly, monthly or a longer or shorter period; and

(b) within which the relevant date falls;

“relevant date” means the 30th April 2017 and each subsequent anniversary of that date; a

“relevant employee” means a person—

(a) who ordinarily works in Great Britain; and

(b) whose contract of employment is governed by UK legislation; and a “relevant employer” means a person who has 250 or more relevant employees on the relevant date.

(1) 2010 (c.15).

Pay

2.—(1) In these Regulations, “pay”—

(a) includes basic pay, paid leave, maternity pay, sick pay, area allowances, shift premium pay, bonus pay and other pay (including car allowances paid through the payroll, on call and standby allowances, clothing, first aider or fire warden allowances); and

(b) does not include pay for a different pay period, overtime pay, expenses, the value of salary sacrifice schemes, benefits in kind, redundancy pay, arrears of pay and tax credits.

(2) “Bonus pay” includes— (a) payments received and earned in relation to profit sharing, productivity, performance and other bonus or incentive pay, piecework and commission;

(b) long term incentive plans or schemes (including those dependent on company and personal performance); and

(c) the cash equivalent value of shares on the date of payment.

(3) Pay is to be calculated before deductions for PAYE, national insurance, pension schemes, student loan repayments and voluntary deductions.

Duty to publish information relating to pay

3.—(1) A relevant employer must publish—

(a) the difference in mean pay, during the pay period, between male and female relevant employees employed by the relevant employer (see regulation 4); (b) the difference in median pay, during the pay period, between male and female relevant employees employed by the relevant employer (see regulation 5);

(c) the difference in mean bonus pay, during the period of 12 months preceding the relevant date, between male and female relevant employees employed by the relevant employer (see regulation 6);

(d) the proportion of male and female relevant employees who received bonus pay during the period of 12 months preceding the relevant date (see regulation 6); and (e) the numbers of male and female relevant employees employed by the relevant employer on the relevant date in quartile pay bands A, B, C and D (see regulation 7).

(2) The information mentioned in paragraph (1) must be published within the period of 12 months beginning with the relevant date.

The difference in mean pay between male and female employees

4.—(1) The difference in mean pay, during the pay period, between male and female relevant employees must be expressed as a percentage of the mean pay of male relevant employees during that period and is to be determined as follows—

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

where—

A is the mean gross hourly rate of pay of all male relevant employees employed by the relevant employer on the relevant date;

B is the mean gross hourly rate of pay of all female relevant employees employed by the relevant employer on the relevant date.

(2) The “gross hourly rate of pay” is determined using the weekly pay divided by weekly basic paid hours for each relevant employee.

The difference in median pay between male and female employees

5. The difference in median pay, during the pay period, between male and female relevant employees must be expressed as a percentage of the median pay of male relevant employees during that period and is to be determined as follows—

$$\frac{(C-D)}{\quad} \times 100 \quad C$$

where—

C is the median gross hourly rate of pay of all male relevant employees employed by the relevant employer on the relevant date;

D is the median gross hourly rate of pay of all female relevant employees employed by the relevant employer on the relevant date.

The difference in mean bonus pay between male and female employees and proportion of male and female relevant employees who received bonus pay

6.—(1) The difference in mean bonus pay received, during the period of 12 months preceding the relevant date, by male and female relevant employees must be expressed as a percentage of the mean bonus pay received by male relevant employees during that period and is to be determined as follows—

$$\frac{(E-F)}{\quad} \times 100 \quad E$$

where—

E is the mean bonus pay paid to all male relevant employees employed by the relevant employer during the period of 12 months preceding the relevant date; F is the mean bonus pay paid to all female relevant employees employed by the relevant employer during the period of 12 months preceding the relevant date.

(2) The proportion of male and female relevant employees who received bonus pay during the period of 12 months preceding the relevant date must be expressed as a percentage of the total number of all male relevant employees and female relevant employees respectively.

Numbers of male and female employees according to quartile pay bands

7.—(1) The numbers of male and female relevant employees, employed by the relevant employer on the relevant date, in pay bands A, B, C and D is to be determined as follows. (2) The relevant employer must identify the quartiles for the overall pay range (“the pay range”) based on the gross hourly rate of pay for each relevant male or female relevant employee, listed in order of increasing value. Pay bands A, B, C and D must be determined and expressed as follows—

- (a) pay band A is from the lowest pay to the first quartile;
- (b) pay band B is from the first quartile to the second quartile;
- (c) pay band C is from the second quartile to the third quartile; and (d) pay band D is from the third quartile to the highest pay.

Form and manner of publication of information

8.—(1) The information mentioned in regulation 3(1) must be accompanied by a written statement which confirms that the information is accurate and signed in accordance with paragraph (2).

- (2) Where the relevant employer is—
- (a) a body corporate other than a limited liability partnership, 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;
 - (c) a limited partnership registered under the Limited Partnerships Act 1907(2), the written statement must be signed by a general partner;
 - (d) any other kind of partnership, the written statement must be signed by a partner;
 - (e) an unincorporated body of persons other than a partnership, the written statement must be signed by a member of the governing body or the most senior employee of the relevant employer;
 - (f) any other type of body, the written statement must be signed by the most senior employee.

9.—(1) A relevant employer must publish the information mentioned in regulation 3(1) on the employer’s website in the United Kingdom—

- (a) in English;
- (b) in a manner that is accessible to all employees and the public; and
- (c) for a period of at least 3 years beginning with the date on which the information is published on the website.

(2) The relevant employer must upload the information [on or through a website designated by the Secretary of State]

Review

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

- (2) 1907 (c.24).

- (a) carry out a review of these Regulations,
 - (b) set out the conclusions 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 the regulatory system established 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under sections 78 and 207(1) and (4) of the Equality Act 2010 (c. 15). They require employers with 250 or more employees to publish information relating to the difference in pay between male and female employees and to provide the number of male and female employees employed in quartile pay bands.

Regulations 1 and 2 define key terms used in the Regulations.

Regulation 3 sets out the duty on relevant employers to publish information relating to the difference in mean pay, median pay and mean bonus pay, during the pay period, between male and female relevant employees. It also sets out the obligation for the relevant employer to publish the numbers of male and female relevant employees on the relevant date in quartile pay bands to be determined by the relevant employer.

Regulation 4 makes provision in relation to the difference in mean pay between male and female relevant employees and how it is to be determined.

Regulation 5 makes provision in relation to the difference in median pay between male and female relevant employees and how it is to be determined.

Regulation 6 makes provision in relation to the difference in mean bonus pay between male and female relevant employees and the proportions of male and female relevant employees who received bonus pay.

Regulation 7 makes provision in relation to the numbers of male and female employees according to quartile pay bands and how the pay bands are to be determined by the relevant employer.

Regulation 8 sets out the form and manner of publication of information by the relevant employer, including providing a written statement which confirms that the information is accurate and that it is signed by the appropriate person depending on the legal status of the relevant employer.

Regulation 9 sets out the requirement for the relevant employer to publish the information on their website in English, in a manner accessible to all employees and the public and to retain that information for 3 years. Regulation 9(2) requires the relevant employer to upload the information to a designated website by the Secretary of State.

Regulation 10 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).



Government
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