



Government  
Equalities Office

# Mandatory Gender Pay Gap Reporting

**Government response to the  
consultation on draft regulations**

**December 2016**

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## Introduction

This government is committed to tackling pay inequality which has existed between men and women for too long. We have made progress in recent years, but know that further progress must be made. That's why this government is taking bold steps to tackle the gender pay gap – creating opportunities for individuals and employers by promoting greater gender equality in our workplaces.

Achieving gender equality isn't just the right thing to do, it is vital for our economy too – enhancing performance and nurturing productivity. Although the employment level of women is the highest on record, it has been estimated that further bridging the UK gender gap in work has the potential to create an extra £150 billion on top of business-as-usual GDP forecasts in 2025. If we work together to make real progress on this, we will be able to make business environments more accessible for women and advance the economy for the country as a whole.

We published a consultation, Mandatory Gender Pay Gap Reporting, in February 2016 to gather views on what, if any, modifications should be made to draft regulations requiring large private and voluntary sector employers in England, Wales and Scotland to publish the differences between the average pay and bonuses of their female and male employees.

Our consultation received around 150 responses, including from employers, trade associations, business organisations and individuals. In addition to two webinars to explain the draft regulations, the Government Equalities Office (GEO) organised roundtables with employers, business organisations, women's civil society, trade unions, legal associations and experts in gender pay analysis.

Having carefully considered the questions and proposals received, this document summarises the results of the latest consultation and our stakeholder engagement. Where respondents indicated that greater clarity was required, we have revised the regulations where necessary and will publish user-friendly guidance.

Having ensured that our proposals are workable and proportionate, we will closely monitor compliance to ensure that the measures in place are effective in practice. The Secretary of State will review the regulations five years after commencement.

These regulations are only one element of the government's strategy to meet the needs of women at every stage of their working lives. We know the causes of the gender pay gap are complex and our strategy must span education, business and the executive pipeline.

# Gender Pay Gap Regulations

## Commencement

The government remains committed to making the regulations introducing mandatory gender pay gap reporting at the earliest opportunity when the Parliamentary timetable allows. If both Houses of Parliament approve the draft legislation, the regulations would commence in April 2017, having been published in their final form well before that date.

In advance of the commencement date, the government will continue to engage with key stakeholders to ensure that all employers within scope understand the regulations and publish the required gender pay gap information during the first reporting cycle.

We will continue working with those employers that already publish gender pay gap information to help others learn from their positive experiences. As announced in February, the government will provide a package of support to help employers calculate and address their gender pay gap, including:

- A campaign of myth-busting UK-wide events and multimedia guidance to help employers calculate their gender pay gap, gender bonus gap and the numbers of men and women at different pay quartiles.
- Targeted support for smaller employers, and those in sectors that are least advanced on gender equality (e.g. STEM).
- Share best practice of exemplars through Think, Act, Report, and a report on the trailblazing action many businesses are taking to tackle the pay gap was published in February.

## Relevant Date

We want employers within scope to collect information on the hours and earnings of employees during the pay period in which a 'snapshot date' in April falls. The published regulations specified 30 April as the relevant date, but consultation responses highlighted that information from two tax years would need to be collated.

For example, **ADP** felt that aligning the relevant date with the tax year would make things easier: *“Selection of 30th April as the relevant date means that bonus payments between May of one year and April of the next will have to be taken into account. In payroll terms that runs from month 2 of one tax year to month 1 of the next. Given that many payroll systems are tax-year centric all the data may not be one place, which will increase the burden on employers.”*

In the interests of reducing the burden on employers, we agree that it would be sensible to change the snapshot date to 5 April.

## Scope

As outlined in section 78 of the Equality Act 2010, the government has the power to make regulations covering employers with 250 or more employees. These regulations will affect around 8,000 employers and over 11 million employees. An estimated 3.8 million employees will also be covered by separate gender pay gap regulations that will apply to certain public authorities. In total, the new gender pay gap regulations will cover nearly half of the total workforce.

A small number of respondents to the second consultation suggested that the threshold should be lowered. While **Close the Gap** (a partnership initiative working in Scotland on women's participation in the labour market) favour extending the regulations to cover all employers, the **Fawcett Society** believe that provision should be made to extend the regulations to organisations with over 50 employees as this *“will maximize the number of women covered by the regulations”* whilst reflecting the challenge this sort of reporting would place on a smaller organisation.

The **Young Women's Trust** stated: *“SMEs and large organisations will need different regulation and support in order to tackle their gender pay gaps. In particular, SMEs may be concerned about reporting being burdensome on their resource. However, if the government is serious about closing the gender pay gap for more than half the working population, it will need to explore ways of working with employers of all sizes. One example of this may be to provide access to software that might lighten the workload of SMEs.”*

**Business in the Community (BITC)** reiterated its view that the threshold should be lowered to organisations with 100 employees and over because: *“Reporting the gender pay gap will apply pressure to companies to achieve gender equality at work, but the overall impact on gender equality in the UK will not be as significant if it only applies to large employers.”*

The **Employment Lawyers Association (ELA)** proposed *“that the quantity of the threshold could decrease incrementally year on year. This was the pattern followed*

*by Austria, which had compulsory equal pay reports with a threshold of 1000 employees from 2011, 500 from 2012, 250 from 2013 and 150 from 2014.”*

Over half the organisations that responded to our first consultation agreed that the planned threshold was appropriate as small and medium sized employers may find it difficult to comply due to system constraints and data protection. We believe that this holds true – especially given the range of measures that we will be requiring employers to publish annually which differs from the reporting requirements in other countries. For example, Austrian employers must provide the central works council with a report on the gender pay gap for each occupational group or pay grade every other year.

We will continue to help all employers tackle their gender pay gaps regardless of size and consider the employee threshold when the regulations are formally reviewed. The **Equality and Human Rights Commission** recommended that the government *“should undertake to review the operation and impact of the regulations in order to consider whether the reporting requirements should be extended to smaller employers in due course.”*

A large building society sought clarity on how to calculate the number of employees for each reporting period. A multinational risk management and insurance brokerage company proposed that only employees who have been employed for 12 months prior to the snapshot date are included. To clarify the government position, employers with 250 or more relevant employees on the snapshot date in April – irrespective of the duration of their employment - will fall within scope.

Businesses which produce a slavery and human trafficking statement in one financial year are encouraged to produce a statement even if their turnover has fallen below the threshold as producing an annual statement will ensure that organisations can build upon earlier statements and demonstrate that they are being transparent because they consider it important. **ICSA**, a professional body for governance, noted: *“We would welcome the same recommendation being applied to employers within the scope of the draft regulations. The rationale for on-going transparency and the value of annual benchmarking equally apply in the context of the gender pay gap.”*

We agree that this approach would promote consistent efforts to promote workplace gender equality. The non-statutory guidance will encourage employers to publish the gender pay gap information on a voluntary basis in those instances where the number of employees slightly drops below the mandatory threshold on 5 April in a particular year.

## Subsidiaries and groups

A diverse range of consultation responses (including **Leonardo**, **Enterprise Holdings** and **Bond Dickinson LLP**) asked for clarification around reporting for group and multinational organisations which have multiple UK companies.

Suggesting that the regulations should “*allow corporate groups the option to report on a group basis (as well as or instead of reporting on an employing entity basis)*”, **BT** indicated: “*If group-wide reporting is not permitted, this would result in BT publishing a number of reports, and some aspects of the business being excluded as they would fall below the reporting threshold.*”

The **CBI** recommended that “*an exemption should be created so that employers are not required to report if their group or parent company has reported on their behalf*”.

Other responses flagged a potential issue around employees, including senior managers, based in a head office with its own payroll. For example, **Cobham PLV** felt that requiring each payroll entity to report separately “*could lead to unintended consequences of capturing UK subsidiary employees that exceed the 250 employee threshold and missing out subsidiary and head office employees below the threshold*”.

The **Society of Motor Manufacturers and Traders (SMMT)** highlighted a particular issue around those UK-based employers reporting to an overseas PLC organization – asking if there would be “*any requirement on a headquarters based in a different country to report, if across different offices and subsidiaries in the UK the company has at least 250 employees?*”

We consider that reporting at group level would mean the published information would have significantly less meaning for both employers and employees. We want the senior leaders within each employer to have a strong sense of ownership of the published figures and the subsequent remedial action to close any identified pay gaps.

As outlined in the government response to the earlier consultation on closing the gender pay gap (published February), we opted not to require employers to publish gender pay gaps by grade or job type on the grounds that it would not be workable as many employers do not have standardised grading structures, especially those with complex and changing structures resulting from mergers and acquisitions. There is a very high likelihood that subsidiaries may operate in a wide range of sectors or have job-types and remuneration levels that are simply not comparable.

As such, the reporting requirements will apply to each separate legal entity (i.e. the employer) with at least 250 employees within a group structure.

**PWC** proposed: *“If a group of employers feel that disclosure on an entity basis may be misleading, an option would be for voluntary disclosure of gender pay gaps across the wider group, in order to provide context to the results for each employing entity.”*

This sensible and proportionate approach will be reflected in the non-statutory guidance, and corporate groups will be encouraged to disclose gender pay gaps across the wider group on a voluntary basis if their senior leaders, board members and shareholders consider that informative and appropriate.

## Defining Pay

As outlined in the second consultation document, to ensure comparability with national gender pay gap figures, we have aimed for consistency with the definition of pay used by the Office of National Statistics (ONS) for the Annual Survey of Hours and Earnings (ASHE).

The **Financial Reporting Council (FRC)** believe that *“it is difficult to make comparison between pay gap figures between male and female employees and with other organisations without considering the total remuneration package. Pay structures may vary within organisations for a number of reasons including type of work (e.g. commission based work for sales roles, negotiation of individual employment contracts or changes to a company’s remuneration structure over time).”*

**CIPD**, the professional body for HR and people development, responded: *“We note that the draft regulations are consistent with the definition of pay used by the Office for National Statistics for the Annual Survey of Hours and Earnings (ASHE) and believe this is a sensible approach to ensure comparability with national gender pay gap data.”*

As well as providing a tried-and-tested methodology, we think that the principle underpinning this definition of pay is logical, understandable and widely applicable. As a rule, the favoured methodology for calculating gender pay gaps includes any earned payments that can be considered to be an integral part of a job’s remuneration.

**Marks and Spencer** recommended *“that a fully defined list of all pay elements which need to be included, be provided to ensure that all companies are reporting the same information.”*

As an alternative, **PWC** proposed: *“We consider that the definition of ‘pay’, as well as containing lists of elements to be included and excluded, should be accompanied by principles and guidelines for assessing those pay elements which are not specifically stated within the list. It will be impossible to produce a definitive list of which pay elements are included or excluded from the definition of pay, and to keep this*

*constantly up to date and appropriate for all circumstances, and therefore employers will need principles or guidelines to make their own appropriately informed decisions as to what should be included.”*

A number of responses sought clarification about specific elements of remuneration that are included and excluded from the definition of pay used within the draft regulations, and each of these points is addressed below. We will ensure that our non-statutory guidance that we will publish to accompany the regulations clearly outlines which elements of remuneration should and should not be captured in pay gap or bonus gap calculations.

#### *Parental leave and statutory pay*

The draft regulations published in February referred to ‘maternity pay’ only within the definition of pay and some responses sought clarification. For example, the **Employment Lawyers Association (ELA)** noted: *“With respect to the definition of ‘pay’, it is notable that maternity pay is included but not pay for other similar forms of leave such as adoption pay, paternity pay and shared parental leave pay.”*

A large international bank agreed: *“If maternity pay (i.e. paid leave) is to be included...this should also include pay during other types of family friendly leave such as adoption, surrogacy and shared parental leave.”*

However, a number of responses highlighted the impact of including statutory payments within the gender pay gap calculations outlined in the regulations. **PWC** stated: *“Inclusion of such pay could lead to gender pay gaps which do not accurately reflect employees’ pay in respect work done. Pay received during a non-working period is typically lower than pay received during a working period meaning that, for example, female employees taking maternity leave would have a detrimental effect on their employer’s gender pay gap figures. In extremis, this could conceivably lead to employers discouraging employees from taking certain types of enhanced leave, so as to improve their gender pay position.”*

Making a similar, albeit broader observation, **Barclays** noted: *“Maternity, paternity and shared parental leave as well as pay during sickness absence are subject to separate legislation, which makes clear that it is not unlawful to pay any employee (male or female) differently where they undertake such periods of leave (and regulations set out detailed requirements for calculating that pay).”*

This concern was echoed by **Linklaters**: *“pay data for an employee on maternity leave who has exhausted any period of enhanced maternity pay by the ‘pay period’ and/or who is in receipt of or has exhausted statutory maternity pay will distort the data analysis as her ‘pay’ during the ‘pay period’ will be artificially low, and in a number of cases could be zero.”*

**BT** noted: *“Family related leave or sick pay on the ‘relevant date’ should either be excluded or their pay should be determined by reference to their ‘pay’ immediately before they commenced their leave.”*

**Simmons and Simmons LLP** suggested that the information *“should be based on such employees’ notional pay instead of the actual pay received”*, and the **British Retail Consortium (BRC)** and **Telefonica O2 UK** favoured excluding all statutory payments on the basis that it would unfairly skew the data published by employers.

We agree that having the gender pay gap calculation take statutory pay (e.g. parental leave and sick pay) or other paid leave at less than full pay into account does not compare like-for-like in terms of average hourly earnings. Asking employers to use notional earnings before the statutory pay period would not align with our ‘snapshot’ methodology and risks becoming too complicated for employers to implement.

Therefore, the gender pay gap calculations will cover only those employees receiving their full pay during the specified pay period. For example, a man or woman taking parental leave or sick leave on full pay will be included, but an employee receiving less than full pay while on parental leave or sick leave will not be included. This approach will ensure a meaningful earnings comparison.

## *Overtime and shift pay*

**CBI** stated: *“We welcome the exclusion of overtime from the definition of ‘pay’ and believe shift allowances should also be excluded. Companies will always have a need for a proportion of their workforce to have flexibility in their working hours. Voluntary overtime and shift based premiums are ways of managing this business need while remaining sensitive to the different working preferences of employees... Including shift allowances in the definition of pay to be reported creates an incentive for companies to limit or remove the choice of employees over the shifts that they work in order to equalise the calculation of the gender pay gap.”*

A global automotive company believed *“that consideration should be given to removing shift pay from the definition of ‘pay’ under section 2.1. As a responsible and flexible employer we provide our employees with the choice of working shift work or not. We find that the majority of female employees would prefer to work more sociable hours to fit in around childcare, so including shift premium pay within the definition of ‘pay’ would distort the mean and median pay results.”*

The gender pay gap calculation will still exclude overtime. Shift premium pay or shift allowance will be included within the gender pay gap calculations because it is generally a component of an employee’s regular pay used to compensate for them working undesirable or inconvenient hours, whereas overtime is used to pay for additional hours worked on an ad hoc basis.

If an employer finds that female employees’ earning potential is being depressed because they need to work family-friendly (rather than sociable) hours, many will want to highlight the impact of those wider cultural drivers for the gender pay gap within their voluntary contextual information.

Workplaces must reflect the way we live now, with more women and men wanting to share childcare responsibilities. To help employers and employees recognise the benefits a modern workplace can bring, the government will continue to promote real cultural change. Employees can now request flexible working and around 285,000 couples are estimated to be eligible for shared parental leave each year.

The government is also investing to help hard working families with the costs of childcare, ensuring that parents' hard-earned money goes further. High-quality, affordable childcare can make a huge difference to children and parents, giving parents the support they need to work. We have already put in place a number of measures to boost the number of childcare places available and help with the cost of childcare. We currently invest around £5 billion a year on early education and childcare but this will increase to over £6 billion by 2019-20. From September 2017, working parents of three- and four-year olds will be entitled to 30 hours of free childcare a week – worth around £5000 p/a per child.

### *Expenses*

Expenses will be excluded from the gender pay gap calculation as they are generally reimbursements for money expended by the employee and are not regular payments earned as part of a remuneration package.

### *Allowances*

**BT** felt that the examples of 'other pay' cited within the draft regulations (e.g. on-call, clothing, first aider and fire warden allowances) *“appear arbitrary and non-exhaustive; the meaning of 'other pay' should be amended and clarified.”*

Based on such responses, we will clarify that the calculations must include all those allowances paid in money that have been earned in the pay period as part of the employee's job. This approach is consistent with established ONS methodology.

## *Salary sacrifice schemes and benefits in kind*

A salary sacrifice scheme is an agreement between an employer and employee to change the terms and conditions of employment to reduce the employee's entitlement to cash remuneration – usually in return for some form of non-cash 'fringe benefit', perk or benefit in kind that is not reflected in their salary or wages. Consultation responses outlined some issues arising around such schemes.

**KPMG LLP** highlighted: *“salary sacrifice operates by employees agreeing to a reduction in their pay in exchange for a benefit...If basic pay relates to employees' pay post-salary sacrifice, and the value of salary sacrifice schemes is excluded, the gender pay gap calculation will not reflect the value of employees' overall package. We acknowledge that it is possible the value of the salary sacrifice schemes does not always correspond directly to the salary reduction, and therefore we consider the simplest approach would be to analyse the pre-salary sacrifice pay.”*

**EY** feel that a salary sacrifice scheme *“is part of an individual's base pay package (sacrificed by choice) and should be included (i.e. notional or pre-sacrifice salary should be reported).”*

**PWC** stated: *“In our view, there is a trade-off between the administrative simplicity of using the after salary sacrifice figure (as this comes from payroll), and the possibility of causing distortions in the pay gap figure. If, for example, take-up rates for a salary sacrifice arrangement for childcare are considered, these may be higher in females than males, thus giving the false impression that females are earning less than men because the calculation does not take into account the value of the childcare vouchers received.”*

The gender pay gap calculation will continue to exclude salary sacrifice schemes and benefits in kind as (a) the goods and services received are typically non-cash benefits (e.g. child-minding services or health/dental plans); (b) the value of salary sacrifice schemes is not necessarily equivalent to the agreed reduction in salary; and (c) our

favoured methodology is based on the information that employers will readily hold on their existing payroll systems.

If an employer finds that their published pay gap has been distorted as a result of gender differences in the take-up of such schemes or benefits in kind, they will be encouraged to highlight that in their voluntary contextual information. For example, it would be significant if an employer identifies that the earnings of women employees are disproportionately affected by absorbing costs associated with childcare as part of a salary sacrifice scheme.

### *Company cars and car allowances*

Some consultation responses asked for further clarification around car-related allowances and benefits, specifically. For example, the **CBI** suggested: *“The draft regulations include, ‘car allowance paid through the payroll’ in the definition of pay’, but excludes a car that is received as a benefit in kind. As well as this distinction being arbitrary, businesses believe that a car allowance or company car can be a benefit in some roles, but a necessary piece of work equipment for others.”*

**Asda** explained: *“At Asda, employees that reach a certain level of seniority are given the option to take a company car or a cash allowance in place of this. Under the regulations as drafted, company cars would be excluded as a benefit in kind, but car allowances paid through the payroll would need to be included in the gender pay gap calculation. As such, there is a risk that the data could be skewed purely as a result of individual colleague choice.”*

While favouring excluding car-related allowances from the gender pay gap calculation on the basis that they represent a benefit in kind, **AXA** felt that most *“company policies for cars would apply consistently to men and women”*.

Given that no consultation responses provided evidence of gender differentials in the numbers of male and female employees who opt for a company car as a benefit in kind, we do not believe that excluding them from the calculations outlined in the regulations will unfairly skew the results.

Car allowances paid to an employer through the payroll will be included within the calculations to ensure consistency with our wider approach to paid allowances. For the purpose of gender pay gap reporting, it is not directly relevant whether an individual employer regards the provision of a company car or car allowance as a perk or a necessity.

#### *Pension contributions and other deductions*

**EEF** stated: *“The issue of employer and employee contributions into occupational pension schemes should be explicitly dealt with as the current reference to calculating pay before deductions for pension schemes is insufficiently clear. Employer contributions should be expressly excluded from the definition of pay in the regulation and it should be made clear that pay is to be calculated before the deduction of any employee occupational pension contributions.”*

**KPMG** suggested: *“Consideration should be given as to whether to include employer pension contributions because pension contributions are likely to be a material figure in the context of overall remuneration, particularly where some employees are members of a defined benefit pensions scheme. Ideally, employer contributions under defined contribution arrangements and the value of defined benefit accrual under defined benefit schemes would also be included but we are aware that putting an accurate value on defined benefit accrual can be both complex and administratively burdensome.”*

As the objective is to capture the amount earned by employees in their jobs, the draft regulations will continue to specify that pay is to be calculated before any deductions made at source, including (a) any cash deductions that are compulsory for the employer (e.g. PAYE, national insurance or pension contributions/schemes) and (b) any cash deductions that are compulsory for the employee (e.g. court-imposed child support payments or attachment of earnings).

## *Redundancy, severance and termination*

Echoing the response from **BT**, the **GC100** stated: *“While redundancy pay is expressly excluded from the definition of ‘pay’, other types of severance pay that would not constitute ‘redundancy pay’ are not excluded. Such payments could therefore fall within the definition of ‘pay’, despite the fact that such payments are not ordinarily referable to an employee performing work in the ordinary course of their employment. This different treatment of redundancy and other severance pay is inconsistent. The majority of GC100 members are of the view that ‘pay’ should be amended to exclude pay referable to or in connection with termination of employment.”*

We agree that redundancy, severance or termination payments are not earned by the employee during a specific pay period. It is important to be consistent between redundancy and other types of severance and termination pay, and all such payments will be excluded from an employer’s gender pay gap calculation.

## Defining employees

A number of responses highlighted that the current definition of relevant employee within the draft regulations unintentionally limited the application of the regulations and may exclude salaried members of LLPs or apprentices. For example, the **Recruitment and Employment Confederation** noted:

*“This appears to suggest that, the definition of ‘employment’ will be narrower for the purpose of gender pay reporting than the definition used in section 83 of the Act. Thus meaning that for the purpose of determining whether an employer meets the threshold for reporting and who employers must report on, only individuals engaged on a contract of employment will be taken into account.”*

The **TUC** *“believe that the government must look to include all workers – those who have contracts to personally carry out work – in gender pay gap reporting”* as women are more likely than men to be employed as casual workers (e.g. zero hour contracts or seasonal employment).

Other consultation responses expressed concern about the wider definition of employment under section 83 of the Equality Act 2010 that includes employment under a contract of employment and a contract of apprenticeship or a contract personally to do work.

Noting that *“case law relating to the scope of the circumstances in which individuals do or do not fall within s.83 is complex and will continue to evolve”*, **Linklaters LLP** proposed: *“Applying a narrower definition limited to those individuals who are actually employed on a contract of employment will avoid uncertainty.”*

The **GC100** (the Association for the General Counsel and Company Secretaries of Companies in the UK FTSE 100) flagged: *“Some GC100 members do not hold pay data on their HR or payroll systems for agency workers, consultants or individuals who provide their services on a self-employed basis.”*

Similarly, having noted that *“the definition of relevant employee within section 83 of the Equality Act 2010 could be interpreted to include agency and contingent workers”*, **Barclays** expressed the following concern: *“For the purposes of gender pay reporting, applying the definition in section 83 could lead to a situation where a business has to include the pay of workers who are not employees, and the business has no direct control or influence over pay decisions.”*

We will provide guidance to help employers to identify which employees are within scope. We have amended the regulations so that it is clearer that we intend the regulations to apply to employees within the meaning of section 83 of the Equality Act 2010:

- Any employees within the meaning of the Act who are remunerated during the reference period would be included, such as zero-hours contractors, apprentices and some consultants.
- Those who are not based in Great Britain but are still regarded as being employees of employers within scope could still be covered because of a strong connection with Great Britain.
- Self-employed people (i.e. those who are not employees for the purposes of the Equality Act 2010) should not be included in the overall gender pay gap calculations.
- Agency workers will be taken into account by the employer with whom they have the contract of employment, and this will generally be their agency.

## Proposed additional measures

Reflecting the feedback received during our earlier consultation, there was a general consensus that the reporting requirements outlined in the draft regulations are “attainable”, as noted by the **British Retail Consortium (BRC)**. Some responses proposed additional measures that could also be included within the requirements.

### *Reporting by working hours*

A relatively small number of responses (including the **Fawcett Society** and **Prospect**) suggested additional reporting around part-time pay gaps. For example, the **TUC** suggested requirements to publish the gender breakdown of the part-time workforce; the gap in hourly pay between part-time and full-time employees; and the distribution of part-time employees: *“This would focus employers’ attention on the concentration of women in part-time roles and the part-time penalty (by which we mean the gap in hourly pay between full-time and part-time jobs).”*

While recognising that the publishing a part-time gender pay gap figure was less helpful for employers with few or no part-time employees, the **Equality and Human Rights Commission (EHRC)** recommended that *“a requirement to measure the part-time pay gap be added to the regulations, for employers whose workforce is 25% or more part-time workers”*.

Responses to the first consultation highlighted that publishing separate gender pay gap figures for full-time and part-time workers risks hiding the average differences in pay between men and women given differences in working patterns. As noted in our response to the first consultation, publishing separate full-time and part-time figures may not be useful or appropriate for many employers with few part-time workers.

Requiring employers to publish information that compares the average hourly pay of part-time women with that of full-time men risks artificially excluding full-time women and part-time men. Moreover, although 73% of part-time workers and 37% of full-time workers are women, no responses provided specific evidence that part-time and full-

time employees in similar or comparable roles are paid unequally. Given these considerations, we will not be requiring employers to publish a separate part-time pay gap at this time.

#### *Reporting by age*

The **Young Women's Trust** proposed: *"We believe that publishing the gender pay gaps at different age bands will help to identify both barriers to progression for young women as well as the impact of career breaks. This will allow organisations to introduce policies which will support the progression of young women and minimise the wage penalties felt by women taking career breaks."*

In its report on the gender pay gap (published March), the **Women and Equalities Select Committee** also recommended gender pay gap reporting by age on the grounds that national statistics produced by the Office for National Statistics (ONS) show that women over 40 experience the most pronounced gender pay gap.

Given that workforce demographics will vary significantly across employers and sectors and that such reporting may raise confidentiality issues (e.g. where only a small number of employees occupy a particular age range within an organisation), we do not intend to introduce this additional requirement. Our non-statutory guidance will suggest that some employers may find it useful to provide this information as part of their voluntary narrative as suggested by **Business in the Community**: *"Since we know that the gender pay gap increases with age, we should encourage employers in the government guidance to also report voluntarily what they pay their male and female staff by age."*

#### *Action plans*

The **Fawcett Society** recommended a requirement for employers within scope to publish an action plan: *"Identifying a gap is not enough, interventions must be made to close it."*

**Prospect** agree that *“there should be an accompanying requirement for employers to publish what steps they intend to take to reduce any identified gaps”*; the **TUC** believe that an action plan *“would also give employees and trade unions something to hold employers to account for delivering”*; and **Unite** suggested that this *“will assist in union negotiations for fair pay for women”*.

Similarly, **Close the Gap** stated: *“Without a requirement to take action to address identified gaps, it is extremely unlikely that many employers will voluntarily do so.”*

The government maintains that increasing transparency around the differences in pay between women and men will encourage employers to scrutinise their own recruitment, remuneration, reward and staff development practices and ensure that steps are taken to close any identified pay gaps. Although the regulations will not require the publication of action plans, the non-statutory guidance will encourage employers to do so voluntarily where appropriate.

## Gender bonus gap

### *Bonuses received*

A number of responses highlighted the potential complexities around some forms of bonus payments, including long-term incentive plans, share options, profit-sharing and deferred bonus payments.

While **Centrica** agreed that “*any bonuses, commission, long-term incentive plans and company share awards*” should be included in the gender bonus gap calculation, **JLT Group PLC** asked that the definition of bonuses be clarified: “*At the moment it states this is for bonuses “received and earned” but it is not clear if this would include amounts that have been awarded or deferred but not yet paid.*”

**Simmons and Simmons LLP** asked for further clarification about how ‘profit sharing’ is defined for the purpose of these regulations: “*Is there intended to be any distinction between pure profit-share (received by the equity owner of a business) as distinct from individual work performance-linked profit share arrangements (such as equity-linked incentive awards)?*”

Taking these consultation responses into account, we will amend the regulations so that bonus payments made in securities, interests in securities and securities options are captured by reference to income tax liability, as we consider this the easiest and most consistent way for employers to value bonuses paid other than in cash. We will provide clear guidance on how to comply with the gender bonus gap reporting requirements.

### *Calculating bonus gaps*

The **CBI** suggested that the bonus gap “*would be better presented on a full-time equivalent basis*” as the average cash value awarded to a woman may be lower than the average cash value awarded to men because of the distribution of part-time work where an employer awards a 2% bonus to all staff, for example. This methodology

was favoured by a small number of responses (including **Marks and Spencer**, the **Financial Reporting Council** and **PWC**).

As with the employee threshold, the overall gender pay gap calculations and earnings quartiles are all based on headcount rather than full-time equivalent (FTE). Adopting an alternative methodology for the bonus gap calculations risks being confusing for employers and employees. If a gender bonus gap has been skewed where a percentage bonus has been paid to full-time and part-time employees, that employer may want to highlight that in their contextual information.

#### *Median gender bonus gap*

Given that the regulations will require mean and median gender pay gap figures, some consultation responses (including **CIPD**) suggested that employers should similarly publish two gender bonus gap figures.

The **Law Society of Scotland** felt that it was *“not clear why there is no requirement to publish information on the median as well as mean bonus paid by an employer”* and the **British Retail Consortium** agreed that this would be *“inconsistent”*.

**Virgin Media** indicated that *“the mean and the median should be used for bonus in the same way as for pay, due to our view that the median is the best representation of the ‘typical’ difference as it is unaffected by a smaller number of high earners and provides consistency in approach between the pay and bonus calculations.”*

**Simmons and Simmons LLP** also stated: *“We note that some of our clients are considering voluntary publication of the median bonus pay. We suggest that the regulations should be modified to require publication of the difference in median bonus pay in addition to the difference in mean bonus pay.”*

We agree that requiring a mean and median gender bonus gap would be consistent with our requirement that employers publish two gender pay gap figures and that the median is the best representation of the typical difference because it identifies the

bonus paid to the middle recipient. Once employers had collated the data to calculate the mean bonus gap, we estimate that it would take a further 30 minutes to calculate a second bonus gap figure. This would only incur minimal familiarisation and annual implementation costs. As the resulting additional transparency would be beneficial, the regulations have been amended to require large employers to publish mean and median gender bonus gaps.

### *Proportions receiving bonuses*

To supplement the gender bonus gap, the draft regulations require employers to publish the proportion of male and female employees that received a bonus. **Chwarae Teg's** suggested that "*bonus pay gap reporting should include a gender break down of who is eligible for bonus payments*", while **EY** asked for clarity on what the percentage base is calculated from – e.g. all employees on the relevant date or all employees over the 12-month period.

Awarded bonuses will be recorded on payroll systems (while eligibility will not) and our policy objective is to highlight any differences in the bonuses paid to men and women. As such, we have refined the drafting of the regulations, but this will not affect the substance of the requirement for a gender breakdown of those receiving bonuses. Only those employed on the relevant date need be captured.

## Salary quartiles

Employers will be required to report on the number of men and women in each quartile of their pay distribution. Some respondents suggested that a more detailed pay distribution by decile would help highlight gender differences. For example, the **TUC** *“would like to see the requirement to publish the numbers of men and women in each pay quartile...modified so that the requirement is to publish information by pay decile instead. Gender segregation that frequently exists at the very top and bottom of organisations will not be so evident when information is presented by quartiles.”*

While agreeing that deciles would *“allow employers to better understand how women are distributed in their pay scale”*, the **Fawcett Society** stated: *“The inclusion of the proportion of women employed at each salary quartile is a positive addition to the regulations. The concentration of men in more senior and highly paid roles is a significant driver of the pay gap and this data could improve employers’ awareness and understanding of how this plays out within their organisation.”*

Requiring more detailed information would likely raise confidentiality issues with relatively limited additional benefit. Moreover, where an employer has a certain number of fixed pay bands, it is much more likely that employees receiving the same hourly rate could be spread across a number of deciles which would be confusing and misleading. As such, we will not be amending the regulations to require deciles instead of quartiles.

Indeed, the quartile requirement was favourably received overall. For example, **PWC** said: *“We consider that, if applied consistently, the publication of quartile pay bands could provide insightful information into the distribution of an organisation’s employees across the pay range. This should help to contextualise the overall gender pay gaps published by indicating the extent to which an organisation’s demographic characteristics impact its gender pay figures”*

A number of responses suggested that the quartile disclosure would be more useful if the proportion of male and female employees within each quartile was included

instead of the overall number of male and female employees, and we have revised this requirement as proposed.

A number of consultation responses indicated that the requirement to publish quartile information as outlined in the draft regulations published in February could be interpreted in different ways. For example, the **Chartered Management Institute (CMI)** observed that *“there is some ambiguity about the interpretation of the requirements on pay quartiles. We would support clarification on this.”*

We have subsequently revised the draft regulations to clarify that employers should generate quartiles by dividing the workforce into four groups, each with an equal number of employees as follows:

- All employees are ranked according to average hourly pay, starting from lowest paid to the highest paid.
- The employer then identifies the median (50<sup>th</sup> percentile) in this ranked distribution of all employees. This figure represents the second quartile.
- An employer identifies the first quartile (25<sup>th</sup> percentile) by calculating the mid-point between the smallest value (i.e. the lowest paid worker) and the median (i.e. the second quartile).
- To identify the third quartile (75<sup>th</sup> percentile), the employer calculates the mid-point between the median (i.e. the second quartile) and the largest value (i.e. the highest paid worker). 75% of all employees are under this value and 25% are over it in the fourth (“upper”) quartile.
- If there are multiple employees on exactly the same hourly pay rate, some employees on the boundary would be split into the quartile below and some into the quartile above, so that the four quartiles have an equal proportion of people. Employers should ensure that the proportions of male and female employees in each of those quartiles are the same. For example, it would not be

appropriate for all the women on that hourly rate to be put into the higher quartile. Popular spreadsheet software does this automatically.

- As noted above, the employer must then calculate what proportion of women and what proportion of men are in each of these four quartiles – presenting this information as percentages as in the following example:

<b>Quartile</b>	<b>Women</b>	<b>Men</b>
Upper (75-100%)	40%	60%
Upper middle (50-75%)	45%	55%
Lower middle (25-50%)	54%	46%
Lower (0-25%)	73%	27%

This method is preferable to calculating each quartile by dividing the full salary range into four equal parts. Many organisations may employ a small number of very highly paid individuals who would distort the overall distribution, pushing the majority of the staff into the lowest quartile. Indeed, the pay of a single individual (e.g. the CEO) may be sufficiently high that they are the only person in the upper quartile.

Similarly, it is possible that one or two of the quartiles calculated on this basis may include no employees at all. As such, this information would have very limited meaning to employees considering the published information. The favoured methodology outlined above will better facilitate discussions around the gender balance within an organisation's pay hierarchy.

## Contextual information

As noted in the government response (published February) to the earlier consultation on closing the gender pay gap, we expect that many employers will want to provide additional narrative that provides context, explains any pay gaps and sets out what actions will be taken. The narrative will be voluntary, but will be strongly encouraged within the guidance accompanying the regulations.

The **Equality and Human Rights Commission (EHRC)** endorsed this position: *“Some employers and their representatives have expressed concerns to the Commission that publication of pay gap figures alone, without an accompanying explanation, may be misleading and damaging to their reputation. Employees and the public may wrongly perceive pay gaps as synonymous with discriminatory pay practices. We consider that narrative reporting will encourage employers to consider the impact on gender pay gaps of their approach to recruitment, retention, development, promotion, and remuneration of staff.”*

The **Financial Reporting Council (FRC)** also agreed with our proposed approach: *“A number of variables (different roles within an organisation, experience, level of seniority, length of service) will have an impact on the figures that are presented. We believe that it is important for the GEO, perhaps through guidance, to encourage companies to include narrative information to explain the published figures.”*

Viewing the regulations as a further step in signalling the importance placed on achieving equality in the workplace, the **British Banker’s Association (BBA)** observed that *“an employer with relatively progressive return to work and flexible working policies...could find itself disclosing higher pay gaps than those with less progressive policies in the short term...if, for example, a strategy to reduce the gender imbalance at a senior management level were to be to recruit more young women into ‘pipeline’ posts for senior management. In this scenario, pay rates could be reflective of lesser experience and could result in the gap widening in the first instance.”*

We recognise that the gender pay gaps reported by employers may fluctuate – especially in the early years of reporting. This will encourage employers to outline those actions taken to increase gender parity – enhancing rather than damaging their reputations.

To help employers understand the factors driving any gender pay gaps and take action to address them, the **EHRC** recommended that supporting guidance should also encourage employers to consider the following aspects of pay and progression:

- Starting pay for men and women.
- Promotion rates for men and women.
- The proportion of mothers returning to the employer after maternity leave, and the proportion of mothers still in employment a year after returning.
- The proportion of men and women using various flexible working patterns, and levels within the organisation at which take-up is occurring.

We are working closely with ACAS to develop clear and user-friendly guidance to help employers understand and implement the regulations. That guidance will include advice about the voluntary contextual narrative that will reflect relevant and appropriate proposals raised by stakeholders during the second consultation, such as those outlined above.

While agreeing that *“publically reporting gender pay gap information will encourage action to be taken and approve the greater transparency on this topic”*, **Standard Life PLC** *“remain concerned that there is a lack of understanding around the causes of the gender pay gap...many still equate pay equality (legislation) as the gender pay gap. We believe the Government has a role to play in educating the public on the gender pay gap vs equal pay, as this is a broader societal issue and not one that companies should be expected to manage in isolation.”*

Our earlier consultation on closing the gender pay gap (July-September 2015) emphasised that the gender pay gap shows the average difference between the earnings of women and men rather than signifying unequal pay for comparable work. Government messaging will continue to recognise the complex drivers of gender pay gaps because overcoming those barriers will help promote gender equality in workplaces and society. Employers' own contextual narrative may also want to demonstrate that their gender pay gaps are not the result of unequal pay practices.

## Publication and compliance

### *Online publication*

The regulations will require employers to publish the information on their own website in a manner that is accessible to employees and the public. In addition, employers must also publish the information to a government website.

**EEF** (the manufacturer's organisation) noted: *"Some of our companies have commented that they do not have a UK website. If the company is part of a group of companies which manufactures a range of products, they might have websites for the products (for example hosted by an overseas parent) rather than websites for each local plant or employer."*

However, the **Financial Reporting Council (FRC)** *"support this information being published on a company website as we believe that this is the most effective method for communicating the information to the intended audience."*

Similarly, the **National Federation of Women's Institutes** supported the proposed approach: *"We welcome the guidelines for where employers should publish this data, how they are to notify government that they have published the data, and that a senior representative within each organisation will have to attest to the accuracy of the data."*

Although we received no specific evidence about the numbers of large employers within scope that do not have a UK website, the revised regulations do not explicitly require the information to be published on a UK website. An employer may want to create a separate webpage for their gender pay gap information or publish on a website hosted by its parent company.

### *Senior statement*

A written statement - signed by a director or senior employee - confirming the accuracy of the required information must also be published online. **CIPD** responded: “*We note that employers must publish their gender pay gap information on their website, accompanied by a written statement confirming that the information is accurate. The explanatory note specifies that this should be signed ‘by the appropriate person depending on the legal status of the relevant employer’. The guidance should provide enough general principles and specific examples of who the ‘appropriate person’ might be, including the circumstances that might lead to a failure to comply with the regulations.*”

While we will ensure that the supporting guidance for employers provides clear advice about the senior signatory of the written statement (and this has been clarified within the regulations), the government position is clear that all employers within scope will be expected to publish the required information on an annual basis and no exemptions for non-compliance are currently envisioned.

### *Monitoring compliance*

Although some responses (including the **Fawcett Society**, **TUC**, **Prospect** and **Unite**) felt strongly that there should be financial sanctions for employers that do not comply, the majority did not raise concerns about the absence of such penalties. As such, we do not intend to create any additional civil penalties at this time, but we can review this if the levels of compliance are not satisfactory. However, non-compliance would constitute an ‘unlawful act’ and fall within the existing enforcement powers of the Equality and Human Rights Commission (EHRC) under the Equality Act 2006.

Requiring employers to publish the required information to a government website will allow us to closely monitor levels of compliance and keep this position under review by establishing a database of compliant employers. We are currently scoping the potential functionality of that government-sponsored online portal.



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