

# **EQUALITIES IMPACT ASSESSMENT: REQUIRING GENDER PAY GAP INFORMATION FROM EMPLOYERS UNDER SECTIONS 78 AND SECTION 153 OF THE EQUALITY ACT 2010**

## **Introduction**

1. This paper assesses the impact of proposed mandatory Gender Pay Gap (GPG) reporting obligations for large employers in the private and public sectors, through making regulations under the Equality Act 2010 (“the 2010 Act”) and will assist the Minister for Women and Equalities in giving effect to the Public Sector Equality Duty (PSED) under section 149 of the 2010 Act. The PSED requires the Minister to have due regard to three limbs of section 149(1):
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2. Having due regard to the need to advance equality of opportunity under section 149(1)(b) between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
  - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
3. This paper provides a forward-looking analysis of the expected equalities impact of new regulations to be made for both the private and public sectors under sections 78 and 153 respectively, informed by, amongst other things:
  - (a) the likely/foreseeable impact of those new regulations,
  - (b) the available data on the makeup of the current protected characteristics,
  - (c) extensive engagement between businesses and business groups regarding the development of the new regulations. As set out in paragraph 12 below, there have been three public consultations on gender pay gap reporting proposals to inform the policy.

4. This policy is owned by the Government Equalities Office (GEO). The GEO is responsible for equality strategy and legislation across government. GEO take action on the government's commitment to remove barriers to equality and help to build a fairer society, leading on issues relating to women, sexual orientation and transgender equality.
5. A key GEO priority is delivering the government's manifesto commitment to introduce regulations requiring large employers to publish their gender pay data. This manifesto commitment contributes towards the wider work the GEO is doing which seeks to eliminate the GPG in a generation.

### **Description of the policy**

6. The Office of National Statistics (ONS) calculate the overall median GPG as the difference between the average gross hourly earnings of male and female paid employees as a percentage of average gross hourly earnings of male paid employees. The overall UK GPG figure has narrowed from 27.5% in 1997 to 18.1% in 2016<sup>1</sup>.
7. Many factors have affected the GPG during that period, including the introduction of the national minimum wage which especially benefited women in low-paying work. The current GPG figure is the lowest since the survey began in 1997, but the rate of progress in closing the gender pay gap is too slow - the gap was 19.8% in 2010<sup>2</sup>.
8. The then Prime Minister set out his ambition to close the GPG in a generation<sup>3</sup>. 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.
9. Mandatory gender pay gap reporting has cross-party support. The initial commitment was only for the private sector, but in October 2015 the then Prime Minister announced plans to extend the requirement to large public sector employers. The aim is to keep the requirements and timetable as similar as possible between the private and public sectors.
10. Wider government policies will continue to have an impact on the UK gender pay gap. For example, hourly wages have increased by 5.3% for part-time employees (who are mostly female) and by 2.3% for full-time employees since 2015<sup>4</sup>. Because women make up the vast majority of the part-time workforce,

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<sup>1</sup> ONS Annual Survey of Hours and Earnings 2016, gender pay differences, <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2016provisionalresults#gender-pay-differences>

<sup>2</sup> Ibid.

<sup>3</sup> The Times, July 2015, 'Women's raw deal on pay has to end now', <http://www.thetimes.co.uk/tto/opinion/columnists/article4496792.ece>

<sup>4</sup> ONS Annual Survey of Hours and Earnings 2016, gender pay differences, <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2016provisionalresults#gender-pay-differences>

more women received a pay rise as a result of the 2016 introduction of the National Living Wage, which in turn contributed to the fall in the overall GPG. Since 1997, the proportion of men working part-time has steadily increased (9% in 1997 to 13% in 2016) and this has contributed to the fall in the overall GPG. The government is committed to reviewing the GPG regulations five years after commencement as required by the Small Business, Enterprise and Employment Act 2015.

11. The government will use the powers in the 2010 Act to make regulations under section 78 (the private sector regulations) and section 153 (the public sector regulations), requiring large employers to publish gender pay gap information. Taken together, the two sets of regulations will cover around 9000 employers (including 1000 public sector organisations) and around half of the total workforce.
12. Three public consultation exercises have been conducted during 2015 and 2016. Two focused on reporting by the private, voluntary and charity sectors, and another focused on public sector reporting. Through the consultations and our engagement with employers, business organisations, HR experts, women's civil society and trade unions, we have identified a number of complementary and achievable metrics which will provide employers in scope with a useful picture of workplace gender equality. These are:
  - **Mean gender pay gap:** reflects an employers' full earning distribution and is useful because women are often over-represented at the low earning extreme and men over-represented at the high extreme
  - **Median gender pay gap:** identifies the wage of the middle earner and is the best representation of the 'typical' difference as it is unaffected by a small number of very high earners
  - **Mean and median gender bonus gap:**
    - Bonuses as a percentage of total pay were 6.0% overall in the financial year ending 2016, with over £44 billion paid out in bonuses in 2015/16.
    - Employers will analyse all bonus payments made in the preceding 12-month period and publish the percentage difference between women and men.
  - **Proportions of male and female employees that received a bonus**
  - **Salary quartiles:** Four equal groups into which an employer's salary range can be divided. Employers will publish the proportion of men and women in each quartile of their pay distribution. This will identify where women are concentrated in terms of pay and if there are blockages to their progression.

## **Who will be affected by the new legislation?**

13. The private sector regulations will require all employers (except government departments, the armed forces and certain public authorities specified in Schedule 19 to the Equality Act 2010) with at least 250 employees in Great Britain to publish gender pay gap information. They will cover some public bodies that are not specified in the 2010 Act.
14. The public sector regulations will apply to the public authorities specified in Regulations, which are most of the public authorities listed in Parts 1 and 4 of Schedule 19 to the Equality Act 2010<sup>5</sup>. The gender pay gap reporting requirements only apply to those specified public authorities if they have 250 or more employees. The specified bodies are English public authorities and those exercising reserved functions, and cross-border authorities. Welsh and Scottish public authorities (exercising devolved functions) are subject to separate duties under regulations made by the devolved administrations.
15. Bodies covered by both sets of regulations will be expected to capture their first set of GPG data based on a “snapshot date” (5 April 2017 for bodies covered by the section 78 regulations, and 31 March 2017 for public authorities covered by the section 153 regulations) and publish the information within 12 months of that date (so by 4 April 2018, or 30 March 2018 for the public sector).
16. The majority of employers and business representative organisations that responded to the first consultation agreed that the regulations should only apply to employers with at least 250 employees. Responses highlighted that small and medium sized employers may find it more difficult to comply with the regulations due to system and data constraints.
17. The existing requirement in the Equality Act 2010 (Specific Duties) Regulations 2011 (S.I. 2011/2260) (made under section 153) for public authorities to publish information relating to employees applies to bodies with 150 or more employees, and these bodies are already encouraged to include GPG data in the information that they publish. We intend to keep this reporting regime in place so that public authorities with 150 or more employees will still be required to report on the diversity of their workforce and consider whether to include data on gender pay differences in the information that they publish. This will be in addition to the new obligation to report on their GPG if they have 250 or more employees (to align with the private sector).

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<sup>5</sup> Some of the smallest public authorities listed in Schedule 19 are not subject to the Regulations (as the obligations would be disproportionate for small bodies).

## **Analysis of impact on protected characteristics**

18. Most employers will be required to publish gender pay gap details under section 78 of the Equality Act. That provision enables regulations to require employers to publish information to show whether there are differences between the pay of male and female employees. There is currently no legal basis to require employers to report on pay gaps solely by reference to other protected characteristics - a disability pay gap, for example. The Government has no plans at present to require reporting on differences in pay for those protected characteristics not covered by section 78.
19. The Government Equalities Office uses “gender” to describe the marker for those who identify as either male or female. Although the Equality Act 2010 refers to the protected characteristic of “sex”, in this document, we use the term “gender” interchangeably with “sex”, except in the context of gender reassignment.

## **Protected characteristics that will not be directly impacted on by introduction of the regulations**

20. For the following protected characteristics, it is anticipated that the introduction of the regulations will not have any appreciable impact on any of the three limbs of the PSED (the need to a: eliminate discrimination, b: advance equality of opportunity, or c: foster good relations):
- **Race**
  - **Religion & Belief**
  - **Sexual Orientation**
  - **Disability**
  - **Marriage and civil partnership**
21. Taking into consideration the theory of intersectionality (the interconnected nature of social categorisations such as race, class, and gender as they apply to a given individual or group, regarded as creating overlapping and interdependent systems of discrimination or disadvantage), we expect the regulations to have an indirect positive impact on women who hold other multiple characteristics. For example, a woman who self-defines as LGB is invited to participate in a talent scheme set up as a result of her organisation identifying blockages in progression for women into senior-management. However, as the regulations only measure outcomes for the protected characteristic of gender, it will not be possible to infer from the data that there is a causal relationship between the legislation and the interconnected protected characteristics of the woman’s gender and any other protected characteristic.

## **Consideration of protected characteristics which may interact with introduction of the regulations**

### **Gender Reassignment**

22. The regulations will require employers to consider whether employees are “male” or “female” so to that extent it is possible that gender pay gap reporting might be perceived to have an impact on the needs to advance equality of opportunity and to foster good relations between people with the protected characteristic of gender reassignment and others. However, it is not considered that any (or any significant) impact would in fact occur, for the following reasons.
23. In most if not all cases, employers are already required to record employees’ gender for HMRC purposes and will simply use these records for gender pay gap reporting purposes. In addition, nothing in the regulations requires a person’s transgender status to be recorded or disclosed. Further, nothing in the regulations prevents the employer from treating the employee as belonging to the gender in which the employee presents / is known at work, irrespective of their legal gender.

### **Age**

24. Key challenges for many older women include keeping their skills updated and learning new ones in order to take advantage of employment opportunities in growing sectors. For others, the main challenge is the need to reduce their hours to accommodate increased caring responsibilities for children, grandchildren and/or ageing parents. The cumulative effect is that women remain less likely to progress far up the career ladder. Whilst evidence shows that the gender pay gap is much less for women working full-time under 40 years old, the largest pay gap exists for 50-59 year-old women at 25.4%<sup>6</sup>.
25. 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 a regulatory requirement for gender pay gaps reporting by age. Our non-statutory guidance will suggest that some employers may find it useful to provide this information as part of their voluntary narrative that explains any identified gender pay gaps.
26. As the regulations do not introduce a specific requirement for employers to report on ‘age’, we cannot assert that the regulations will have a direct impact on compelling employers to address any of the three limbs of the PSED in regards to age only and for those experiencing age discrimination regardless of gender.

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<sup>6</sup> ONS Annual Survey of Hours and Earnings 2016, gender pay differences, <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2016provisionalresults#gender-pay-differences>

27. However, based upon consultation responses and stakeholder feedback, we anticipate that many employers who publish gender pay gap information will be encouraged to establish an effective talent pipeline that helps women to fulfil their earning potential thereby advancing equality of opportunity with men<sup>7</sup>. Employers may feel incentivised to tackle blockages in the talent pipeline that limit progression by increasing support and career development for older women workers.

## **Pregnancy and Maternity**

28. A proportion of the gender pay gap is due to differences in the number of years of full-time work experience or the negative effect on wages having previously worked part-time or having taken time out of the labour market to look after family. Women in the middle phase of their working lives are often looking to secure their positions or move into senior and managerial roles. Assumptions about mothers not wanting or not being in a position to accept promotion may result from unconscious stereotyping. All of these issues contribute to the gender pay gap. The gender pay gap opens up when women have their first child, and continues to widen after the age of 40<sup>8</sup>. Although mothers with dependent children have higher rates of employment than mothers without dependent children (74% vs 69% respectively), mothers with dependent children still have considerably lower employment rates (around 20 percentage points lower) than fathers with dependent children<sup>9</sup>.

29. The regulations will ensure that large employers are transparent about any differences between the pay of men and women in their organisation, consider why this is, and take appropriate action to address the causes where pay analysis highlights anomalies - for example, issues around recruitment, retention and progression, remuneration or support for parents, including encouraging more male employers to use shared parental leave.

30. The regulations do not require employers to publish data on pregnancy and maternity because section 78 of the Equality Act 2010 focuses on pay differences between women and men and does not provide a legal basis for reporting on maternity returner rates, for example. As the government is making reporting around gender pay differences mandatory for the first time, the requirements must not be disproportionately burdensome or complicated as we move from a purely voluntary approach.

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<sup>7</sup> ONS Annual Survey of Hours and Earnings 2016, gender pay differences, <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2016provisionalresults#gender-pay-differences>

<sup>8</sup> ONS Annual Survey of Hours and Earnings 2016, gender pay differences, <http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2016provisionalresults#gender-pay-differences>

<sup>9</sup> ONS, Employment Rates of People by Parental Status, <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/workingandworklesshouseholdstablepemploymentratesofpeoplebyparentalstatus>

31. However, many consultation responses and stakeholders agree with our assumption that the reporting requirements will encourage employers to address those workplace cultures that have historically favoured men – e.g. introducing training to tackle unconscious bias (covering gender and other protected characteristics) among recruiters and line managers, such as stereotypical assumptions about mothers not wanting promotion opportunities. Such efforts by employers should improve outcomes for people with the protected characteristic of pregnancy and maternity, in relation to all three limbs of the PSED. This is also further compliance with section 149(5) of the 2010 Act in that it pays due regard to the need to tackle prejudice and promote understanding.

## Sex

32. Sex is the protected characteristic upon which mandatory gender pay gap reporting will have the greatest impact.

33. There is strong evidence that the UK economy is losing out due to women's academic achievements, experience and talents not being effectively utilised. Boosting female participation in the labour market so that it equals male participation (both in terms of hours and occupation) would improve the productive potential of the UK economy, not just simply through increasing the hours worked, but also through addressing skill shortages. McKinsey estimated that "bridging the full labour-force participation gap between men and women could boost GDP by 5 to 20% for most countries. The OECD estimates that 10% could be added to UK GDP by 2030 if gender gaps in labour force participation are fully eliminated vs. the status quo"<sup>10</sup>.

34. Whilst there are a range of positive economic outcomes from increasing the labour market participation among low-skilled women, doing so may be bad for the gender pay gap in the immediate term. This is due to the way the GPG is measured and follows from the assumption that a low-skilled individual is likely to be paid less than the median wage. We will be monitoring compliance with the regulations very closely and consider any adverse impact on employment patterns and practices.

35. As outlined above, our extensive stakeholder engagement strongly indicates that many employers within scope of the regulations will be encouraged to recruit more women and establish an effective talent pipeline that helps them to fulfil their earning potential<sup>11</sup>. Moreover, publication of a gender pay gap can ultimately increase employee confidence in the remuneration process and enhance an employer's corporate reputation. Competition and peer pressure (especially within the same sector) will also drive employers to take constructive actions to tackle any workplace inequalities identified.

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<sup>10</sup> McKinsey, How Advancing Women's Equality can add 12 trillion to Global Growth, <http://www.mckinsey.com/global-themes/employment-and-growth/how-advancing-womens-equality-can-add-12-trillion-to-global-growth>, 13.

<sup>11</sup> Over four-fifths of organisations who responded to the first government consultation agreed or strongly agreed that the publication of gender pay information will encourage employers to take actions that will help close the gender pay gap. No organisations strongly disagreed with that statement.



36. Increasing transparency around gender pay differences in the private and voluntary sectors and the public sector will enable the impact of workplace policies and practices to be monitored and discussed. By identifying those employers that are consistently and successfully ensuring that their women employees are achieving their full potential, government can recognise and disseminate good practice.

**37. We are confident that the regulations in/directly contribute towards all three limbs of the PSED in regards to the protected characteristic of 'sex':**

(a) to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act. Although the gender pay gap and unequal pay are often conflated, a gender pay gap in itself is not evidence that an employer is breaching long-standing equal pay laws. However, by forcing large employers to examine any differentials in the earnings of women and men, it is possible that such analyses of remuneration practices may identify instances of unequal pay for similar or comparable work that the employer was previously unaware of. In those instances, the employer would need to take immediate steps to address any such disparity in order to be compliant with equal pay legislation.

(b) to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. As the regulations will demonstrate the gender pay gap in an organisation, it is considered that the proposals will drive efforts to promote equality of opportunity between men and women. For example, our proposals to require employers to publish their gender bonus gaps were favourably received and many respondents to the second GPG consultation acknowledged that bonus payments can be a significant element of remuneration in some sectors and increasing transparency in this area should spur employers to ensure that their reward policies are fair. Similarly, the quartile-pay distribution information was also welcomed as it clearly demonstrates if there is an unexplained disparity in the distribution of women and men within an organisation. Where women are concentrated in the lower pay quartiles, many employers will step-up their efforts to establish an effective talent pipeline to help women achieve their full earning potential. All these actions pay due regard in particular to the three principles in section 149(3) – to remove or minimise disadvantages suffered by women, to take steps to meet women's needs and encourage women to participate more in the workplace.

(c) to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In addition to the anticipated impacts of these reporting requirements as outlined above (including reviewing remuneration policies, promoting flexible working, supporting parents, providing unconscious bias training and developing older working women), stakeholder feedback has highlighted that greater transparency will encourage male and female employees to constructively discuss any disparity in earnings with their employers, their trade unions and each other.