

Mandatory Gender Pay Gap Reporting

CIPD response to the Government Equalities Office

Chartered Institute of Personnel and Development (CIPD)

March 2016



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Background

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has 140,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

Response

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.

The CIPD welcomes the Government's draft mandatory gender pay gap regulations, and is pleased to see that, broadly speaking, the regulations reflect the views of stakeholders to its first consultation. We believe that the proposed regulations are, in the main, soundly based and will help to support organic and sustainable change, with transparency representing an important step in the right direction to encourage greater equality of opportunity for women in work. However, if implemented in isolation, without ongoing and concerted action on that part of government and business to support employers, not only to measure their gender pay gap, but to understand its underlying causes, we are concerned that the regulations will not achieve their desired impact. While we do not suggest any specific amendments to the regulations as they stand, therefore, we do seek clarification on some areas. Further, as we also believe that *how* the regulations are implemented and the resultant data acted on by employers and government is as important as the scope and content of the regulations themselves, we urge the Government to consider our general comments set out in a separate section below.

Definition of pay

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.

Bonus payments

We welcome the additional focus on the bonus gap and quartile salary bands in the regulations, which are a departure from the earlier consultation proposals, and believe that this more detailed analysis will help employers to build up a more meaningful understanding of where its gender pay differentials lie, or are more pronounced, in the organisation.

We are also pleased to see that employers will have to publish the difference between their mean bonus payments paid to men and women, and the proportion of male and female employees that received a bonus. We fully understand why bonus information will be calculated over a 12-month period, rather than taken from a snapshot, so as to capture all bonus payments over that 12-month period. However, we are unclear as to why employers will be required to publish only mean, and not median, data relating to bonus payments, which is a departure from the welcome provision in the initial draft regulations that requires employers to produce both mean *and* median measures for their gender pay gap. As the introduction to the draft regulations make clear, the median is the best representation of the 'typical' difference as its unaffected by a small number of very high earners, and this surely applies equally to bonus payments, the mean calculation of which could be distorted by a small number of very high bonus payments. We raised this question during the webinar conducted by the Government Equalities Office on 19 February and received feedback that the mean was considered the most appropriate measure, but we would be grateful for further clarification on why this is the case.

Publication of the information on the employer's website

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.

Wider impact of the regulations

We would welcome clarification as to whether or not the Government expects the

regulations and the forthcoming guidance to have any impact on the workings of other legislation, for example, in relation to equal pay claims? For instance, if an individual makes an equal pay claim against his or her employer and it transpires that the gender pay gap regulations haven't been complied with, could that influence the outcome of any litigation? Another potential scenario could be if an employer had complied with the regulations but had not followed the approach set out in the guidance (on narrative reporting, for example), could any inference be drawn by the employment tribunal about the employer in a similar way in which the status of Acas Codes of Practice in areas such as discipline and grievance means that they are referred to by employment tribunals?

General Comments

Method of publication – a 'league table' approach

The Government Equalities Office's initial consultation on closing the gender pay gap in 2015 asked the question 'What, if any, do you consider to be the unintended consequences of implementing section 78?' Our response to this question drew on evidence collected from senior HR practitioners through focus group sessions and telephone interviews that informed our first consultation response; it highlighted the first potential unintended consequence relating to the way that the gender pay gap data will end up being collated and used. The strong consensus that emerged from the feedback we received, and endorsed by the CIPD, is that the publication of a league table would not be a constructive approach to encouraging positive and sustainable action on the part of employers to close their gender pay gap.

Our response to the first consultation therefore raised the concern that a league table:

'...would be seized upon, especially by the media, and those with organisations or sectors with the larger gender pay gaps would be painted as "bad" employers or professions. We envisage that this would very possibly have a detrimental effect on certain employers or sectors as a whole, by discouraging girls and women from pursuing certain careers. This could also have a negative effect on employees and potential employees for the organisations that have the larger pay gaps, and employers with larger pay gaps may see more of their staff leaving as a result of reporting on gender pay.... We, however, would urge the Government from taking this approach to publication, particularly the first occasion on which gender pay is being reported. The narrative on why the gender pay gap exists, and steps being taken over the following years to close the gender pay gap are what should really be important to the Government.'

We are, therefore, concerned about the Government's plans to publish the pay gap 'by sector – in a league table that will allow women to see where the gap is being addressed and where action must be taken', as outlined in the Government's press release of 12 February 2016. As you know, the Office for National Statistics (ONS) already publishes sectoral figures for the gender pay gap and so we would welcome clarification on how the

Government intends to supplement this analysis, and whether or not this would involve including the publication of individual employers' pay gaps that fall within each sector. Publishing headline figures for the gender pay gap by sector, as the ONS does, provides only one dimension to help understand the pay, position and progression of women in each sector. Indeed, providing sector-wide gender pay gap statistics on their own – without any contextual information to help business and employers to understand the deeper gender diversity issues affecting gender pay differentials in a particular employment sector or industry – could even be misleading.

For example, the GEO's first consultation on closing the gender pay gap quite rightly highlighted the wide variation in the gender pay gap across different employment sectors, as published by the Annual Survey of Hours and Earnings, with the widest gap identified in 'financial and insurance activities' (35.2%) whereas some sectors such as 'transportation and storage' and 'mining and quarrying' actually have a negative gender pay gap (-2.2% and -4.2%, respectively). However, it would be misleading for anyone to assume, on the basis of the headline gender pay gap statistic for these sectors, that sectors with a narrow or negative pay gap do not experience any challenges in attracting, progressing and paying female employees; in fact, the opposite could be true, as the two example sectors here tend to be male-dominated. Conversely, a sector demonstrating a wide gender pay gap could draw the attention of women to the lower earnings potential they will have to face in forging a career in the STEM [science, technology, engineering and maths] areas, where they are already seriously under-represented. It could disincentivise women from exploring opportunities in the very areas that the Government wants to see more women working in, in order to remove the gender pay gap.

This analysis just highlights the complexity of the factors that lead to a gender pay gap, such as occupational segregation and early female careers choices, and the need for contextual information to help employers and people in the labour market to understand why it stands at a certain level in a sector, as well as in individual companies.

While we feel that publishing sectoral gender pay gap statistics in a league table without an accompanying contextual narrative explaining the reasons for a sectoral pay gap would not be helpful, neither do we believe that 'naming and shaming' certain employers will necessarily be helpful and encourage the right behaviour change and positive action to remedy the gender pay gap at an individual employer level. The feedback from our members to the first gender pay gap consultation highlighted the risk of 'naming and shaming' as a potential unintended consequence of implementing Section 78 of the *Equality Act 2010*. Our response cautioned that such an approach could be counterproductive. For example, simply because an organisation has a larger gender pay gap compared to others, it does not automatically mean that it is a 'bad' employer. Organisations vary in terms of their provision of non-pay benefits, such as contributions to employee pensions, which means that rankings on the basis of pay alone might not accurately reflect relativities in total reward. There will, undoubtedly, be some employers that might have some very inclusive practices that promote diversity within their organisation, yet report a relatively large gap due to broader factors such as the particular sector or type of work or because of the local labour supply. Conversely, there may be



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employers that do not have particularly inclusive work practices and yet are able to report a relatively low gender pay gap. The Government should avoid, therefore, the perception of employers becoming polarised between being either 'good' or 'bad' employers depending on the size of their gender pay gap.

New evidence we have collected as part of our *Labour Market Outlook* survey to help inform this second consultation response draws on the views and practices of 1,007 employers to gender equality and pay practices in their organisation. It finds that less than three in ten (28%) of employers carry out a gender pay analysis and, among those that do so, half (50%) do not share the results of this analysis with staff – of those that do share the information, 17% publish it on the company intranet, 10% communicate it by email or other direct communication while 22% use a cascade system such as team briefings. In terms of external publication of their gender pay gap analysis, more than six employers in ten (62%) do not publish the results externally. These findings demonstrate the considerable steps that the majority of employers will need to take to comply with the proposed gender pay gap regulations in terms of their collection, analysis and publication of the necessary data.

In the view of the CIPD, the threat of using league tables, coupled with a strategy of 'naming and shaming' employers who fail to comply, is likely to impact badly on their willingness to be transparent. Such sanctions could have unintended consequences on the culture of openness, which thought leaders and good practice pioneering employers give testimony to as game changing in connection with improving female talent management. Further, the use of 'naming and shaming' as a sanction against organisations for failing to report what they find could also hinder meaningful and sustainable change. It might encourage quick fixes, which could be inaccurate reflections of real progress.

Support and guidance for employers

The voluntary narrative

The 'Introduction' section preceding the draft regulations states that the Government intends to publish 'supporting guidance' this year, including advice on providing a 'voluntary narrative that explains any pay gaps and what actions the employer is taking'. We welcome the voluntary, rather than mandatory, approach to providing a narrative taken by Government as well as its intention to 'strongly encourage' employers to include a narrative as part of their reporting. We urge government to ensure that its guidance not only strongly encourages employers to adopt this approach, but that the guidance itself provides the right step-by-step advice that fully supports employers in helping them to understand the basis of their gender pay gap and the kind of practical measures they can take to close it. The CIPD believes that the Government has an important role to play in helping businesses not only to comply with the regulations, but to fully understand the issues at the heart of why the gender pay gap exists and provide advice on the steps that employers can take to close it.

Although it would not be sensible to make specific requirements for a narrative report in the regulations, we believe that a narrative can help an employer to contextualise its headline gender pay gap data and develop appropriate remedial steps. Transparency is a crucial first step, but if the data is considered in isolation, an employer's gender pay gap figure (even if accompanied by more detailed data such as earnings distribution by quartiles and mean bonus figures) will still only provide a limited and superficial overview of *what* is happening to men and women's pay in that organisation and, more importantly, will do little to help the employer to understand *why* it is happening. An employer will need a much fuller understanding of the underlying causes of its gender pay gap that goes beyond how women and men are paid in the organisation, and extends to how its working practices and even culture negatively affect women's employment prospects and opportunities for progression. For example, the Government's first consultation asked for feedback on helping employers with other types of supporting analysis, e.g. analysis of representation of women at different levels within the workforce, and we said that this would be hugely beneficial to employers, and help 'shine a light onto an organisation and its practices, recruitment and talent management', in order to identify where the problems that lead to a gender pay gap ultimately lie. This will mean well-targeted practices can be implemented that can help close a gender pay gap. Four-fifths of respondents to our survey to help inform our response to the first consultation believed this would be beneficial – **37%** said it would be **very helpful** and **43%** said it would be **helpful**.

While the narrative should be unique to each organisation, there are broad areas that could be taken into account in all narratives, such as the gender distribution of women in certain occupations and roles, and recruitment into these roles; female progression into more senior roles in the organisation; the effectiveness of flexible working practices and attrition and female returner rates, as well as the wider sectoral challenges related to attracting women into specific industries and occupations, to encourage action on a broader and collaborative level in business and education. Therefore, we believe that the guidance could be pivotal in helping employers to grasp the structural and cultural barriers to female advancement in their organisation and affect change to close their pay gap. We urge the Government to set out full and detailed guidance in relation to what information should be included in the narrative, including how best employers can collect and analyse it in order to better understand their pay gap data.

The CIPD would welcome the opportunity to draw on the extensive insights of its 140,000-strong membership in developing diverse and inclusive people development practices to help inform the scope and content of this guidance. New evidence we have collected as part of our *Labour Market Outlook* survey finds that fewer than three in ten (28%) employers currently carry out any gender pay analysis, while two in three (65%) told us that they did not intend to carry out any in the next 12 months. When asked how they intended to promote equal opportunities for men and women over the next 12 months, just 5% of the 1,007 employers in our sample cited the introduction of new gender pay analysis as an approach. This indicates that establishing and acting on any gender pay gap in the organisation is not a high priority for the overwhelming majority of employers, who therefore face a significant challenge in implementing the forthcoming regulations. The Government's supporting guidance can, therefore, play a vital role in preparing businesses



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for the mandatory reporting requirement.

As we emphasised in our response to the first consultation, there is a risk that employers might, on the surface, simply see the mandatory reporting as yet another regulation or ‘hoop’ in which they have to jump through which will incur financial cost, without any perceived benefit necessarily being achieved. To address this the Government should consider how it can work with key stakeholders, such as employer representatives and professional bodies such as the CIPD to not only effectively develop, but disseminate, the planned guidance, as well as educate employers on the practical steps they can take to close a gender pay gap, such as more inclusive recruitment and talent management practices which have the potential to enhance performance.

Broader guidance and support

We welcome the Government’s intention to publish supporting guidance later this year and urge Government to publish this as soon as possible in order to provide as much lead-in time as possible to help employers prepare for the new regulatory reporting requirement. As the consultation states, the regulations will require employers to calculate their gender pay gap for the first time using data at April 2017 – and yet the survey of 1,007 employers we carried out to help inform this response found that just 28% currently undertake gender pay gap analysis and just 5% plan to introduce any over the next 12 months. Therefore, we suspect that the majority of employers will be woefully unprepared to conduct a gender pay gap audit by 2017. Employers will need to start preparing for their new regulatory duty now so that they have the systems and processes in place to carry out their gender pay gap analysis, and the Government’s planned guidance should help to raise awareness and understanding of the measures they need to put in place.

We note the Government’s announcement of a new £500,000 support package to help companies implement the regulations and, as the professional body representing more than 140,000 HR professionals (many of whom will be closely involved in implementing and ensuring compliance with the regulations), would welcome the opportunity to work with other professional and industry bodies to help develop the most appropriate and effective package of support. The CIPD believes it is imperative that employers understand the new regulations and, just as importantly, exactly why these regulations are being brought in and what they hope to achieve. This was reflected in our earlier survey of employers that helped to inform our response to the first consultation, where **44%** of respondents said that helping employers understand would be **helpful**, and **41%** said it would be **very helpful**.

The Government’s accompanying press notice also mentions making available free online software which we would strongly endorse as a key element of the support package. We believe that provide free and easy-to-use software that organisations can use to put together their report, rather like HMRC provide for businesses for their tax returns, should be a priority. As we emphasised in our response to the Government’s first consultation, the CIPD thinks that assisting employers to calculate their pay gap would be very helpful,



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and would lead to some uniformity in the figures, which would then lead to better comparability for interested parties. Again, this view was backed overwhelmingly in our initial survey, in which just fewer than half of respondents (**49%**) believed action to help employers calculate their organisation's gender pay gap would be **very helpful**, and one-third (**32%**) stating that it would be **helpful**. We also believe it would be helpful for Government to provide further guidance for employers on how to analyse the gender pay gap data they have gathered using Excel spreadsheets, for example. Another helpful approach could be to provide a model report structure that includes prompts on the sort of issues they should be covering when they report on their gender pay gap.

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March 2016