



Government Equalities Office

Mandatory Gender Pay Gap Reporting

Responding to this Government consultation

Before completing this form please refer to (a) the Government response to its previous consultation on closing the gender pay gap and (b) the current consultation on mandatory gender pay gap reporting.

The closing date for responses is **11 March 2016**. Responses received after this date will not be considered.

Disclosure of responses

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).

The Government may publish responses received from organisations. If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

YOUR DETAILS

Please complete the following:

| | |
|----------------|---|
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Are you completing this consultation as an (tick one):

| | |
|--------------|---|
| Individual | |
| Organisation | √ |

If you are responding on behalf of an organisation, please complete the following:

| | |
|----------------------------|--|
| Company name | Berwin Leighton Paisner LLP |
| Company address | Adelaide House |
| Address 2 | London Bridge |
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| Postcode | EC4R 9HA |
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| Email | Adam.Turner@blplaw.com |
| Contact number | 020 3400 1000 |
| Number of staff in company | 1360 |

Please select what type of company it is (tick one):

| | |
|--|-------------------------------------|
| Business representative organisation/ trade body | |
| Charity or Social Enterprise | |
| Business | |
| Legal representative | <input checked="" type="checkbox"/> |
| Local Government | |
| Professional body | |
| Public Sector | |
| Trade Union or Staff Association | |
| Other, please specify | |

YOUR 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.

General comments

This response sets out feedback from a wide ranging survey that Berwin Leighton Paisner conducted of private sector employers who will be affected by the proposed regulations. It takes account of survey feedback from employers across a broad spectrum of industries, including Professional Services, Retail and Technology.

The definition of “relevant employer”

A significant majority of our survey respondents were employers within a group structure. The draft regulations apply to any employer with 250 or more relevant employees. This suggests each employer within the group who satisfies the test has a separate reporting obligation, rather than reporting on a group-wide basis. There was some concern that this approach might give a fragmented, rather than properly representative analysis of a group’s gender pay gap situation. Respondents said they would appreciate clarity on the application of this requirement.

The definition of ‘relevant employee’

Respondents had a number of concerns with the definition in the draft regulations, set out below. More generally, this was an issue on which respondents would welcome detailed guidance from the government.

‘contracts of employment’: Contrary to what has suggested in the government’s July 2015 consultation, the draft regulations apply only to individuals with ‘contracts of employment’, rather than the much wider class of individuals set out in section 83 Equality Act 2010. The vast majority of our survey respondents said that they would welcome clarification on whether this was intended. Aside from anything else, respondent feedback indicated that applying a narrow definition will involve potentially more work for employers in working out who to exclude when conducting a pay gap analysis. Respondents also expressed concern about the difficulties of determining whether certain classes of individual, such as temporary staff, would be in scope, and would welcome guidance on this. We consider that it would be beneficial to clarify this definition in the final regulations.

‘governed by UK legislation’: this is a very broad expression and it is unclear precisely what is meant by it. For example, respondents asked if the focus was on whether:

- individuals qualified for rights under employment legislation such as the Employment Rights Act 1996, or
- all that was required was that individuals’ contracts are governed by English law (or the law of another country within the UK).

Our survey respondents said that they would welcome detailed guidance on this.

‘ordinarily works in Great Britain’: This is an uncommon legal term in current employment legislation (although it was commonly used historically to determine territorial scope in employment legislation until the late 1990s). Respondents were not familiar with what this test means in practice, and would welcome detailed guidance on this.

‘Pay’

The meaning of ‘pay’: Many survey respondents highlighted that not all of the elements of pay set out in the ‘pay’ definition can be found just by using their payroll system. They expect that they will have to do work collating the various elements of pay from different databases/sources. Whilst survey respondents generally accepted that the pay definition is intended to mirror that used by the ONS, so that meaningful comparisons can be made, many respondents said that they would welcome clarity on what certain elements of pay cover. For example, why is maternity pay expressly identified as an element of pay, but not other forms of family leave pay such as paternity pay or shared parental pay? Is it intended that other types of family leave pay be covered by “paid leave”? Respondents said they would welcome detailed guidance on what, in practice, is included and excluded from the definition of “pay”.

The meaning of ‘bonus pay’: There was considerable concern about the lack of clarity with this definition, including:

- what is meant by the expression payments “received and earned” - is this intended to only apply to bonuses that have not just been awarded, but have actually been paid?
- how to value non-cash bonuses, and at what point in time? For example, what is the “date of payment” when deciding the cash equivalent value of shares – is that the date of grant, vesting, disposal, or some other date?

Calculating pay gap statistics

The vast majority of our survey respondents said that the methodology set out in draft regulations 4 to 6 was clear, but would still welcome detailed guidance to help support employers in working out the various metrics.

However, there was considerable confusion about whether the calculation of quartile pay bands in draft regulation 7 requires calculating quartiles based on the number of employees, or based on the overall pay range, or something else. Our survey respondents would welcome clarity on this in the drafting of regulation 7 and in supporting guidance. Respondents also said this was an area where detailed examples on how to go about calculating this metric would be very welcome.

Proposed timetable

A majority of our survey respondents said that the proposed timetable and lead-in period would work for their organisations. A small number of much larger respondents said that they had already started the process.

Thank you for your time in completing this consultation.

You may email or post your completed response.

By email: GenderPayGapConsultation@geo.gov.uk

By post:

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