

# Closing the gender pay gap

**Rachel Lewis and Claudia Rooney | 4 May 2016**

The issue of equal pay has of course been a hot topic for a number of years and the proposal of mandatory gender pay gap reporting has been mooted for some time. The Government has finally got its ducks in a row on this and in February published both its response to the consultation on closing the gender pay gap and draft regulations aimed at implementing its proposals. It anticipates that the new Regulations will affect approximately 8,000 employers and around 11.3 million employees in total, representing 34% of the total workforce in Great Britain.

For those of you who have been following the passage of this legislation, the eagle-eyed amongst you will have noted that in theory the new Regulations should have been in place by the end of March (pursuant to s.78 of the Equality Act and s.147 Small Business, Enterprise and Employment Act). However, the Government's current proposal is that the Regulations will come into force on 1 October 2016. Affected employers will then have a lead-in time of 18 months to publish the required information; taking a preliminary data snap-shot in April 2017 and then the publication of the required data within 12 months and by 30 April 2018 at the latest.

A summary of the Regulations is as follows:

- They will apply to private and voluntary sector employers (in England, Wales and Scotland) with 250 or more employees. The Government has indicated that public sector employers will also be subject to a similar duty but intend to consult further on this issue;
- Employees will fall within scope if they ordinarily work in Great Britain and their contract of employment is governed by UK legislation;
- Employers will be required to publish their overall mean and median gender pay gaps (expressed as a percentage and based on gross hourly pay);
- "Pay" will be defined and includes: basic pay, paid leave, shift premium pay, sick pay, bonus pay and other payments such as car, clothing and on-call allowances. It will not include certain items such as overtime pay, expenses and the value of salary-sacrifice schemes;
- Employers who pay bonuses will also have to publish the difference between the mean bonus payments to men and women (and only employees who receive bonuses should be included in the calculation) and information on the proportion of male and female employees who received bonus pay;
- "Bonus pay" is also defined and includes incentive pay, commission, LTIPs

and the cash equivalent value of shares on the date of payment;

- Employers will also be required to report on the number of men and women in each quartile of their pay distribution;
- Employers will be required to publish the information on their own (publicly available) website and will also have to upload the information to a government-sponsored website;
- Employers will need to publish the requisite data on an annual basis.

The Government aims to closely monitor levels of compliance to ensure that the measures in place are effective but is not at this stage proposing to introduce any additional civil penalties. To assist employers with the implementation of the Regulations, the Government has confirmed that it plans to publish further guidance later in the year.

In its response, the Government highlights the fact that employers will be encouraged to provide voluntary narrative that explains any pay gaps and the action (if any) the employer is taking to tackle the inequalities. Whilst the requirement is not mandatory, I can see that it may be helpful for an employer to provide any reasonable justification for pay differences not least to put itself on the front foot and prevent (or at least minimise) a negative impact on issues such as the recruitment and retention of females. The Government is planning to produce league tables by sector (as opposed to identifying particular employers), but as the information will be publicly available it is likely that, certainly in the early years, the media will make much of employers with large gender pay differentials.

The Government suggests that extracting the relevant data should not incur "significant additional costs". However, while we await the detailed guidance, affected employers within the sector should be turning their minds to how the information required will be captured. There could be significant reputational implications for voluntary sector employers who get this wrong.

If you require further information on anything covered in this briefing please contact [Rachel Lewis \(rachel.lewis@farrer.co.uk\)](mailto:rachel.lewis@farrer.co.uk); 020 3375 7440, [Claudia Rooney \(claudia.rooney@farrer.co.uk\)](mailto:claudia.rooney@farrer.co.uk); 020 3375 7469) or your usual contact at the firm on 020 3375 7000. Further information can also be found on the [Employment](#) page on our website.

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