



Quick Guide to Gender Pay Gap Reporting

We explain everything you
need to know to comply with
gender pay gap reporting

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 came into force on 6 April 2017.

What is the gender pay gap?

Put simply, the gender pay gap is the difference between the average pay for men and women. In August 2016, the Institute for Fiscal Studies reported that the gap at a UK-wide level was 18%, although this may be partially attributable to more women working part-time and in low-paying sectors.

The gender pay gap should not be confused with equal pay which relates to the requirement to pay the same pay for the same/like work (or work of equal value). A gender pay gap does not necessarily mean that there is a breach of equal pay law. Instead, it could mean that there are barriers to promotion for women, or that women are not accessing more skilled and better paid roles within an organisation.

Who do the Regulations apply to?

Employers with 250 or more employees on 5 April each year are covered by the Regulations. At the moment, reporting is not compulsory for smaller businesses, but the Government recommends that such businesses give serious consideration to the benefits of doing so. The employer could

be a company, LLP, partnership, unincorporated body or any other employing entity. There is no requirement to aggregate employee numbers across a group.

All full-time and part-time employees employed on the snapshot date count towards the headcount threshold. This includes apprentices, workers, and some self-employed contractors where they are engaged under a contract personally to do work. In some circumstances this can also include people with international roles or those seconded from overseas. However, as explained below, some of these employees who are relevant for determining whether the employer meets the headcount threshold may be excluded from the final gender pay gap calculations.

English public sector employers are covered by separate regulations which came into force on 31 March 2017, with a different snapshot date of 31 March. Scottish public sector bodies listed at Schedule 19 of the Equality Act 2010 (including local authorities and universities) are specifically excluded from the Regulations and instead must comply with the existing Scottish public sector equality duty. However, a minority of Scottish public sector bodies not specifically excluded (such as local leisure trusts) will be caught by the Regulations if they have the requisite headcount. This may change over time to bring all employers under the same regime.

Which employees do you need to report on?

Partners and LLP members who would usually be considered to be employees will be relevant for calculating the headcount, but their pay is specifically excluded from the gender pay gap figures. Some workers, while included in an employer's headcount, may also need to be excluded from the calculations if the employer cannot obtain the necessary pay data.

When calculating the pay gap, only the wages of 'full-pay' relevant employees should be taken into account. An employee receiving payments for family leave or sickness absence at a reduced rate should be excluded as their inclusion could exaggerate a gender pay gap; for example, where a significant number of employees on maternity leave were paid at the statutory rate. The position is slightly different for the gender bonus gap as even where a relevant employee was not receiving full pay on the snapshot date their bonus data should be included for these purposes.

When do the Regulations apply?

Organisations had to publish their first report in respect of the 'snapshot' pay period for 5 April 2017. The deadline for publishing the report was 4 April 2018. A new report then has to be produced each year.

The Report

The headline figure of the reports is a comparison between the average gross hourly pay for male and female employees and will be expressed as a percentage.

What counts as pay?

The non-exhaustive list of what counts as pay includes salary/wages, pro-rotta bonus (including shares and share options), commission, shift allowance, on-call allowance, sick pay and all types of family leave pay (where this is paid at full normal salary).

Pay excludes overtime, expenses, benefits in kind, salary sacrifice arrangements, redundancy or other termination payments, arrears of pay and tax credits.

Pay is based on gross hourly pay. The Regulations set out a detailed method for calculating the hourly rate of pay, using an employee's normal working hours where applicable, and adopting a 12-week reference period for employees with variable hours. Where a bonus is paid in the relevant pay period, it will only be taken into account on a pro-rata basis: for example, if it is an annual bonus and the relevant pay period is monthly, 1/12 will be included in the average pay calculation.

What does the report need to include?

In short, the report must include:

- **Overall gender pay gap figures for the snapshot period (in which 5 April falls).** This is calculated using the average hourly pay. The average needs to be shown in two ways: (1) the mean (all the pay figures added up and divided by the total number); and (2) the median (all the pay figures lined up and the middle one selected). The mean figure could be skewed by individual high/low earners especially if the organisation employs far more people of one gender. The median is considered a more helpful guide to any pay gap.
- **The proportions of men and women within each of four pay bands/quartiles.** The quartiles are to be calculated based on the number of employees (i.e. by putting employees in order of their pay from low to high and then dividing the workforce into four equal sized groups). For example, a workforce of 400 employees would be divided into four groups of 100 people, sorted by pay range. The organisation will have to disclose the percentages of men and women in each quartile. This demonstrates whether there is a disparity in terms of seniority within the business and can help to expose the nature of any gender pay gap.
- **The gender pay gap for bonuses paid in the past year.** The difference between men and women's mean and median bonus pay over the previous 12-month period (i.e. from 6 April in the previous year to 5 April in the current year). A variety of different bonus structures, especially with regards to when bonuses are paid, may make tracking the exact bonus figure difficult. The Regulations confirm that elements of bonus that are awarded as securities, securities options and interests in securities (for example LTIPs) are to be treated as paid at the point in time when they would give rise to taxable earnings or taxable specific income.
- **The proportion of male and female employees who received a bonus.** The percentage of men and women in receipt of any bonus in the same 12-month period. Information about those eligible to receive a bonus is not relevant to calculating this.

For private sector employers, a director, LLP designated member, partner or the most senior employee (as applicable) must also provide a written statement of accuracy to accompany the report.

Employers can choose to include in the report an explanation of any existing pay gaps and set out what action they plan to take to resolve such a gap. Although this is not required, it is expected that most employers will want to explain the steps they are taking to reduce any gap, as has been seen in the reports already published by certain businesses wishing to emphasise their proactive approach.

Where do you need to publish the report?

The report must be published on the employer's website and must remain available online for three years. The information must also be uploaded to a government-sponsored website, which will be categorised by industry sector.

What are the penalties for non-compliance?

Failure to comply with the Regulations constitutes an 'unlawful act' under the Equality Act 2006. Whether the Equality and Human Rights Commission (EHRC) technically has the legal right to take enforcement action is open to challenge.

We understand that the Government is proposing to run periodic checks to assess for non-compliance; produce tables by sector of employers' reported gender pay gaps; highlight and identify employers publishing particularly full reports and explanatory information; and possibly publicise the identity of employers known not to have complied.

In the absence of an increased budget for EHRC, we anticipate that the Government will find sector-reporting an effective means of exerting pressure on businesses, as this will directly expose businesses with larger gender pay gaps than their direct competitors.

What steps should you take to comply?



Identify if your organisation (or any entity within its corporate group) is likely to be a relevant employer. For corporate groups, consider which employing entities will be relevant employers for the purposes of the Regulations, and whether you also wish to report voluntarily on a group-wide basis, or prepare any sector specific analysis if your organisation works across a range of sectors.



Identify responsibilities. Decide who will be responsible for collecting and compiling the relevant information, and identify an internal reporting structure to consider any issues.

Also identify who will sign the written statement confirming the accuracy of the published information (see note above for who this appropriate person might be), and ensure that this person understands the Regulations and has been involved in reviewing the information.



Identify any areas of uncertainty over who is in scope. Consider the employment status of those who may be regarded as relevant employees under the Regulations.



Consider the remuneration package offered, all benefits, and any flexible benefits scheme. Analyse which elements would be reportable under the Regulations.



Keep the information legally privileged before you are ready to publish. Organisations should consider whether to liaise with their internal legal team or have their external advisers prepare their report to seek to have the information gathered, and any analysis of issues identified which does not form part of the report itself, covered by legal privilege so that it is not disclosable in any legal proceedings.



Further consideration of any pay gap identified. If a pay gap or any potential equal pay issues are uncovered, you may wish to investigate the underlying reasons and consider strategies to address and reduce any pay gap or equal pay issues. If helpful, information about this could form part of an explanatory statement accompanying the report.

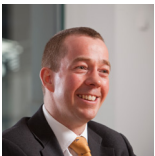




How can we help?

We are advising a number of clients on their obligations under the Regulations. We can offer training to your internal team on the requirements. We can also discuss your individual pay structure to identify which payments are likely to be included and which employees fall within the scope of the regulations. We can assist in the drafting of your report and in particular, any accompanying statement. If you identify any pay issues, we can also advise on strategies to address this.

Key contacts



Neil Maclean
Partner and Head of Employment
T +44 (0)131 473 5181
E neil.maclean@shepwedd.com



Katie Russell
Partner
T +44 (0)131 473 5266
E katie.russell@shepwedd.com



Elouisa Crichton
Associate
T +44 (0)141 566 7249
E elouisa.crichton@shepwedd.com



Gillian Moore
Associate
T +44 (0)141 566 7217
E gillian.moore@shepwedd.com