



Government  
Equalities Office

# **Mandatory Gender Pay Gap Reporting – Public Sector Employers**

**Government Response to the Public  
Consultation**

**January 2017**

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## Foreword by the Secretary of State for Education and Minister for Women and Equalities



Tackling the gender pay gap is an absolute priority for this Government. That is why we are delivering on our manifesto commitment to introduce mandatory gender pay gap reporting for larger private and voluntary sector organisations and why we extended this commitment to the public sector. We are introducing landmark regulations to provide transparency across major employers in all sectors and create the environment needed to drive change.

Two public consultations have been held on the regulations being introduced under section 78 of the Equality Act 2010, which will apply to large private and voluntary sector employers in the UK. Separate regulations for large employers in the public sector are being introduced under section 153 of the Equality Act 2010. As this response to our consultation on the public sector regulations shows, we have made good progress and we are aiming to commence both sets of gender pay gap regulations in Spring 2017.

Our consultation on the proposed requirements for large employers in the public sector ran from 18 August to 30 September 2016. This consultation set out how we are intending to introduce the mandatory gender pay gap reporting requirements alongside the existing obligations for public authorities in England (and non-devolved organisations operating across Great Britain) to publish information which demonstrates their compliance under the Public Sector Equality Duty. We invited

comments on the overall approach and asked respondents to inform us of any issues which are particularly relevant to employers in the public sector.

Introducing the same mandatory reporting regime for all major employers in the public, private and voluntary sectors will ensure consistency across the economy and help make our ambition to eliminate the gender pay gap a reality.

We received 125 responses to the consultation. These made many useful points which we have taken account of in preparing the regulations and guidance, as this document sets out. We are very grateful for the time and trouble taken by respondents.

**The Rt Hon Justine Greening MP**

**Secretary of State for Education and Minister for Women and Equalities**

## Introduction

Tackling the gender pay gap is a key priority for this government. Significant progress has been made in recent years with the lowest gender pay gap (18.1%) since records began in 1997. We are taking decisive action now to reduce this gap further and realise the Government's ambition to eliminate the gender pay gap.

The Government announced its aim of implementing the manifesto commitment to require large employers to publish the difference between the average pay of their male and female employees after the general election in 2015. Following two public consultations, the Government has published regulations under section 78 of the Equality Act 2010, which will require all large employers (of 250 or more employees) in the private and voluntary sectors to report their gender pay gap information<sup>1</sup>. These regulations were laid before Parliament in December 2017 and, subject to parliamentary approval, should commence on 6 April 2017.

We announced in October 2015 that we would extend the mandatory gender pay gap reporting requirements to the public sector. Our measures will apply to public sector employers in England (and relevant cross-border authorities) by amending the Specific Duties regulations<sup>2</sup> in England which underpin the Public Sector Equality Duty. These regulations are made under section 153 of the Equality Act 2010.

We launched a public consultation on 18 August 2016 to seek comments on the proposed reporting requirements for large employers in the public sector. The consultation was open for comments until 30 September 2016 and a total of 125 responses were received from a range of public sector employers, representative organisations, trade unions and individuals. We also held engagement activities with key stakeholders to discuss the proposals in more detail, including a number of roundtables and meetings.

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<sup>1</sup> These regulations will also apply to some public bodies that are neither government departments nor listed in Schedule 19 to the Equality Act 2010.

<sup>2</sup> The Equality Act 2010 (Specific Duties) Regulations 2011, No.2260

The consultation paper highlighted that we aimed to use the same approach that we are using for private and voluntary sector employers but we were seeking views on whether the intended reporting requirements presented any specific difficulties for public sector employers. This document outlines the key outcomes from the public consultation and the Government's response to particular issues which were raised.

The draft regulations are being published alongside this Government response to the public consultation and can be accessed at [legislation.gov.uk](http://legislation.gov.uk)<sup>3</sup>. Subject to parliamentary approval, the regulations should be in force before 31 March 2017.

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<sup>3</sup> <http://www.legislation.gov.uk/id/ukdsi/2017/9780111153277>

# **Chapter 1: Scope and Coverage of the Public Sector**

## **Gender Pay Gap Requirements**

### **Which organisations will be affected?**

Ensuring maximum coverage of the new gender pay gap reporting requirements is a key aim for the Government. The Equality Act 2010 (“the Act”) offers a useful framework for achieving this aim as the primary powers are connected in terms of specifying which bodies can be covered by each set of regulations:

- Regulations made under section 78 of the Act can only apply to employers with 250 or more employees and cannot be applied to any public authority listed in Schedule 19 to the Act. Schedule 19 to the Equality Act lists the bodies that are subject to the Public Sector Equality Duty (PSED) in section 149 of the Act<sup>4</sup>.
- Regulations made under section 153 of the Act can only apply to authorities listed in Schedule 19. The regulations impose specific duties intended to help public authorities comply with the PSED more effectively (and are consequently known as the “specific duties” regulations).

The regulations under section 78 will apply to all employers in Great Britain with 250 or more employees on the relevant date of 5 April (the “snapshot date”). For the public sector, the specific duties under the PSED are devolved, so our regulations under Section 153 will only apply to public bodies in England, and certain cross-border authorities and non-devolved authorities operating across Great Britain. But Scotland and Wales have corresponding regulations passed by their own governments, with their own gender pay reporting requirements.

This approach should ensure that almost every larger employer will be covered by gender pay reporting requirements without any duplication of coverage.

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<sup>4</sup> Although by virtue of section 149(2) of the Act, any body exercising a public function will be subject to the public sector equality duty in the exercise of that function, whether or not they are listed in Schedule 19. “Public function” has the same meaning as in the Human Rights Act 1998.

## What we asked

We sought views on whether the gender pay gap reporting requirements should apply to the same public bodies, with 250 or more employees, which are currently subject to the specific duties regulations in England.

## Respondents said

- The overall response rate for this question was 94%, made up 100% of individuals and 92% of organisations that submitted a response.
- 77% of all respondents who answered this question agreed that the reporting requirements should apply to the same public authorities who are subject to the specific duties regulations in England if they have 250 or more employees. The majority of responses from individuals (87%) and organisations (72%) responded yes to this question.
- 23% of all respondents who answered this question disagreed (13% of individuals and 28% of organisations).
- Of those organisations who disagreed with this question, the principle reason given was that the employee threshold should be lower than 250 employees.
- The Employment Lawyers Association commented that *'reporting requirements for Executive Agencies, whether named within Schedules 1 and 2 or not ought to be included within the reporting for the central department. ELA is concerned that some organisations may fall between the gaps without this being expressed in the Regulations.'*

## The Government's Response

The majority of respondents agreed with the intended scope and coverage of the new reporting requirements for the public sector, including the employee threshold of 250 or more employees.

As we said in the public consultation document, the reporting requirements for the public sector are intended to mirror the approach taken towards employers in the private and voluntary sectors. Using the same employee threshold for the public

sector will ensure that there is a consistent approach and that comparable data becomes available for all large employers.

There is an existing requirement in the Specific Duties Regulations in England for public authorities with 150 or more employees to publish diversity information on their workforce. This requirement will still apply to public authorities with 150 or more staff. As now, public authorities with 150 or more employees will be strongly encouraged to include data on gender pay differences in the information that they publish.

Although the full range of gender pay gap calculations will only be mandatory for larger employers with over 250 employees, public authorities of all sizes can choose to adopt the methodology and calculate the same data that large employers will be publishing. The Government will be providing guidance to help all employers with this. Providing transparency on gender pay differences should offer great benefits to employers, including attracting and retaining talent.

We do not therefore consider it to be necessary to set a lower employee threshold for public bodies. This will be kept under review and may be considered again at a later date.

Government departments will be responsible for reporting on all the Executive Agencies under their remit. Further guidance on this will be provided to Government departments.

## **Updates to Schedule 19 and the Schedules to the Specific Duties Regulations**

We are taking this opportunity to review the list of public authorities that are subject to the Public Sector Equality Duty, as set out in Schedule 19 to the Act, and the list of authorities in the Schedules to the Specific Duties regulations.

## What we asked

We asked whether there are any other public bodies that need to be covered by the amended Specific Duties regulations and the new gender pay gap reporting requirements.

## Respondents said

- The overall response rate for this question was 93%, made up of 97% of individuals and 91% of organisations that submitted a response.
- 65% of all respondents who answered this question answered no. The majority of responses from organisations (65%) and individuals (63%) responded no to this question.
- 35% of all respondents who answered this question answered yes (37% of individuals and 35% of organisations).
- Of those organisations who answered yes to this question, many responses highlighted particular organisations or types of organisations that should be added, amended or removed to the relevant schedules e.g. combined authorities, clinical commissioning groups and organisations such as Network Rail.

## The Government's Response

The majority of respondents who answered this question agreed that the list of public authorities who are already subject to the Specific Duties regulations in England was correct and did not need updating. Of those respondents who did highlight changes, we have considered the information and reviewed the list accordingly. In ascertaining which public authorities should or should not be in scope of the regulations, the two overriding principles which informed our thinking was whether the authority is exercising 'public functions' within the meaning of the Human Rights Act 1998, and if so, the extent to which equalities issues might be relevant to the authority in question. We also had regard to the size of the body, as it might be disproportionate to impose the specific duties on very small bodies.

The list of public authorities at Schedule 19 to the Act was originally published in April 2011 when the PSED came into force<sup>5</sup>. Some entries have been updated since then but this has been completed on an ad-hoc basis by individual Government departments. In addition to considering the responses received to the public consultation, we wrote to all Government departments to seek views on what changes were necessary. As a result of these efforts, we believe that we have established a more up to date list of public bodies that will be subject to the reporting requirements under the Specific Duties regulations.

It is important to note that any large authorities that are not listed in Schedule 19 will automatically be covered by the regulations being introduced under section 78 of the Act – and will be required to publish the same gender pay gap data – if they have over 250 employees.

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<sup>5</sup> See the Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011, No.1060

## Chapter 2: Definition of Employment

### Employees

In the public consultation, we set out our intention to rely on section 83 of the Equality Act 2010 to define employees and highlighted how this would affect which employees were in or out of scope of the regulations. For example, using this definition of employment would mean that apprentices would need to be included in the employer's gender pay gap calculations, but not volunteers.

### What we asked

We sought views on whether there are particular issues for public authorities in relying on section 83 of the Act to define employees.

### Respondents said

- The overall response rate for this question was 94%, made up of 100% of individuals and 91% of organisations that submitted a response.
- A total of 80% of all respondents who answered this question agreed that it was appropriate to rely on the definition of employment as set out at section 83 of the Act. The majority of responses from individuals (73%) and organisations (83%) responded yes to this question.
- Of those respondents who disagreed with this question, more individuals (28%) responded no to this question than organisations (17%) answered no.
- Of those organisations who disagreed with this question, several responses asked for clarification on how different types of staff would be covered e.g. 'office-holders'.
- The Universities and Colleges Employers Association stated that '*It would be helpful to have guidance with examples on what is considered 'employment', in particular where the employment is 'a contract personally to do work'*'.
- The Local Government Association commented that: '*Using the section 83 definition appears to be appropriate. However, clear guidance will be needed to accompany this provision so employers can determine whether or not they*

*need to include casual/irregular hours workers, who in some cases may be self-employed.'*

## **The Government's Response**

A large majority of the respondents agreed with the Government's suggested approach of relying on section 83 of the Equality Act 2010 to define employees. Using this definition will provide consistency with the regulations that will apply to the private and voluntary sectors.

Some of the responses highlighted that certain staff in the public sector are not classified as employees under this definition and would instead be defined as 'office-holders' under the Act, e.g. police officers and members of the armed forces. Although they are not technically employees under the Act, we consider that these key personnel in the public sector should be covered by the regulations. We have therefore included wording in the draft regulations that will allow police officers and members of the armed forces to be considered as employees, but only for the purposes of the amended Specific Duties regulations.

Some responses argued that all casual and agency staff should be included in the organisations' gender pay gap calculations where they are working. Agency staff will already be covered by the agency that employs them if that agency employs over 250 employees. We want to avoid duplication and ensure that such agency staff are not covered in two returns. It may also be difficult for employers to report on agency staff as many may not readily have access to an individual's working hours and salary details, and may instead make payments to an agency to cover a number of employees. Temporary staff, where there is a direct contract between the employee and the organisation, will need to be covered if they are employed on the snapshot date.

Further advice on how to determine who will be in or out of scope of the gender pay gap calculations will be included in the guidance that will accompany the regulations.

## Chapter 3: Gender Pay Gap Calculations

### Methodology

The methodology for the mandatory gender pay gap reporting obligations has been developed through extensive consultation and engagement with a wide cross-section of stakeholders. Two public consultations have been conducted on the gender pay gap proposals for the private and voluntary sectors and one public consultation has been conducted on the public sector reporting requirements. The public consultation on the proposed reporting requirements for public authorities explained that we were basing the calculations on the key findings from the earlier engagement on the regulations for private and voluntary sector employers.

### Elements of Pay

The definition of 'pay' which has been adopted in both sets of gender pay gap regulations largely reflects the methodology used by the Office for National Statistics (ONS) in its Annual Survey of Hours and Earnings. As well as using an approach which has been tried and tested, this will enable meaningful comparison of the data.

'Pay' will include:

- basic pay
- paid leave, including annual leave, sick leave, maternity, paternity, adoption or parental leave (except where an employee is paid less than usual because of being on leave)
- area and other allowances
- shift premium pay
- pay for piecework
- bonus pay

It will not include:

- overtime pay
- expenses

- the value of salary sacrifice schemes
- benefits in kind
- redundancy pay
- tax credits.

## What we asked

We asked for views on whether the proposed elements of pay raised any particular issues for the public sector.

## Respondents said

- The overall response rate for this question was 93%, made up of 97% of individuals and 91% of organisations that submitted a response.
- A total of 53% of all respondents who answered this question did not think that the proposed elements of pay raised any particular issues. The majority of responses from individuals (58%) and organisations (51%) responded no to this question.
- Of those respondents who answered yes to this question, more organisations (49%) responded yes than individuals (42%).
- Of those organisations who did foresee problems with the proposed elements of pay, several responses asked for clarification on the particular types of allowances that are prevalent in the public sector.
- The TUC commented that: *‘Public sector unions have raised a number of concerns around elements that are excluded from pay because they are aware of gender inequalities that arise in them, including pensions, overtime, benefits in kind and salary sacrifice schemes.’*

## The Government’s response

The majority of respondents did not foresee particular problems with the suggested elements of pay which will be covered in the main gender pay gap calculations.

We have reviewed the responses received and reflected some of the issues raised in the draft regulations. For example, several respondents requested clarification on particular types of payments such as on-call allowances and ‘sleeping-in’

allowances. We have inserted wording in the draft regulations which clarifies this issue, taking the same approach as is used in the National Minimum Wage Regulations 2015 with which employers should be familiar.

Respondents who did raise concerns relating to the elements of pay highlighted issues such as excluding overtime and salary sacrifice schemes from the gender pay gap calculations. The elements of pay that were set out in the public consultation follows the definition of pay as used by the Office of National Statistics (ONS) for the Annual Survey of Hours and Earnings (ASHE). Using the ONS definition of pay will aid comparability with national gender pay gap figures and the methodology that has been adopted in the regulations made under section 78 of the Act for large employers not listed in Schedule 19 to the Act.

The gender pay gap calculations will include shift premium pay or shift allowance as these payments are generally a component of an employee's regular pay used to compensate for them working undesirable or inconvenient hours. Overtime payments are excluded as they are additional payments for extra hours worked on an ad hoc basis.

The gender pay gap calculation will continue to exclude benefits in kind and salary sacrifice schemes, in line with the reporting requirements that will apply to private and voluntary sector employers. Including such payments would be difficult as many benefits in kind are typically non-cash benefits and the value of salary sacrifice schemes is not necessarily equivalent to the agreed reduction in salary. We are also aware that many employers will not be able to readily access information on all benefits in kind on their payroll systems.

Employers will be encouraged to consider whether the use of such schemes or benefits in kind have had a disproportionate effect on their calculations and to highlight information if they choose to publish a narrative to explain their figures.

## Relevant date and deadline for reporting requirements

The Specific Duties regulations already require all public authorities, listed at the schedules to the regulations, to publish information to demonstrate their compliance under the Public Sector Equality Duty (PSED). There are currently different deadlines for publishing the information that is required:

- All the listed public bodies are required to publish equality objectives by 6 April 2012 and subsequently every four years from the last publication
- All the public bodies listed in Schedule 1 to the regulations are required to publish annual information which demonstrates their compliance with the PSED by 31st January each year.
- Schools and other bodies listed in Schedule 2 to the regulations are required to publish annual information which demonstrates their compliance by 6th April each year.

The public consultation set out the policy aim of streamlining these reporting deadlines so that all the reporting requirements, including the new gender pay gap obligations, would be based on the same date. Although public authorities still have flexibility in choosing which date to publish the various data, and may use different dates if they wish to do so, all the bodies that will be subject to the reporting requirements will be working towards the same cycle of reporting.

### What we asked

We asked for views on whether we should introduce the same deadline for all reporting under the Specific Duties regulations.

### Respondents said

- The overall response rate for this question was 94%, made up of 97% of individuals and 92% of organisations that submitted a response.
- A total of 97% of all respondents who answered this question agreed that the same deadline should be used for all reporting requirements. The majority of

responses from individuals (95%) and organisations (98%) responded yes to this question.

- Of those respondents who answered no to this question, there was a similar response rate between organisations (3%) and individuals (5%).
- Several respondents requested that the relevant date for capturing the snapshot of pay information for the gender pay gap obligations should be changed to 31 March each year.
- The Greater London Authority commented that: *'It would make more sense for public bodies that generally run their fiscal years as 1 April to 31 March to take the snapshot on 31 March each year...In addition, many public sector bodies publish other staff related data using the 31 March as the date for extracting the data.'*

## The Government's response

In response to the large majority of respondents who agreed with this question, the amended regulations will provide the same deadline for publishing the different data required by the regulations.

The public consultation indicated that the relevant date for capturing the pay information for the gender pay gap calculations would be 5 April 2017. However, several respondents argued that 31 March would be a more appropriate date as this would fit in with other reporting requirements for the public sector and avoid unnecessary duplication. We have reconsidered this in view of the responses received and agree that 31 March represents a more suitable relevant date for public authorities to capture the pay information for the gender pay gap calculations. As the relevant date for capturing the gender pay gap data has been moved to 31 March each year, the deadline for publishing the gender pay gap information will be the following 30 March as the publication date needs to fall within the 12 month period of the data being captured. The deadline for publishing the other data that is required by the Specific Duties regulations will therefore also be 30 March.

## Reporting requirements for public sector employers

The regulations will require public authorities with at least 250 employees to publish the following four measures of information, based on a 'snapshot' of pay information taken each year:

- The difference between the average (mean and median) hourly rate of pay for male and female employees (excluding employees being paid at less than their usual rate because of maternity leave, for example);
- The difference between the average (mean and median) bonuses paid to male and female employees over the period of 12 months ending with the 'snapshot' date;
- The proportion of male employees, and of female employees who were paid bonuses during the period of 12 months ending with the snapshot date;
- The proportions of male and female employees in each quartile of the pay distribution.

### What we asked

We asked for views on whether these reporting requirements posed any particular issues for public sector employers.

### Respondents said

- The overall response rate for this question was 93%, made up of 97% of individuals and 91% of organisations who submitted a response.
- A total of 66% of all respondents who answered this question did not think that the reporting requirements as set out would cause any particular issues for public sector employers. The majority of responses received from individuals (79%) and organisations (59%) responded no to this question.
- Of those respondents who answered yes to this question, more organisations (41%) than individuals (21%) felt that the reporting requirements did represent particular concerns for employers in the public sector.

- Several respondents highlighted some of the difficulties associated with reporting on employees at separate organisations where the pay data is not held by the legal ‘employer’.
- One local authority stated that: *‘people working in schools are technically employees of the authority, responsibility for recruitment and staffing arrangements in each school, is the responsibility of each Governing Body. It is highly likely that the inclusion of employees based in schools in the authority's Gender Pay Gap performance will, therefore, significantly skew the data (either to the authority's benefit or not) but without the authority being able to influence the figures.’*
- One organisation commented that: *‘the regulations and guidance should make it clear that the pay data to be used should be the actual pay as of the 5th April snapshot date, not what might be backdated’.*

## The Government's response

The majority of all respondents who answered this question agreed with the proposed reporting requirements and did not foresee any particular issues for public authorities.

Several organisations asked for clarification on whether local authorities would be required to report on all maintained schools as this could cause difficulties if local authorities do not have access to payroll data for schools with delegated budgets and would be reliant on the required data being submitted to them. We acknowledge this concern and have made provision in the regulations so that the governing body of a maintained school will be treated as the employer for the purposes of the regulations, and will therefore be responsible for reporting in relation to employees in that school. As with other public authorities, if there are fewer than 250 employers in the school the obligation to report will not arise.

Some responses highlighted the lack of advance notice that public authorities would have to prepare for the new reporting requirements and suggested that a further lead-in time should be allowed for the public sector. The vast majority of data that will be required to carry out the gender pay gap calculations should already be held by employers and should not require any additional data collection. Public authorities will have a maximum of 12 months to publish their findings, with their first publication of

gender pay gap figures expected by 30 March 2018. The Government will also be providing guidance to help all employers with the processes for collecting and publishing their gender pay gap data, which should ease the transition to the new requirements.

A few respondents highlighted that pay awards for the public sector are scheduled for 1 April each year but that in practice they are settled at a much later date and it would be difficult to include any backdated pay increases after the snapshot of pay information is captured. Although this issue is largely resolved due to the snapshot date changing from 5 April to 31 March for public sector employers, it is also worth noting that backdated payments such as pay awards would not need to be included in the calculation of hourly rates for the mean and median gender pay gap calculation.

## General comments

### What we asked

We asked respondents to submit any other comments on the reporting requirements and the public consultation more generally.

### Respondents said

- Several respondents stated that it was not enough to require gender pay gap data to be published and that the regulations should also require the publication of action plans.
- Some respondents wanted to know whether public sector employers will be required to upload their gender pay gap data onto the online portal which is being set up by the Government, in line with the requirements that were set out for private and voluntary sector employers.
- A few respondents asked for clarification on whether the data published by public sector employers will need to be signed off by a senior official, in line with the requirements for the private and voluntary sector employers.
- The Equality and Human Rights Commission stated that: *'public authorities should be required to publish one or more objectives showing how they will contribute to reducing the gender pay gap, supported by an action plan setting*

*out the steps they will take to achieve their objective(s) and the timescales for taking those steps.'*

## **The Government's response**

We acknowledge the comments raised by respondents on the value of mandatory action plans and equality objectives to accompany the data published under the regulations. Although the regulations will not require mandatory equality objectives connected to gender pay gap data or action plans, employers will be strongly encouraged to consider including this information in the data that they publish to demonstrate their compliance under the Public Sector Equality Duty. The guidance which will be published on the new regulations will provide advice to employers on how they can take action to tackle the gender pay gap and outline the benefits of devising and implementing action plans. We will keep this issue under review.

We are also not intending to make it compulsory for employers to publish a narrative when they publish their gender pay gap data. We were advised by a range of public bodies that many would wish to publish a narrative, on a voluntary basis, particularly if they wanted to explain any pay gaps or promote any initiatives they are using to achieve better gender equality in their organisation. The guidance which will accompany the regulations will provide advice to employers on the merits of publishing a narrative.

It is envisaged that public sector employers will upload their gender pay gap data onto the online portal that is being developed by the Government, thereby ensuring that the data for all large employers will be held in one place. We will make further details of the compliance portal available before it becomes operational in Spring 2017.

The regulations that will apply to the public sector will not include an explicit requirement for a senior official to sign a statement to authenticate an organisation's gender pay gap data, as is the case in the regulations for the private and voluntary sector employers. Although we are trying to mirror the reporting requirements for the private and voluntary sectors as closely as possible, we are also trying to fit in the new gender pay gap measures alongside the existing obligations under the Specific Duties regulations. As the data that is currently published under the Specific Duties

regulations do not need to be signed off by a senior official, we do not consider it to be necessary to include this specific requirement for public bodies.