



# **UK Government consultation on the draft regulations on mandatory gender pay gap reporting**

## **Close the Gap response**

**March 2016**

### **1.0 INTRODUCTION**

Close the Gap is a partnership initiative working in Scotland on women's participation in the labour market. Partners include Scottish Government, Scottish Enterprise, Highlands and Islands Enterprise, Skills Development Scotland, Equality and Human Rights Commission, and Scottish Trades Union Congress. The breadth of the partnership recognises that the gender pay gap is an economic issue as well as an equality issue, and that narrowing the pay gap would return aggregate gains to the UK economy.

Close the Gap has been operating since 2001, and works with employers, employees and policymakers to encourage and enable action to address causes of women's inequality at work. The gender pay gap is the key indicator of women's equality in the labour market, and we have 15 years' experience of working with a wide range of stakeholders to promote positive activity to tackle its causes. We therefore welcome the opportunity to respond to this consultation on the draft regulations on mandatory pay gap reporting.

This response does not represent the views of any one individual partner, but the experience of working across the private, public and third sectors in Scotland on women's labour market participation.

### **2.0 CONSULTATION QUESTION: WHAT, IF ANY, MODIFICATIONS SHOULD BE MADE TO THESE DRAFT REGULATIONS?**

#### **2.1 Requirement to provide contextual information**

Publishing an accompanying narrative is critical to demonstrating an understanding of an organisation's gender pay gap. Without meaningful analysis

which includes the identification of where and why specific problems exist, the publication of a headline gender pay gap can be meaningless and is unlikely to lead to change in practice.

Requiring employers to publish a narrative will also encourage employers to undertake a robust and meaningful analysis of their pay gaps, rather than the pay gap calculation alone, which may become a tick-box exercise for some organisations. In turn this will give employers a broader understanding of the causes of the pay gap, and of where women are disadvantaged in their organisation. Developing an understanding of the issues that are specific to their own workplace will enable the development of an effective action plan to address gaps, and build capacity within the organisation to design and deliver work to narrow the pay gap.

## 2.2 Requirement to publish an action plan to address pay gaps

The reporting of headline pay gaps alone will not necessarily encourage all employers to develop actions to address pay gaps. Without a requirement to take action to address identified gaps, it is extremely unlikely that many employers will voluntarily do so.

Research by Close the Gap into employer action on equal pay showed that while 94% of those employers we surveyed had an equal pay policy in place, less than a third had undertaken an equal pay review, and only 3% had taken any action to address pay gaps.<sup>1</sup>

This undue complacency among employers is also evidenced in the Government Equalities Office research on reporting of gender pay gap data where the vast majority of employers surveyed had no current, past or planned future involvement in pay reviews because they considered that they already provided equal pay<sup>2</sup>. This demonstrates a lack of understanding about the causes of the gender pay gap, and specifically a lack of recognition that factors other than discrimination in pay systems contribute towards the pay gap. Pay gaps as a result of pay discrimination may result in litigation. However, if gaps are determined by occupational segregation and employers are not persuaded of the business case for gender equality, there is no clear driver for action. We are therefore strongly of the view that a requirement to publish gender pay gaps

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<sup>1</sup> Close the Gap (2013) *Missing Out on the Benefits: Summary of research on the reporting of the gender pay gap in Scotland* <http://www.closesthegap.org.uk/content/resources/Missingoutonthebenefits-CTG.pdf>

<sup>2</sup> Winterbotham et al (2014) *Company Reporting: gender pay gap data*, Government Equalities Office: London

should be coupled with a requirement to develop an action plan to address identified gaps.

### 2.3 Extension of the reporting requirements to smaller employers

A threshold of 250 employees excludes small and medium enterprises which account for 99.9% of private sector companies in the UK<sup>3</sup>, and most third sector organisations, as 62% of these have fewer than 50 employees.<sup>4</sup> The Government's own estimates suggest that the regulations will affect only 34% of the current UK workforce<sup>5</sup>.

Women are more likely to work in smaller organisations, both in the private and third sectors. 68% of third sector employees are women.<sup>6</sup> Evidence shows that smaller employers are less likely to have good equalities practice in place<sup>7</sup> because of they are unlikely to have a discrete HR function or equalities competence within the business. Smaller employers are also less likely to have undertaken an equal pay review or taken any action to address unequal pay.

In our experience, the employers that are already taking steps to deliver work to narrow the pay gap tend to be large organisations. Extending the regulations to cover all employers would ensure that the majority of female employees are benefit from the new measure.

### 2.4 Provide Equality and Human Rights Commission with the statutory power to enforce compliance

Close the Gap has concerns that without strong enforcement measures, it is very likely that some employers will not meet their obligations under the regulations. The majority of organisations and individuals responding to the consultation (63% and 65%, respectively) agreed that civil enforcement procedures would help to ensure compliance.<sup>8</sup>

The Government Equalities Office notes that pay gap reporting by employers would already be subject to “the compliance and enforcement arrangements provided for in the Act itself, and in the Equality Act 2006 which governs the

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<sup>3</sup> Department for Business, Innovation and Skills (2014) *Business Population Estimates for UK and the Regions 2014*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/377934/bpe\\_2014\\_statistical\\_release.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377934/bpe_2014_statistical_release.pdf) accessed September 2015

<sup>4</sup> NCVO *UK Civil Society Almanac* <http://data.ncvo.org.uk/a/almanac15/workforce/> accessed September 2015

<sup>5</sup> Government Equalities Office (2016) *Closing the gender pay gap: Government response to the consultation*

<sup>6</sup> Ibid.

<sup>7</sup> Olsen and Walby (2004) *Modelling gender pay gaps*, Equal Opportunities Commission: Manchester

<sup>8</sup> Government Equalities Office (2016) *Closing the gender pay gap: Government response to the consultation*

Equality and Human Rights Commission”.<sup>9</sup> We believe that this is inadequate because, as discussed in the Government’s response to the consultation, these provisions relate to the Equality and Human Rights Commission investigating an employer suspected of committing an unlawful act. The Commission should be given the statutory power to enforce compliance with the regulations where enforcement is necessary.

It is essential that the Commission is adequately resourced to undertake compliance and enforcement work on pay gap reporting, and that separate resources should also be allocated to the Commission in Scotland to undertake work with large private and third sector organisations in Scotland.

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<sup>9</sup> Government Equalities Office (2016) *Closing the gender pay gap: Government response to the consultation*