



Mandatory gender pay gap reporting

ICAEW welcomes the opportunity to comment on the consultation paper *Mandatory Gender Pay Gap Reporting. Government Consultation on Draft Regulations*, published by the Government Equalities Office on 12 February 2016, a copy of which is available from this [link](#).

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MAJOR POINTS

ICAEW Support for Gender Equality

1. ICAEW is a strong and active supporter of efforts to achieve gender equality in the UK. In 2015, ICAEW submitted comments to the Women and Equalities Select Committee inquiry exploring the gender pay gap, published as ICAEW REP 171/15, and ICAEW Executive Director Sharron Gunn gave oral evidence to the Select Committee. ICAEW has developed a number of initiatives to support gender equality in the workforce. Our 'Women in Leadership' programme helps prepare women for leadership roles and the 'Back to Work' programme is designed to support women returning to the workforce; both programmes are taken advantage of by a range of firms and employers.
2. We welcome this initiative and support many of the key features of the proposed regime for disclosure of gender pay gap information. However, we have a number of significant concerns over the detail of the draft regulations. These need to be addressed before we can be confident that the new regime will be proportionate and provide meaningful information on a cost-effective basis.

The Consultation Process

3. In preparing this response our Financial Reporting Faculty has consulted a wide range of ICAEW members, working in different types of business and as auditors and advisors. ICAEW strongly supports the government's goal of closing the gender pay gap, and ideally we would have liked to consult even more widely among our members to help ensure that the regulations achieve the government's objective. Restricting the time available for debate and consultation to just one month is likely to lead to poorer outcomes. It seems unlikely, for example, that many company HR functions will have been able to consider all of the challenges involved in the data collection requirements and complicated calculations that would be necessitated by the current proposals. We would, of course, be happy to consult our members again should the government wish on reflection to consult further about the draft regulations.

Reporting Mechanism

4. We strongly support the decision to require companies to publish information on their websites, supplemented by links to that information provided on a government-sponsored website. A similar approach has been taken in a number of recent government policy initiatives, such as the recent introduction of a requirement to disclose information in relation to modern-day slavery. However, we would urge the government to consider how best to ensure that a consistent approach is taken when devising new requirements to disclose regulatory information on company websites. Incidentally, it may not be safe to assume that every employer with more than 250 employees necessarily has a website, although the great majority no doubt do have one.

Compliance

5. We welcome the government's intention to build-up a database of employers complying with the regulations and to closely monitor levels of compliance during the early years of implementation. We also welcome the planned publication of guidance for employers within the scope of the new regime. Clear guidance supported by illustrative examples will help to ensure compliance and will allow employers to implement the new requirements without undue cost and uncertainty.
6. We note from the introduction to the consultative document that 'examples of compliance and non-compliance will be identified'. While such a naming-and-shaming approach could be highly effective, this is in part because it could be highly damaging to an employer's reputation to be

publicly identified as a non-complier. The draft regulations do not indicate what the process would be for deciding whether an employer has complied with them. Clearly a fair and rigorous process needs to be established to decide which employers have complied and which have not, and it would be helpful for the government to indicate how this would work in practice.

7. Accountants are often in positions where they have to report on numbers for which they are in some sense responsible. It is generally accepted in such circumstances that it is unreasonable to expect anyone to report that the numbers are exactly right, and for this reason wording is always found for such reports that does not imply a guarantee of absolute accuracy. We therefore believe that the proposed requirement to confirm that the reported information is 'accurate' could be unreasonably demanding, especially in view of the large volumes of complex data that would be involved in preparing it. We suggest instead that this should be rephrased to require a statement that the company has implemented appropriate data collection and calculation systems during the period to ensure compliance with the regulations. This is more aligned with the approach taken for example by HMRC as regards Senior Accounting Officer certificates for tax accounting.

Objectives and Methodology

8. We assume that the government's objective in producing these regulations is to expose gaps in pay between men and women regardless of their cause, rather than to focus on, for example, whether men and women receive equal pay for equal work or whether men and women of comparable skills and experience are equally rewarded. If the government wishes to go further and to focus on specific causes of inequality, then populations of employees would of course need to be properly stratified and calculations carried out across those stratified groups, so that valid comparisons can be made. The averaging approach adopted means that the proposals as they stand will allow only very broad-brush comparisons between different employers.
9. We have a number of concerns regarding the proposed methodology for measuring pay and bonuses, which is drawn from the Office of National Statistics' Annual Survey of Hours and Earnings (ASHE). In our response to the government's *Review of Economic Statistics: Call for Evidence* (ICAEW Rep 137/15), we have drawn attention to the opportunities for improvement in national statistics, and the ASHE methodology may be an area that requires some attention in the context of this broader review. The underlying logic of the ASHE methodology is not always clear, which will make the information difficult for companies to explain and users to understand. Why, for example, should shift premium pay be included, but overtime excluded? Why should a car allowance be included, but the value of a car provided as a benefit in kind be excluded?
10. We would welcome clarification on the proposed methodology and the work undertaken by the Government Equalities Office to establish the degree to which this method will require detailed data collection that is not consistent with the existing accounting and HR records maintained by companies affected by the new requirements. Our concern on considering the draft regulations is that the complexity of the work that would be required by employers to comply with the regulations in the short interval proposed between the commencement date and the date the information would first have to be disclosed may have been underestimated.
11. If our concerns are justified, it may be preferable for the data requirements to be modified to allow data to be derived from the underlying payroll records, so ensuring that a second, parallel set of records does not need to be maintained.
12. The government should also consider the case for taking a more flexible approach in the regulations, so as to allow a period of experimentation by employers with this novel form of reporting. For example, the regulations might simply require companies to disclose their gender pay gap information on a mean and median basis, for both basic pay and all

performance-related bonuses, using a consistent approach to what is included and excluded from base pay and bonuses and disclosing the basis of calculation. The requirements could be tightened up at a later stage as best practices – or evidence of poor compliance – emerge. This high level, principles-based approach to corporate reporting, which was pioneered in the UK – for example, in relation to the strategic report – has pros and cons, but it has tended to produce better information and more innovative reporting.

The Scope of the Regulations

13. The sooner useful information on the pay gap can be disclosed the better. But we conclude, after considering the challenges of implementing the draft regulations as they stand, that it would be more sensible if they applied initially to firms with 500 or more employees, rather than 250 or more. This would be in line with the threshold that will apply in legislation requiring companies in the UK and the rest of the EU to publish a new statement of non-financial information, which is due to be effective from 1 January 2017. While ICAEW believes that all large organisations should be obliged to publish gender pay gap information, the voluntary TAR ('Think, Act, Report') scheme may illustrate how difficult this is to do. We understand that since 2011 close to 300 firms have signed up to the scheme, but only a small number have actually published reports. This implies that businesses may have found it more onerous than they had anticipated.
14. If our proposal on a delay in implementation for employers with between 250 and 499 employees is adopted, the scope of the mandatory requirements should be extended at a later date as soon as it has been established that the regulations are producing useful information without imposing undue costs. This would enable smaller companies to benefit from the experience of the first wave of reporters. The benefits of disclosure on a voluntary basis should be promoted in the meantime.

CONSULTATION QUESTION

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

15. The issues raised above may well mean that significant modifications to the draft regulations are considered necessary. In addition, there are a number of problems with the detail of the draft requirements as they stand that ought to be addressed before the regulations are finalised. Some of the more important issues we have identified to date are set out below; we are aware of others that will no doubt be raised in other responses to the consultation.
16. Bonus pay includes payments 'received and earned'. Bonuses are not necessarily received in the period in which they are earned and the term 'earned' can be considered to apply to a bonus that accrues over the period. If bonuses are included both when they are received and when they are earned they could be counted twice; the first time when they are earned and the second time when they are received. A decision therefore needs to be made as to whether bonuses should be reported on the basis of when they are received or on the basis of when they are earned.
17. There is also a problem with including bonuses in the relevant period mean and median calculations of 'pay' as this introduces a random impact if, say, an annual bonus is paid in the relevant period one year but not the next. As there is to be separate disclosure of bonuses, it may be better to exclude them from the disclosures of 'pay' as such variations in the timing of annual bonuses could have a misleading effect on comparisons from one year to the next and between employers.

18. Long-term incentive plans (LTIPs) are included in bonuses, and it would be helpful to clarify how the value of these should be calculated for the purpose of the regulations.
19. It will be misleading to include 'hourly rates of pay' for monthly-paid employees in any calculation of average hourly rates of pay where weekly- and monthly-paid employees are added together. This is because many monthly-paid employees work well in excess of their contractual hours.
20. Employer contributions to employee pensions appear to be excluded. This may be reasonable as a way of reducing the cost of compliance, but it will mean that a significant element of remuneration for many employees is not taken into account.
21. We have noted above the anomaly that car allowances are included but cars as a benefit in kind are not. Similar anomalies arise whenever employees have an option to choose between pay and other benefits.
22. As a large number of detailed questions are likely to arise on what should be included or excluded in calculating 'pay' and 'bonus pay', it may be useful to set out principles that should be followed, illustrated by examples, rather than try to answer every conceivable question in advance.