

GENERAL SCHEME OF GENDER PAY GAP INFORMATION BILL

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Head 1 Short title, collective citation and commencement

- (1) This Act may be cited as the Gender Pay Gap Information Act 2018.
- (2) The Employment Equality Acts 1998 to 2015, and Heads 2 to 4 and 6 of this Act may be cited together as the Employment Equality Acts 1998 to 2018.
- (3) The Irish Human Rights and Equality Commission Act 2014 and Head 5 of this Act may be cited together as the Irish Human Rights and Equality Commission Acts 2014 and 2018.
- (4) This Act shall come into operation on such day or days as the Minister for Justice and Equality may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions

Head 2. Gender pay gap information

The Employment Equality Act 1998 is amended by inserting the following after section 20:

“20A Gender pay gap information

- (1) The Minister shall make regulations requiring employers to publish information relating to the pay of their employees for the purpose of showing whether there are differences in the pay of male and female employees and, if so, the scale of such differences.
- (2) In making regulations under subsection (1), the Minister shall have regard to the cost of complying with such regulations.
- (3) (a) Regulations made under this section shall not apply to employers having fewer than 50 employees.

(b) The requirement to publish information under such regulations shall not apply to employers having fewer than
 - (i) 250 employees earlier than two years, or
 - (ii) 150 employees earlier than three years,after commencement of this section.
- (4) Regulations made under this section may prescribe –
 - (a) classes of employer to which the regulations relate, including by reference to the number of employees the employer has,
 - (b) classes of employee to which the regulations relate,
 - (c) how to calculate the number of employees that an employer has,
 - (d) how to calculate, for ease of comparison, the pay of employees,
 - (e) the form and manner in which, and the frequency with which (which shall not be more frequent than once in each year), information is to be published under the regulations.

- (5) Regulations made under this section may require the employer to publish information in respect of
- (a) each Department of State,
 - (b) each Scheduled Office within the meaning of the Public Service Management Act 1997,
 - (c) the Garda Síochána, and
 - (d) the Defence Forces.
- (6) The information published by employers in accordance with regulations made under this section shall include the—
- (i) difference between the mean hourly pay of male employees and that of female employees,
 - (ii) difference between the median hourly pay of male employees and that of female employees,
 - (iii) difference between the mean bonus pay of male employees and that of female employees,
 - (iv) difference between the median bonus pay of male employees and that of female employees,
 - (v) difference between the mean pay of part-time male employees and that of part-time female employees,
 - (vi) difference between the median pay of part-time male employees and that of part-time female employees,
 - (vii) difference between the mean pay of male employees on temporary contracts and that of female employees on such contracts,
 - (viii) difference between the median pay of male employees on temporary contracts and that of female employees on such contracts,
 - (ix) proportions of male and female employees who were paid bonus pay,
 - (x) proportions of male and female employees who received benefits in kind, and

- (xi) proportions of male and female employees in the lower, lower middle, upper middle and upper quartile pay bands.
- (7) Regulations made under this section may require the publication of information by reference to job classifications.
- (8) Regulations made under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (9) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder."

Head 3. Enforcement powers through designated officers

The Employment Equality Act 1998 is amended by inserting the following after section 85A (inserted by the Equality Act 2004):

“85B Enforcement powers in respect of gender pay gap information

- (1) For the purpose of ensuring that information published by an employer under regulations made under section 20A is accurate, the Minister may appoint persons to be designated officers.
- (2) For the purpose referred to in subsection (1) and at the request of the Minister, a designated officer shall investigate and prepare a report on a question specified by the Minister.
- (3) For the purpose of such an investigation, sections 94 and 96 shall apply subject to
 - (a) the references in section 96 to Director General of the Workplace Relations Commission, the Chairman of the Labour Court and an adjudication officer being taken as references to the Minister and a designated officer, and
 - (b) any other necessary modifications. ”

Head 4. Enforcement power through court orders for failure to comply

The Employment Equality Act 1998 is amended by inserting the following after section 85B (inserted by Head 3):

“85C Orders for failure to comply with regulations under section 20A

- (1) Subject to subsection (2), the Circuit Court may, on the application of the Irish Human Rights and Equality Commission, where the Commission has reasonable grounds for believing that there has been a failure by an employer to comply with regulations made under section 20A, grant an order requiring an employer to comply.
- (2) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the employer concerned ordinarily resides or carries on any profession, business or occupation.”

Head 5. Equality reviews and action plans

The Irish Human Rights and Equality Commission Act 2014 is amended by inserting the following after section 32 (4):

“(5) Arising out of the operation of of Section 20A of the Employment Equality Act 1998 or regulations made thereunder, the Minister may request the Commission to consider exercising its powers under this section in relation to a particular undertaking or group of undertakings and the Commission shall comply with this request.”

Head 6. Redress through the Workplace Relations Commission

The Employment Equality Act 1998 is amended by the insertion of the following after section 85C (inserted by Head 4):

“85D (1) An employee (the ‘complainant’) who claims that his or her employer (the ‘respondent’) has failed to comply with regulations made under section 20A may refer the complaint to the Director General of the Workplace Relations Commission.

(2) The Director General shall investigate the complaint and, for that purpose, shall hear all persons appearing to the Director General to be interested and desiring to be heard, and shall issue a decision.

(3) Subsections (3A) and (4) of section 79 shall apply in relation to an investigation by the Director General under subsection (2) as they apply in relation to an investigation by the Director General under that section.

(4) An investigation under subsection (2) shall be conducted in private.

(5) At the conclusion of an investigation under subsection (2) (including an investigation of a preliminary issue under subsection (3A) of section 79), the Director General shall make and issue a decision and, if the decision is in favour of the complainant—

(a) it may provide for an order that the respondent take a specified course of action in order to comply with the regulations, or

(b) in the case of a decision on a preliminary issue under subsection (3A) of section 79, it shall be followed by an investigation of the substantive issue.

(6) Not later than 42 days from the date of such a decision, the complainant or the respondent may appeal to the Labour Court by notice in writing specifying the grounds of the appeal.

(7) The Labour Court shall hear an appeal under subsection (6) in private unless, at the request of the complainant or respondent, it determines to hold the appeal, or so much of it as it does not consider should be treated as confidential, in public.

(8) The Labour Court shall issue a determination on the appeal and the Court shall have power to grant such redress as the Director General has under subsection 5(a).

(9) Sections 88(3) is amended by the addition of the following paragraph:

'(e) in the case of a decision or determination under section 85D, the complainant and the respondents, within the meaning of that section.'

(10) Notwithstanding anything in section 89, the publication of decisions and determinations shall include the names of the complainant and respondent."

Head 7. Review of Act

The Minister shall cause a review of the functioning of this Act to be carried out before the 5th anniversary of the date of enactment of this Act.