STATUTORY INSTRUMENTS

2017 No. 172

EQUALITY

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017

Made - - - -	*6th February 2017*
Coming into force - -	*6th April 2017*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 78 and 207(1) and (4) of the Equality Act 2010(**1**).

In accordance with section 208(4), (5)(b) and (8) of the Equality Act 2010(**2**), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 and come into force on 6th April 2017.

(2) In these Regulations—

"bonus pay" has the meaning given in regulation 4;

"full-pay relevant employee" means a relevant employee who is not, during the relevant pay period, being paid at a reduced rate or nil as a result of the employee being on leave;

"hourly rate of pay" has the meaning given in regulation 6;

"ITEPA 2003" means the Income Tax (Earnings and Pensions) Act 2003(**3**);

"leave" includes—

(a) annual leave;

(b) maternity, paternity, adoption, parental or shared parental leave;

(c) sick leave; and

(d) special leave;

"ordinary pay" has the meaning given in regulation 3;

"pay period" has the meaning given in regulation 5(1);

(**1**) 2010 c. 15.
(**2**) There are amendments to section 208, not relevant here.
(**3**) 2003 c. 1.

"piecework" means work in respect of which an employee is entitled to be paid by reference to a number of pieces made or processed, or a number of tasks performed, instead of by reference to a period of time worked;

"relevant employee" means (subject to paragraph (4)) a person who is employed by the relevant employer on the snapshot date;

"relevant employer" means (subject to paragraph (6)) an employer who has 250 or more employees on the snapshot date;

"relevant pay period" has the meaning given in regulation 5(2);

"snapshot date" means the 5th April in the year to which the information required by regulation 2 relates.

(3) For the purposes of these Regulations, the amount of an employee's ordinary pay or bonus pay is to be calculated before deductions made at source (for example deductions in relation to income tax).

(4) In paragraph (2), a "relevant employee" does not include a partner in a firm.

(5) For the purposes of paragraph (4)—

(a) "firm" has the same meaning as in the Income Tax (Trading and Other Income) Act 2005(**4**), and

(b) "partner" includes a member of a limited liability partnership to which section 863(1) of the Income Tax (Trading and Other Income) Act 2005 applies.

(6) In paragraph (2), a "relevant employer" does not include—

(a) a person specified in Schedule 19 to the Equality Act 2010; or

(b) a government department or part of the armed forces not specified in that Schedule.

Duty to publish annual information relating to pay

2.—(1) A relevant employer must publish, for 2017 and each subsequent year, the following information—

(a) the difference between the mean hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees (see regulation 8);

(b) the difference between the median hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees (see regulation 9);

(c) the difference between the mean bonus pay paid to male relevant employees and that paid to female relevant employees (see regulation 10);

(d) the difference between the median bonus pay paid to male relevant employees and that paid to female relevant employees (see regulation 11);

(e) the proportions of male and female relevant employees who were paid bonus pay (see regulation 12); and

(f) the proportions of male and female full-pay relevant employees in the lower, lower middle, upper middle and upper quartile pay bands (see regulation 13).

(2) The relevant employer must publish the information required by paragraph (1) within the period of 12 months beginning with the snapshot date.

(3) In compiling the information required by paragraph (1), the relevant employer is not required to include data relating to a relevant employee if—

(a) the employee is employed under a contract personally to do work, and

(**4**) 2005 c. 5. The definition of "firm" is in sections 847(1) and 863.

(b) the employer does not have, and it is not reasonably practicable for the employer to obtain, the data.

Meaning of "ordinary pay"

3.—(1) In these Regulations, "ordinary pay" means (subject to paragraph (2))—

(a) basic pay;

(b) allowances;

(c) pay for piecework;

(d) pay for leave;

(e) shift premium pay.

(2) "Ordinary pay" does not include—

(a) remuneration referable to overtime,

(b) remuneration referable to redundancy or termination of employment,

(c) remuneration in lieu of leave, or

(d) remuneration provided otherwise than in money.

(3) In paragraph (1)—

(a) "allowances" includes any sum paid with respect to—

(i) any duty of the employee, such as a duty in connection with the role of fire or bomb warden, that is ancillary to the main duties of the employee's employment;

(ii) the location of the employment in a particular area;

(iii) the purchase, lease or maintenance of a vehicle;

(iv) the recruitment and retention of an employee; and

(v) the purchase, lease or maintenance of an item;

but excludes any payment to reimburse expenditure wholly and necessarily incurred by the employee in the course of his or her employment.

(b) "shift premium pay" means the difference between basic pay and any higher rate paid by the employer for work during different times of the day or night.

Meaning of "bonus pay"

4.—(1) In these Regulations, "bonus pay" means (subject to paragraph (2)) any remuneration that—

(a) is in the form of money, vouchers, securities, securities options, or interests in securities,

(b) relates to profit sharing, productivity, performance, incentive or commission.

(2) "Bonus pay" does not include—

(a) ordinary pay,

(b) remuneration referable to overtime, or

(c) remuneration referable to redundancy or termination of employment.

(3) For the purpose of paragraph (1), remuneration in the form of securities, securities options and interests in securities is to be treated as paid to the employee at the time, and in the amounts in respect of which, the securities, securities options and interests in securities give rise to (or would give rise to, if the employee were an employee for the purposes of Part 2 of ITEPA 2003 (employment income))—

(a) any taxable earnings within the meaning of section 10(2) of ITEPA 2003(**5**); or

(b) any taxable specific income within the meaning of section 10(3) of ITEPA 2003(**6**).

(4) In this regulation, "securities", "securities options" and "interests in securities" have the same meaning as in section 420 of ITEPA 2003(**7**).

Meaning of the "pay period" and the "relevant pay period"

5.—(1) In these Regulations, the "pay period", in relation to a relevant employee, means—

(a) the period in respect of which the relevant employer pays the employee basic pay, whether weekly, fortnightly, monthly or any other period, or

(b) if the relevant employer does not pay the employee basic pay, the period in respect of which the employer most frequently pays the employee one of the elements of ordinary pay mentioned in regulation 3(1)(b) to (e).

(2) In these Regulations, the "relevant pay period" means the pay period within which the snapshot date falls.

Meaning of "hourly rate of pay"

6.—(1) The "hourly rate of pay", in relation to a relevant employee, is to be determined as follows —

Step 1

Identify all amounts of ordinary pay and bonus pay paid to the employee during the relevant pay period.

Step 2

Where an amount identified under Step 1 is an amount of ordinary pay, exclude any amount that would normally fall to be paid in a different pay period.

Step 3

Where an amount identified under Step 1 is an amount of bonus pay, and is paid in respect of a period ("the bonus period") which is not the same length as the relevant pay period, divide the amount by the length of the bonus period (in days) and multiply it by the length of the relevant pay period (in days).

Step 4

Add together the amounts identified under Step 1 (as adjusted, where necessary, under Steps 2 and 3).

Step 5

Multiply the amount found under Step 4 by the appropriate multiplier (see paragraphs (2) and (3)).

Step 6

Divide the amount found under Step 5 by the number of working hours in a week for that employee (see regulation 7).

(2) In this regulation, "the appropriate multiplier" means 7 divided by the number of days in the relevant pay period.

(**5**) Section 10(2) was amended by paragraph 4(2) of Schedule 7 to the Finance Act 2008 (c. 9).
(**6**) Section 10(3) was amended by paragraph 6(2) of Schedule 2 to the Finance Act 2011 (c. 11).
(**7**) 2003 c. 1. Section 420 was substituted by paragraph 2(1) of Schedule 22 to the Finance Act 2003 (c. 14).

(3) In determining for the purposes of this regulation the number of days in the relevant pay period or bonus period where those periods are (or are determined by reference to) a month or a year—

(a) a month is treated as having 30.44 days;

(b) a year is treated as having 365.25 days.

Employee's working hours in a week

7.—(1) The number of working hours in a week for a relevant employee, for the purposes of Step 6 in regulation 6, is to be determined as follows.

(2) Subject to paragraph (6), where an employee has normal working hours that do not differ from week to week or over a longer period, the number of working hours in a week for a relevant employee is the number of the normal working hours in a week for that employee under the employee's contract of employment, or terms of employment, in force on the snapshot date.

(3) Subject to paragraph (6), where the employee has no normal working hours, or the number of the normal working hours differs from week to week or over a longer period, the number of working hours in a week for the employee is—

(a) the average number of working hours calculated by dividing by twelve the total number of the employee's working hours during the period of twelve weeks ending with the last complete week of the relevant pay period, or

(b) where the employee has not been at work for a sufficient period, or for some other reason the employer is not reasonably able to make the calculation under paragraph (a), a number which fairly represents the number of working hours in a week having regard to such of the considerations specified in paragraph (5) as are appropriate in the circumstances.

(4) In calculating the average number of working hours for the purposes of paragraph (3)(a), no account is to be taken of a week in which no hours were worked by the employee, and hours worked in earlier weeks must be brought in so as to bring up to twelve the number of weeks of which account is taken.

(5) The considerations referred to in paragraph (3)(b) are—

(a) the average number of working hours in a week which the employee could expect under the employee's contract of employment, or terms of employment; and

(b) the average number of working hours of other employees engaged in comparable employment with the same employer.

(6) Where the employee is paid on the basis of piecework, the number of working hours in a week for the employee is the number of hours of output work for that employee in the week during the relevant pay period within which the snapshot date falls, determined in accordance with Chapter 4 of Part 5 of the National Minimum Wage Regulations 2015(**8**).

(7) In its application by virtue of paragraph (6), Chapter 4 of Part 5 of the National Minimum Wage Regulations 2015 has effect as if—

(a) references to a worker were references to an employee, and

(b) references to a pay reference period were references to a week.

(8) In this regulation, "working hours"—

(a) includes hours when an employee is available, and required to be available, at or near a place of work for the purposes of working unless the employee is at home, and

(b) excludes any hours for which an employee is entitled to overtime pay.

(**8**) S.I. 2015/621.