Draft Regulations laid before Parliament under section 208 of the Equality Act 2010, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

EQUALITY

The Equality Act 2010 (Equal Pay Audits) Regulations 2014

Made - - - -

Coming into force - - 1st October 2014

These Regulations are made in exercise of the powers conferred by sections 139A and 207(1) and (4) of the Equality Act 2010(**1**).

The Secretary of State has consulted the Minister for Employment Relations and Consumer Affairs and the Lord Chancellor in accordance with section 139A(12) of that Act.

In accordance with section 208(4), (5)(ea)(**2**) and (8) of that Act, a draft of these Regulations has been laid before and approved by resolution of each House of Parliament.

The Secretary of State makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Equality Act 2010 (Equal Pay Audits) Regulations 2014 and come into force on 1st October 2014.

(2) In these Regulations—

"the Act" means the Equality Act 2010;

"audit" means an equal pay audit;

"date of complaint" means the date on which a complaint in respect of an equal pay breach is presented to a tribunal;

"date of judgment" means the date on which a tribunal finds that there has been an equal pay breach;

"relevant gender pay information" means information relating to the pay of men and women (including the maternity-related pay of women to whom section 74 of the Act applies (maternity equality clause: pay))—

(a) who are employed by the respondent;

(**1**) 2010 c. 15; section 139A was inserted by section 98(2) of the Enterprise and Regulatory Reform Act 2013 (c. 24).
(**2**) Subsection (5)(ea) was inserted by section 98(4) of the Enterprise and Regulatory Reform Act 2013 (c. 24).

(b) who are appointed to a personal or public office by the respondent;

(c) for whom the respondent is the relevant person in relation to the terms of appointment to a personal or public office;

"relevant person" has the same meaning as in section 52(6) of the Act;

"tribunal" means an employment tribunal.

Requirement for a tribunal to order an audit

2.—(1) This regulation applies to a complaint presented on or after 1st October 2014 where a tribunal finds that there has been an equal pay breach.

(2) Subject to regulations 3 and 4, the tribunal must order the respondent to carry out an audit.

Circumstances in which an audit must not be ordered

3.—(1) A tribunal must not order the respondent to carry out an audit where it considers that—

(a) an audit completed by the respondent in the previous 3 years meets the requirements set out in regulation 6;

(b) it is clear without an audit whether any action is required to avoid equal pay breaches occurring or continuing;

(c) the breach which the tribunal has found gives no reason to think that there may be other breaches; or

(d) the disadvantages of an audit would outweigh its benefits.

(2) In paragraph (1), "previous 3 years" means the 3 years preceding the date on which the tribunal issues a judgment, orally or in writing, stating that there has been an equal pay breach.

Exemption for existing micro-businesses and new businesses

4.—(1) A tribunal must not, within the applicable exemption period, order a respondent to carry out an audit in relation to persons employed for the purposes of a business where the respondent is carrying on that business and the business is—

(a) an existing micro-business, or

(b) a new business.

(2) The Schedule defines "micro-business", "new business" and the applicable exemption period.

Content of the tribunal's order

5.—(1) An order made by a tribunal under regulation 2 must—

(a) specify descriptions of persons in relation to whom relevant gender pay information must be included in the audit and the period of time to which the audit must relate; and

(b) specify the date by which the audit must be received by the tribunal.

(2) The date specified for the purposes of paragraph (1)(b) must not be sooner than 3 months after the date on which the order is made.

Content of an audit

6. An audit must —

(a) include the relevant gender pay information related to the descriptions of persons specified by the tribunal for the purposes of regulation 5(1)(a);

(b) identify any differences in pay between the descriptions of men and women specified for the purposes of regulation 5(1)(a) and the reasons for those differences;

(c) include the reasons for any potential equal pay breach identified by the audit; and

(d) include the respondent's plan to avoid equal pay breaches occurring or continuing.

Determining compliance with an order to carry out an audit on the papers

7.—(1) Where an audit has been received by a tribunal by the date specified in relation to it for the purpose of regulation 5(1)(b), the tribunal must determine whether the audit complies with the requirements in regulation 6.

(2) Where the tribunal determines that the audit complies with the requirements in regulation 6, it must make an order to that effect and provide a copy of that order to the respondent.

(3) Where the tribunal is not satisfied that the audit complies with the requirements in regulation 6 or where the audit was not received by the tribunal by the date specified for the purposes of regulation 5(1)(b), the tribunal must—

(a) fix a hearing for the purpose of determining whether the respondent has complied with the requirements in regulation 6;

(b) notify the respondent of—

(i) the reasons why it is not satisfied that the audit complies with the requirements in regulation 6 (where an audit was received by the tribunal by the date specified for the purposes of regulation 5(1)(b)) and the powers available to the tribunal;

(ii) the date of the hearing;

(iii) the right of the respondent to make representations at the hearing; and

(c) where an audit has not been received by the date specified for the purposes of regulation 5(1)(b), make an order specifying the new date by which the audit must be received by the tribunal, which must be no later than the date specified in paragraph (b)(ii).

Determining compliance with an order to carry out an audit at a hearing

8.—(1) This regulation applies where a tribunal has held a hearing fixed under regulation 7(3) and considered any representations made by the respondent.

(2) Where an audit has been received by a tribunal by the date of the hearing, it must determine whether the audit complies with the requirements in regulation 6.

(3) Where the tribunal determines that the audit complies with the requirements in regulation 6, it must—

(a) make an order to that effect and provide a copy of that order to the respondent; and

(b) where the audit was not received by the tribunal by the date specified for the purposes of regulation 5(1)(b) or (as the case may be) regulation 7(3)(c), paragraph (4)(a) below or paragraph 5(a) below, consider whether to make an order under regulation 11.

(4) Where the tribunal determines that the audit does not comply with the requirements in regulation 6, it must—

(a) make an order requiring the respondent to amend the audit so that it does so comply and specifying the date by which the tribunal must receive the amended audit;

(b) notify the respondent of the reasons for its determination;

(c) provide a copy of that order to the respondent; and

(d) consider whether to make an order under regulation 11.

(5) Where the audit has not been received by the tribunal by the date of the hearing, the tribunal must—

(a) make an order specifying a new date by which the tribunal must receive the audit;

(b) provide a copy of that order to the respondent; and

(c) consider whether to make an order under regulation 11.

(6) Where the respondent fails to comply with an order under paragraph (4) or (5), the tribunal must—

(a) fix a further hearing; and

(b) notify the respondent of—

(i) the date of the hearing; and

(ii) the right of the respondent to make representations.

(7) The preceding provisions of this regulation apply to a hearing fixed under paragraph (6) as they apply to a hearing fixed under regulation 7(3).

Publishing an audit

9.—(1) This regulation applies where a tribunal makes an order under regulation 7(2) or 8(3).

(2) Subject to paragraph (3), the respondent must, not later than 28 days after the date of the order, publish the audit—

(a) if the respondent has a website, by placing it on the respondent's website for a period of at least 3 years starting with the date on which it is placed on the website; and

(b) by informing all persons about whom relevant gender pay information was included in the audit where they can obtain a copy.

(3) Where the respondent considers that publication under paragraph (2) would result in a breach of a legal obligation, the respondent—

(a) must, so far as possible, publish the audit in accordance with paragraph (2) with such revisions as it considers necessary to ensure compliance with that obligation while still ensuring compliance with regulation 6; or

(b) where it is satisfied that it is not possible to comply with sub-paragraph (a), need not publish the audit.

(4) Where the respondent publishes the audit under paragraph (2), it must send to the tribunal evidence of this not later than 28 days after the date of publication of the audit.

(5) Where the respondent publishes the audit under paragraph (3)(a), it must send to the tribunal—

(a) evidence that the audit has been published; and

(b) adequate written reasons why it considers that publication under paragraph (2) would result in a breach of a legal obligation,

not later than 28 days after the date of publication of the audit.

(6) Where the respondent, in reliance on paragraph (3)(b), does not publish the audit, it must send to the tribunal, not later than 28 days after the date on which the tribunal makes an order under regulation 7(2) or 8(3), adequate reasons in writing explaining why it considers that publication would result in a breach of a legal obligation and why it is satisfied that it is not possible to comply with paragraph (3)(a).

Determining compliance with an order to publish an audit

10.—(1) This regulation applies where a tribunal makes an order under regulation 7(2) or 8(3).

(2) The tribunal must, no sooner than 56 days after the date of that order, consider whether the respondent has complied with the publication requirements.

(3) Where the tribunal determines that the respondent—

(a) has complied with the publication requirements; or

(b) is not required to do so by virtue of regulation 9(3)(b),

the tribunal must issue a decision in writing to the respondent stating that the respondent has so complied or that the respondent is not required to do so.

(4) Where the tribunal is not satisfied that the respondent has complied with the publication requirements and is required to do so, it must—

(a) fix a hearing to determine whether the respondent has complied with the publication requirements; and

(b) notify the respondent of—

(i) the reasons why it is not satisfied that the respondent has complied with the publication requirements;

(ii) the date of the hearing; and

(iii) the right of the respondent to make representations.

(5) Paragraphs (6) to (8) apply where the tribunal has held a hearing under paragraph (4) and considered any representations made by the respondent.

(6) Where the tribunal determines that the respondent—

(a) has complied with the publication requirements; or

(b) is not required to do so by virtue of regulation 9(3)(b),

it must issue a decision in writing stating that the respondent has so complied, or is not required to do so.

(7) Where the tribunal determines that the respondent has not complied with the publication requirements and is not exempt from doing so by virtue of regulation 9(3)(b), it must make an order specifying a new date by which the respondent must comply with the publication requirements, in so far as the respondent has not done so.

(8) Where the respondent fails to comply with an order under paragraph (7), the tribunal must—

(a) fix a further hearing; and

(b) notify the respondent of—

(i) the date of the hearing; and

(ii) the right of the respondent to make further representations.

(9) The preceding provisions of this regulation apply to a hearing fixed under paragraph (8) as they apply to a hearing fixed under paragraph (4).

(10) In this regulation, "publication requirements" means the requirement to—

(a) publish the audit; and

(b) provide evidence of publication to the tribunal,

in accordance with regulation 9.

Power to order a penalty

11.—(1) Where a tribunal—

(a) determines that a respondent has failed to comply with an order made under regulation 2 or 8; and