

Gender Pay Gap Reporting: Make (More) Meaning of Mandate

In the spring of 2016 I wrote a commentary¹ on the then draft regulations, introducing new requirements for larger organisations to report on their gender pay gap. My message was that HR could and should regard the new rules as opportunity. Your interest may be concern for compliance alone, or the tricky analysis work, or the social and ethical consequence. I argued that whether for their mandate, maths or meaning, these regulations were worthy of some attention.

Final regulations² have recently been published and are due to come into force on 6 April 2017, giving employers a key “snapshot date” on which to be sure the requisite information is there for the analysis by a latest publication date 12 months later. In this article, I start with the basics, look at what has changed since draft and explore some of the more intricate questions for HR. I conclude with some advice about how to make the most meaning of the gender pay gap reporting mandate.

Key Points:

- Pay attention to the regulations about Gender Pay Gap Reporting for all of 3 reasons: mandate (compliance), maths (complex analysis work) and meaning (social and ethical)
- These come into force on 6 April 2017 and effect private and voluntary sector employers of more than 250, although public sector bodies will soon have to comply too
- Final regulations offer welcome clarity on many issues of method but there are inevitably factors that are organisationally specific which HR will have to address
- HR, reporting analysts and payroll will need to work together to produce meaningful results that can later be explained
- There are practical steps HR leaders responsible for diversity at strategic level can do to be well prepared

The Mandate

Let's start with the mandate itself and the need-to-know rules. Read this for some context and to establish what is in store for you and your organisation.

Voluntary equal pay auditing has done little to address a frustrating stuck-ness in the UK gender pay gap, bearing in mind that it approaches half a century since the first legislative

¹ Read the Phase 3 Consulting original Insights paper at <http://www.phase3consulting.co.uk/gender-pay-gap-reporting-making-meaning-of-mandate/>

² The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017

intervention to address the difference between men and women's pay³. More rules were inevitable. The pay gap has narrowed and it can be hard to establish a single figure, but despite representing the lowest ever differences in gender pay, the 2015 figure of 19.2% or 9.4% for the full time comparison⁴ is evidencing a stubborn persistence in different value placed on the work that we all do.

Now all employers in the private sector with 250 or more "relevant employees" on the key "snapshot" date of 5 April 2017 have to publish, both on a government portal and on their own website, information about the organisation's gender pay gap. A set of 6 figures are to be published and there is no requirement to offer commentary, although it must be the case that some degree of qualitative assessment and narrative is wise to regard as an imperative.

Public sector employers should take note too. At the time of writing, consultation has closed on matching requirements and regulations awaiting. The draft rules for public sector bodies were a close match to those final in the private sector (discussed here) so it seems highly probable and infinitely sensible that there is a dovetail on dates, a match on the maths and similar niceties left outstanding for HR teams and employment lawyers to argue over.

The 6 Figures required....

1. Difference between men and women's mean hourly rate of pay
2. Difference between men and women's median hourly rate of pay
3. Difference between men and women's mean bonus pay
4. Difference between men and women's median bonus pay
5. Proportion of male and female employees paid bonus pay
6. Proportion of male and female employees falling into each quartile pay band, where quartiles are defined by listing earners from lowest to highest

The Dates defined....

- A "pay period" is most likely your payroll frequency – how often you pay basic pay to your employees (e.g. monthly, weekly)
- The "relevant pay period" is the one in which 5 April 2017 (and years subsequent) falls. This is the period for which average hourly rates must be used.
- The "relevant period" for bonus pay figures is the 12 months which ends with the snapshot date of 5 April 2017. This is the period you must use to look at bonuses paid.
- There is also a familiar 12-week reference period to work out hourly rates where pay is variable

³ Equal Pay Act 1970 (EPA)

⁴ Figures from the Office of National Statistics, reporting in November 2015 on 2014 data

Essentially the information to be published covers ordinary pay and bonuses, with those 6 figures expressing in percentage terms the difference between both mean and median hourly rates of pay and bonus pay. In addition, organisations must state the proportion of men and women receiving bonuses at all and the proportion falling into each quartile of a pay range from lowest to highest.

In summary, if you employ 250 or more this April, then be ready to publish gender pay gap information no later than April 2018. For this, HR will need not only the information prepared, but a grasp of from where it is derived and a sound understanding of the reasons for any deviation from appropriate benchmarks.

What has changed since the draft?

There are 5 points to note of change since the government's first draft and I welcome all, despite the first being something of a quagmire. This is the definition of "employee".

We now understand that the definition matches section 83 of the Equality Act and this makes sense. However be aware that this brings into requirements some non-payroll staff. Those concerned are workers engaged directly under a "contract personally to do work". Independent contractors and consultants may be caught within this definition⁵ therefore and a start-point for HR is to determine whether and which off-payroll records should also be gathered. Bear in mind that the Finance Bill 2017 also brings for the public sector changes to off-payroll tax duty decisions too, and to link your rationale for analysis seems a good move.

Secondly the snapshot date shifts from 30 April to 5 April 2017. The greatest impact here is probably the timing of bonus pay where these are distributed annually according to a financial year that runs from April to March.

There are clear definitions set out about how to derive hourly rates and the number of working hours in a week⁶ because the actual hours worked and actual pay received in total must be used, rather than an extrapolation from a basic rate point for those working part time.

Originally there were just 5 values to be published and final regulations introduce the median value for bonus pay.

Lastly leave pay receives attention and the government has responded to views that to include the impact of staff members' lower rates of pay received during leave periods, for example on reduced rates of sickness or maternity pay, is a distorting factor. Only report on "full-pay relevant employees" and set aside those who in the relevant pay period have circumstance meaning that they are earning less due to their leave.

⁵ Excluded categories are: agency workers where contract is with the agency, volunteers, the self-employed not covered by s.83 and any employees not paid in the relevant pay period

⁶ See sections 6 and 7 of the regulations

The Maths

Ignore the role of the HR analyst at peril. In my working life with business intelligence experts, I am continually aware of the dark art of reporting from an HR and payroll database. Between a report definition and a set of figures are a series of design steps which in this case HR would be wise to get a handle on.

Be sure that those responsible for producing figures start with your choice of employee set and those appropriate to include and exclude. It is important to understand that gender pay gaps are all about by-person reporting and not by role. Where rates of pay vary, or there are multiple jobs, then these need to be combined to look at the person.

Next up is an analysis of the list of pay elements. Which types of pay should be in or out? This is a decision to be made with care by those skilled to understand the nuance of current debate and standing on the consequences within employment law. Whilst the regulations are relatively clear on some counts, there are inevitably organisationally specific pay terms which a single legislative clause cannot cater for. Take care with allowances (in) and on-call time (some in and some out) and overtime (out). I am interested to see the divergence here from emerging case law on holiday pay where “normal pay” the courts are minded currently to include some instances of overtime, which counts out here⁷

In writing reports, a prescribed method must be followed. Make sure your teams are aware of this. The text of the legislation isn't so hard to navigate or otherwise set out the steps in your own words. *Here is an example:*⁸

How to derive Hourly Rate:

1. Identify all gross pay (both ordinary and bonus pay) for the agreed set of pay elements to be included in the relevant pay period
2. Exclude any amount that would normally be paid in a different pay period (e.g. back-pay, advances)
3. If bonus pay has been paid for a period that's different from the relevant pay period, pro rate the amount paid to match the length of the relevant pay period (all in days)
4. Add amounts together per employee
5. Multiply total amounts by 7/no. of days in the relevant pay period (where a monthly payroll is defined to have 30.44 days)
6. Divide this by the employee's contractual hours per week or where contractual hours vary by the average weekly hours in the 12 weeks that end during the relevant pay period (discount any weeks where there was no pay)

⁷ Note that commission-style arrangements are also current the subject of debate. These regulations make commission a part of bonus pay, but given that bonus pay combines with ordinary pay to form hourly rates, then (unlike for overtime) these rules lean towards the more inclusive judgements

⁸ This list of steps is taken from section 6 of the regulations and section 7 explains in more detail how to work out the hours per week

To be sure that you can understand, justify and examine your gender pay gap figures appropriately – and that you are compliant in full with the rules – HR, data analysts and payroll teams need to work together with a clear brief. Single figure outcomes, once arrived at, can be hard to work back from if a misconception is unearthed later on.

The Meaning

What sense is to be made of a set of figures? An good grasp of a good brief is a good start for HR and diversity leaders to take forward the opportunity for mandatory gender pay gap reporting to be a positive exercise in promoting achievements in pay fairness or in addressing any shortfalls found. I have indicated here the importance for HR in working closely on that brief and implied is the need to get ahead somewhat on this and not to be misled by a 2018 deadline.

Whilst the government has not sought to define a requirement to explain the organisational pay gap findings, be prepared to do so. Encouraging verdicts are surely cause for promotion and celebration, both internally and to the outside world of potential applicants, customers and community. Concerning verdicts need exploration and this is where the real meaning of

The Practical Guide for HR:

- Work out if the rules apply to you, according to a count of your “relevant employees”. Which employees will you include? Have a clear rationale for so doing.
- Brief those who can provide reports for you and make sure that there is an appreciation of precise methods which must be followed and a consensus on pay elements to be included. Don’t wait until March 2018!
- Document methods for reference. More legislation may come later on which you wish to match your decision-making. Closer exploration of outcomes may be necessary or defence of choices made.
- Those in the public sector should watch out for final regulations to be published. Check those off against the guidance here. Assume for now that the public sector will not evade this responsibility.
- Consider likely outcomes. Is your organisation set for a PR coup or PR crisis? Will you need to take further action? Could this attach cost? Make leadership teams aware of the imperative.
- Understand what constitutes a “good” and “bad” outcome. How will you benchmark? You might want to do some research around national, industry or local benchmarks. Look out for guidance in 2017 from ACAS and the GEO for more advice.
- For your own website be prepared to offer narrative. How does gender pay fit with your wider diversity strategy? How much or how little works for you to say? Take the opportunity to prepare.

the stuff comes in. Getting ahead will give more time to drill down to pockets of pay problems and to join up cause and effect.

Whether your interest is because you've got to, because you rather like the sums or because your organisation has a care for shifting that stubborn percentage stuck-ness that differentiates men and women's pay and you'd like to break some glass walls and ceilings, then mandatory Gender Pay Gap reporting is worth some thinking on. I like this simple quote on simple data about something so organisationally and socially intricate: "There is no single measure that adequately deals with the complex issue of differences between men and women's pay⁹." I like that the government has not responded to this difficulty by giving up and the onus now lies on us to make the most meaning of mandate.

⁹ ONS in the ASHE, November 2015 preliminary report