

Employers Federation Response to Public Consultation on Gender Pay Gap Reporting

About Us

Employers Federation (previously known as the Engineering Employers Federation Northern Ireland) is a not-for-profit Organisation which has been in existence in Northern Ireland for over 100 years. We solely represent employers, predominantly in the private sector, although we also have some charitable bodies within the Membership.

We advise across an extensive range of industries including engineering, communications, fintech, technology and food. The employers we represent range in size from small to some of the largest private sector employers in Northern Ireland.

We have consulted with our member companies about our response including through an in person Briefing Session held in January 2025. This response reflects the opinions we have gathered. In compiling our response, we have also liaised with our sister Organisation MAKE uk.

We welcome the opportunity to respond to this Consultation.

Executive Summary

Many of our Members are already completing Gender Pay Gap Reports in Great Britain and are familiar with the process there. The resounding message from Members is that Northern Ireland should mirror the provisions that are in place in Great Britain to reduce the administrative burden and cost on businesses having to comply.

Organisations have also voiced their concerns about the number of changes and new laws proposed by the Executive that are due to come into force in and around 2027. Businesses need time to prepare and advance warning so that they can comply with any new laws. This includes knowing the detail of how these new rights and laws will operate. We recommend that this is taken into account when planning their introduction.

Businesses have also re-enforced the need for an effective childcare strategy. This is an important aspect of closing the gender pay gap removing which will encourage more women to join and stay in the workforce.

Coupled with this is the need to upskill and increase the number of females, disabled persons and those from different ethnicity in relation to their skills. Businesses again believe more could be done to target these groups. Overcoming some of these barriers for women and ethnic minority groups to access these positions is vital to prevent the gap from widening.

In relation to ethnicity and disability reporting, there is real concern and confusion around this requirement. Businesses believe that it is contradictory on the one hand to recognise that there is currently no legal requirement or agreed methodology to record an employee's ethnic origin or disability status and yet on the other hand to state that where the information is known, it should be recorded. Businesses have real concerns that any data collected in this way would not be accurate and have very limited, if any, statistical value.

This is more pronounced when considering recording disability status. Employees may not recognise themselves as being disabled or indeed disclose their disability. How disability is defined, and by whom, will be relevant to this issue and greater legislative clarity on definitions in the draft Regulations is needed. Therefore, there should be further consultation and engagement on this before any legal requirement is introduced to complete reporting on ethnicity and disability reporting.

Members wholly oppose the use of criminal sanctions, which disproportionate to the breach. There are no equivalent sanctions in GB and we fail to understand the need for it to be a criminal offence in Northern Ireland.

We have responded to the individual questions below.

Introduction

Please indicate whether you are responding as an:

- On behalf of an organisation
- Other (please specify)

Employers Federation a representative body for businesses.

Scope

The Regulations for England, Scotland and Wales outline that employers with 250 or more employees fall within the scope of their Gender Pay Gap legislation and are required to complete a return.

1. Do you agree that the threshold of 250 employees is also appropriate for Northern Ireland? If not, what do you think is an appropriate threshold?

- Yes

Why do you say that?

The Federation is of the view that the thresholds should align with GB and remain at 250 as otherwise this would impose additional and disproportionate financial burden, for smaller businesses if they were required to complete new reporting requirement.

The current proposal considers that all employers who employ 250 employees or more (i.e. in the public, private and voluntary sectors) will fall within the scope of the legislation.

2. Do you agree with this aspect of the legislation, i.e. the scope should include all sectors?

- Yes

Why do you say that?

To have any representative value then it is important that it is across all sectors.

Standardised Methodology

A standardised methodology for calculating gender pay information has been presented in Section 6.3 of the Consultation Document.

3. Do you agree that this methodology should be used?

- Yes
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Why do you say that?

As stated above businesses are very keen that Northern Ireland adopts the same methodology as used in GB.

We have liaised with our sister Organisation who highlighted a number of issues below.

It should be clear what from the Guidance what employees are in scope and should be counted in the report. ‘Relevant employee’ should be defined as someone who ‘ordinarily works in Northern Ireland and ‘whose contract of employment is governed by NI legislation’, the updated Regs are silent on this.

The Regulations should be accompanied with Guidance similar to that in place in GB. This would clarify that an employee based overseas will generally be a relevant employee if they could bring an unfair dismissal claim to Tribunal. This is particularly important given the number of cross border employees in NI.

We ask that the final Regulations will deal with this issues, and for it to supplemented by updated guidance perhaps from LRA.

Meaning of ‘ordinary pay’

We are looking for guidance for example on how PILONs will be treated.

Excluded from the definition of ordinary pay ‘remuneration referable to overtime’.

We need clarification as to whether it is only actual overtime pay that is excluded or also elements of pay, such as allowance, that relate to overtime hours. If all payments referable to overtime are to be excluded, guidance will be needed as to whether they are ‘referable’ or not, eg for certain on call, standby allowances etc.

Meaning of ‘bonus pay’

We need to understand and out of scope of ‘bonus payments’ and how certain payments are to be valued.

Calculating hourly rate of pay – ‘working hours in a week’

‘Working hours in a week’/‘normal working hours’ need to be defined more clearly. We understand that it is only where there is a fixed number of hours in the employment terms that otherwise, where hours are not fixed, the calculations in the Regulations will apply?

‘Working hours’ excludes any hours for which an employee is entitled to overtime pay. The Guidance states that working hours do not include overtime. We need clarification as to whether it is only paid overtime that is excluded from the calculation? What happens to unpaid overtime hours, eg where employees are required to work additional hours ‘as required for the performance of the contract’?

Calculating the Gender Pay Gap

For the purposes of calculating the Gender Pay Gap we have relied on the ONS (Office for National Statistics) definition of calculating ‘pay’ as this allows for comparability with England, Scotland and Wales.

4. Do you agree that we use the ONS (Office for National Statistics) definition of calculating ‘pay’?

- Yes

Why do you say that?

Yes see above regarding adopting the same methodology as is used in GB.

In order to identify any Gender Pay Gap and / or gender bonus gap it is proposed that employers will report gender pay using both the mean and median figures.

5. Do you agree with the proposal to use mean and median figures?

- Yes
- No

Why do you say that?

Yes see above regarding adopting the same methodology as is used in GB

6. For employers that will be within the scope of these regulations, can you currently calculate Gender Pay Gap figures from your systems?

- Yes
- No

Why do you say that?

Some are able to; others will have to implement new systems to gather the data.

It is proposed that employers, when undertaking gender pay calculations, draw information from a specific “snapshot date” of 5 April each year.

7. Do you agree with the proposal to use this specified snapshot date when calculating gender pay information?

- Yes

Why do you say that?

Yes – the same snap shot date used in GB that avoids seasonal fluctuations that can skew the figures.

Form, Manner and Timing of publication

8. Do you think the regulations should specify where the employer publishes their Gender Pay Gap information – for example, a prominent place on their website? (If not on their website, where do you believe the information should be published and why?)

- No

Why do you say that?

We believe the regulations should adopt a light touch to how and where it should be published, provided it is published provided it can be easily accessible on the website.

9. Do you agree that the publication of Gender Pay Gap information will encourage employers to take action to close the Gender Pay Gap?

- Yes
- No

Why do you say that?

We agree in principle that transparency assists in identifying gaps and it is more likely that action will be taken. However, we refer to our comments in our Executive Summary. GPR is one tool but there must also be in place an effective childcare strategy and targeted upskill for real meaningful change to happen

It has been proposed in the Consultation Document that employers publish Gender Pay Gap information on an annual basis.

10. Do you agree that employers should publish this information on an annual basis?

- Yes
- No

Why do you say that?

Yes we have no issue with this.

Ethnicity and Disability

Section 19 of the Employment Act (Northern Ireland) 2016 stipulates that the information provided by employers on Gender Pay Gap, must include statistics on ethnicity and disability.

11. Do you have any comments on providing Gender Pay Gap information relating to a workers a) ethnicity and/or b) disability?

Businesses have real concerns with the requirement to publish statistics on workers within each pay band in relation to ethnicity and disability.

Businesses believe that it is contradictory on the one hand to recognise that there is currently no legal requirement or agreed methodology to record an employee's ethnic origin or if they are a disabled person. Yet, on the otherhand, to state that where information is known of an employee's ethnic origin or disability, it should be recorded. Businesses have real concerns that any data collected in this way would not be accurate and have limited statistical value.

There are no set categories for ethnicity and again this needs to be clarified.

Disability is an even harder matter to categorise. What constitutes a disability for the purposes of these Regulations has not been set out. Some employees may not consider themselves as disabled and/or want to disclose a disability. We are of the view that there needs to be a further and more detailed consultation on this issue before any requirement to monitor workers ethnicity and/or disability is required given the complexity of implementing these further reporting requirements.

We are conscious that GB contains similar proposals on monitoring which have now been pushed back in the next steps programme, with no clear timeline for implementation. For these reasons we believe that this aspect should not be implemented until further consultation has taken place.

Action Plan

Employers will be required to produce and publish an action plan setting out what actions they will take to eliminate gender pay differences within their organisations.

12. Do you agree that employers should produce and publish action plans?

- Yes
- No

Why do you say that?

In relation to the requirement to publish an Action Plan, businesses welcome the proposal for the plan to be proportionate to the level of the gender pay gap, cover the reasons and the actions being taken to address the causes that are within their control. Businesses are keen that a light touch is taken in terms of what is required in the content of any Action Plan and no sanction imposed on businesses who may get it wrong.

It is not entirely clear from consultation document if action plans are only required in relation to gender pay differences only, and not any ethnicity or disability pay gaps. We would ask that this is clarified and action plans only required for gender.

Monitoring

In England, Scotland and Wales, enforcement powers fall within the remit of the Equality and Human Rights Commission (EHRC).

13. In your opinion which body / organisation should be responsible for monitoring and enforcing the gender pay information that employer's will be expected to calculate and publish, in Northern Ireland?

Currently registration and monitoring requirements of community background under the Fair Employment Order rest with the Equality Commission for Northern Ireland (ECNI), and there may be some overlap with gender pay gap given the requirement to break down community background by sex.

ECNI expertise in equality and human rights issues may make them suited to oversee the enforcement of gender pay reporting regulations.

Additionally, their role in providing guidance and support to employers may help educate and address any identified issues effectively.

Implementation Costs

14. If you are an employer, what is your assessment of the costs to your business of conducting gender pay analysis and publishing the information?

We have no data on projected financial costs but businesses anticipate that the following associated with conducting gender pay analysis and publishing the information:

1. Initial Setup Costs: Implementing the necessary software or tools to collect and analyse pay data can involve upfront expenses. This might include purchasing specialized software, integrating it with existing HR systems, or consulting services to ensure accurate data collection and analysis.
2. Staff Training and Time: Employees may need training to use new tools and understand the reporting requirements. Additionally, staff time is required to collect, clean, and analyse the data, which could divert resources from other tasks.
3. Ongoing Reporting Costs: Regularly updating and maintaining the data, as well as preparing and publishing annual reports and action plans, will incur ongoing costs. This includes staff time and potentially additional resources to ensure the data remains accurate and up-to-date.
4. Compliance and Legal Costs: Ensuring compliance with gender pay gap reporting regulations might involve legal costs to understand requirements a
5. Communication and Engagement: Effectively communicating the results and action plans to employees and stakeholders might involve costs related to internal communications, external public relations, and engagement activities to address any concerns or feedback.

Compliance

The requirements for the information to be signed off and published by employers are intended to ensure reliability of, and accountability for, the data and to identify for the public record those employers who have complied.

15. What sanctions, other than an offence, do you believe would be appropriate if an employer fails to comply with these regulations?

We wholly oppose the use of criminal sanctions, which are much to disproportionate, severe and punitive given the ethos of the new laws is to encourage transparency. There are no equivalent sanctions in GB and we fail to understand the need for it to be a criminal offence here. We believe that there are several other softer measures that could be appropriate for enforcing gender pay gap regulations such as publicly naming non-compliant employers.

Comments

16. Is there anything else you would like to add?

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