



Bill Digest

Gender Pay Gap Information Bill

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Abstract

This Bill Digest presents an overview of the situation relating to the gender pay gap and analyses the provisions of the *Gender Pay Gap Information Bill 2019*. The Digest pays particular attention to the issues raised during the Oireachtas Joint Committee on Justice and Equality Pre-Legislative Scrutiny (PLS) of the General Scheme, and examines the impact of this PLS on the published Bill.

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Glossary

CSO	Central Statistics Office
EEA	Employment Equality Act
EHRC	Equality and Human Rights Commission (UK)
ESRI	Economic and Social Research Institute
EU	European Union
GPG	Gender Pay Gap
IBEC	Irish Business and Employers Confederation
IHREC	Irish Human Rights and Equality Commission
L&RS	Library and Research Service (Oireachtas)
NWCI	National Women's Council of Ireland
PBO	Parliamentary Budget Office (Oireachtas)
PfG	Programme for Government
PLS	Pre-Legislative Scrutiny
UK	United Kingdom
WRC	Workplace Relations Commission

Summary

The gender pay gap is the difference in men's and women's median earnings. According to Eurostat in 2016, across the EU women's gross hourly earnings were 16.2% below those of men, and the Irish gender pay gap was 13.9%. Since 1994, Ireland's gender pay gap has reduced, but it has been relatively stable in recent years. This paper estimates that at the current pace, it would take Ireland 55 years to close the gender pay gap. The implications of the gap are much broader than inequities of pay and have long-term and systemic consequences for the role of women in society. Over time, even a small gap can cumulatively have a significant impact on women and their families.

The gender pay gap is experienced differently by different cohorts of women - the gap is worse for older women, women from ethnic minorities, and for higher earners. There are many factors which have been identified as 'explaining' the gender pay gap including: occupational segregation/choice, parenting and flexible work; workplace practices, as well as the role and influence of broader government policy. There are concerns that the gender pay gap is a useful but somewhat crude measure of differences in pay and broader gender inequality. The extent to which any of these factors are pre-determined by deeply embedded gender norms is difficult to measure, and of course women can make legitimate, independent decisions about how they choose to structure their work and family life. Despite decades of anti-discrimination law, direct gender discrimination remains an important causative factor in the gender pay gap, and this is why several countries have begun to implement new legislative initiatives aimed at closing the gender pay gap.

Given the persistence of the gender pay gap, several countries have put in place transparency legislation. While there is much in common across countries which have introduced gender pay gap transparency legislation, there are also differences including which employers are covered and the penalties in place when organisations fail to comply. The overall ambition of such initiatives is that greater transparency will encourage actions to reduce the pay gap within organisations. Critics of these measures suggest that transparency legislation may serve to normalise low or medium pay gaps, and/or that the measures are too crude and do not account for the choices women make in the labour market.

The *Gender Pay Gap Information Bill 2019* (summarised in table 1) would require the phased introduction of pay gap reporting for any organisation with more than 50 employees. Employers will be required to report the percentage mean and median pay gap for men and women in terms of hourly pay for both full time and part-time employees, as well as any bonus pay. Employers will also report on the proportion of male and female employees who receive bonuses or benefit-in-kind. Additionally, regulations *may* require reporting on temporary contracts and the publication of information by type of job or income quartiles within an organisation. Reporting will not be more frequent than once a year and reporting will be available publicly (most likely through a website) and to employees. The proposed legislation will also require employers to submit a narrative providing their explanation of any gender pay gap and the measures they are undertaking to close it. The Bill envisages several avenues for enforcement including the appointment of a 'designed officer' under the *Employment Equality Act*, and equality review by IHREC, an application by IHREC to the Circuit Court, and employee complaints to the WRC.

In their Pre-Legislative Scrutiny of the General Scheme the Oireachtas Joint Committee on Justice and Equality heard from several stakeholders, and analysed a broad range of issues they considered relevant to the proposed legislation. The Committee welcomed the publication of the General Scheme and made several recommendations in relation to: reducing the thresholds for employee levels at which reporting is mandatory, reducing the timescales for the phased introduction of reporting, describing and categorising employees in order to best capture the gender pay gap, introducing fines for non-compliance, and mandating narrative reports offer the employer's perspective on their gender pay gap and measures they are undertaking to overcome it.

Table 5 of this digest provides an overview of the impacts of these recommendations on the published Bill and the explanation offered by the Department of Justice and Equality in response to an information request by the Oireachtas Library and Research Service.

Table 1: Overview of the Gender Pay Gap Information Bill 2019

Section	Focus	Gender Pay Gap Information Bill 2019
	Objective	Amends the <i>Employment Equality Act 1998</i> to require employers to publish information on the gender pay gap and to publish statements setting out the reasons for any gap and actions taken or proposed to eliminate or reduce the gap.
2		The Minister shall make regulations requiring the publication of GPG information.
2.3	Employer size	More than 50, but with a phased introduction: <ul style="list-style-type: none"> • More than 250 (by the 2nd anniversary of the first regulations). • More than 150 (by the 3rd anniversary of the first regulations).
2.1	Reporting	Reporting information includes: <ul style="list-style-type: none"> • Mean hourly GPG, expressed as a percentage. • Median hourly GPG, expressed as a percentage. • Mean bonus GPG, expressed as a percentage. • Median bonus GPG, expressed as a percentage. • Mean hourly part-time GPG, expressed as a percentage. • Median hourly part-time GPG, expressed as a percentage. • Percentage of male and female employees who are paid bonuses. • Percentage of male and female employees who receive benefits in kind. Reporting should also include a statement setting out the employer's opinion of the reasons for gender pay differences and the measures taken or proposed.
2.2	Costs	The Minister shall have regard to the estimated costs of complying with and enforcing these regulations.
2.4	Scope	Regulations may prescribe classes of employer (size or otherwise), employee, remuneration, as well as calculation of number of employees and remuneration.
2.5	Reporting	Frequency of reporting (not more than once a year) and manner of publication so that the information is brought to the attention of employees and the public.
2.6	Scope	Regulations may require information to be published in respect of: each Department of State, scheduled office under the Public Service Management Act 1997, the Garda Síochána, and the Defence Forces.
2.7	Information	Where an employer does not have access to necessary information, regulations may require the person who has the information to make this available.
2.8	Information	Regulations can set out steps so that personal data undergoes pseudonymisation. Provisions of the GDPR apply to the publication of data.
2.9	Scope	Regulation may also require: <ul style="list-style-type: none"> • Mean hourly GPG for temporary contracts, expressed as a percentage. • Median hourly GPG for temporary contracts, expressed as a percentage. • Publication of percentage of income quartiles or job classification.
2.10	Principle	In making regulations the Minister will have regard to the principles that employees and the public need to have access to information which shows differences in pay.
3-5	Enforcement and sanction	<ul style="list-style-type: none"> • Minister may appoint 'designated officers' who can investigate. • IHREC can apply to the Circuit Court for an order requiring compliance. • An employee can take a complaint to the WRC that their employer has failed to comply, and may appeal a decision to the Labour Court. • The Minister may request that the IHREC consider exercising its powers in relation to carrying out an equality review/equality action plan.
6	Review	Review before the 5 th anniversary of commencement.
7	Commence	The Act shall come into operation on order of the Minister, and different days may be appointed for different purposes.

Source: L&RS analysis

1. Introduction

The gender pay gap, the difference between men's and women's average earnings, is closing and substantial progress has been made since the introduction of gender equality legislation; however, several studies suggest that the rate of decline has stagnated, and that at the current pace it would take 170 years to close the gap globally.¹ This paper estimates that at the current rate of decline it would take Ireland another 55 years to close the pay gap.

Over recent decades, interventions aimed at addressing the gender pay gap including equal pay legislation, a focus on educational outcomes for women and girls, and anti-discrimination measures, have impacted upon gender equality; however, the gender pay gap remains stubbornly persistent. Even in countries with particularly proactive policies on gender equality the pay gap is persistent.² In response, some countries have started to explore and put in place new legislative approaches aimed at reducing the gender pay gap. The objective of transparency legislation is to encourage organisations to take action to close their gender pay gaps.

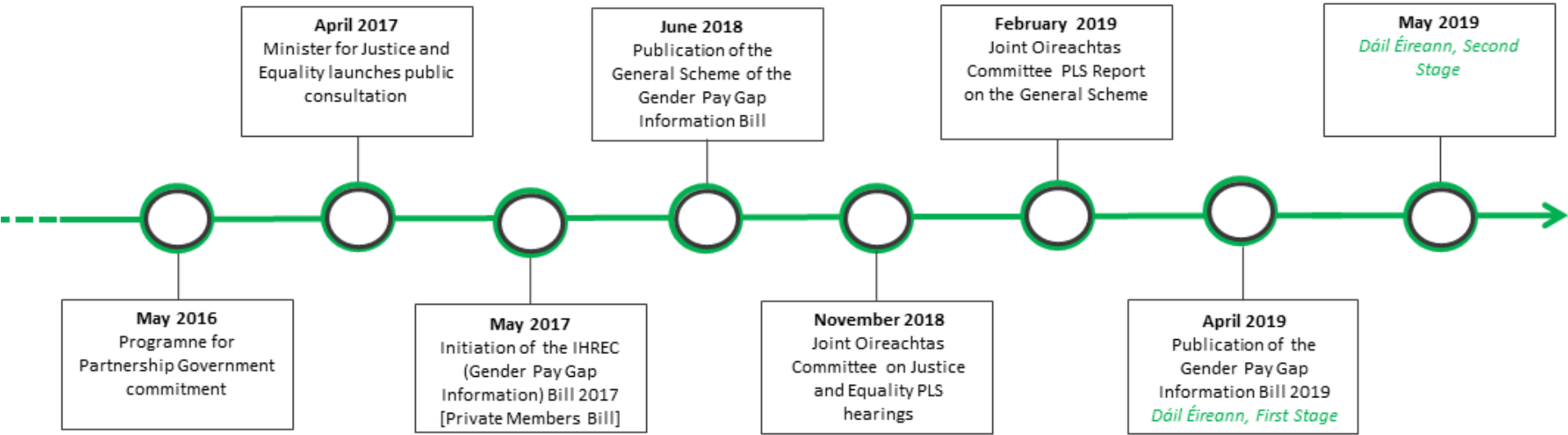
The proposal to introduce gender pay gap legislation in Ireland has been around for a number of years (as summarised in figure 1 on the next page). The *Gender Pay Gap Information Bill 2019* would require the phased introduction of pay gap reporting for any employer with more than 50 employees. Employers will be required to report the percentage mean and median pay gap for men and women in terms of hourly pay for both full time and part-time employees, as well as any bonus pay. Employers will also report on the proportion of male and female employees who receive bonuses or benefit-in-kind. Additionally, regulations *may* require reporting on temporary contracts and the publication of information by type of job or income quartiles within an organisation. Reporting will not be more frequent than once a year and reporting will be available publicly (most likely through a website).

This Bill Digest presents an overview of the situation relating the gender pay gap, and analyses the provisions of the [Gender Pay Gap Information Bill 2019](#). The Digest pays particular attention to the issues raised during the Oireachtas Joint Committee on Justice and Equality [Pre-Legislative Scrutiny \(PLS\)](#) of the General Scheme, and examines the impact of this PLS on the published Bill. As such, this Digest develops over five substantive sections. After these opening remarks, the Digest begins by explaining the background and policy context, and some of the international responses which introduced transparency legislation. Section three provides an overview of the key issues raised during Pre-Legislative Scrutiny (PLS) and impact the impact of PLS. Section four addresses the principal provisions of the Bill, and section five provides a brief overview of some of the stakeholder responses to the publication of the Bill.

¹ Apolitical, "How to Close the Gender Pay Gap in Five - Difficult - Steps," *Apolitical*, August 2017, https://apolitical.co/solution_article/close-gender-pay-gap-five-difficult-steps/.

² Anne Grönlund and Charlotta Magnusson, "Family-Friendly Policies and Women's Wages – Is There a Trade-off? Skill Investments, Occupational Segregation and the Gender Pay Gap in Germany, Sweden and the UK.," *European Societies* 18, no. 1 (February 2016): 91–113.

Figure 1: Overview of developments relating to the development of the Gender Pay Gap Information Bill 2019



Source: L&RS analysis

2. Background and policy context

Over recent decades interventions aimed at addressing the gender pay gap, including equal pay legislation, a focus on educational outcomes for women and girls, and anti-discrimination measures, have reduced gender equality; however, the gender pay gaps remains stubbornly persistent. Even in countries with particularly proactive policies on gender equality the pay gap is persistent (Grönlund and Magnusson, 2016). In response, some countries have started to explore and put in place new legislative approaches aimed at reducing the gender pay gap. The objective of such legislative developments is to encourage organisations to take action to close their gender pay gaps.

This section of the Digest addresses the background and policy context, and looks at how the gender pay gap is defined, the causes of the pay gap, and legislative measures in other jurisdictions aimed at promoting pay gap transparency.

2.1 What is the gender pay gap?

The gender pay gap is the difference in men's and women's median earnings, usually reported as either the earnings ratio between men and women (for example, women earn 80% of what men earn) or as an actual pay gap (for example, there is a 20% pay gap). This overall figure is usually called the unadjusted pay gap, and is calculated by:

$$\frac{\text{Median hourly/weekly earnings of men} - \text{Median hourly/weekly earnings of women}}{\text{Median hourly/weekly earnings of men}}$$

The Gender Pay Gap can also be reported as the mean (or average). Box 1, on the next page, explains why the median and mean figures for the gender pay gap in an organisation may be different.

According to Eurostat in 2016, across the EU women's gross hourly earnings were 16.2% below those of men, and the Irish gender pay gap was 13.9%. The unadjusted pay gap is the figure most frequently referred to when discussing the gender pay gap. Given the blunt nature of the unadjusted measure, Eurostat has been working on a measurement which can take into account those factors which 'adjust' or 'explain' the gap.³ A recent Eurostat working paper has identified the role of known factors which as age, education, occupation, job experience, employment contract, and working time on the gender pay gap.⁴ Interestingly, Ireland is one of 11 EU countries where the gender pay gap *increases* when these factors are taken into account (in the EC commissioned study the authors estimate that Ireland's *adjusted* gender pay gap would be 15.8%).

³ Denis Leythienne and Piotr Ronkowski, "A Decomposition of the Unadjusted Gender Pay Gap Using Structure of Earnings Survey Data," Statistical Working Papers (Eurostat, 2018), <https://ec.europa.eu/eurostat/documents/3888793/8979317/KS-TC-18-003-EN-N.pdf/3a6c9295-5e66-4b79-b009-ea1604770676>.

⁴ Leythienne and Ronkowski.

Box 1: Calculating mean and median salary averages**Calculating mean and median**

The 'mean' of a set of numbers is the average value. The 'median' is the middle number in an ascending list of numbers.

If there are five employees in an organisation, and their weekly salaries are:

€250 €257 €383 €450 €676

The mean salary in this case is €403.20 ($€250 + €257 + €383 + €450 + €676 = €2,016 \div 5 = €403.20$).

The median salary of €383 (the number in the middle of the list).

In this example the mean is higher than the median because there is a large difference between the lower and higher salaries. If the upper salaries were lower then the mean could be lower than the median.

Calculating the Gender Pay Gap

If the three lower salaries, in this hypothetical organisation, were women and the two higher salaries were men, the weekly gender pay gap in this organisation would be calculated as follows:

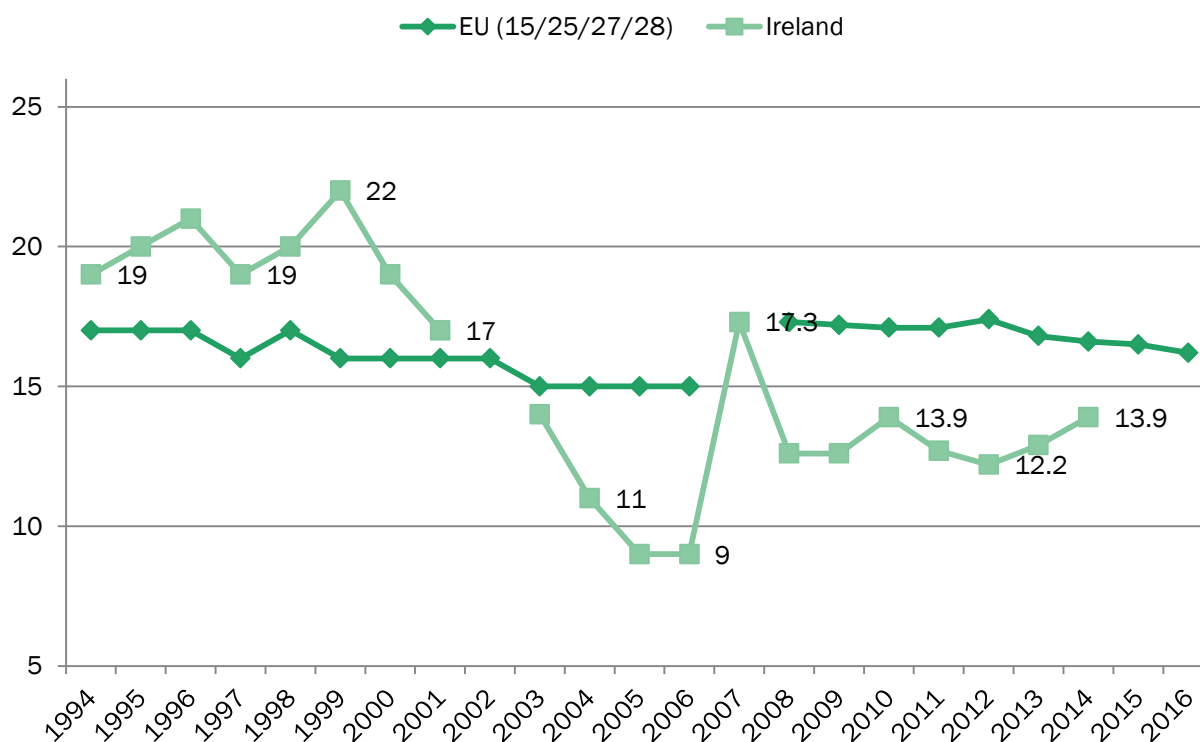
$$\frac{563 \text{ (Median weekly earning of men)} - 257 \text{ (median weekly earnings of women)}}{563 \text{ (Median weekly earning of men)}} = 54 \%$$

Source: L&RS analysis

Ireland's gender pay gap has fluctuated significantly in recent years, and these figures are likely to have been effected by overall decreases in salaries during the recession years. Figure 2 illustrates the available data on the *unadjusted* gender pay gap across the EU and in Ireland for 1994 to 2016. These figures are illustrative of one of the difficulties with the gender pay gap measure, which is that a decrease in the gender pay gap may mean that men's salaries have decreased and not necessarily that there has been any improvement in the situation of women.

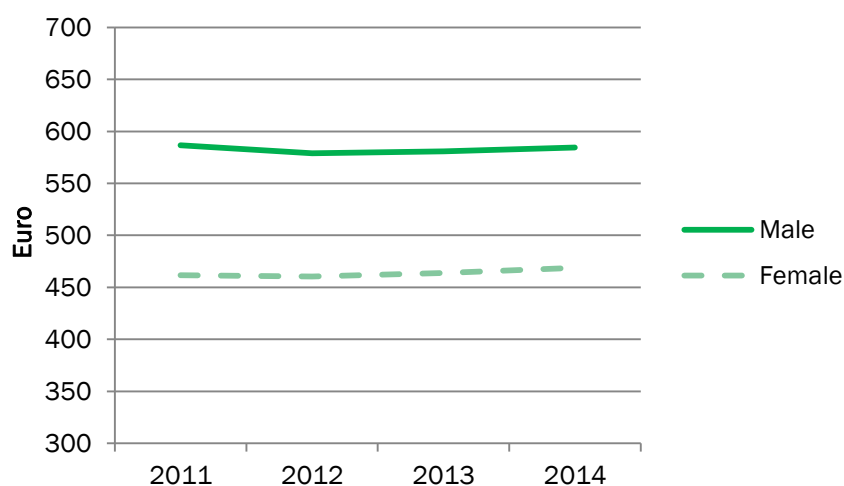
Estimating the rate of decline in the GPG in Ireland

Taking the difference between the gender pay gap in 1994 (19%) and twenty years later in 2014 (13.9%), on average the Irish gender pay gap has reduced by about one-quarter of a percentage point annually. Given the fluctuations in the pay gap, it is very difficult to estimate the actual rate of decline; however, if the rate of decline is a quarter of a percentage point per year, then it would potentially take Ireland another **55 years** to close the gender pay gap across the economy.

Figure 2: Unadjusted pay gap in Ireland and in the EU, 1994-2016

Source: Eurostat (L&RS analysis)

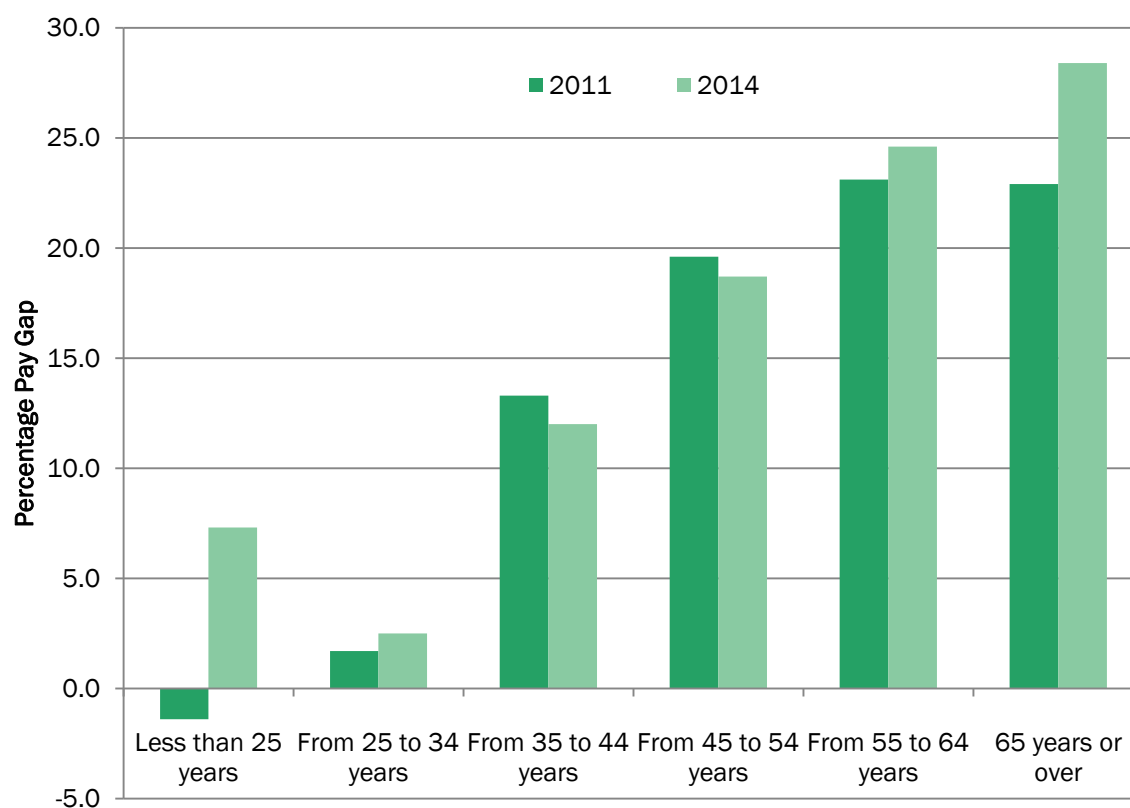
In Ireland, the gender pay gap has been quite static in recent years. Figure 3 demonstrates the median weekly earning in Ireland by gender from 2011 and 2014 and suggests that the gender pay gap proved relatively stable during this period. This trend matches an international picture which is characterised by significant decline in the gender pay gap in the 1980s and 1990s, but in more recent years the gender pay gap has declined slowly.

Figure 3: Irish Median weekly earnings by gender

Source: CSO Earnings analysis using administrative data sources (L&RS analysis)

Headline figures for the gender pay gap can mask significant differences across different employment types and individual profiles. The gender pay gap increases with age and the gap is particularly significant for women in their 30s and 40s. Figure 4 illustrates Eurostat data which captures the significant increase in the gender pay gap in Ireland as women progress through their careers (the initial negative gender pay gap reflects the fact that early in their careers women are paid slightly better than men).

Figure 4: Unadjusted gender pay gap in Ireland by Age for 2011 and 2014



Source: Eurostat (L&RS analysis)

The gender pay gap is widest at the top of the income distribution and international evidence reveals that the gap is closing more slowly in the higher income brackets.⁵

International evidence also demonstrates that there are significant differences in the gender pay gap for women with disabilities and those from ethnic minority groups. Though we know less about these experiences in an Irish context, US studies show that women from different ethnic groups had lower earnings than white women.⁶ Interestingly, preliminary evidence in the US demonstrates that “that people who transition from male to female gender expression experience a drop in pay after the transition, while those who transition from female to male gender expression see no difference in pay or even a small increase (Grant et al., 2011)”.⁷

⁵ Francine D. Blau and Lawrence M. Kahn, “The Gender Wage Gap: Extent, Trends, and Explanations.” 55, no. 3 (September 2017): 807.

⁶ AAUW, “Simple Truth about the Gender Pay Gap” (Washington: AAUW, 2018).

⁷ AAUW, 13.

While both the adjusted and unadjusted gender pay gaps offers some insight into the gender situation in the labour market, the literature on gender equality raises several challenges in terms of the reliability of this indicator as a measure for gender equality:

- First, the gender pay gap often relies on official data and therefore will not include those in the informal economy, and of course it does not take into account the value of unpaid work in the economic.⁸
- Second, a decrease in the gender pay gap may be the result of falling wages overall and does not necessarily reflect an improvement in the situation of female workers.
- Third, in a global context the gender pay gap may appear small but this can be a reflection that only a small number of elite women participate in the formal economy in the first place.

Summary: What is the gender pay gap?

The gender pay gap is the difference in men's and women's median earnings. According to Eurostat in 2016, across the EU women's gross hourly earnings were 16.2% below those of men, and the Irish gender pay gap was 13.9%. Since 1994 Ireland's gender pay gap has reduced, but it has been relatively stable in recent years. This paper estimates that at the current pace, it would take Ireland 55 years to close the gender pay gap. The gender pay gap is experienced differently by different cohorts of women - the gap is worse for older women and women from ethnic minorities. There are some concerns that the gender pay gap is a useful but somewhat crude measure of differences in pay and broader gender inequality.

⁸ Odette Chalaby, "Why the Gender Pay Gap Fails to Explain Global Workplace Inequality," *Apolitical*, April 11, 2018, https://apolitical.co/solution_article/why-the-gender-pay-gap-fails-to-explain-global-workplace-inequality/.

2.2 Causes of the gender pay gap

The causes of the gender pay gap are multiple and complex,⁹ and reflect a long history of differentiated labour market experiences, as well as the diversity of women and their life experiences. Several longitudinal studies have explored the factors behind the gender pay gap,¹⁰ and while different studies emphasis different factors, this briefing will identify five key factors which are widely discussed in the literature:

- occupation segregation and choice,
- parenting and flexible work arrangements,
- workplace characteristics,
- economic and tax policy, and
- gender discrimination and bias.

One factor which has been traditionally associated with the gender pay gap is differences in **educational attainment**. In western democracies today, such human capital attributes are relatively unimportant, as women's education levels match or surpass those of men.¹¹ As we saw already this largely appears to explain why the gender pay gap is small amongst younger workers.

2.2.1 Occupational segregation and choice

One of the most significant factors identified as explaining the gender pay gap is occupational segregation and occupational choice.¹² Both within occupations and across occupation groups "differences between men's and women's preferences and attitudes have been put forward as one of the reasons behind the stagnation of the gender wage gap over the last two decades".¹³

Within occupations and sectors several studies and commentators have suggested that women are less competitive than men, less likely to negotiate salaries, and therefore experience reduced pay and promotion in comparison to their male colleagues. The available research suggests that such factors do explain, to a certain extent, some of the experience of the gender pay gap. A French study revealed that, "we observe that optimism and giving priority to one's career explain 3.3% of the overall wage gap – almost as much as experience. The difference in attitudes to risk, on the other hand, has no influence on the wage gap."¹⁴

⁹ Gnesi, De Santis, and Cardinaleschi, "The Gender Pay Gap in Italy: Some Evidence on the Role of Decentralized Collective Bargaining.," *La Brecha Salarial de Género En Italia: Algunas Evidencias Sobre El Papel de La Negociación Colectiva Descentralizada*. 34, no. 1 (January 2016): 112.

¹⁰ Blau and Kahn, "The Gender Wage Gap: Extent, Trends, and Explanations."

¹¹ Isabelle Bensidoun and Danièle Trancart, "Career Choices and the Gender Pay Gap: The Role of Work Preferences and Attitudes.," *Population* 73, no. 1 (January 2018): 35–60; Joanne Kathryn Lindley, "Lousy Pay with Lousy Conditions: The Role of Occupational Desegregation in Explaining the UK Gender Pay and Work Intensity Gaps," *Oxford Economic Papers* 68, no. 1 (January 2016): 152–73.

¹² Bensidoun and Trancart, "Career Choices and the Gender Pay Gap: The Role of Work Preferences and Attitudes.,"; Stephanie Bornstein, "Equal Work," *Maryland Law Review* 77, no. 3 (April 2018): 581–648.

¹³ Bensidoun and Trancart, "Career Choices and the Gender Pay Gap: The Role of Work Preferences and Attitudes.," 55.

¹⁴ Bensidoun and Trancart, 53.

Personal choice is also associated with occupational segregation whereby women are more likely to choose careers and occupation that are in less well paid sectors.¹⁵ For example, an analysis of academic careers has suggested that even where there is substantial equality of opportunity there is nonetheless still lower representation of women in science, technology, engineering, mathematics, and medical fields.¹⁶ These authors suggest that any analysis of the gender pay gap is complicated by the fact that it is heavily influenced by the choices and practices of individuals, as opposed to institutional discrimination.¹⁷ However, such an analysis does not necessarily address the extent to which such choices are determined by experiences of gendered roles across society from a very early age.¹⁸

Doucet et al. (2012), suggest that there are two possible reasons why occupations associated with women tend to have lower salaries. The first is the devaluation of women's work, in other words a concentration of women reduces pay in a particular field (Bornstein, 2018, p. 582). Bornstein points out that in the US,

“In 1950, most biologists were men, as were most designers, ticket agents, and recreation workers (park rangers, camp leaders, and the like). By 2000, most workers in each of those occupations were women—and their median hourly wages, in real dollars adjusted for inflation, had decreased by 18% (biologists), 34% (designers), 43% (ticket agents), and 57% (recreation workers).”¹⁹

The second explanation identified by Doucet et al. (2012) is what they call ‘job queuing’ whereby women only gain access to occupations after they have become less attractive to men, in other words, once the salaries have already reduced. Regardless of the mechanisms at play there is evidence that jobs that are primarily associated with women are less well paid than those associated with men.

These differences, both within occupations and between occupations, have led some researchers to explore the influence of learned gender roles in explaining the gender pay gap. For example Finnish²⁰ and British studies have found evidence a gender pay gap in pocket money. A UK study found that boys received an average of £6.99 for chores while girls receive £4.67.²¹ The extent to which choice is ‘conditioned’ by learned gender roles, and the question of why certain jobs (more

¹⁵ Lindley, “Lousy Pay with Lousy Conditions: The Role of Occupational Desegregation in Explaining the UK Gender Pay and Work Intensity Gaps.”

¹⁶ Jason R. Boynton et al., “Gender Bias in Publishing,” *The Lancet* 392, no. 10157 (October 27, 2018): 1514–15, [https://doi.org/10.1016/S0140-6736\(18\)32000-2](https://doi.org/10.1016/S0140-6736(18)32000-2).

¹⁷ Boynton et al.

¹⁸ Bensidoun and Trancart, “Career Choices and the Gender Pay Gap: The Role of Work Preferences and Attitudes.”

¹⁹ “Equal Work,” 582.

²⁰ Terhi-Anna Wilska and Tomi Lintonen, “The Gender Gap in Teenagers’ Incomes. A 30-Year Trend in Finland 1983–2013,” *Journal of Youth Studies* 19, no. 4 (April 20, 2016): 421–37, <https://doi.org/10.1080/13676261.2015.1083956>.

²¹ While similar pocket money research has not been conducted in Ireland, the L&RS Researcher contacted the international pocket money tracking mobile phone application ‘Rooster’. Rooster conducts analysis of their data and have not found a significant gender gap internationally. This analysis is not Ireland specific, though they may conduct such analysis in the future.

associated with women) attract lower rates to pay, points to structural and systemic processes which connect the question of the gender pay gap to broader questions of gender equality and inequality.

It is difficult to disentangle question of choice and preferences from systematic differentiations between men and women. As Schieder and Gould conclude:

“by the time a woman earns her first dollar, her occupational choice is the culmination of years of education, guidance by mentors, expectations set by those who raised her, hiring practices of firms, and widespread norms and expectations about work-family balance held by employers, co-workers, and society. In other words, even though women disproportionately enter lower-paid, female-dominated occupations, this decision is shaped by discrimination, societal norms, and other forces beyond women’s control.”²²

2.2.2 Parenting and flexible work arrangements

One of the key ways in which women’s employment is structured differently to men’s is that they are more likely to take primary responsibility for childcare,²³ and therefore are more likely to avail of flexible working arrangements or part-time work. Becoming a parent has different implications for men and women, indeed fathers have been described as experiencing a ‘fatherhood bonus’,²⁴ whereas “considerable empirical evidence indicates a negative relationship between children and women’s wages, commonly known as the motherhood wage penalty”.²⁵ According to Blau and Kahn²⁶ motherhood plays a particularly significant role in explaining the gender pay gap in highly skilled occupations. These authors conclude that in the longer-term leave arrangements are associated with high labour market participation rates of women but lead to a reduction in women’s wages.

One of the reasons for introducing ‘schedule control’ or flexible working is to facilitate family life, but some studies show that where schedule control is introduced men work longer and more intensely, while women are more likely to increase activities outside work. The consequence may be, where flexible work is not shared between men and women they have the potential to “confirm ideas about women’s lower employment commitment, and hence status. Paradoxically, such policies might encourage employer discrimination”.²⁷ Lott and Heejung Chung point out that,

²² Jessica Schieder and Elise Gould, “‘Women’s Work’ and the Gender Pay Gap: How Discrimination, Societal Norms, and Other Forces Affect Women’s Occupational Choices—and Their Pay,” *Economic Policy Institute* (blog), July 20, 2016, <https://www.epi.org/publication/womens-work-and-the-gender-pay-gap-how-discrimination-societal-norms-and-other-forces-affect-womens-occupational-choices-and-their-pay/>.

²³ Lindley, “Lousy Pay with Lousy Conditions: The Role of Occupational Desegregation in Explaining the UK Gender Pay and Work Intensity Gaps.”

²⁴ AAUW, “Simple Truth about the Gender Pay Gap,” 18.

²⁵ Blau and Kahn, “The Gender Wage Gap: Extent, Trends, and Explanations.,” 823.

²⁶ “The Gender Wage Gap: Extent, Trends, and Explanations.”

²⁷ Katrin Auspurg, Thomas Hinz, and Carsten Sauer, “Why Should Women Get Less? Evidence on the Gender Pay Gap from Multifactorial Survey Experiments.,” *American Sociological Review* 82, no. 1 (February 2017): 204.

“When the border between work and family becomes flexible through schedule control, women are more likely to (have to) use this flexibility to facilitate family demands, especially if community-time structures—e.g., school opening times—are not flexible.”²⁸

Impact of flexible working arrangement on career progression

A recently published [Eurobarometer survey](#) found that Irish people reported having more access to flexible work than their European peers, but they reported greater negative consequences of availing of such arrangements.²⁹ 47% of Irish people use flexible working arrangements (compared to an EU average of 42%), while 39% said that availing of flexible working arrangements could have or has had a negative impact on their career (compared to an EU average of 31%). In Ireland, 34% said that availing of flexible working arrangement was badly perceived by colleagues (compared to 26% in the EU).

2.2.3 Workplace characteristics

Some studies have found that there are characteristics of certain work places which can either decrease or increase the gender pay gap. As we have seen, the gender pay gap is larger in some sectors of the economy than others. Studies point to the role of certain workplace practice, such as:

- **External hiring:** external hiring can put women at a disadvantage (in comparison to internal hiring).³⁰
- **Informal and discretionary pay:** Informal pay system and lack of transparency about pay negotiations,³¹ and the existence of variable wage practices such as bonuses and overtime³² can disadvantage women.
- **Collective bargaining:** The prevalence, or not, of systems for collective bargaining, which tend to result in greater pay transparency which have been shown to reduce the pay gap.³³ US studies have revealed that “women that are members of unions or covered by union contracts have gender pay gaps that are half the size of those outside... A similar effect on

²⁸ “Gender Discrepancies in the Outcomes of Schedule Control on Overtime Hours and Income in Germany,” *European Sociological Review* 32, no. 6 (December 2016): 754.

²⁹ European Commission, “Flash Eurobarometer 470 - Work-Life Balance - Ireland,” October 2018.

³⁰ Cristina Quintana-Garcia and Marta Elvira, “The Effect of the External Labour Market on the Gender Pay Gap among Executives,” *ILR Review* 70, no. 1 (January 2017): 132–59.

³¹ Gnesi, De Santis, and Cardinaleschi, “The Gender Pay Gap in Italy: Some Evidence on the Role of Decentralized Collective Bargaining.”; Quintana-Garcia and Elvira, “The Effect of the External Labour Market on the Gender Pay Gap among Executives.”

³² Lott and Heejung Chung, “Gender Discrepancies in the Outcomes of Schedule Control on Overtime Hours and Income in Germany.”

³³ Christine Doucet, Michael R. Smith, and Claire Durand, Pay Structure, Female Representation and the Gender Pay Gap among University Professors. (Universite Laval, Department of Industrial Relations 2012); Jacqueline O’Reilly et al., “Equal Pay as a Moving Target: International Perspectives on Forty-Years of Addressing the Gender Pay Gap,” *Cambridge Journal of Economics* 39, no. 2 (March 2015): 299–317.

the pay gap has also been found in many other countries, including Canada and the UK".³⁴ However, others have pointed to the risk that collective bargaining can in effect institutionalise discriminatory patterns of occupation segregation.³⁵

- **Women in senior roles:** The influence of women in senior positions and on boards is not universally associated with a reduction in the gender pay gap, but several studies have revealed a connection particularly for lower grades.³⁶ For example, a German study found that "having more women in management reduces the gender earnings gap for jobs with low qualifications, but not those with high qualifications".³⁷
- **Occupational training:** Several studies suggest that men gain greater access to on-the-job training.³⁸

Recognising the significance of such workplace practices, the UK Government Equalities Office has recently produced a guide for employers which summarises actions which are known to improve the gender pay gap. The actions, summarised in Table 2, are based on the best available evidence currently, and the guidance classifies actions into three categories — 'effective', 'promising' or 'mixed results'.

Table 2: Organisational strategies for reducing the gender pay gap

Effective	Promising	Mixed results
Include multiple women in shortlists for recruitment and promotion	Improve workplace flexibility for men and women	Unconscious bias training
Use skill-based assessment tasks in recruitment	Encourage the uptake of shared parental leave	Diversity training
Use structured interviews for recruitment and promotions	Recruit those returning after a career break	Leadership development training
Encourage salary negotiation by showing salary ranges	Offer mentoring and sponsorship	Performance self-assessments
Introduce transparency to promotion, pay and reward processes	Offer networking programmes	Diverse selection panels
Appoint diversity managers and/or diversity task forces	Set time-bound internal targets	

Source: Government Equalities Office and The Behavioural Insights Team, 2018

³⁴ Odette Chalaby, "Women in Unions Have Gender Pay Gaps That Are Half the Size," *Apolitical*, March 29, 2018, https://apolitical.co/solution_article/women-in-unions-have-gender-pay-gaps-that-are-half-the-size/.

³⁵ Marco Peruzzi, "Contradictions and Misalignments in the EU Approach towards the Gender Pay Gap," *Cambridge Journal of Economics* 39, no. 2 (March 2015): 454.

³⁶ Hedija Veronika, "Gender Wage Differences in the Czech Public Sector: A Micro-Level Case," *Review of Economic Perspectives*, Vol 16, Iss 2, Pp 121-134 (2016), no. 2 (2016): 121, <https://doi.org/10.1515/revecp-2016-0009>.

³⁷ Anja-Kristin Abendroth et al., "Women at Work: Women's Access to Power and the Gender Earnings Gap," *ILR Review* 70, no. 1 (January 2017): 190.

³⁸ Blau and Kahn, "The Gender Wage Gap: Extent, Trends, and Explanations."; Grönlund and Magnusson, "Family-Friendly Policies and Women's Wages – Is There a Trade-off? Skill Investments, Occupational Segregation and the Gender Pay Gap in Germany, Sweden and the UK."

2.2.4 Broader government policy

Several authors who are concerned with the persistence of gender inequality, point to the role played by the unintended consequences of contiguous legal and policy developments. For example, public transport and commuting times have been linked to occupational choices of men and women, with women choosing to work more locally in order to facilitate childcare. Recent data on commuting on the UK suggests that “the constraint on commuting longer distances is thought by economists to be one of multiple contributing factors to the gender pay gap, as women are limited in their choice of work, even if it pays more”.³⁹ Similarly, childcare and school policies impact on the ability of those caring for children to participate equally in the workplace.

There is also evidence that taxation policy can impact on men and women differently. In the Irish context, a recent ESRI study, commissioned by the Oireachtas Parliamentary Budget Office (PBO), found tax and welfare policies can have differing impacts on men and women. This report concluded that while tax and welfare policies between 2008 and 2018 did not have a gender impacts on single people without children,

“Assuming no income sharing, the change in disposable income is -8.1% for women in couples without children and -11.9% for women in couples with children. These figures can be compared to losses of 7.9% for men in couples without children and 7% for men in couples with children. Under a no income sharing assumption, the main gender difference is, therefore, between men and women with children.”⁴⁰

In this paper the ESRI concludes that “the main causes of differential impacts of budgetary policy by gender are the interaction of policy changes with the economic activity of the individual and the presence of children”.⁴¹

2.2.5 Gender discrimination and bias

Direct gender discrimination continues to play a role in explaining the gender pay gap.⁴²

Discrimination persists despite significant legislative and other efforts to overcome it.

Discrimination remains a deep seated and sometimes hidden cultural phenomenon. For example, a large scale German study found evidence that both women and men consider somewhat lower earnings for female employees to be fair – this study found that those surveyed had different expectations of men and women.⁴³

Figure 5 below demonstrates that in Ireland women are more likely than men to experience discrimination in the workplace (though interestingly not while looking for work). According to the

³⁹ Jasper Jolly, “Childcare Constraints Forcing More Women to Work Closer to Home,” *The Guardian*, November 7, 2018, <https://www.theguardian.com/world/2018/nov/07/childcare-constraints-forcing-more-women-to-work-closer-to-home>.

⁴⁰ Karina Doorley et al., “The Gender Impact of Irish Budgetary Policy 2008-2018” (ESRI, 2018), 27, <https://doi.org/10.26504/bkmnext367>.

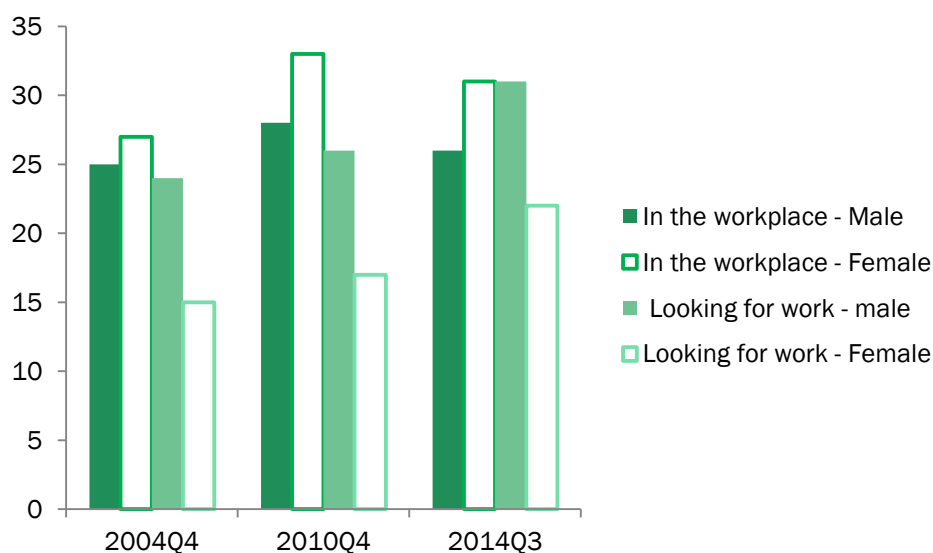
⁴¹ Doorley et al., 37.

⁴² Blau and Kahn, “The Gender Wage Gap: Extent, Trends, and Explanations.”

⁴³ Auspurg, Hinz, and Sauer, “Why Should Women Get Less? Evidence on the Gender Pay Gap from Multifactorial Survey Experiments,” 202.

WRC, in 2017, 219 (24% of all complaints) complaints named the gender ground under the *Employment Equality Acts 1998-2011*. This is a reduction from 32% in 2016.⁴⁴

Figure 5: Persons ages 18 years or over who have experienced discrimination



Source: CSO, QNHS Equality Module (L&RS analysis)

Summary: What are the causes of the gender pay gap?

There are many factors which have been identified as contributing to the gender pay gap. While human capital attributes, such as educational attainment, are no longer as relevant in western democracies, there are a range of other factors which are associated with the 'explained' part of the gender pay gap including occupational segregation/choice, parenting and flexible work, workplace practices, as well as the role and influence of broader government policy. The extent to which any of these factors are pre-determined by deeply embedded gender norms is difficult to measure, and of course women can make legitimate, independent decisions about how they choose to structure their work and family life. Despite decades of anti-discrimination law direct gender discrimination remains an important causative factor in the gender pay gap, this is why several countries have begun to implement new legislative initiatives aimed at closing the gender pay gap.

⁴⁴ Data on complaints by each discrimination ground under the *Employment Equality Acts 1998-2011* is captured in the annual reports of the Workplace Relations Commission. The L&RS researcher contacted the WRC regarding an error in the reporting in their 2017 report, whereby the 2016 figure were attributed to 2017. The figure for 2017 was confirmed by the WRC.

2.3 International legislation to address the gender pay gap

Fairness is at the heart of efforts to reduce the gender pay gap, but the implications of the gap are much broader than inequities of pay and have long term and systemic consequences for the role of women in society. As Tharenou has pointed out: “the gender pay gap supports and maintains the lesser status of women in society and it helps to preserve the status quo with respect to gender roles”.⁴⁵ The amount of money people earn determines many opportunities like buying a house, educating children, saving for a pension, and independence. Even modest difference in earnings can amount to very large gender inequalities overtime.⁴⁶ The gender pay gap does not just impact women. As families increasingly rely on women’s wages to make ends meet, the gender pay gap directly affects men and children as well.⁴⁷

There is a long history of legislation which aims to promote gender equality and tackle discrimination. Most countries have laws protecting against pay discrimination, but as we have seen the gender pay gap remains. Several studies have critiqued the effectiveness of legislation aimed at dealing with gender pay equality in the workplace. Given the persistence of gender inequality, several countries have begun to look at the effectiveness of existing approaches and to consider supplementary measures. This section of the Digest will focus on legislative developments which have sought to address the gender pay gap, and particularly, legislation aimed at enhancing transparency of the gender pay gap has been a particular focus of such initiatives. Table 3 provides an overview of some international legislative initiatives which address the gender pay gap.

Table 3: International legislative initiatives which address the gender pay gap

Country	Name of law
United Kingdom	The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017
Ontario, Canada	Bill 3, Pay Transparency Act, 2018
France	Article L.432.3.1 of the Labour Code
Sweden	Act on Equality between Men and Women
Denmark	1976 Act on Equal Pay for Men and Women (July 2001 amendment)
Belgium	Law on the Gender Pay Gap, 2012
Germany	Act to Promote Transparency of Pay Structures, 2017
Australia	Workplace Gender Equality Act 2012
Iceland	Equal Pay Certification Law

Source: L&RS analysis

⁴⁵ “The Work of Feminists Is Not Yet Done: The Gender Pay Gap-a Stubborn Anachronism.,” *Sex Roles* 68, no. 3–4 (February 2013): 198.

⁴⁶ Auspurg, Hinz, and Sauer, “Why Should Women Get Less? Evidence on the Gender Pay Gap from Multifactorial Survey Experiments.”

⁴⁷ AAUW, “Simple Truth about the Gender Pay Gap.”

While there is much in common across countries which have introduced gender pay gap transparency legislation, there are also substantial differences in approach. The key differences include the size of an organisation for which reporting becomes mandatory, as well as the existence of penalties for non-publication of information. While there have been broad moves towards introducing gap legislation, these developments are not without their critiques. Some authors and commentators have warned that such legislation can have unintended negative consequences and that transparency legislation runs the risk of reinforcing gender stereotypes, by normalising particular levels of gender pay gap as not as bad as those in some other organisations. Following their large scale German study, Ausperg et al conclude, “with respect to policy interventions, our results suggest that single pieces of disconfirming information are insufficient to stop discrimination... Rather, more transparency about pay gaps might even increase the internalization of gender status beliefs...”⁴⁸

Oireachtas Members can access a more detailed overview of the legislation in the United Kingdom, Iceland, Australia and parts of the USA in a [briefing paper](#) prepared by the L&RS for the Oireachtas Joint Committee on Justice and Equality.

Summary: International legislative approach is GPG transparency

Given the persistence of the gender pay gap, several countries have sought to put in place transparency legislation. While there is much in common across countries which have introduced gender pay gap transparency legislation, there are also differences including which employers are covered and the penalties in place when employers fail to comply. Critiques of these measures suggest that such legislation may serve to normalise low or medium pay gaps, and that the measures are too crude and do not account for the choices women make in the labour market.

⁴⁸ Ausperg, Hinz, and Sauer, “Why Should Women Get Less? Evidence on the Gender Pay Gap from Multifactorial Survey Experiments.” 204.

3. Pre-legislative scrutiny by the Oireachtas Joint Committee on Justice and Equality

The Oireachtas Joint Committee on Justice and Equality held a public hearing with stakeholders on the *General Scheme of the Gender Pay Gap Information Bill* on 21 November 2018.

Committee members had the opportunity to engage with representatives of:

- Irish Congress of Trade Unions (Congress)
- National Women's Council of Ireland (NWCi)
- Irish Business and Employer Confederation (IBEC)

The Committee published its PLS report in February 2019. The PLS report identified five key issues, and made recommendations. These issues are summarised in figure 5, and described in more details in the subsequent paragraphs.

Figure 5: Overview of key issues of interest to the Oireachtas Joint Committee on Justice and Equality in its Pre-Legislative Scrutiny of the General Scheme.

Thresholds	<ul style="list-style-type: none"> • Only companies above a certain number of employees are obliged to report their GPG. • International practice varies as to the employee threshold levels for reporting.
Phased introduction	<ul style="list-style-type: none"> • Legislation generally allows a lead in time so that companies can prepare to be compliant. • Lead-in can be phased so that larger companies are subject to reporting first.
Categorising employees	<ul style="list-style-type: none"> • There are different ways to describe categories of employees and what the GPG is between them. • Employees can be described by income quartile whereby employees are divided according to pay levels, or by job classification whereby certain jobs are classified as similar.
Enforcement	<ul style="list-style-type: none"> • There are many available routes for enforcement. • Internationally a key differentiator is whether there are fines for non-compliance.
Publishing	<ul style="list-style-type: none"> • Generally GPG information is made publicly available. • In some countries data publication is accompanied by an explanatory narrative.

Source: L&RS analysis of the [Oireachtas Joint Committee Report](#)

3.1 Threshold for reporting

Internationally, countries which have adopted gender pay gap transparency legislation have used different thresholds for organisational size at which reporting becomes mandatory (see table 3). The threshold for reporting in the UK is currently 250 employees however other countries have adopted alternative thresholds, with thresholds as low as 25 employees in Iceland.

Table 3: Transparency legislation employee thresholds and population size in several countries

	Reporting threshold	Population
United kingdom	250	66.02m
Australia	100	24.6m
Lithuania	20	2.84m
Switzerland	50	8.42m
Germany	500	82.8m
Sweden	10	9.99m
Ireland (proposed)	50	4.78m

Source: [OECD \(2007\), p. 163-164](#) (L&RS analysis)

The argument for having a threshold for organisation size is two-fold: (1) to protect data privacy in very small employers where data broken down by sub-category (e.g. quartiles) would make individual employees identifiable; and, (2) to avoid an undue administrative burden on small employers. On the other hand, thresholds limit the number of organisations who are required to report and as a consequence reduce the information available about the gender pay gap and, as a consequence, understanding of the complexities which cause it. From the perspective of enhancing equality a larger reporting population provides a fuller picture of the gender pay gap picture across sectors and occupations.

As table 4 below reveals according to CSO data 91.8% of enterprises in Ireland employ under ten employees, while just 1.4% of companies (3,582 companies) employ more than 50 employees (however, this represents more than 50% of employees). The large number of organisations in Ireland with a small number of employees suggests that the proposed GPG reporting will only reveal part of the picture in relation to the gender pay gap. Further initiatives will likely be necessary to understand the gap in smaller companies, this could include anonymised research studies and analysis of pay across individuals sub-sectors.

Table 4: Number of active enterprises by employment size in 2016

Number of employees	Number of companies	% of total companies	Persons engaged
Under 10	229,534	91.8%	26.57%
10 - 19	10,748	4.3%	22.16%
20 - 49	6,166	2.5%	
50 - 249	3,003	1.2%	19.66%
250 and over	582	0.2%	31.61%

Source: CSO, [Business Demography](#)

In their PLS report, the Joint Committee recommended reducing the employee threshold and specifically, that the Minister should,

- Reduce the reporting threshold for public and/or private organisations to 10-15 employees
- Provide for voluntary reporting by smaller organisations.
- Provide for the commissioning and publication of research which would explore the gender pay gap in smaller organisations through aggregated anonymised analysis in particular sub-sectors.

Given the experience that has been identified in the UK⁴⁹ and other jurisdictions regarding the administrative burden that gender pay gap reporting can place on smaller organisations, the committee also recommended that:

- Consideration should be given to the capacity of smaller businesses to meet reporting requirements.

3.2 Phased introduction of reporting requirements

The experience in several countries is that reporting requirements are introduced on a phased basis with larger and/or public sector organisations expected to report earlier. The argument in favour of a staggered approach is that it allows for the process to be tested by larger employers with more significant human resource capacity (and presumably more complex human resource arrangements), and allows for a longer preparatory period for smaller organisations.

The introduction of gender pay gap legislation has been flagged for several years in an Irish context. The government included a commitment to introduce legislation in the Programme for Government (May 2016) and in April 2017 the Minister for Justice and Equality launched a public consultation on tackling the gender pay gap, the results of which were published in January 2018 (see figure 1). Furthermore, the experience of other countries provides a useful benchmark which supports implementation in the Irish case. For example, the UK Government Equalities Office has published comprehensive guidelines for employers on how to prepare their reporting of their gender pay gap.

In their PLS report the Joint Committee recommended that the Minister,

- Bring forward the initial reporting requirement so that publication of reports begins within one year of commencement of the relevant section rather than the current two years.
- Extend the requirement for reporting within one year to all employees with 50 or more employees.
- Specify the reporting timescale for all affected organisations.

⁴⁹ In telephone communication with the L&RS (24 January 2019) the Equality and Human Rights Commission (EHRC) in the UK said that “while there was full compliance (attributed to the role of publicity), there were issues with regard to the capacity of organisations to calculate their GPG. These capacity issues were particularly pronounced for small organisations (between 250 and 300 employees), especially for those organisations which did not have designated HR capacity”.

3.3 Categorisation of employee profiles

Existing approaches to reporting on the pay gap for employees generally take two main categories for reporting – pay quartile and job classification. The quartile approach, which has been used in the UK, involves listing employees by salary and dividing this list into four sections with an equal number of employees in each section. The argument for the quartile approach is that this information provides a specific insight into the gender pay gap in the context of overall pay inequality within an organisation. It also reveals information about whether the pay gap is more significant at higher or lower pay levels.

A second approach is to describe the pay gap according to the job classification, a system which is used in Australia. In this case, employees are allocated a ‘job classification or type’ and the pay gap is reported according to these categories. The argument for this approach is that the pay gap is being described in the context of the same types of job. The job classification approach would provide insights into occupational segregation within organisations, and specifically whether women experience a pay gap within specific occupations; however, these categories do not necessarily capture seniority within individual organisations.

In their PLS report, the Oireachtas Joint Committee recommended that the Minister should allow for both types of reporting (job classification and quartile) and the Minister may choose to prioritise one form in the initial period. The Committee also emphasised that the importance of the reporting including a comparison of the situation of men and women who work full-time and those who work part-time.

3.4 Enforcement

The experience in the UK has been that the enforcement processes available to the EHRC have not been used. In the UK, they have not faced a situation that there has been extensive non-compliance, but rather that in some cases there was difficulties, either inadvertently or deliberately, in relation to the quality of compliance. In the UK, the EHRC are seeking the power to impose fines for non compliance.⁵⁰ During the PLS hearings, IBEC and Congress did not foresee significant difficulty in achieving compliance.

The General Scheme set out several avenues of enforcement including a role for the WRC, the IHREC, and the Circuit Court. The argument for several avenues of enforcement is that it could facilitate enhanced scrutiny and accountability. On the other hand, multiple routes to pursue compliance may complicate and potentially deter potential responses to non-compliance.

In their PLS report, the Oireachtas Joint Committee recommended that:

- The Department of Justice and Equality should conduct an assessment of the likely added value, and potential risks, of the proposed enforcement framework.
- The Bill should provide for specific fines in order to increase certainty and transparency and to ensure greater compliance.

⁵⁰ EHRC communication with the L&RS on 24 January 2019.

3.6 Reporting and publication

During the PLS hearings all of the stakeholders emphasised the importance of publicly accessible reporting structures, and the significance of facilitating organisations to submit an accompanying narrative explaining their figures. In the UK, the significant public interest in the reporting website, is associated with enhanced public awareness of the concept of the gender pay gap. Such a website is important for compliance and analysis of the data supplied by individual organisations. Publication also supports accountability over time and should encourage actions to address the gender pay gap. In their PLS report, the Oireachtas Joint Committee recommended that:

- Gender pay gap information will be published, in real time, on a publicly accessible website.
- Meta-analysis of reporting trends will be published annually on the website.










Table 5 summarises the Committee's recommendations and provides the Department of Justice and Equalities analysis of whether the recommendations are addressed (either in whole or in part) in the Bill or elsewhere. The *Explanatory and Financial Memorandum* which accompanied the *Gender Pay Gap Information Bill 2019*, does envisage that "the regulations might require the employer to send the information to the employees in addition to publishing it on a website".









Summary: Pre-Legislative Scrutiny of the General Scheme

In their Pre-Legislative Scrutiny of the General Scheme the Oireachtas Joint Committee on Justice and Equality heard from several stakeholders, and analysed a broad range of issues they considered relevant to the proposed legislation. The Committee welcomed the publication of the Bill and made several recommendations in relation to: reducing the thresholds for employee levels at which reporting is mandatory, reducing the timescales for the phased introduction of reporting, describing and categorising employees in order to best capture the gender pay gap, introducing fines for non-compliance, and mandating narrative reports offer the employer's perspective on their gender pay gap and measures they are undertaking to overcome it.

Table 5 of this digest provides an overview of the impacts of these recommendations on the published Bill and the explanation offered by the Department of Justice and Equality in response to an information request by the Oireachtas Library and Research Service.

Table 5: Overview of the impact of the Oireachtas Committee PLS recommendations and response provided by the Department of Justice and Equality (9 May 2015). The traffic light assessment represents the analysis of the L&RS.

No.	Recommendation as per Joint Committee on Justice and Equality Report (February 2019)	L&RS 'traffic light'	Response from Department of Justice and Equality on whether addressed (either in whole or in part) in the Bill or elsewhere
<p> Key issue has had an impact on the drafting of the Bill.</p> <p> The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue on the drafting of the Bill is unclear.</p> <p> Key issue has not had an impact on the drafting of the Bill.</p>			
1	Reporting threshold (1) Reduce the threshold for public and private organisations to 10-15 employees.		This is not provided for in the Bill. The threshold above which employers can be required to report gender pay gap information is set at 50 employees in line with commitments in the Programme for a Partnership Government and the National Strategy for Women and Girls, 2017-2020.
	(2) Provide for voluntary reporting by smaller companies.		This will be considered in the preparation of regulations which will need to be made when the Bill is enacted and comes into force.
	(3) Provide for the commissioning and publication of research that would explore the gender pay gap in smaller organisations through aggregated anonymised analysis in particular sub-sectors.		Such research would not appear to be a matter for legislation.
2	Supports for small businesses Consideration should be given to the capacity of smaller businesses to meet reporting requirements.		This recommendation arises from Recommendation 1 which is not contained in the Bill.
3	Phased Introduction of reporting (1) Bringing forward the initial reporting requirement so that publication of reports begins within one year of commencement of the relevant section rather than the current two years.		The Bill does not provide that reporting begins within two years of the commencement of the section. This will be a matter for regulations to be made under the Act. The Bill provides that these regulations shall be made as soon as is reasonably practicable after commencement.
	(2) Extending the requirement for reporting within one year to all companies with 50 or more employees.		This is not being implemented. The Bill provides that the reporting requirement shall not apply to employers with fewer than 250 employees until the second anniversary of the making of the first regulations under the Act and shall not apply to

			employers with fewer than 150 employees until the third anniversary.
	(3) Specifying the reporting timescale for all affected organisations.		This will be a matter for the regulations under the Act subject to the provisions on phasing referred to above.
4	Employee categorisation The Bill should allow for both types of reporting (job classification and quartile) and the Minister may choose to prioritise one form in the initial period.		This recommendation will be borne in mind when regulations are being made.
5	Part-time workers In setting out reporting requirements it is important to ensure that males and females who work full-time hours are compared with males and females who work part-time.		The Bill requires publication of differences in pay between male and female part-time employees. As it concerns gender pay gap information, it does cover differences in pay between full-time and part-time employees.
6	Enforcement (1) The Department of Justice and Equality should conduct an assessment of the likely added value, and potential risks, of the proposed enforcement framework.		The proposed provisions for enforcement are along the lines of those set out in the General Scheme.
	(2) The Bill should provide for specific fines in order to increase certainty and transparency and to ensure greater compliance.		The Bill does not provide for fines but, as in the General Scheme, reliance is placed on enforcement by means of court orders.
7	Narratives Employers should be required to provide a narrative or contextual statement alongside their gender pay statistics.		Such a provision is made in section 20A(1)(c) of the Employment Equality Act 1998, to be inserted by section 2 of the Bill.
8	Reporting and publication (1) Establishment of a publicly accessible website to record gender pay gap data and information.	⁵¹ 	This will be a matter for the regulations under the Act.
	(2) Meta-analysis of reporting trends should be published annually on the website.		This is a matter for regulations under the Act.

Source: L&RS is grateful to the Department of Justice and Equality for providing an analysis of how the impact of the Committees recommendations on the Bill. The traffic light assessment represents the analysis of the L&RS.

⁵¹ A website is envisaged in the Explanatory Memorandum.

4. Principal provisions

The *Gender Pay Gap Information Bill 2019* is a short bill. Table 1 contains in the summary of this Digest provides an outline summary of the key provisions of the Bill. These provisions are described here.

Purpose

The purpose of this Bill is to amend the *Employment Equality Act 1998* so that the Minister can make regulations requiring certain employers to publish information on any gender pay gaps in the pay of their employees. The Bill also amends the *Irish Human Rights and Equality Commission Act 2014*.

Section 1 – Definitions

The Minister referred to in the Bill is the Minister for Justice and Equality and the Principle Act refers to the *Employment Equality Act 1998*.

Section 2 – Gender pay gap information

The Bill requires the phased introduction of pay gap reporting for any employer with more than 50 employees. Employers with more than 250 employees should report by the second anniversary of the first regulations under the Bill, and those with more than 150 employees by the 3rd anniversary.

Employers will be required to report the percentage mean and median pay gap for men and women in terms of hourly pay for both full time and part-time employees, as well as any bonus pay. Employers will also report on the proportion of male and female employees who receive bonuses or benefit-in-kind. The proposed Irish legislation will also require employers to submit a narrative providing their explanation of any gender pay gap and the measures they are undertaking to close it.

In making the regulations the Minister shall have regard to the estimated costs of complying with and enforcing these regulations.

Reporting will not be more frequent than once a year and reporting will be available publicly (most likely through a website) and to employees of an organisation. Regulations may require information to be published in respect of: each Department of State, scheduled office under the Public Service Management Action 1997, the Garda Síochána, and the Defence Forces. Where an employer does not have access to necessary information, regulations may require the person who has the information to make this available. Regulations can set out steps so that personal data undergoes pseudonymisation. Provisions of the GDPR apply to the publication of data.

Regulations *may* require reporting on temporary contracts and the publication of information by type of job or income quartiles within an organisation. In making regulations the Minister will have regard to the principle that employees and the public need to have access to information which shows differences in pay.

Sections 3-5 – Enforcement

The Bill envisages several avenues for enforcement including:

- Minister may appoint 'designated officers' who can investigate.
- IHREC can apply to the Circuit Court for an order requiring compliance.
- An employee can take a complaint to the WRC that their employer has failed to comply, and may appeal a decision to the Labour Court.
- The Minister may request that the IHREC consider exercising its powers in relation to carrying out an equality review/equality action plan.

Section 6 – Review

The Minister shall review the implementation of provisions of the Bill before the fifth anniversary of commencement.

Section 7 – Short title, collective citations and commencement

This section deals with citation of the acts; *Gender Pay Gap Information Act 2019*, the *Employment Equality Acts 1998 to 2019*, *The Irish Human Rights and Equality Commission Act 2014 and 2019*. The Act shall come into operation on order of the Minister and different days may be appointed for different purposes

Financial implications of the Gender Pay gap Information Bill 2019

In the *Explanatory and Financial Memorandum* which accompanied the publication of the *Gender Pay Gap Information Bill 2019* the full costs of implementation have not been calculated pending the drafting of regulations, however a number of key expenditure items are flagged.

The Bill does state that the Minister will have regard to the costs of complying with the regulations and of enforcing them. As such the Bill does imply a cost to those reporting their pay gap as well as to the State in overseeing the implementation of regulations. The Memorandum states that the reporting and staff training costs for employers are expected to be relatively small.

The costs to the State will include the appointment of any designated officers under the Employment Equality Acts, as well as any costs incurred by the IHREC and the WRC. The most likely immediately costs to the State will be maintenance of a central website through which employers will report their pay gap. The website implies both development and maintenance costs.

5. Stakeholder commentary

Stakeholders who have commented on the published Bill have welcomed it, and suggest that the Bill is a necessary step as part of a broader suite of measures aimed at addressing the gender pay gap. While stakeholders have welcomed the Bill, in commenting on the publication of the Bill (summarised in table 6 below) some have raised specific issues in relation to the scope of the proposed pay gap reporting, including that:

- Implementation should be speeded up (ICTU, Fórsa). IBEC has welcomed the phased introduction envisaged in the Bill.
- Reporting thresholds should be reduced to 20 employees (ICTU, SIPTU, NWC). IBEC has welcomed the thresholds envisaged in the Bill.
- Allow for comparison between part-time and full-time employees (ICTU, SIPTU).
- Preference for occupational categories approach (as opposed to quartiles) (IBEC).
- Concern about the possibility of employees making complaints to the WRC (IBEC).
- The Minister should be required to make regulations in relation to temporary workers (currently the Minister *may* make sure regulations) (SIPTU).
- Penalties for non-compliance should be introduced (ICTU).

Table 6: Initial stakeholder responses to publication of the Gender Pay Gap Information Bill 2019

<p>IBEC (May 2019)</p> <p>“more work is required around defining the regulations... we have lessons to learn from the UK experience”</p> <p>“concerns regarding the nature of the involvement of the Workplace Relations Commission... this adversarial element risks pitting employees against employers... the most appropriate models of gender pay reporting [would be]...standardised occupational categories”</p>	<p>Irish Congress of Trade Unions (10 April 2019)</p> <p>“would like to see this happening quicker [reporting] ... Lowering the threshold to 20 employees would capture 70% of employees... [narrative reports] this provision is an important one for trade unions and opens up space for negotiating actions to tackle the gender pay gap in companies... Absent from the Bill are clear penalties for non-compliance in respect of companies that report inaccurate data, as well as those that fail to report. It is not clear either that companies will have to compare males and females who work full time hours with males and females who work part time...”</p>
<p>CIPD Ireland (professional body for HR and people development) (No date)</p> <p>“our members support legislation for annual reporting of the gender pay gap, including bonuses and shares... Bringing in legislation to report on the GPG is a necessary step in creating change”</p>	<p>SIPTU (10 April 2019)</p> <p>“the Bill fails to compare the hourly rate between full-time and part-time male and female workers... it is left to the Minister to decide whether to compare male and female temporary staff... we call on the Government to reduce the minimum threshold of applicable firms from those with 50 employees to 20 employees”</p>
<p>National Women’s Council of Ireland (9 April 2019)</p> <p>“expressed concern that the Bill does not go far enough... called on the Bill to apply to employers with 20 or more employees... experience from other countries shows that harder measures are needed to combat pay inequality”</p>	<p>Fórsa (9 April 2019)</p> <p>“welcomed a Government Bill that would compel firms to report on their gender pay gaps, but says it wants to see a quick expansion of the number of companies covered by the new law”</p>

Source: L&RS Analysis

6. Conclusions

This Bill Digest has sought to presents an overview of the situation relating the gender pay gap and analyse the provisions of the *Gender Pay Gap Information Bill 2019*. It began by explaining what the gender pay gap is and how it is calculated, and reviewing the literature on the known causes of the gender pay gap. The causes of the gender pay gap are multiple and complex, and reflect a long history of differentiated labour market experiences, as well as the diversity of women and their life experiences. This Digest briefing discussed five key factors which are widely discussed in the literature: (1) occupation segregation and choice, (2) parenting and flexible work arrangements, (3) workplace characteristics, (4) economic and tax policy, and (5) gender discrimination and bias.

The pay gap has proved remarkably persistent despite decades of gender equality measures and anti-discrimination legislation, consequently several countries have started to introduce gender pay transparency initiatives in order to encourage action aimed at closing the pay gap between men and women. The *Gender Pay Gap Information Bill 2019* follows this approach and seeks to require employers to publish information on the pay gap among their employees.

The Bill would require the phased introduction of pay gap reporting for any employer with more than 50 employees. Employees will be required to report the percentage mean and median pay gap for men and women in terms of hourly Opay for both full time and part-time employees, as well as any bonus pay. Employers will also report on the proportion of male and female employees who receive bonuses or benefit-in-kind. Additionally, regulations *may* require reporting on temporary contacts and the publication of information by type of job or income quartiles within an organisation. Reporting will not be more frequent than once a year and reporting will be available publicly (most likely through a website) and to employees. The proposed Irish legislation will also require employers to submit a narrative providing their explanation of any gender pay gap and the measures they are undertaking to close it. The Bill envisages several avenues for enforcement including the appointment of a 'designed officer' under the *Employment Equality Act*, an equality review by the IHREC, an application by IHREC to the Circuit Court, and employee complaints to the WRC.

In their Pre-Legislative Scrutiny of the General Scheme the Oireachtas Joint Committee on Justice and Equality heard from several stakeholders, and analysed a broad range of issues they considered relevant to the proposed legislation. The Committee welcomed the publication of the Bill and made several recommendations in relation to: reducing the thresholds for employee levels at which reporting is mandatory, reducing the timescales for the phased introduction of reporting, describing and categorising employees in order to best capture the gender pay gap, introducing fines for non-compliance, and mandating narrative reports offer the employer's perspective on their gender pay gap and measures they are undertaking to overcome it. As we have seen, several of these recommendations were implemented in the published Bill, while others were not.

Annex 1: Sample of reporting under the UK legislation

According to the Office for National Statistics the gender pay gap in the UK in April 2018 was 17.9% for all employees and 8.6% for full time employees. While the reporting deadline for the second year was 5 April 2019, none of these organisations had reported at the time of writing (24 April 2019).

Employer Snapshot: 5.4.2017	GPG mean hourly	GPG median hourly	Proportion women in each pay quartile	Who receives bonus pay	GPG Mean bonus pay	GPG median bonus pay
Bank of Ireland UK	38.1%	33.9%	Top – 30%; Upper mid – 46% Lower mid – 52%; Lower – 66%	None	NA	NA
Barclay's Bank UK	26%	14.2%	Top – 45%; Upper mid – 66% Lower mid – 67%; Lower – 73%	95.2% women 93.1% men	60.1%	46.9%
Confederation of British Industry	9.7%	15.1%	Top – 42%; Upper mid – 49% Lower mid – 61%; Lower – 67%	80% women 73% men	14.5% (higher)	0%
Glaxosmithkline	3.5%	1.6%	Top – 41%; Upper mid – 42% Lower mid – 39%; Lower – 47%	100% women 100% men	19%	0%
Google UK	17%	16%	Top – 22%; Upper mid – 25% Lower mid – 32%; Lower – 50%	97% women 97% men	43%	27%
House of Commons	1.7%	1%	Top – 44%; Upper mid – 43% Lower mid – 43%; Lower – 49%	35% women 42.2% men	17.1%	42.7%
Kerry Foods Ltd	0.3% (higher)	1.2%	Top – 36.6%; Upper mid – 31.4% Lower mid – 29.6%; Lower – 40.6%	10.1% women 8.1% men	31.5%	22.9%
London school of economics & politics	25.8%	14.9%	Top – 34%; Upper mid – 56% Lower mid – 56%; Lower – 56%	15.9% women 15.1% men	49.2%	25.4%
Oxfam	11%	12.5%	Top – 57%; Upper mid – 68% Lower mid – 71%; Lower – 68%	None	NA	NA
Primark Stores	15.6%	0%	Top – 61.7%; Upper mid - 82.7% Lower mid – 74.8%; Lower – 75.4%	1.3% Women 4% Men	45.7%	16.5%
Ryanair	67%	71.8%	Top – 3%; Upper mid – 16% Lower mid – 76%; Lower – 57%	82.8% women 27.8% men	20.6%	3.4%
Trades Union Congress	2.2%	0%	Top – 42.6%; Upper mid – 56.3% Lower mid – 55.3%; Lower – 47.9%	None	NA	NA

Source: UK Government Gender Pay Gap Services (selected by L&RS as potentially of interest to members of the Members of the Oireachtas). To search other companies go to: www.gender-pay-gap.service.gov.uk.



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