



**An Bille um Fhaisnéis faoin Difríocht Pá idir na
hInscní, 2019**

Gender Pay Gap Information Bill 2019

Meabhrán Mínitheach agus Airgeadais
Explanatory and Financial Memorandum



**AN BILLE UM FHAISNÉIS FAOIN DIFRÍOCHT PÁ IDIR
NA HINSCNÍ, 2019
GENDER PAY GAP INFORMATION BILL 2019**

EXPLANATORY AND FINANCIAL MEMORANDUM

The purpose of this Bill is to require regulations to be made that will oblige certain employers to publish information relating to the gender pay gap among their employees and, where there is a gap, the measures (if any) being taken to eliminate or reduce it.

Provisions of the Bill

Section 1 contains definitions

Publication of gender pay gap information

Section 2 provides for the insertion of a new Section 20A in the Employment Equality Act 1998. This provides that the Minister for Justice and Equality shall make regulations requiring employers to publish gender pay gap information for their employees.

Section 20A(1)(b) provides that the Minister shall, as soon as is reasonably practicable after commencement, make regulations requiring the publication of gender pay gap information. The information is specified:

- The mean and median gap in hourly pay between men and women
- The mean and median gap in bonus pay between men and women
- The mean and median gap in hourly pay of part-time male and female employees
- The percentage of men and of women who received bonus pay
- The percentage of men and of women who received benefits in kind.

Section 20A(1)(c) requires the publication of the reasons, in the employer's opinion, for any gaps and of the measures (if any) that the employer is taking or proposes to take to eliminate or reduce gaps.

Section 20A(2) provides that, in making regulations, the Minister shall have regard to the estimated costs of complying with, and enforcing, the regulations.

Section 20A(3) provides for a phased introduction of the requirements on certain employers to report, namely, that regulations shall not apply to employers with fewer than 50 employees; that they shall not apply to employers with fewer than 250 employees before the second anniversary of the making of the first regulations; nor to employers with fewer than 150 employees before the third anniversary.

Section 20A(4) provides that the regulations may prescribe any, or any combination of:

- the classes of employer to which the regulations apply (whether by reference to the number of employees that an employer has or otherwise)
- the classes of employee to which the regulations apply
- the classes of remuneration to which the regulations apply
- how the number of employees that an employer has is to be calculated
- how the remuneration or classes of remuneration of employees are to be calculated.

Section 20A (5) provides that the regulations may prescribe the form and manner in which, and the frequency (which shall not be more frequent than once in each year) with which, information is to be published in order to bring such information to the attention of the employees to whom the information relates and the public. For example, the regulations might require the employer to send the information to the employees in addition to publishing it on a website.

Section 20A(6) provides for publication of gender pay gap information by each Government Department, Scheduled Offices, An Garda Síochána, and the Defence Forces.

Section 20A(7) provides for the situation in which the employer does not have access to pay information on employees. In that case, the regulations may require the person who has such access to give the information, or access to the information, to the employer so that the latter can comply with the regulations. An example of this situation is teachers who are employed by a school board but are paid by the Department of Education and Skills.

Section 20A(8) provides that the regulations may prescribe measures to be taken by the employer or the person who has access to information (in the situation envisaged in Subsection (7) above) to ensure that personal data have undergone pseudonymisation before or when they are released. ‘pseudonymisation’ has the meaning assigned to it by Article 4 of the GDPR:

“ ‘pseudonymisation’ means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person”.

Section 20A(9) provides that the regulations may require publication of the mean and median gap in hourly pay between male and female employees on temporary contracts.

The regulations may require publication of the percentage of each pay quartile who are men and who are women. For example, what percentage of the most highly (hourly) paid 25% of employees are men/women?

The regulations may require the publication of information by reference to job classifications. For example, what is the gender pay gap among senior managers, among other managers, among professionals, among technicians etc?

These are matters which may be required by regulations, in contrast to the matters set out at Section 20A(1)(b) (described above) which must be required by the regulations.

The power to make regulations, as provided for in this Bill, needs to be accompanied by a provision setting out the principles and policies to

which the Minister must have regard in exercising this power. This is the purpose of **Section 20A(10)**. This provides that the Minister shall have regard to the principle that employees and the public need to have access to any information which shows whether there are differences relating to the remuneration of employees by reference to the gender of such employees and, if there are such differences, the reasons for the differences and the measures being taken, or proposed to be taken, to eliminate or reduce the differences.

Enforcement

Section 3 of the Bill inserts three new sections in the Employment Equality Act 1998: Section 85B) (enforcement powers in respect of gender pay gap information), 85C (application to Circuit Court in case of failure to comply with regulations), and 85D (redress through the Workplace Relations Commission).

Section 85B provides for the appointment by the Minister of designated officers to investigate how employers prepare the information required to be published to ensure its accuracy. Provisions already in the Employment Equality Act on powers to enter premises, obtain information, and require persons to provide information and associated sanctions are applied to this situation.

Section 85C enables the Irish Human Rights and Equality Commission (IHREC) to apply to the Circuit Court for an order requiring a person to comply with the regulations. A person who fails to comply with a Circuit Court order is in contempt of that Court.

Section 85D allows for an employee to make a complaint to the Workplace Relations Commission (WRC) of non-compliance with reporting regulations by their employer. The Director General of the WRC will investigate the complaint if satisfied that there is a prima facie case. If, on investigation, the Director General or an adjudication officer finds in favour of the complainant, he or she may make an order requiring the employer to take a specified course of action in order to comply. This is the only remedy that may be ordered. For example, compensation may not be awarded as it is not an appropriate remedy in this situation. Enforcement of WRC orders is through the District Court.

Section 4 of the Bill is purely technical.

Other sections

Section 5 inserts a provision in the Irish Human Rights and Equality Commission Act 2014 to allow the Minister to request IHREC to consider exercising its powers under section 32 of that Act. This section concerns the carrying out of equality reviews and the drawing up of equality action plans. It will be for IHREC to decide whether to exercise its section 32 powers following the Minister's request.

Section 6 provides that the Minister shall review the Act before the fifth anniversary of commencement.

Section 7 contains standard citation and commencement provisions.

Financial implications

Costs have not yet been qualified pending the drafting of regulations.

Section 20A(2) of the Employment Equality Act 1998, to be inserted by section 2 of the Bill, provides that, in making regulations for gender pay gap reporting, the Minister shall have regard to the cost not just of complying with the regulations but also of enforcing them.

There will be costs to the Exchequer arising from the requirement on State bodies, as employers, to comply with the regulations made under the Act. These costs relate to the time taken to compile the information needed and the training of staff to do this. It is likely that these costs will be small.

Some costs will arise from Section 85B of the Employment Equality Act 1998, to be inserted by section 3 of the Bill, which will involve the appointment of designated officers to carry out investigations to ensure that the information published by employers is accurate.

Some costs will arise from the power being given to IHREC in section 85C of the Employment Equality Act 1998, to be inserted by section 3 of the Bill. This provides that IHREC may apply to the Circuit Court for an order requiring an employer to comply with regulations requiring publication of gender pay gap information.

Some costs will arise from Section 85D of the Employment Equality Act 1998, to be inserted by section 3 of the Bill, that gives an employee the facility to take a complaint of non-compliance to the WRC.

It is likely that regulations made under the Act will provide for a central website on to which employers will be required to upload their information. A cost will arise to establish and maintain that website.

*An Roinn Dlí agus Cirt agus Comhionannais,
Aibreán, 2019.*