Tithe an Oireachtais

An Comhchoiste um Dhlí agus Ceart agus Comhionannas

Tuarascáil maidir leis an ngrinnscrúdú réamhreachtach ar Scéim Ghinearálta an Bhille um Fhaisnéis faoin Difríocht Pá idir na hInscní

Feabhra 2019

Houses of the Oireachtas

Joint Committee on Justice and Equality

Report on pre-legislative scrutiny of the General Scheme of the Gender Pay Gap Information Bill

February 2019

32/JAE/33

Contents

Chairman's Preface

Equality is a central element of the Committee's remit, and one we have taken very seriously since our establishment in 2016. The Committee broadly welcomed the publication of the General Scheme of the Gender Pay Gap Information Bill. The proposed Bill is broadly along the same lines as wage gap transparency legislation in other countries, and will ultimately require organisations with more than 50 staff to publish pay gap information.

However, the Committee felt it was nevertheless essential to conduct thorough scrutiny of the fine detail of the legislation, to ensure that we get it right and that we learn from the experiences of other States. Our hearing on the issue was informed by the views of stakeholders representing a variety of views and interests, including women's groups, the trade union movement and employer representatives.

On foot of its deliberations, the Committee has made recommendations which can be found at the end of this report. The Committee hopes these will assist and inform the Government in the final drafting of the Bill.

I would like to express my gratitude on behalf of the Committee to all the witnesses who attended our public hearing to give evidence. Finally, I also wish to thank the staff of the Committee's Secretariat, and of the Library & Research Service (particularly Dr Anna Visser), who assisted in the preparation of this report. Go raibh maith agaibh.

Caoimhghín Ó Caoláin T.D.

Chairman – February 2019

Background

The General Scheme of the Gender Pay Gap Information Bill was published by the Department of Justice and Equality on 26 June 2018. The stated intention of the Bill is to give effect to a commitment in the Programme for a Partnership Government and to Action 1.23 of the National Strategy for Women and Girls 2017-2020, which is to promote wage transparency by requiring companies of 50 or more employees to complete a wage survey periodically and report the results.

Notable elements of the General Scheme of the Bill are:

- the Minister shall make regulations requiring publication of information on the gender pay gap in firms;
- the regulations will apply to employers with 250+ employees initially, then to those with 150+ and finally those with 50+;
- the regulations will apply to the public as well as the private sector subject to the employment thresholds;
- in addition to differences in hourly pay, information on differences in bonus pay, part-time pay and pay of men and women on temporary contracts will be among the data which must be published;
- the regulations may also require publication of differences in pay by reference to job classifications; and
- the enforcement mechanisms include a power for the Irish Human Rights and Equality Commission to apply to the Circuit Court for an order requiring an employer to comply with the legislation. Also, an employee of the employer concerned may apply to the Workplace Relations Commission for an order requiring compliance. There is a provision too for designated officers who would investigate a sample of employers to ensure that the information published is accurate.

A link to the General Scheme can be found here:

General Scheme

Pre-legislative scrutiny by the Committee

On 4 July 2018, the Minister of State for Equality, Immigration and Integration, Deputy David Stanton, requested the Oireachtas Joint Committee on Justice and Equality ('Committee') to consider the General Scheme in terms of pre-legislative scrutiny ('PLS').

As part of its scrutiny of the Draft Heads of the General Scheme, the Committee met in public session on 21 November 2018.

The following stakeholders appeared before the Committee:

The National Women's Council of Ireland;

The Irish Congress of Trade Unions; and

The Irish Business and Employers Confederation.

A link to the Official Report of the hearing can be found here:

Official Report

Summary and key issues

In examining the General Scheme of the *Gender Pay Gap Information Bill*, this report will highlight several key issues for consideration which arise from a review of the international research and analysis, the legislative experience in other countries, and the views of the stakeholders who presented to the Committee's hearing on the General Scheme on 21 November 2018. Five key issues emerged which could be of interest to the Government in its consideration of the general scheme and the objective of implementing gender pay gap transparency legislation in Ireland:

1. The **thresholds** for employee numbers at which organisations will be obliged to report.
2. The proposed **phased introduction** of the legislation over time and by company size.
3. How reporting should describe the **categorisation of employees** in an organisation.
4. **Enforcement** of reporting obligations and addressing non-compliance.
5. The mechanisms for **publishing** gender pay gap data.

Key issue 1 – Reporting threshold

The General Scheme proposes an initial reporting threshold of 250 employees, which would drop to 50 employees after four years. Given that the objective of the General Scheme is to increase transparency with regard to the gender pay gap, while also balancing data protection imperatives and the need to avoid an undue administrative burden on small companies, the Department may wish to consider:

1.1	Reducing the reporting threshold for public and/or private organisations.
1.2	Providing for voluntary reporting by smaller companies.
1.3	Facilitating the commissioning and publication of research which would explore the gender pay gap in smaller organisations through aggregated anonymised analysis[1] in particular sub-sectors.

Key issue 2 – Phased introduction of reporting

The General Scheme proposes that companies with 250+ employees will report within two years of commencement and those with 150+ within three years. The general scheme does not envisage a specific timeframe for reporting for 50+ employees. Given that the intention to introduce gender pay gap transparency legislation has been flagged for nearly three years, and that stakeholders expressed the view that pay gap information should be available much sooner, the Department could consider the following:

[1]An aggregated anonymised study would survey wages in multiple organisations in a particular sector and publish a gender pay gap study which provides an overall picture of the sector without identifying individual organisations.

2.1	Bring forward initial reporting to one year following commencement of the relevant section.
2.2	Extend the initial reporting threshold a greater number of companies.
2.3	Specify the reporting timescale for all affected organisations.

Key issue 3 - Employee categorisation

The General Scheme goes beyond the approach adopted in the UK in allowing for reporting by job classification as well as quartile reporting. The international literature suggests that these approaches offer different insights and that they are not incompatible. During the Committee hearing, the Irish Business and Employers Confederation (IBEC) expressed concern that adopting both approaches would be an administrative burden. However, the experience in the UK suggests that the quartile approach is relatively simple and does not require organisations to undertake any specific analysis of their employee's job classification. Consequently, the Department could consider the following:

3.1	Allow for the possibility of both types of reporting, but the Minister may choose to prioritise one form of reporting over another in the initial period.
3.2	Remove the reference that IHREC 'shall' comply with the request of the Minister.

Key issue 4: Enforcement and compliance

The General Scheme goes beyond the *Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017,* and the UK legislative approach, in proposing several mechanisms for enforcement. It is difficult to predict compliance rates, and the challenge of compliance will be influenced by the size of reporting organisations. However, the view of IBEC and of the Irish Congress of Trade Unions (ICTU) is that there should not be significant difficulty in achieving compliance, and this view is supported by the UK experience. It would appear that the approach outlined in the General Scheme could enhance compliance and therefore better reporting. However, given the risk of enforcement complexity, in drafting the Bill the Minister could:

4.1	Undertake an assessment of the likely added value, and potential risks, of the proposed enforcement framework.

Key issue 5: Reporting and publication

The UK experience, as well as the views of stakeholders, support the case for maintaining a publicly accessible website to record gender pay gap information in real time. 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. The Bill could signal the intention that:

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

1. Introduction

In Ireland, as in the rest of the EU, despite over forty years of anti-discrimination legislation, persistent gender inequalities remain, and amongst them is the gender pay gap. Globally, the gender pay gap - the difference between male and female 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 (Apolitical, 2017).

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" (2013, p. 198). The amount of money people earn determines many opportunities like buying a house, educating children, saving for a pension and independence. Even modest differences in earnings can amount to very large gender inequalities overtime (Auspurg et al., 2017). The gender pay gap does not just impact on women. As families increasingly rely on women's wages, the gender pay gap directly affects men and children as well (AAUW, 2018).

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 gaps remains stubbornly persistent. Even in countries with particularly proactive policies on gender equality, the pay gap is still evident (Grönlund and Magnusson, 2016).

In response, several countries have started to explore and put in place new legislative approaches aimed at reducing the gender pay gap. In Ireland, the *Programme for a Partnership Government* contains a commitment to take measures to reduce the gender pay gap by "requiring companies of 50 and more to complete a wage survey". Internationally, such approaches range from voluntary and mandatory company reporting to laws which will fine companies that cannot prove that they pay men and women equally.

According to the United Nations Development Programme (UNDP), Ireland does relatively well on gender equality, and in 2015 was ranked 23rd in the world in terms of gender equality (United Nations Development Programme, Gender Inequality Index, 2017). In the same year, the European Union (EU) Gender Equality Index ranked Ireland 8th in the EU (EIGE, 2018). Gender equality manifests itself across a broad range of social spheres. Women experience inequality in relation to power and representation, employment, care responsibilities and experiences of violence and rape. The Central Statistics Office (CSO) produces regular data about women and men in Ireland. In 2016, the average labour force participation rate was 51.5% for women and 67.8% for men. Women worked on average 31.7 hours per week and men worked 39.7 hours (CSO). In Ireland, the gender pay gap currently stands at 14%, i.e. on average men are paid 14% more than women.

This report highlights several key issues for consideration which arise from a review of the international research and analysis, the legislative experience in other countries and the views of the stakeholders who presented to the Committee's hearing on the General Scheme on 21 November 2018.

The report will develop over key four sections. Following these introductory remarks (section 1), the report will provide an analysis of the background and context, in particular addressing what the gender pay gap is, how it is measured, potential difficulties with the gender pay gap as a measure of inequality, as well as the causes of the gender pay gap and legislative responses in other countries. Section three presents a summary of the general scheme, and includes a comparison of the General Scheme with the Private Members Bill (PMB) the *Irish Human Right and Equality Commission (Gender Pay Gap Information) Bill 2017*. Section 4 summarises the Committee's hearing and the views expressed by stakeholders at the hearing. The final section of this paper address the key issues which emerge from the international literature and the views of stakeholders, and draws out five key themes: threshold for reporting, the phased introduction of reporting, categorisation of employees, enforcement and reporting and publication.

2. Context

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 as follows:

$$\frac{\textbf{Median hourly/weekly earning of men - Median hourly/weekly earning of women}}{\textbf{Median hourly/weekly earning of men}}$$

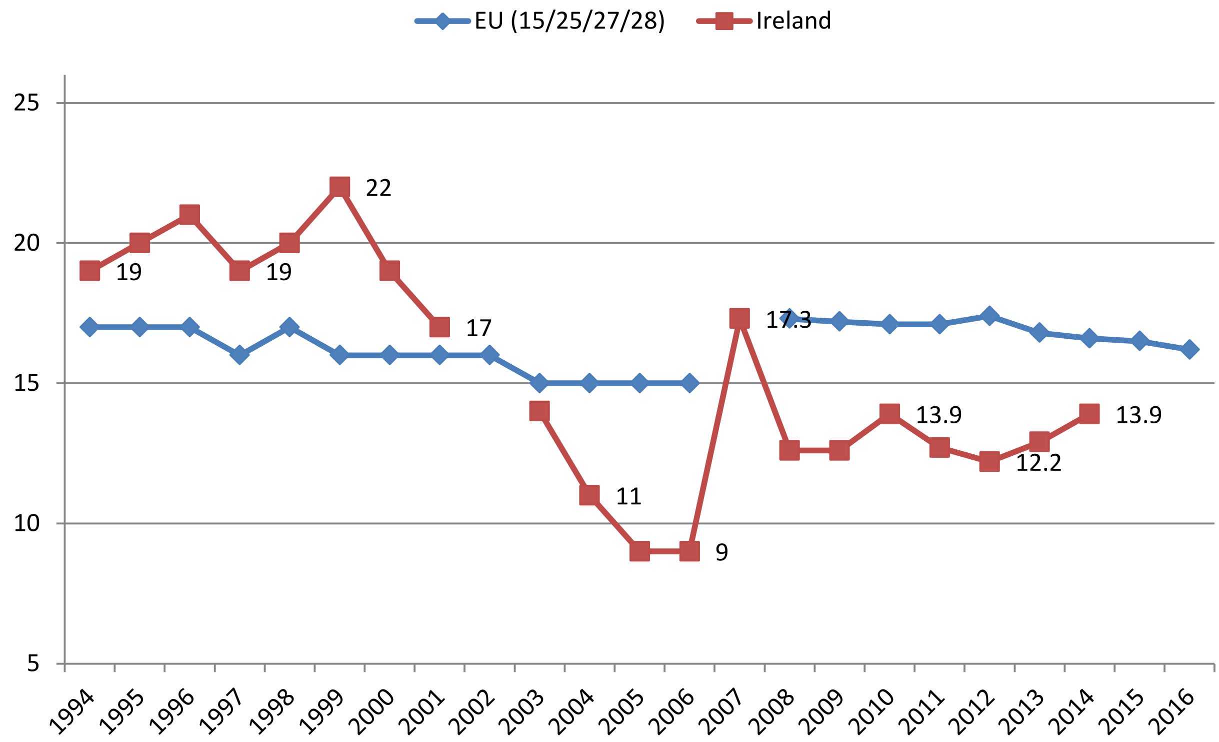
Box 1: Calculating mean and media salary averages

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÷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 would be lower than the median.

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%. Figure 1 illustrates the available data on the gender pay gap across the EU and in Ireland from 1994 to 2016. This is the figure most frequently referred to when discussing the gender pay gap. Ireland's gender pay gap has fluctuated significantly in recent years, and these figures are likely to have been impacted by overall decreases in salaries during the recession years. 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 can mean that men's salaries have decreased, and not necessarily that there has been any improvement in the situation of women.

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.

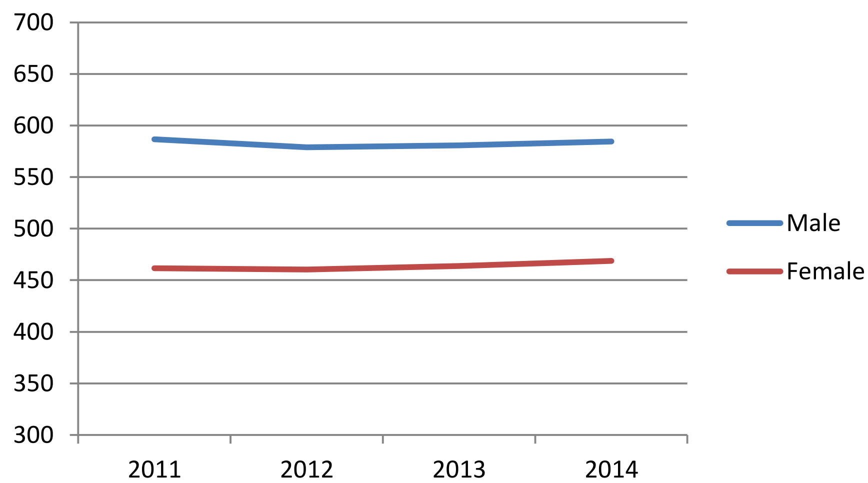
Figure 1: Unadjusted pay gap in Ireland and in the EU, 1994-2016



Source: Eurostat (L&RS analysis)

In Ireland, the gender pay gap has been quite static in recent years. Figure 2 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 was characterised by a significant decline in the gender pay gap in the 1980s and 1990s, followed by a slower decline in more recent years.

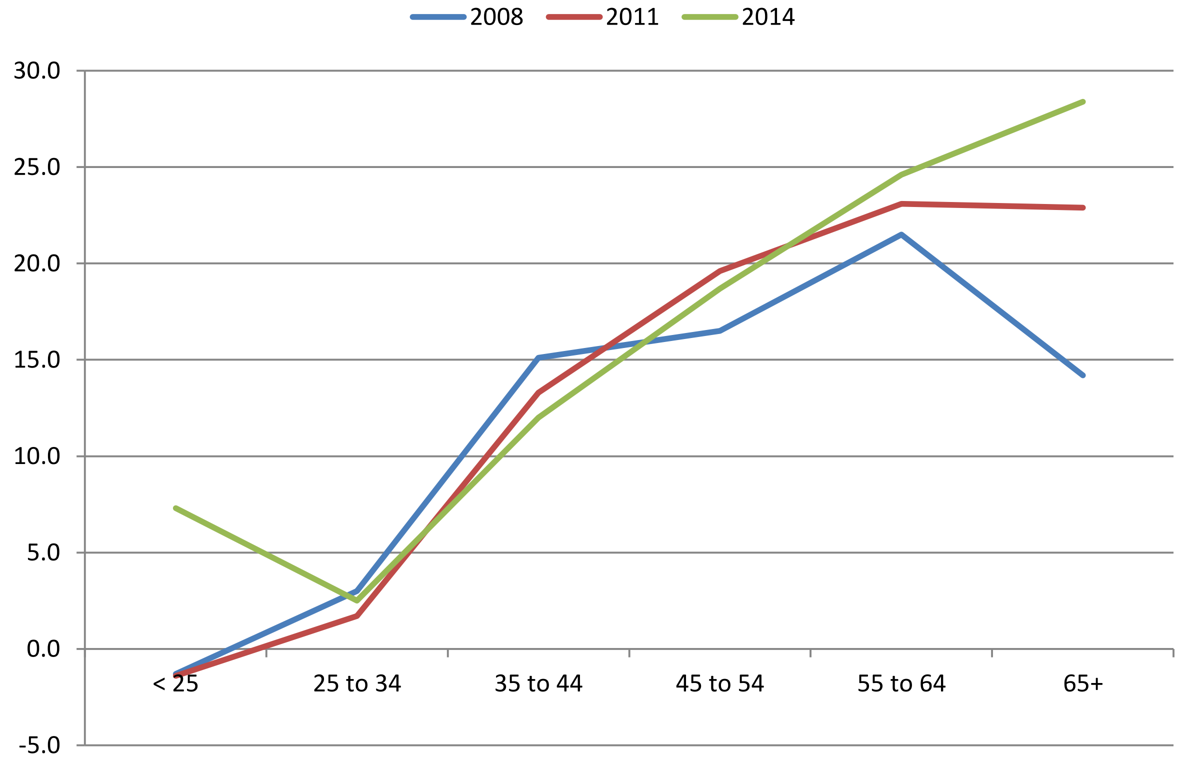
Figure 2: Irish Median weekly earnings by gender



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

Headline figures for the gender pay gap 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 3 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).

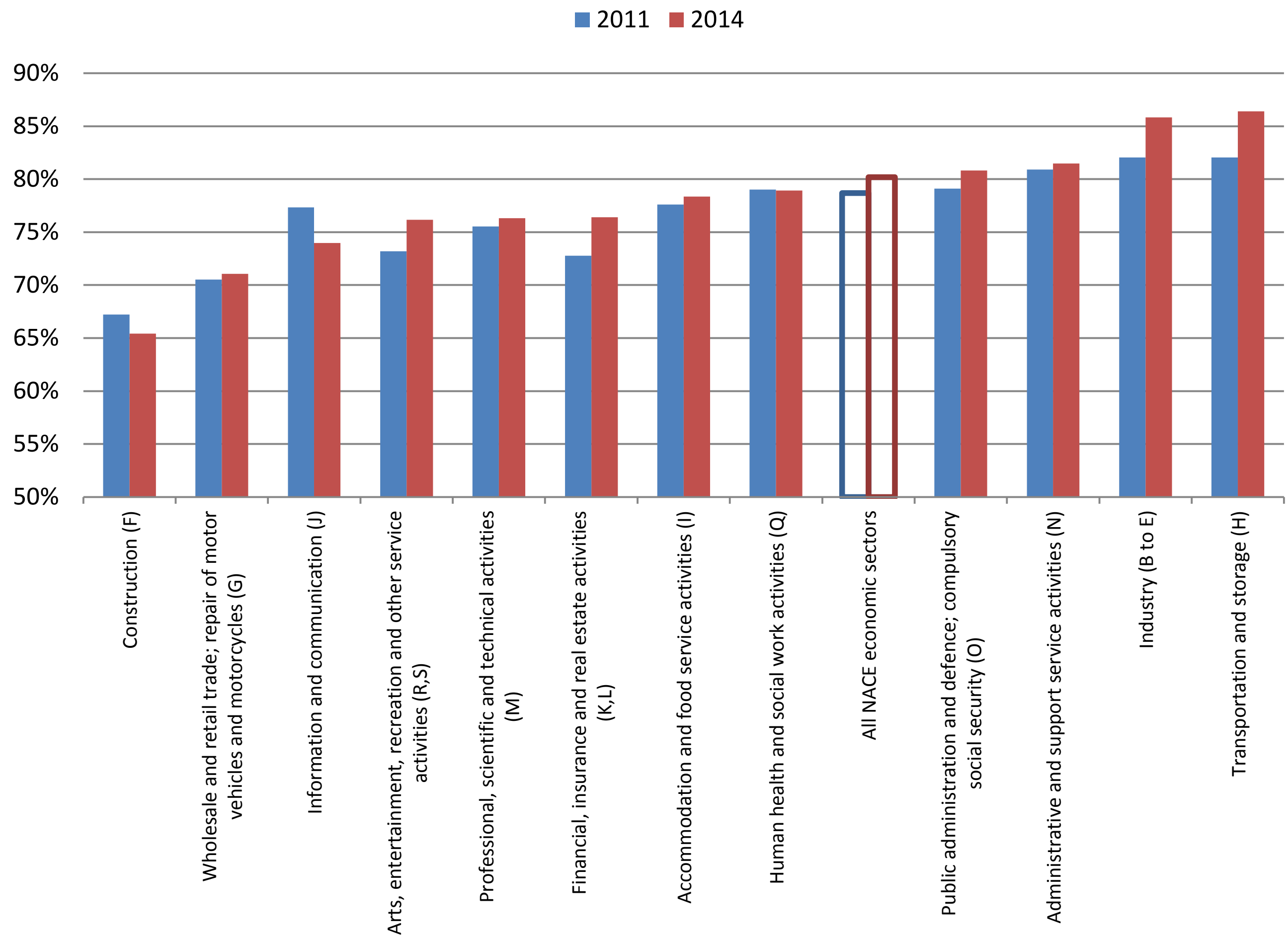
Figure 3: Unadjusted gender pay gap in Ireland by Age for 2008, 2011 and 2014.



Source: Eurostat (L&RS analysis)

CSO data by economic sector and gender reveals that in 2014, the sectors with the biggest gender pay gap were construction, wholesale and retail, and information and communications. Figure 4 captures the percentage earning ratio difference between men and women in 2012 and 2014.

Figure 4: Percentage difference in median weekly earning by gender across economic sectors in 2011 and 2014.



Source: CSO (L&RS analysis)

The gender pay gap is widest at the top of the income distribution curve, and international evidence reveals that the gap is closing more slowly in the higher income brackets (Blau and Kahn, 2017, p. 807). 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 have lower earnings than white women (AAUW, 2018). 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)" (AAUW, 2018, p. 13).

The adjusted or explained pay gap

As we have already seen the unadjusted pay gap is a complex and controversial measure of gender inequality. As Gardiner writes:

> "Before we delve into these results we should say that we know the gender pay gap isn't a perfect measure. By comparing the typical pay of all women and all men it obscures the fact that these two groups differ in their characteristics and the jobs they do. And therefore it mixes together positive choices than women make about the balance between work, education and other things with constrained career decisions and straightforward discrimination." (2017)

The gender pay gap is broader than the concept of "equal pay for equal work", as part of the difference between rates of pay can be explained by personal, sectoral and work practice differences. 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 (Leythienne and Ronkowski, 2018).

Table 1 sets out the findings of a recent Eurostat working paper which seeks to identify the role of known factors such as age, education, occupation, job experience, employment contract and working time on the gender pay gap (Leythienne and Ronkowski, 2018). Ireland is one of 11 EU countries where the gender pay gap *increased* when these factors are taken into account. The unexplained part of the gender pay gap is often associated with the role of discrimination in the labour market, though of course there may be other explanatory factors which have not been taken into account. This paper returns to the questions of the "explained" pay gap in its analysis of the causes of the gender pay gap in section 2.1.

Table 1: Adjusted and unadjusted pay gap in Ireland and in the EU.

	Unadjusted GPG	Overall explained GPG	Unexplained GPG
EU 28	16.6	5.1	11.5
Ireland	13.9	-1.9	15.8
United Kingdom	20.9	7.6	13.3

Source: Leythienne and Ronkowski (2018) (L&RS analysis).

4.2 Problems with the gender pay gap measure

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:

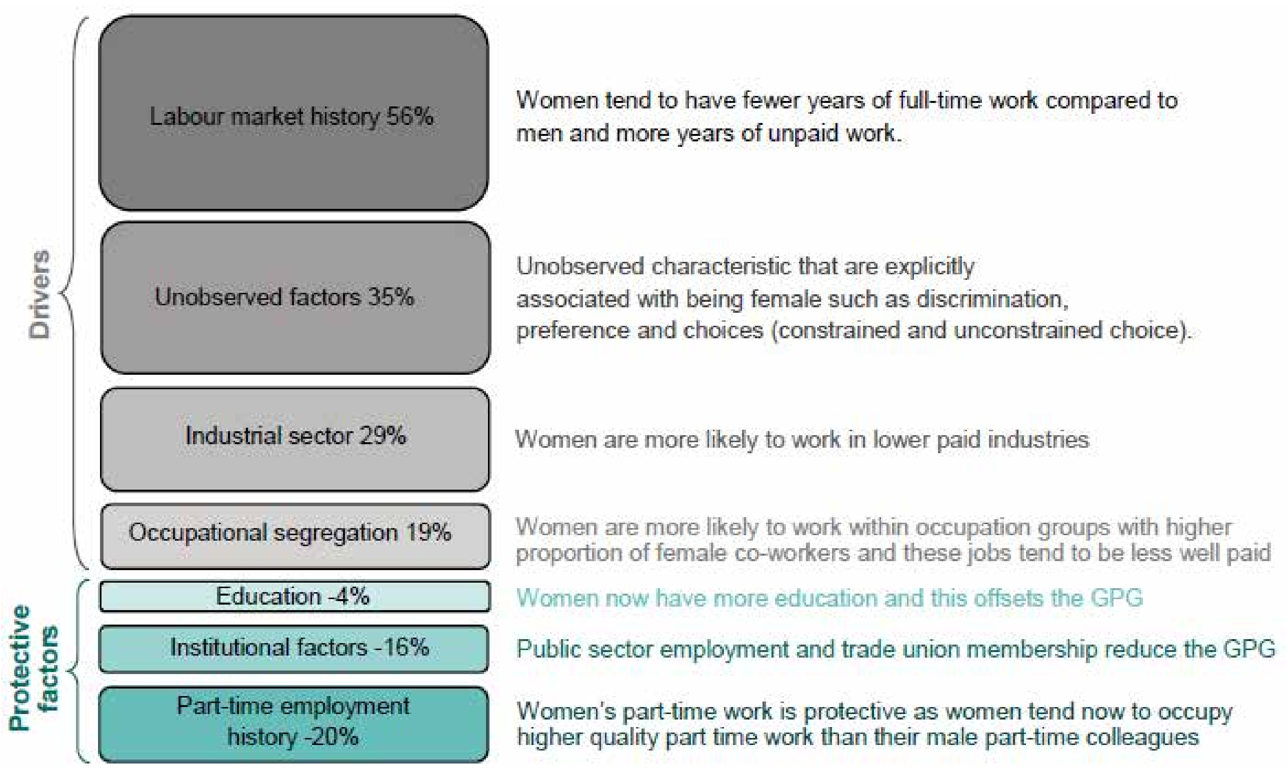
- First, the gender pay gap often relies on official data and therefore will not include those in the informal economy, and of course it does not take into account the value of unpaid work in the economic (Chalaby, 2018);

- 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; and
- Third, in a global context the gender pay gap may appear small but this can be a reflection of the fact that only a small number of elite women participate in the formal economy in the first place.

2.1 Causes of the gender pay gap

The causes of the gender pay gap are multiple and complex (Gnesi et al., 2016), and reflect a long history of differentiated labour market experiences as well as the diversity of women and their life experiences. A UK study by Olsen et al., published by the Government Equalities Office in May 2018, usefully distinguishes between "drivers of the gender pay gap" and "protective factors" which reduce the gap. This study reveals a number of interesting changes in recent years in relation to the factors which help to explain the gender pay gap, and demonstrates that while employers have a role to play, closing the gender pay gap is a broader societal challenge. Figure 5 summarises the findings of Olsen et al. (2018) This study concluded that the most significant drivers of the pay gap are: labour market history, unobserved factors, industrial sector and occupational sector. While education, institutional factors and part-time employment (in comparison to men's part-time employment) are now protective factors, in other words they can act to reduce the gender pay gap.

Figure 5: Drivers and protective factors of the gender pay gap in the United Kingdom



Source: Adapted by the L&RS from study by Olsen et al. (2018), p. 24

Labour market history

Olsen et al. concluded that in the UK, the biggest driver of the gender pay gap is now differences in labour market history between men and women, and in this case this accounts for more than half (56%) of the pay gap. Women, for example, are more likely to have periods of unpaid care work in comparison to men. They conclude that if women and men had similar amounts of unpaid family leave then the gap would close significantly.

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 (Lindley, 2016), 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" (AAUW, 2018, p. 18), whereas "considerable empirical evidence indicates a negative relationship between children and women's wages, commonly known as the motherhood wage penalty" (Blau and Kahn, 2017, p. 823). According to Blau and Kahn (2017) motherhood plays a particularly significant role in explaining the gender pay gap in highly skilled occupations. These authors conclude that in the longerterm 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 thatwhere 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" (Auspurg et al., 2017, p. 204). Lott and Heejung Chung point out that:

> "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." (2016, p. 754)

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 (European Commission, 2018). Some 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 arrangements was badly perceived by colleagues (compared to 26% in the EU).

Unobserved factors

For Olsen et al., the second most significant driver of the gender pay gap is unobserved factors, which are specifically associated with being female. They define these unobserved factors as including discrimination, preference and choice; the authors point out that that choice includes decisions that are both constrained and unconstrained by social norms and structures. While such factors are difficult to observe and study, some research has pointed to their relevance in accounting for the gender pay gap.

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" (Bensidoun and Trancart, 2018, p. 55). 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" (Bensidoun and Trancart, 2018, p. 53).

Personal choice is also associated with occupational segregation whereby women are more likely to choose careers and occupations that are in less well-paid sectors (Lindley, 2016). For example, an analysis of academic careers has suggested that even where there is substantial equality of opportunity there are nonetheless still lower levels of representation of women in science, technology, engineering, mathematics, and medical fields (Boynton et al., 2018). 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 (Boynton et al., 2018). However, such an analysis does not necessarily address the extent to which such choices are determined by experience of gendered roles across society from a very early age (Bensidoun and Trancart, 2018).

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, a Finnish study of pocket money found that as teenagers get older a gender pay gap opens up in the resources they have available to them:

> "Our results reveal that although young people's incomes have been in a rather steady rise over the past three decades, the only exceptions being periods of economic depression, gender differences in income seem rather persistent among adolescents from the age of 14." (Wilska and Lintonen, 2016, p. 431)

Similarly, a UK study found evidence of a gender pay gap in pocket money, with boys receiving an average of £6.99 for chores while girls receive £4.67.[2]

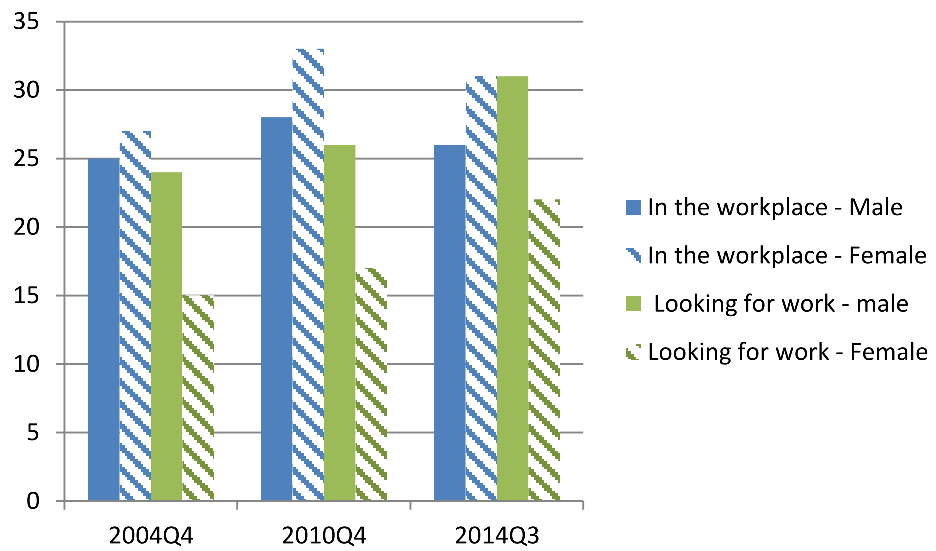
The extent to which choice is 'conditioned' by such learned gender roles, and the question of why certain jobs (more associated with women) attract lower rates to pay, points to structural and systemic processes which connect the question of the gender pay gap to broader questions of gender equality and inequality. It is difficult to disentangle question of choice and preferences from systematic differentiations. 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." (Schieder and Gould, 2016)

There is also evidence that direct gender discrimination continues to play a role in explaining the gender pay gap (Blau and Kahn, 2017). Discrimination persists despite significant legislative and other efforts to overcome it. 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 (Auspurg et al., 2017, p. 202).

Figure 6 demonstrates that in Ireland women are more likely than men to experience discrimination in the workplace (though interestingly not while looking for work).

Figure 6: Persons ages 18 years or over who have experienced discrimination



[2] 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.

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

According to the Workplace Relations Commission, in 2017, 219 (24% of all complaints) complaints cited the gender ground under the *Employment Equality Acts 1998-2011*. This is a reduction from 32% in 2016[3].

Sector and occupational segregation

For Olsen et al., (2018), occupational and industrial sector segregation together account for 48% of the gender pay gap. Women are more likely to work in some sectors than others, and sectors associated with women tend to be more poorly paid. Additionally, even within sectors which experience occupational segregation, women are more associated with certain roles where there are higher proportions of female co-workers, and jobs that tend to be less well paid.

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)." (2018, p. 582)

The second trend 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.

Broader government policy

Several authors 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 the occupational choices of men and women, with women choosing to work closer to home in order to facilitate childcare. Recent data on commuting in the UK reveals 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" (Jolly, 2018). Similarly, childcare and school

[3] 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.

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 that 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 impact 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." (Doorley et al., 2018, p. 27)

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" (Doorley et al., 2018, p. 37).

Protective factors

The study by Olsen et al. (2018) identifies three key protective factors which tend to reduce the gender pay gap, two of which are well established in the literature, and the third which appears to be associated with increasing flexibility in the labour market, particular in higher skilled jobs (see figure 5). For Olsen et al., women's higher education levels mean that education attainment is no longer a factor in the gender pay gap, and indeed serves to reduce it (in their study by 4%). This finding supports the conclusion of several other studies that human capital attributes such as education are now relatively unimportant in western democracies (though the same is not true in other international contexts) (Bensidoun and Trancart, 2018; Lindley, 2016). As we saw already, this largely appears to explain why the gender pay gap is small amongst younger workers.

Olsen et al. find that certain institutional factors play an important role in closing the gender pay gap, they particularly highlight public sector employment (20% reduction in the gender pay gap) and trade union membership (smaller impact of 1.2%). The international literature on institutional factors and workplace characteristics similarly concludes that there are certain factors which are associated with lowering the gender pay gap, such as:

- Hiring practices and enhanced formalisation and transparency of pay arrangements (Gnesi et al., 2016; Quintana-Garcia and Elvira, 2017).
- 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 (Doucet et al., 2012; O'Reilly et al., 2015).
- The influence of women in senior positions is not universally associated with a reduction in the gender pay gap; however, several studies have revealed a connection particularly for lower grades (Abendroth et al., 2017; Hedija Veronika, 2016).

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 5, are based on the best available evidence currently, and the guidance classifies actions into three categories — "effective", "promising" or "mixed results".

Table 5: 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

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 and 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 it.

2.2 Legislative responses to the general pay gap

There is a long history of legislation aimed at promoting gender equality and tackling discrimination. Most countries have laws protecting against pay discrimination, but as we have seen the gender pay gap remains. As Bornstein has concluded, "Existing antidiscrimination laws have failed to live up to their promise of equal treatment and opportunity in employment regardless of sex or race" (2018, p. 586). Several studies have critiqued the effectiveness of legislation aimed at dealing with gender equality in the workplace. Blau and Kahn (2017) in an analysis of antidiscrimination law in the US, introduced in the 1960s, concluded that it had little impact on the gender pay gap, and that other factors were responsible for narrowing the gap after the 1980s (a time when anti-discrimination law was actually scaled back).

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 briefing paper 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 2 provides an overview of some international legislative initiatives which address the gender pay gap. In this section, this paper describes initiatives in the United Kingdom, Iceland, United States, and Australia.

Table 2: 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

United Kingdom

In 2017, the UK passed a law which requires all companies with 250 employees or more, in England, Scotland and Wales (not Northern Ireland[4]), to publicly state the differences between earnings of male and female workers.[5] The first deadline for

[4] The Northern Ireland Assembly has produced a useful up date on the gender pay gap in Northern Ireland: https://www.assemblyresearchmatters.org/2018/03/08/gender-pay-gap-northern-ireland/.

[5] For further information on the UK reporting requirements see the guidance for employers sections on the website of the UK Equalities Office: https://www.gov.uk/guidance/gender-pay-gap-reporting-overview

reporting was 30 March 2018 for public sector employers and 4 April for private and voluntary sector employers. Employers are obliged to publish their gender pay gap data and a written statement on their public facing website, and to report their data to government using an online service. All returns are publicly searchable on the UK Equalities Office Website.[6] By way of illustration, annex 1 summarises the data provided for 2017 by several UK employers. The figures are calculated using a specific reference 'snapshot date'. Organisations with less than 250 staff may choose to report voluntarily. Private sector organisations which are part of a group must report separately. This approach takes an inclusive definition of employees which includes agency and contract workers. Reporting must include:

- Mean and median pay gap in hourly pay
- Mean and median pay gap in bonus pay
- Proportion of males and females receiving bonus pay
- Proportion of makes and females in each pay quartile

Iceland

Iceland has recently become the first country in the world to not only make companies prove that they pay male and female employees equally, but if they do not they can face fines (Apolitical?, 2017). The current gender pay gap in Iceland is between 14% and 18%; the government plans to eradicate it by 2022.

The new law requires employers to show, through certification by an accredited auditor, that their pay management system complies with a national equal pay standard modelled on the international ISO environmental management standards familiar to all companies. Within four years from January 2018, any public or private body in Iceland employing more than 25 people that has not been independently certified as paying equal wages for work of equal value will face daily fines (Henley, 2018). Large firms and institutions such as government ministries and national hospitals, with workforces of more than 250 people, have until the end of this year to become certified; those with fewer than 90 employees but more than 25 have until the end of 2021.

United States

In the United States, the Obama administration introduced a federal law requiring publication of pay information by gender and race for employers with more than 100 employed (in August 2017 the Trump administration abandoned the new reporting requirements) (Bornstein, 2018, p. 624). Several US states have introduced interesting new legislation. **Maryland** now prohibits employers from assigning or directing employees into less-favourable career tracks—known as "mommy tracking"—or withholding information about promotions. **Massachusetts** prohibits employers from asking potential employees about their salary history (AAUW, 2018). Bornstein suggest that the emergence of the "comparable work" movement in the US is a direct response to the persistence of the pay gap. Under the "comparable work" concept, "sex-based wage discrimination exists if employees in job classifications

[6] To search returns go to: https://gender-pay-gap.service.gov.uk/

occupied primarily by women are paid less than employees in job classifications filled primarily by men, if the jobs are of equal value to the employer, though otherwise dissimilar"(2018, p. 616). This author describes an initiative by Salesforce, which resulted in that organisation adjusting salaries after it conducted a pay audit.

Australia

Australia was an early adopter of gender reporting under the *Workplace Gender Equality Act, 2012*. Under the Act, non-public sector employers (large private sector companies and NGOs) with 100 or more employees must submit a report annually to the Workplace Gender Equality Agency, measuring their own performance against six gender equality indicators: workforce composition, equal pay, composition of boards, support for flexible work and caring, and sex-based harassment and discrimination (Lyons, 2019). While the government points to the success of adopting a partnership approach with employers, closing the gender pay gap, and increasing representation of women in managerial positions (Lyons, 2019), academic commentators have criticised the implementation of the Act, concluding that:

> "This legislation created the potential capacity to improve pay equity across large sectors of the labour market; however, its achievements were more limited. According to Charlesworth and Macdonald the failure of the law was largely due to the lack of consistent political commitment to achieving gender equality and a lack of integration between legislation and policy at the labour market, sectoral, workplace and individual levels. Drawing on comparisons from Canada and the UK, they conclude that pay inequity is likely to persist because of these inconsistencies" (O'Reilly et al., 2015, p. 306).

Broadly gender pay gap transparency legislation is regarded as a positive step forward, but that transparency is only a first step in bring about change. However, 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 the 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" (Auspurg et al., 2017, p. 204).

3. Overview of the General Scheme

On 26 June 2018 the Minister for Justice and Equality, Charlie Flanagan TD, and the Minister of State for Equality, Immigration and Integration, David Stanton announced the publication of the General Scheme of the Gender Pay Gap Information Bill. The proposed bill is broadly similar to wage gap transparency legislation in other countries.

Table 3: Summary of the General Scheme of the Gender Pay Gap Information Bill

Head	Summary
1.Short title, collective citation and commencement	The Act will be called the *Gender Pay Gap Information Act* and it will amend the *Employment Equality Acts* and the *Irish Human Rights and Equality Commission Act*.
2. Gender pay gap information	Amends the *Employment Equality Act 1998* (new section 20A, which follows section 19 which deals with equal pay) to provide that employers will publish pay information on gender pay differences. The Minister will have regard to the costs of complying. In years one or two the Act will apply to organisations with 250 employees, then 150 employees (year 3), and after that 50 employees. Regulations may prescribe which employers and employees the Act applies to, how to calculate the number of employees and pay, and how information will be published. The information to be published will include differences in: • Mean and median hourly pay; • Mean and median bonus pay; • Mean and median pay of part-time employees; • Mean and median pay of those on temporary contracts; • Proportion of men in women who receive bonus pay; • Proportion that receive benefits in kind; • Proportion of men in women in pay quartiles. Regulations may require the publication of information by reference to job classifications and other provisions that the Minister decides are necessary. Every regulation will be laid before the Houses of the Oireachtas.
3.Enforcement power through designated officers	Amends the *Employment Equality Acts* to insert enforcement powers for gender pay gap information. The Minister may appoint "designated officers" who can investigate and prepare a report. Investigation can be undertaken with reference to sections 94 and 96 of *the Employment Equality Acts* which deals with the role of a "designated" officer in accessing information and premises.
4.Enforcement power through court orders	Amends the *Employment Equality Act* to allow the Irish Human Rights and Equality Commission (IHREC) to apply to the Circuit Court for an order requiring organisations to comply with the provisions of the Act.
5.Equality reviews and action plans	Enables IHREC to undertake a review, by adding a new subsection to the *Irish Human Rights and Equality Commission Act 2014*, this section deals with equality reviews and equality action plans.
6.Redress through the Workplace Relations Commission	This section allows for an employee to take a complaint to the Workplace Relations Commission that their employer has failed to comply with regulations, by adding a new section 85C into the *Employment Equality Acts*. Investigations shall be in private and may result in an order or further investigation. The complainant or respondent may appeal the decision to the Labour Court within 42 days. The publication of decisions

	shall include the names or the complainant and respondent.
7. Review of Act	The Minister shall review the Act after five years.

Source: L&RS analysis

3.1 Comparing the General Scheme and the 2017 PMB

During the hearing on 21 November 2018 members of the Committee and stakeholders referenced the PMB, the *Irish Human Rights and Equality Commission (Gender pay Gap Information) Bill* 2017. This Bill was sponsored by Senators Kevin Humphreys; Gerald Nash; Ivana Bacik; and Aodhán Ó Ríordáin, and was initiated in May 2017 and passed by Seanad Éireann on 3 October 2018. The Bill is currently before Dáil Éireann, Third Stage. The PMB and the General Scheme adopt similar approaches. The General Scheme includes more potential areas of reporting, and sets out a greater range of approaches to enforcement. Table 4 summarises the main differences between the General Scheme and the PMB.

According to the Minister of State at the Department of Justice and Equality, Deputy David Stanton, the Government "examined the possibility of bringing forward amendments to this Bill but our legal advice is that such an approach would be excessively cumbersome and that it would be much more straightforward to bring forward a new Bill" (Oireachtas, 2018).

Table 4: Comparison of the General Scheme and the PMB

Theme	***Irish Human Right and Equality Commission (Gender Pay Gap Information) Bill 2017 [PMB]. As* passed by Seanad Éireann.**	***General Scheme of the Gender Pay Gap Information Bill***
Objective	Require certain employers to publish information relating to the difference in pay between male and female employees	Employers with a certain number of employees must publish information on the gender pay gap in their firm.
Implementing body	Irish Human Rights and Equality Commission (IHREC) will establish a scheme setting out the reporting process and content.	The Minister shall make regulations requiring the publication of gender pay gap information.
Levels	50 (not phased)	50 (initially 250, then 150)
Scope	• Mean hourly GPG • Median hourly GPG • Mean bonus GPG • Median bonus GPG • Proportion of men and women paid bonuses • Proportion of male and females at lower, lower middle, upper middle and upper quartiles • Breakdown of full and part time status of employees	• Mean hourly GPG • Median hourly GPG • Mean bonus GPG • Median bonus GPG • Mean part-time GPG • Median part-time GPG • Mean temporary contracts GPG • Median temporary contracts GPG • Proportion of male and females who are paid bonuses • Proportion of male and females who receive benefits in kind • Proportion of male and females at lower, lower middle, upper middle and upper quartiles • May require publication of information by job classifications
Enforcement and sanction	• Class A fine (Fines Act 2010 -	• Minister may appoint "designated

	between €4,000-€5,000). • If employer has over 100 staff then the company title will be published by IHREC	officers" who can investigate and prepare a report. • IHREC can apply to the Circuit Court for an order requiring organisations to comply • IHREC can undertake a review • An employee can take a complaint to the Workplace Relations Commission that their employer has failed to comply with regulations
Review	The PMB does not contain any provisions on review.	• In making regulations the Minister shall have regard to the cost of complying. • Review after five years

Source: L&RS Analysis

4. Committee hearings

The Joint Oireachtas Committee on Justice and Equality held a public hearing with stakeholders on the General Scheme 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); and
- Irish Business and Employer Confederation (IBEC).

Table 5 summarises the key discussion points and the views of the stakeholders. All of the stakeholders were in favour of the Bill, and shared an analysis of gender pay gap transparency reporting as a valuable tool in efforts to reduce gender inequality generally. All of the stakeholders acknowledged that the causes of the gender pay gap are complex and while employers have an important role to play in closing the gap, employer action is one part of a broader tool box. All of the stakeholders said that it was important that reporting of the pay gap is accompanied by a narrative explaining the situation in an individual company. There were differences between stakeholders with regard to the threshold of employee numbers for reporting, the scope of the reporting regime, and the enforcement mechanisms which should be put in place.

Table 5: Overview of key issues raised by stakeholders during the Committee hearing (21.11. 2018).

Key issue	NWCI	ICTU	IBEC
Purpose of the Bill	Transparency and accountability are vital tools in tackling gap. Importance of shining spotlight on individual organisations	Can make a significant contribution to tackling the gender pay gap	Encourage effective discussion and action on the gender representation gap
Complexity of the causes of the gender pay gap	GPG has long term implications for women. No one solution, as it is complex and there are interrelated factors	Explanatory factors include: • Cultural conditioning • Early years childcare • Paid parental leave • Collective bargaining and salary negotiation • Women's progression	Pay disparity is symptomatic of how we think of men, women and gender, and how society has evolved over time. Also: • Pre-labour market • Caring responsibilities Structural, cultural and policy causes of GPG
Publication of information	Require publication of an explanation of any gender pay gap and an action plan. Start publication at a lower rate and much sooner (current proposal could mean three years before any information is available)	Publication of reporting on public website. Sharing information with workers. Inclusion of a compulsory narrative. Note the "pay disclosure pioneers" initiative - firms will engage.	Not sooner than one year from commencement of the regulation; requires a staggered approach linked to company size. Require the publication of a narrative.

Employee levels	Threshold for reporting should commence at lower level and extend to all employers with 25+ staff.	The threshold needs to be far lower than organisations with 50 employees	
Scope	Legislation should also prohibit employers from asking about salary history, require employers to publish a minimum salary, and prohibit contractual restrictions of salary disclosure.	Useful that bonus pay and part-time work are included. Desirability of including a list of occupational categories and proportion of workers in each. Ensure a broad definition of employees that includes: directors, "consultant roles". Reports on hourly pay, bonus pay, part-time and contracts should include proportion of workers. Bonuses and benefit-in-kind should include proportion in part-time and temporary work.	Current General Scheme provides for hybrid of methodologies: quartiles and job classification approaches, which is administratively burdensome. Delete subsections 6(V) to 6 (viii) (part-time employees and contracts).
Enforcement	Introduce civil penalties for noncompliance; daily fines (as in Iceland).	May not be prudent to publish the complainant's name (Head 6.10).	Concern that Head 6 creates employee rights rather than supporting a diagnostic tool. Multiple avenues of enforcement and lacks coherence. Remove requirement that IHREC "shall" comply with request of Ministers.
Supporting actions		Clarify definition of part-time work (less than full-time or less than half full-time)	Clear methodology. Coherent communication regarding implications. Support to address the causes of the GPG.
Risks			Employers are only stakeholder at risk of reputational damage. Privacy and data protection. Do not want to discourage employers from offering flexible and part-time work

5. Key issues

While all stakeholders were enthusiastically in favour of the introduction of gender pay gap legislation, as table 5 illustrates the three stakeholders who presented to the Committee raised several issues which they felt were relevant to the implementation of the Bill and the realisation of the objectives of the Bill more generally. These issues reflect the nuances of the domestic context outlined in section 1, the experience internationally of legislation and policy measures aimed at addressing the gender pay gap (section 2), as well as their analysis of the General Scheme (section 3). Five key issues emerged which could be of interest to the Committee in their consideration of the General Scheme and the objective of implementing gender pay gap transparency legislation in Ireland, these are:

1. The **thresholds** for employee numbers at which organisations will be obliged to report.
2. The proposed **phased introduction** of the legislation over time and by company size.
3. How reporting should describe the **categorisation of employees** in an individual organisation.
4. **Enforcement** of reporting obligations and addressing non-compliance
5. The mechanisms for **publishing** gender pay gap data.

Each of these issues is considered in turn in the following sections.

5.1 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. The threshold for reporting in the UK is currently 250 employees however other countries have adopted alternative thresholds, with thresholds as low in 25 employees in Iceland.

During the hearing, the NWCI and ICTU expressed the view that the threshold for reporting should be lower than the 50+ proposed in the General Scheme. The argument for having a threshold for company size is two-fold: (1) to protect data privacy in very small companies 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 companies. On the other hand, thresholds limit the number of companies who are required to report and as a consequence narrow 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 6 reveals, according to CSO data 91.8% of companies in Ireland employ under ten employees, while just 1.4% of companies (3,582 companies) employ more than 50 employees (this represents more then 50% of company employees). The large number of organisations in Ireland with a small number of employees suggests that reporting and individuals company level?? 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 would include anonymised research studies and analysis of pay across individuals sub-sectors.

Table 6: Number of active enterprises by employment size in 2016

<table>
<tr><th>Number of employees</th><th>Number of companies</th><th>% of total companies</th><th>Persons engaged</th></tr>
<tr><td>Under 10</td><td>229,534</td><td>91.8%</td><td>26.57%</td></tr>
<tr><td>10 - 19</td><td>10,748</td><td>4.3%</td><td rowspan="2">22.16%</td></tr>
<tr><td>20 - 49</td><td>6,166</td><td>2.5%</td></tr>
<tr><td>50 - 249</td><td>3,003</td><td>1.2%</td><td>19.66%</td></tr>
<tr><td>250 and over</td><td>582</td><td>0.2%</td><td>31.61%</td></tr>
</table>

Source: CSO, Business Demography

Ireland has a relatively small population in comparison to some other countries which have instigated gender pay gap reporting. Table 7 provides an analysis of employee thresholds when population size is taken into account. While population size is a crude measure for identifying an appropriate threshold, it sheds some light on a suitable comparator in terms of scale.

Table 7: Potential employee thresholds when population size accounted for. The proposed threshold in the General Scheme is 50+ employees.

	Reporting threshold	**Population**	**% Irish population (4.784 million)**	**% reporting threshold**
United Kingdom	250	66.02m	7%	17.5
Australia	100	24.6m	19%	19
Lithuania	20	2.84m	168%	33.6
Switzerland	50	8.42m	57%	24
Germany	500	82.8m	6%	30
Sweden	10	9.99m	48%	4.8

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

Key issue 1 – Reporting threshold

The General Scheme proposes an initial reporting threshold of 250 employees which would drop to 50 employees after four years. Given that the objective of the General Scheme is to increase transparency with regardi to the gender pay gap, the experience of other countries which have adopted lower thresholds or higher thresholds for much larger populations, while also balancing data protection imperatives and the need to avoid an undue administrative burden on small companies, it would appear that the proposed Bill could:

1.1 Reduce the reporting threshold for public and/or private organisations.
1.2 Provide for voluntary reporting by smaller companies.
1.3 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.

5.2 Phased introduction of the legislation

The proposed approach to introduce a phased timeline for reporting is that following commencement of the relevant section, companies with 250+ employees should report within two years, those with 150+ employers within three years. The General Scheme does not provide a timeframe for when those with 50+ employees should report.

The argument in favour of a staggered approach is that it allows for the process to be tested by larger companies with more significant human resource capacity (and presumably more complex human resource arrangements), and allows for a longer preparatory period for smaller companies. The NWCI and Congress expressed the view that there is a need to expedite publication, and that the time frame provided for in the General Scheme is too slow. IBEC said that publication of reports should begin not sooner than one year following commencement of the relevant section. In response to questions posed by members of the Committee, in principle the stakeholders did not express any particular difficulty with a phased or staggered approach.

The introduction of gender pay gap legislation has been long flagged 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. 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 reporting of their gender pay gap (Acas, December 2017). In this context, the timeframe proposed in the General Scheme appears to lack ambition and underestimate the readiness of businesses and stakeholders to engage in gender pay gap reporting.

Given the small proportion of companies that have more than 250 employees in Ireland, it seems possible that an approach which limits initial reporting to 250+ employees might offer limited insights into both the gender pay gap itself, as well as any likely challenges in implementing reporting. There is therefore an argument that reporting should be both brought forward and be initially applicable to a broader population of public and/or private companies.

Key issue 2 – Phased introduction of reporting
The General Scheme proposes that companies with 250+ employees will report within two years of commencement and those with 150+ within three years. The general scheme does not envisage specific a timeframe for reporting for 50+ employees. Given that the intention to introduce gender pay gap transparency legislation has been flagged for nearly three years, and that stakeholders expressed the view that pay gap information could and should be available much sooner, it would appear that the Department could consider the following:
2.1 Bring forward initial reporting to one year following commencement of the relevant section.
2.2 Extend the initial reporting threshold to a greater number of companies.
2.3 Specify the reporting timescale for all affected organisations.

5.3 Categorisation of employee profiles

The General Scheme proposes that reporting should include "proportions of male and female employees in the lower, lower middle, upper middle and upper quartile pay bands" (Head 2.6.XI), a proposal which is similar to reporting in the United Kingdom. The quartile approach involves listing employees by salary and dividing this list into four sections with an equal number of employees in each section (ACAS, December 2017, p. 15). Annex 1 provides a snap shot of the results of this reporting in several companies.

In addition to reporting on quartiles, the General Scheme states that "regulations made under this section may require the publication of information by reference to job classification" (Head 2.7). In her presentation to the Committee the representative from IBEC questioned whether quartiles provided the most useful insight into the gender pay gap, and furthermore suggested that to use both approaches (quartiles and job classification) would present a significant administrative burden for employers. IBEC advocates the use of the Australian model of job classification - an approach which Congress said it was open to exploring. Annex 2 provides an overview of the Australian approach.

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 they pay gap is more significant at higher or lower pay levels. International research suggests that the pay gap tends to be higher amongst those who are better paid and that there are fewer women in more senior positions. 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.

Key issue 3 - Employee categorisation

The General Scheme goes beyond the approach adopted in the UK in allowing for reporting by job classification as well as quartile reporting. The international literature suggests that these approaches offer different insights and that they are not incompatible. During the hearing IBEC was concerned that adopting both approaches would represent an administrative burden. The experience in the UK suggests that the quartile approach is relatively simple and does not require organisations to undertake any specific analysis of their employees' job classification. Consequently, it would appear appropriate that the Department could consider the following:

3.1 Allow for the possibility of both types of reporting, but that Minister may choose to prioritise one form of reporting over another in the initial period.

3.2 Remove the reference that IHREC "shall" comply with the request of the Minister.

5.4 Enforcement mechanisms

A significant difference between the General Scheme of the *Gender Pay Gap Information Bill* and *the Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017* [PMB] is the provisions on enforcement. In the PMB the principal agency of enforcement is IHREC, with the possibility of a fine being applied to the organisation. Under the General Scheme, in addition to the role of IHREC, the Minister may appoint a "designated officer", and individual employees can make a complaint to the WRC. During the hearing IBEC suggested that the WRC process may result in an antagonistic climate between individual organisations and employees, while Congress felt that the names of individual employees who make a complaint to the WRC should not be published.

In the UK non-compliance constitutes an "unlawful" act and the Equality and Human Rights Commission is empowered to take enforcement action. A key driver of compliance in the UK appears to be potential reputational damage. In the UK there was 60-85% compliance in the first 12 months and 100% of employers identified as within the scope of the legislation had reported by August 2018 (Apolitical, Webinar, 14.11.2018). The argument for several avenues of enforcement is that it could facilitate enhanced scrutiny and accountability. On the other hand, additional complexity may complicate and potentially deter potential responses to non-compliance. During the hearing IBEC and Congress expressed the view that they did not expect that there would be a significant challenge in achieving compliance and that Irish companies are generally engaged and willing to publish gender pay gap data.

Key issue 4: Enforcement and compliance

The General Scheme goes beyond the *Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017* [PMB] and the UK legislative approach, in proposing several mechanisms for enforcement. It is difficult to predict compliance rates and the challenge of compliance will be influenced by the size of the population of reporting organisations; however, the view of IBEC and Congress is that there should not be significant difficulty in achieving compliance; this view is supported by the UK experience. It would appear likely that the approach outlined in the General Scheme is likely to enhance compliance and therefore better reporting. However, given the risk of enforcement complexity, in drafting the Bill the Department could:

4.1 Undertake an assessment of the likely added value, and potential risks, of the proposed enforcement framework.

5.5 Reporting and publication

The General Scheme proposes that the Minister shall make regulations which will set out "the form and manner in which, and the frequency with which (which shall not be more frequency than once in each year), information is to be published". During the hearing it was not proposed that the Bill should provide any further detail on the form of reporting, though stakeholders discussed several aspects of reporting which are important to the realisation of the objectives of the Bill.

Stakeholders emphasised the importance of publishing the gender pay gap information on an accessible, searchable public website such as that developed in the UK (as well as on the individual organisation's own website). All three stakeholders believe that the data should be accompanied by a narrative explaining the findings, and the NWCI suggested that the narrative should include an action plan to close the gender pay gap in the organisation. As is the case in the UK, data could be made available on the public website in real time as soon as a company files their return. In a recent presentation Gillian Unsworth, Head of Gender Pay Gap Reporting in the UK Government Equalities Office (Apolitical, Webinar, 14.11.2018), emphasised the significance of the reporting system in the UK; in the first year more than 1.2 million people viewed the website, which contains 10,000 company returns. She suggested that a significant consequence is that the concept of the "gender pay gap" is widely understood and recognised across the UK. It is likely that the maintenance of such a public website would enhance compliance, as well as encourage analysis of the data.

The publication of individual company data on the gender pay gap presents the opportunity to undertake meta-analysis about the reporting process and the gender pay gap in Ireland. The authorities charged with managing the data could publish analysis of the number of companies that submit reports, the time it takes them to do so, and the pay gap across sectors and company size. This information would supplement available data on the overall gender pay gap, as well as the gender pay gap by age and by sector, as published by the CSO and Eurostat.

Key issue 5: Reporting and publication

The UK experience and the views of stakeholders support the case for maintaining a publicly accessible website to record gender pay gap information in real time. 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. The Bill could signal the intention that:

5.1 Gender pay gap information will be published, in real time, on a publicly accessible website.

5.2 Meta-analysis of reporting trends will be published annually on the website.

6. Recommendations

On foot of its consideration of all the evidence, the Committee makes the following recommendations:

1) Reporting threshold

The General Scheme proposes an initial reporting threshold of 250 employees, which would drop to 50 employees after four years. However, the Committee heard evidence of how several countries have adopted considerably lower thresholds. Given that the objective of the General Scheme is to increase transparency with regard to the gender pay gap, and that the vast majority of companies in Ireland have fewer than 10 employees, the Committee therefore recommends that the Bill:

- Reduces the threshold for public and private organisations to 10-15 employees;
- Provides for voluntary reporting by smaller companies; and
- Provides 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.

2) Supports for small businesses

With lower thresholds, consideration should be given to the capacity of smaller businesses to meet reporting requirements. One option would be to establish a unit in the Department of Justice and Equality, or potentially the Revenue Commissioners, to provide necessary supports.

3) Phased introduction of reporting

The General Scheme proposes that companies with 250+ employees will report within two years of commencement and those with 150+ within three years. It does not envisage a specific timeframe for reporting for companies with 50+ employees. However, given that the intention to introduce gender pay gap transparency legislation has been flagged for almost three years, the Committee recommends:

- 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;
- Extending the requirement for reporting within one year to all companies with 50 or more employees; and
- Specifying the reporting timescale for all affected organisations.

4) Employee categorisation

The General Scheme goes beyond the approach adopted in the UK in allowing for reporting by job classification as well as quartile reporting. The international literature suggests that these approaches offer different insights and that they are not incompatible. The Committee therefore recommends that the Bill allow for the possibility of both types of reporting, but that the Minister may choose to prioritise one form of reporting over another in the initial period.

5) Part-time workers

The Committee believes it is important in setting out reporting requirements and gathering data to ensure that males and females who work full-time hours are compared with males and females who work part-time. Underlying factors behind the gender pay gap cannot be fully understood without comparing part-time and full-time workers.

6) Enforcement

The General Scheme proposes several methods to enforce the proposed legislation. Whilst the Committee does not object to this approach as such, there is a risk of excess complexity in the proposed enforcement regime. It therefore recommends that the Department of Justice and Equality conduct an assessment of the likely added value, and potential risks, of the proposed enforcement framework.

The General Scheme does not provide for clear penalties for non-compliance in respect of companies that fail to report or that report inaccurate data. The Committee recommends that the Bill provide for specific fines in order to increase certainty and transparency and to ensure greater compliance.

7) Narratives

The Committee believes that employers should be required to provide a narrative or contextual statement alongside their gender pay statistics. Such statements may provide greater clarity than bare statistics.

8) Reporting and publication

The Committee recommends the establishment of a publicly accessible website to record gender pay gap data and information. This is important for monitoring compliance and analysing the data supplied by individual organisations. Publication also enhances accountability over time and should encourage actions to address any gender pay gaps that exist. Meta-analysis of reporting trends should be published annually on the website.

Appendix 1 - Australian occupation categories

Australian workplace profile prepared by the Workplace Gender Equality Agency. Available as a worksheet here: https://www.wgea.gov.au/preparing-reporting/preparing-workplace-profile-data

Standardised manager categories

CEO – The head of business in Australia

KMP – Key management personnel – those persons who have authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity. Their influence is at the entity level. They are likely to be heads of functions and direct how that component contributes to the entity’s outcome, with a strategic focus. The KMP is a manager who represents at least one of the major functions of the organisation and participates in organisation-wide decisions with the CEO.

Other executives/general managers – these individuals hold primary responsibility for the equivalent of a department or a business unit. In a large organisation this manager might not participate in organisation-wide decisions with the CEO. Alternatively this manager could have influence in organisation-wide decision making forums to provide expertise or project development but because they do not actually hold authority at an entity level they would not be defined as KMP.

Senior managers – these individuals are charged with one or more defined functions, departments or outcomes. They are more likely to be involved in a balance of strategies and operational aspects of management. Some decision-making at this level would require approval from either of the three management levels above it. They are responsible for resourcing, a budget and assets (capital expenditure).

Other managers – these individuals plan, organise, direct, control and coordinate an operational function. They usually oversee day to day operations working within and enforcing defined company parameters. They might implement, determine, monitor and review strategies, policies and plans to meet business needs as it relates to their own function/work area. They are accountable for a defined business outcome which usually involves the management of resources that also includes time management, coordination of different functions or people, financial resources and other assets. Line manager may be included in this category but supervisors would not – they would be classified in the non-manager group.

Standardised non-manager categories

Professionals – Perform analytical, conceptual and creative tasks through the application of theoretical knowledge and experience in the fields of the arts, media, business, design, engineering, the physical and life sciences, transport, education, health, information and communication technology, the law, social sciences and social welfare.

Technicians and trade - Perform a variety of skilled tasks, applying broad or in-depth technical, trade or industry-specific knowledge, often in support of scientific, engineering, building and manufacturing activities.

Community and personal service - Provide services in hospitality, policing and emergency services, security, travel and tourism, fitness, sports and personal services. It includes carers and aides in schools and community settings as well as those who assist health professionals in the provision of patient care, and those who provide information and support on a range of social welfare matters, and in the areas of aged care and childcare.

Clerical and administrative - Provide support to managers, professionals and organisations by organising, storing, manipulating and retrieving information.

Sales - Sell goods, services and property, and provide sales support in areas such as operating cash registers and displaying and demonstrating goods.

Machinery operators and drivers - Operate machines, plant, vehicles and other equipment to perform a range of agricultural, manufacturing and construction functions, move materials.

Labourers - Perform a variety of routine and repetitive physical tasks using hand and power tools, and machines either as an individual or as part of a team assisting more skilled workers such as trades workers, and machinery operators and drivers.

Other - Employees whose work is highly specialised or unique and is not defined by above categories

Graduate - Any person employed in a formal graduate programme. Someone who has graduated from a tertiary institution but is NOT part of a formal graduate programme, is not to be included in this category.

Apprentice - Any person employed by an employer as an apprentice. A trainee is not considered an apprentice. Trainees need to be classified according to the eight standardised occupational categories of non-managers provided.

Appendix 2 - References

AAUW, 2018. Simple Truth about the Gender Pay Gap. AAUW, Washington.

Abendroth, A.-K., Melzer, S., Kalev, A., Tomaskovic-Devey, D., 2017. Women at work: Women's access to power and the gender earnings gap. ILR Rev. 70, 190–222.

Apolitical, 2017. How to close the gender pay gap in five - difficult - steps. Apolitical.

Auspurg, K., Hinz, T., Sauer, C., 2017. Why Should Women Get Less? Evidence on the Gender Pay Gap from Multifactorial Survey Experiments. Am. Sociol. Rev. 82, 179–210.

Bensidoun, I., Trancart, D., 2018. Career Choices and the Gender Pay Gap: The Role of Work Preferences and Attitudes. Population 73, 35–60.

Blau, F.D., Kahn, L.M., 2017. The Gender Wage Gap: Extent, Trends, and Explanations. 55, 789–865.

Bornstein, S., 2018. Equal Work. Md. Law Rev. 77, 581–648.

Boynton, J.R., Georgiou, K., Reid, M., Govus, A., 2018. Gender bias in publishing. The Lancet 392, 1514–1515. https://doi.org/10.1016/S0140-6736(18)32000-2

Brady, A., 2019. Gender and the Irish Constitution: Article 41.2, symbolism, and the limitation of the Courts' approach to substantive gender inequality, in: Black, L., Dunne, P. (Eds.), Law and Gender in Modern Ireland. Hart Publishing.

Chalaby, O., 2018a. Why the gender pay gap fails to explain global workplace inequality. Apolitical.

Chalaby, O., 2018b. Women in unions have gender pay gaps that are half the size. Apolitical.

CSO, n.d. Women and Men in Ireland 2016 [WWW Document]. Cent. Stat. Off. URL https://www.cso.ie/en/releasesandpublications/ep/p-wamii/womenandmeninireland2016/ (accessed 11.5.18).

Doorley, K., Callan, T., Keane, C., Walsh, J.R., 2018. The gender impact of Irish budgetary policy 2008-2018. ESRI. https://doi.org/10.26504/bkmnext367

Doucet, C., Smith, M.R., Durand, C., 2012. Pay Structure, Female Representation and the Gender Pay Gap among University Professors.

EIGE, 2018. Countries comparison: Gender Equality Index, 2015 [WWW Document]. EIGE. URL https://eige.europa.eu/gender-equality-index/2015/countries-comparison (accessed 11.5.18).

European Commission, 2018. Flash Eurobarometer 470 - Work-life balance - Ireland.

Gardiner, L., 2017. Is the gender pay gap on the brink of closure for young women today? Resolut. Found.

Gnesi, C., De Santis, S., Cardinaleschi, S., 2016. The Gender Pay Gap in Italy: Some Evidence on the Role of Decentralized Collective Bargaining. Brecha Salarial Género En Ital. Algunas Evid. Sobre El Pap. Negoc. Colect. Descent. 34, 109–132.

Grönlund, A., Magnusson, C., 2016. 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. Eur. Soc. 18, 91–113.

Hedija Veronika, 2016. Gender Wage Differences in the Czech Public Sector: A Micro-level Case. Rev. Econ. Perspect. Vol 16 Iss 2 Pp 121-134 2016 121. https://doi.org/10.1515/revecp-2016-0009

Henley, J., 2018. “Equality won’t happen by itself”: how Iceland got tough on gender pay gap. The Guardian.

Jolly, J., 2018. Childcare constraints forcing more women to work closer to home. The Guardian.

Leythienne, D., Ronkowski, P., 2018. A decomposition of the unadjusted gender pay gap using Structure of Earnings Survey data, Statistical Working Papers. Eurostat.

Lindley, J.K., 2016. Lousy Pay with Lousy Conditions: The Role of Occupational Desegregation in Explaining the UK Gender Pay and Work Intensity Gaps. Oxf. Econ. Pap. 68, 152–173.

Lott, Y., Heejung Chung, 2016. Gender Discrepancies in the Outcomes of Schedule Control on Overtime Hours and Income in Germany. Eur. Sociol. Rev. 32, 752–765.

Lyons, L., 2019. In Australia, we’re taking a different path to close our gender pay gap. Apolitical.

Office for National Statistics, 2018. Gender pay gap in the UK [WWW Document]. URL https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/genderpaygapintheuk/2018#analysis-of-the-gender-pay-gap (accessed 11.7.18).

O’Reilly, J., Smith, M., Deakin, S., Burchell, B., 2015. Equal Pay as a Moving Target: International perspectives on forty-years of addressing the gender pay gap. Camb. J. Econ. 39, 299–317.

Peruzzi, M., 2015. Contradictions and Misalignments in the EU Approach towards the Gender Pay Gap. Camb. J. Econ. 39, 441–465.

Quintana-Garcia, C., Elvira, M., 2017. The effect of the external labour market on the gender pay gap among executives. ILR Rev. 70, 132–159.

Schieder, J., Gould, E., 2016. “Women’s work” and the gender pay gap: How discrimination, societal norms, and other forces affect women’s occupational choices—and their pay. Econ. Policy Inst.

Tharenou, P., 2013. The Work of Feminists is Not Yet Done: The Gender Pay Gap-a Stubborn Anachronism. Sex Roles 68, 198–206.

United Nations Development Programme, 2017. Human Development Report 2016: Human Development for Everyone. UN. https://doi.org/10.18356/b6186701-en

Wilska, T.-A., Lintonen, T., 2016. The gender gap in teenagers’ incomes. A 30-year trend in Finland 1983–2013. J. Youth Stud. 19, 421–437. https://doi.org/10.1080/13676261.2015.1083956

Appendix 3 – Committee Membership

Joint Committee on Justice and Equality

Deputies

Caoimhghín Ó Caoláin TD
(SF) [Chair]

Colm Brophy TD
(FG)

Jack Chambers TD
(FF)

Clare Daly TD
(I4C)

Peter Fitzpatrick TD
(FG)

Jim O'Callaghan TD
(FF)

Mick Wallace TD
(I4C)

Senators

Frances Black	Lorraine Clifford-Lee	Martin Conway	Niall Ó Donnghaile
(CEG)	(FF)	(FG)	(SF)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 16th June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 20th July 2016.

Appendix 4 - Orders of Reference

a) Scope and Context of Activities of Committees *(derived from Standing Orders – DSO 84, SSO 70)*

1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/and or Seanad;

3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993;

4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 111A; and

   The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

   (i) a member of the Government or a Minister of State, or

   (ii) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

   Provided that the Chairman may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

b**)** *Functions of Departmental Committees (derived from Standing Orders – DSO 84A and SSO 70A)*

(1) The Select Committee shall consider and report to the Dáil on-

(*a*) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and

(*b*) European Union matters within the remit of the relevant Department or Departments.

(2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—

(*a*) Bills,

(*b*) proposals contained in any motion, including any motion within the meaning of Standing Order 187,

(*c*) Estimates for Public Services, and

(*d*) other matters

as shall be referred to the Select Committee by the Dáil, and

(*e*) Annual Output Statements including performance, efficiency and effectiveness in the use of public moneys, and

(*f*) such Value for Money and Policy Reviews as the Select Committee may select.

(4) Without prejudice to the generality of paragraph (1), the Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(*a)* matters of policy and governance for which the Minister is officially responsible,

(*b*) public affairs administered by the Department,

(*c*) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(*d*) Government policy and governance in respect of bodies under the aegis of the Department,

(*e*) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(*f*) the general scheme or draft heads of any Bill

(*g*) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,

(*h*) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(*i*) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(*j*) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (*d*) and (*e*) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and

(*k*) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—

(*a*) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,

(*b*) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(*c*) non-legislative documents published by any EU institution in relation to EU policy matters, and

(*d*) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

(6) Where the Select Committee has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.

(7) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:

(*a*) members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

(*b*) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(*c*) at the invitation of the Committee, other members of the European Parliament.

(8) The Joint Committee may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—

(*a*) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and (*b*) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 111F apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

c) Powers of Committees (derived from Standing Orders – DSO 85, 114 and 116 and SSO 71, 107 and 109)

The Joint Committee has:-

(1) power to take oral and written evidence and to print and publish from time to time minutes of such evidence taken in public before the Select Committee together with such related documents as the Select Committee thinks fit;

(2) power to invite and accept oral presentations and written submissions from interested persons or bodies;

(3) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(4) power to draft recommendations for legislative change and for new legislation;

(4A) power to examine any statutory instrument, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009, and to recommend, where it considers that such action is warranted, whether the instrument should be annulled or amended;

(4B) for the purposes of paragraph (4A), power to require any Government Department or instrument-making authority concerned to submit a Memorandum to the Select Committee explaining any statutory instrument under consideration or to attend a meeting of the Select Committee for the purpose of explaining any such statutory instrument: Provided that such Department or authority may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss policy for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss proposed primary or secondary legislation (prior to such legislation being published) for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such proposed legislation;

(6A) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the member of the Government or Minister of State, oral briefings in advance of meetings of the relevant EU Council of Ministers to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(6B) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(6C) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 164A;

(7) subject to any constraints otherwise prescribed by law, power to require that principal office-holders in bodies in the State which are partly or wholly funded by the State or which are established or appointed by members of the Government or by the Oireachtas shall attend meetings of the Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Committee, which may report thereon to the Dáil;

(8) power to engage, subject to the consent of the Houses of the Oireachtas Commission, the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(9) power to undertake travel, subject to—

(*a*) such recommendations as may be made by the Working Group of Committee Chairmen under DSO 108(2)(*a*) and SSO 104(2); and

(b) the consent of the Houses of the Oireachtas Commission, and normal accounting procedures.

(10) In accordance with Articles 6 and 8 of Protocol No. 2 to the Treaty on European Union and the Treaty on the Functioning of the European Union (Protocol on the Application of the Principles of Subsidiarity and Proportionality) as applied by sections 7(3) and 7(4) of the European Union Act 2009, the Committee has the power to-

consider whether any act of an institution of the European Union infringes the principle of subsidiarity (DSO 116; SSO 109); and

form a reasoned opinion that a draft legislative act (within the meaning of Article 3 of the said Protocol) does not comply with the principle of subsidiarity (DSO 114 and SSO 107).

Appendix 5 – Witnesses and Official Report

21 November 2018

- The National Women's Council of Ireland;
- Irish Business and Employers Confederation; and
- Irish Congress of Trade Unions.

Official Report

Appendix 6 -Opening statements

STRONGER TOGETHER

CONGRESS

Irish Congress of Trade Unions

Congress Opening Statement to the Joint Committee on Justice and Equality on the "GENERAL SCHEME OF the GENDER PAY GAP INFORMATION BILL"

Congress welcomes the opportunity to participate in today's meeting on this important subject.

Ireland's gender pay gap stands at 14% and is of course linked to a wide range of cultural, legal, social, and economic factors. It is a much more complex issue than the concept of equal pay for equal work and requires us to tackle amongst other issues:

- cultural conditioning, stereotypes and segregated labour markets;
- lack of a quality, affordable early years care;
- paid parental leave;
- collective bargaining and salary negotiation systems; and
- the barriers to women's progression at all levels of their career.

Having said that, mandatory reporting of gender pay gaps in individual enterprises can make a significant contribution to tackling the gender pay gap and we therefore welcome the publication of the general scheme of the gender pay gap information bill. We also note the previous work on this by Senator Ivana Bacik and her 2017 Bill and hope that this new Bill will not further delay the introduction of such reporting.

It is clear that there is now a broad consensus on this issue across political parties, employer bodies, workers' representatives and civil society organisations. We have had engagements with IBEC and met together with Minister Flanagan and Stanton and officials in his Department with a view to agreeing how best to progress the idea of gender pay gap reporting.

In relation to the Bill at hand, we note that it will essentially enable the Minister to "make regulations requiring employers to **publish** information relating to the pay of their employees for the purpose of showing whether there are differences in the pay of male and female employees and , if so, the scale of such differences".

It is significant that the head includes the word "publish", but there is no detail set out at this stage as to how that will happen. In discussions with the Department, they indicated that a central website may well be administered by them. (similar UK website here: https://gender-pay-gap.service.gov.uk/viewing/search-results?search)

As well as the publication on an external website, Congress also believes that sharing the information with workers (the people directly affected) and their representatives can lead to useful discussion, further investigation and action. We have therefore requested that Gender pay gap information must be shared with employees and trade unions.

Other issues here include the fact that firms with fewer than 250 employees are initially excluded, dropping eventually to firms with 50 + people. This means that about 50% of all firms will not be obliged to report. As the scheme develops, it's our view that far from fearing such a measure, some companies may begin to disclose publically on a voluntary basis as a signal of their commitment to workplace equality. Indeed we note the recent launch of a "pay disclosure pioneers" initiative, which will see leading businesses committing to early pay disclosure and advancement towards workplace equality, before legal requirement under new laws.

It is useful that bonus pay is included and also part-time work, given the predominance of women working in this way. We have also discussed the desirability of including a list of occupational categories as the best way to proceed on this and have discussed with IBEC a proposed list of four managerial and four non managerial categories which should be considered as a workable option. It is worth noting however, that if we were to go down the road of catergorising workers per occupation, then we would also need to know the share of workers in that occupation.

Such a comprehensive list would be a significant improvement on the UK scheme and would lead to greater granularity in the data to be collected. The UK scheme also does not ask for the part time pay gaps.

There is no mention of the inclusion of a narrative with the figures reported. One of the lessons from the UK experience so far is that the narrative section of reports provides context and useful information to help interpret the raw data that companies publish. Congress has made the point that a narrative may explain what the figures represent and also include what actions the companies are going to take in order to narrow it. It also provides unions and others with the possibility of holding companies to account on their performance of these actions. We have suggested that a narrative should be compulsory. It is voluntary in the UK and only about 1/3 of employers provide one in their reports.

We also note the various enforcement mechanisms proposed in the scheme (role of the circuit court, equality reviews, roles for IHREC and the WRC) and are happy to discuss these in the general discussion today.

Briefly, allow me to flag a couple of these:

- Head 2(4) (a) and (c): classes of employer and employee-treatment of proprietary and non-proprietary directors along with those in "consultant" roles (with the company being their only client) will be important here. Also some sectors are organised in terms of partnerships and not incorporated companies- how will they be treated?

- Head 6 (10). Is it prudent for the complainant's name to be published? It seems an extreme measure to disincentivise vexatious complaints.

Thanks for the opportunity to raise these issues and we look forward to the discussion.

Presentation to the
Joint Committee on Justice and Equality
on the
pre-legislative scrutiny of the General Scheme of the Gender Pay Gap Information Bill

Dr Kara McGann, Senior Policy Executive, Ibec

I wish to thank the Joint Committee for the opportunity to address you on this important issue for the business sector.

Ibec welcome the introduction of gender pay gap reporting to Ireland and commend the work of Minister Stanton and the Gender Equality Division of the Department of Justice and Equality for their tireless work in developing the General Scheme of the Gender Pay Gap Information Bill.

Gender pay gap reporting will encourage effective discussion and action to tackle the challenges facing business and society regarding gender balance. Members will be aware that this challenge relates to the difference in the average hourly wage of men and women across a workforce – comparing the pay of all working men and all working women; not just those in same jobs, with the same working patterns or the same competencies or experience. It does not indicate discrimination or bias, or even an absence of equal pay for equal value work which is illegal – but it does report a gender representation gap – so for example if women hold more of the lower paid jobs in the organisation than men, the gender pay gap is usually bigger. While great strides have been made over the last few decades to see greater numbers of women progressing, the starting point was a low one and the improvement is not yet consistent with our ambition.

Pay disparity, as measured by the gender pay gap, is not just an organisation level issue, but is rather symptomatic of how we think of men, women and gender, and how society has evolved over time. There are several complex factors that typically lead to a gender pay gap, including pre-labour market areas such as education and skills acquisition, issues surrounding caring responsibilities and how these impact on labour market outcomes.

This is a timely piece of legislation which will contribute to the tackling of gender imbalance in Ireland, an issue that is already a strategic imperative for many employers today. However, its success will be ultimately judged by how it delivers. As is set out in other submissions, employers are but one actor in the gender pay gap process. Yet they are the only stakeholder who may receive unfair reputational damage from the publication of their gap.

This is a complex challenge which no country in the world has yet fully conquered. We have one opportunity to get this important piece of legislation right to achieve the buy-in of government, employers, civil society and individuals and to enable real solutions to be identified and implemented. To achieve that requires the right methodology; strong coherent communication regarding the conclusions that can and cannot be drawn from a pay gap figure; and support to address the challenges that have created the gap, many of which require action from stakeholders other than employers, and solutions outside the employer’s control.

Fundamental to solving a problem is knowing where the problem exists and what is causing it. As such, Ibec welcomes the publication of the General Scheme of the Gender Pay Gap Information Bill and the aims set out therein. However, we have some concerns over how the General Scheme envisages the introduction of reporting and believe that some amendments would ensure it provides for a useful method of reporting.

As currently drafted, the General Scheme provides for a hybrid of multiple methodologies so as to be administratively burdensome and costly to the employer; calls into question issues of privacy and data protection; yet fails to yield certain information that would enable solutions to be identified. While an in-depth commentary is impossible in a five-minute input, I would like to highlight where we believe the most significant challenges exist from a business perspective.

Firstly, the issue of quartiles. The General Scheme quite correctly emphasises the importance of examining where males and females are located throughout the organisation as gender pay gap reporting is in reality a measure of representation. However, reporting on quartiles requires dividing an organisation's workforce artificially into four equal bands. This can result in two employees on exactly the same pay being placed into different bands to "fit" the quartiles. Ibec have proposed the use of occupational categories akin to the Australian model of gender pay gap reporting. Should a gender pay gap be calculated, this model would allow the data to be further interrogated to identify where and often why the gap is occurring, enabling real solutions to be sought. Unfortunately, the General Scheme alludes to both of these measures under subsection 6(xi) and 7 of Head 2. This appears to require employers to engage in double the administration for no real gain – as such only one methodology should be required.

Secondly, Ibec has concerns regarding the inclusion of Head 6 in the General Scheme. The purpose of this legislation is not to create employee rights but to provide a diagnostic tool to help address barriers to the full socio-economic equality of women. Involving the Workplace Relations Commission (WRC) and giving employees entitlements to make claims before the WRC introduces the prospect that this becomes a rights-based piece of legislation which was never what it was intended to be.

Ibec is concerned that Head 6 risks pitting employees against employers and encouraging employees to take claims to the WRC will increase the likelihood that attempts to address an organisation's gender pay gap will become an adversarial process. This is not in the interests of either party and will certainly not facilitate real solutions.

Conclusion

Gender pay gap reporting alone cannot change the imbalance of males and females within organisations – however measurement and reporting tend to be key drivers of change. This can either be a "box-ticking" exercise which will not realise our common aims, or we can use this opportunity to really tackle gender balance. A renewed focus on the gender pay gap and its roots in the representation of women, offers business and society an opportunity to move the dial substantially if we are serious about really addressing this problem.

I will conclude by thanking members of the Joint Committee for the opportunity to present Ibec's views on this important issue.

Joint Committee on Justice and Equality
Pre-legislative scrutiny of the General Scheme of the Gender Pay Gap Information Bill.
November 21, 2018 at 9am
Committee Room 2, LH2000, Leinster House.

Speaking Notes: Orla O'Connor, Director, NWCI

We thank the Committee for inviting us here today to discuss the *General Scheme of Gender Pay Gap Information Bill*. NWCI is Ireland's leading national feminist organisation campaigning for equality and advocating for women's rights. We are a membership organisation that represents over 180 member organisations across the country. Our aim is an Ireland where women and men are treated equally.

We believe that the gap in earnings between women and men, – which stands at almost 14%, goes to the heart of inequality between women and men. It has serious implications for a woman's lifetime earnings, her life and career decisions and her ability to live in older years with a decent income.

There is unfortunately no one solution to closing the gender pay gap. There are many complex and interrelated factors that influence women's employment opportunities and progress at work, factors which directly contribute to its existence. However, we believe, that increased transparency and accountability around pay, are vital tools in tackling the gap, and in that respect we warmly welcome this Bill.

Requiring employers to publish statistics on an organisational level will shine the spotlight, for the first time, on individual organisations.

An employer may be unaware that they even have a gender pay gap until they analyse their pay information. Requiring employers to be more open about gender pay differences should bring pressure to bear on them to explain the reasons for those differences and to consider what they can do to eliminate them. Transparency around pay will ultimately help to remove the question of gender-influenced pay.

And Ireland is not alone in adopting this type of legislation, and while we are not the first to take this path, this is to our advantage, as we now have the opportunity to learn from the trail blazers. So while we warmly welcome the spirit and direction of the Bill, we ask the Committee to consider a number of matters that we believe would serve to strengthen its overall scope.

Currently it is proposed that the legislation will initially apply to companies with 250 or more staff and then, on a phased basis, move to companies employing 50 or more staff. If so, this legislation is much less likely to have the same immediate impact on women in employment as the Bill proposed by Labour, which would have given immediate application to companies employing 50 or more staff, rather than having to wait for a period of time.

Looking at the threshold figures in more detail, NWCI sought to obtain the gender breakdown of those employed in small, medium and large businesses, respectively. Unfortunately, this exact information is unavailable. And we thank Senator Bacik for raising this matter on our behalf in the Seanad last week.[1]

What we do know, is that according to 2016 CSO figures from the business economy only, - and which cannot be disaggregated by gender - the total number of persons engaged in active small enterprises, namely, those with fewer than 50 persons engaged, was 720,401. The number of persons engaged in active medium enterprises, namely, between 50 and 249 persons engaged, was 290,604. The number of persons engaged in active large enterprises, namely, 250 and more persons engaged, was 467,231.

Clearly, therefore, a large number of people work in small enterprises, and will never be included within the scope of this proposed legislation. Anecdotally, we can say from our own work in this area, and from speaking with women, that they tend to be significantly represented in small and medium enterprises. In light of this, we strenuously query the roll out of this legislation to commence at organisations with over 250 employees, and call for more ambition. This type of legislation has long been signposted; the threshold for reporting should commence at a much lower figure, and extended to all those employers with at least 25 employees, as adopted by our Icelandic neighbours.

Furthermore, organisations should be required to publish, alongside the bald figures, an explanation of any gender pay gap and, most importantly, an action plan for closing the gap, against which they must

[1] See the full response to the Commencement Matter at this link.

report progress each year, as part of normal reporting requirements. Failure to do this is one of the major criticisms of the UK model.

Civil penalties for noncompliance should be introduced, and set at a level at which the cost of noncompliance is significant.

We also believe that this legislation provides the ideal opportunity to address the hidden discrimination inherent in wage negotiations.

An initial salary at an early job can affect salary at a later one because hiring managers often base their offer on previous pay. Research has shown that those who get lower salary offers are often women.
The legislation should prohibit employers (and by extension recruiter agencies) from asking about salary history. Employers should also be prohibited from seeking this information through an agent or from other sources, such as the applicant's former employers.[2]

Employers should also be legally required to state the minimum salary that they are prepared to offer for an advertised role, regardless of whether it is advertised internally or externally. Employers should also be generally prohibited from inserting terms in a contract that prevent employees from disclosing/discussing their wages.

These measures will help to ensure that salaries reflect the qualifications, skills, experience and achievements of the particular

[2] Numerous laws to this effect have been implemented in the US.

employee. They will also help shift the emphasis from presentism to the quality and output of the work done, so that taking extended periods of time off of work will not unduly affect future wages. This is essential for women as they tend to have more career interruptions than men.

Conclusion

Increased pay transparency will, over time, improve fairness. And a more equal role for women in the workplace will contribute to economic growth.

While the new legislation is not, in itself, enough to tackle the gender pay gap or its underlying causes, it is an extremely important and essential step, and one we completely support.

Thank you.