

Equality Commission

FOR NORTHERN IRELAND

# Gender Pay Strategy and Pay Reporting

Full Report

Policy Recommendations and Supporting Rationales

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# 1 Executive Summary

We call for prompt action by Government to bring Section 19 of the Employment Act (Northern Ireland) 2016 ('the Act') into force, and to introduce a gender pay strategy and associated action plan, in tandem with the introduction of Gender Pay Gap Reporting Regulations ('the GPGR Regulations') in Northern Ireland.

## ***Our recommendations***

In summary, we recommend Government should:

**Employment Act (Northern Ireland) 2016: Bring Section 19 of the Act into force, updated as required; and support good practice prior to its enactment.**

- Urgently bring Section 19 of the Act into force, updated as required - including timelines for compliance with the duties and responsibility for implementing the duties.
- Take steps to encourage and support good practice by employers to tackle pay inequalities, including prior to enactment of the Act's provisions.

**Gender Pay Strategy: Implement a gender pay strategy and action plan for Northern Ireland, beginning work without further delay to allow this to occur in tandem with GPGR Regulations.**

- Promptly implement a gender pay strategy and action plan for Northern Ireland to address structural factors within society and the workplace.
- Commit to developing and introducing this strategy and action plan in tandem with the implementation of the GPGR Regulations, beginning work without further delay to allow this to occur.

**Gender Pay Gap Reporting (GPGR) Regulations: Introduce GPGR Regulations; *initially* apply requirements to large employers; review after 5 years; and encourage all employers to address gender pay gaps.**

- Introduce GPGR Regulations as a matter of urgency.

- *Initially* apply the GPGR requirements to employers with 250 or more employees.
- Review the GPGR Regulations after 5 years, including a review of their general operation and employer threshold size.
- Encourage, via Guidance, employers *not* subject to GPGR Regulations to proactively assess and address gender pay gaps.

**Employer Duties: Require publication of gender pay gap data; consider additional pay gap reporting requirements; and clarify provisions of the Act.**

- Require employers to publish data on gender pay gap, bonus gender pay gap, and proportion of males / females receiving bonuses and in each quartile band.
- Consider requiring employers to publish full-time and part-time gender pay gap figures.
- Clarify rationale for limiting requirements to publish data on only ethnicity and disability.
- Clarify the specific intent of the requirement to publish pay data on ethnicity and disability.
- Consider data to be published, versus a wider set of data that employers can collect/ analyse.
- Clarify rationale for the focus on ‘employees’ and/or ‘workers’.
- Require publication of gender pay data on a common fixed date on employer/ government websites.
- Consider coding of employers by Standard Industrial Classification (SIC).

**Employer Gender Pay Action Plans: Ensure gender pay strategy supports employer actions; clarify employer requirements; ensure employers: consult on, and publish action plans widely; consider actions to address ethnicity/ disability pay gaps; and review annually.**

- Ensure that actions required by employers are supported by the content and delivery of a gender pay strategy and action plan for Northern Ireland.
- Clarify requirements on employers as regards action plans.
- Employers should publish action plans on employer/ government websites.
- Employers should consult with employees on action plans.
- Employers should consider actions to address ethnicity/ disability pay gaps.
- Employers should review action plans at least annually.

**Guidance, Compliance, Enforcement: Ensure support for employers; highlight benefits of alignment with existing equality reviews; ensure effective enforcement mechanisms; and consider roles and resourcing.**

- Ensure effective support and guidance for employers.
- Highlight, via Guidance, potential benefits of aligning action planning with existing employer equality reviews.
- Clarify enforcement and compliance provisions and ensure effective enforcement mechanisms.
- Set out advice/ guidance roles and remit, and resourcing.
- Set out enforcement roles and remit, and resourcing.

## 2 Introduction

2.1 The Equality Commission for Northern Ireland ('the Commission') has set out below its key **recommendations** on the:

- enactment of Section 19 of the **Employment Act (Northern Ireland) 2016**<sup>1</sup> ('the Act');
- proposed development and implementation of a Government **gender pay strategy and action plan**;
- proposed introduction of **Gender Pay Gap Reporting Regulations** ('the GPGR Regulations') in Northern Ireland.

2.2 Our recommendations have been informed by the views of a number of stakeholders, including representatives from trade unions, the women's sector and employer organisations.

### ***Context and Background***

#### Difference between the gender pay gap and equal pay

2.3 It is important at the outset to stress that a consideration of 'gender pay gaps' is separate from, and different to, that of 'equal pay'.

- A gender pay gap is a measure of overall average differences in the earnings of men and women in an organisation, sector, etc.
- Equal pay requires that men and women performing the same work in the same organisation must receive equal pay ('equal pay for equal work')<sup>2</sup> for individuals.

2.4 When considering the causes of the gender pay gap, in 2016, the Women and Equalities Committee noted that<sup>3</sup>:

"A large part of the gender pay gap is down to women's concentration in part-time work. Many women are trapped in low paid, part-time work that doesn't make use of their skills. This is partly due to women's disproportionate responsibility

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<sup>1</sup> See Section 19, [Employment Act \(Northern Ireland\) 2016](#)

<sup>2</sup> "Equal work" is work that is the same or broadly similar, work that has been rated as equivalent, or work that is of equal value. See ECNI (2013) [Code of Practice on Equal Pay](#)

<sup>3</sup> House of Commons, Women and Equalities Committee (2016) [Gender Pay Gap. Second Report of Session 2015-16](#), at p5.

for unpaid caring, but also because many of the sectors women work in, like retail and care, offer predominantly low-paid, part-time work.

Old-fashioned approaches to flexibility in the workplace and a lack of support for those wishing to re-enter the labour market are also stopping employers from making the most of women's talent and experience.”

2.5 It also highlighted that confusion between equal pay and the gender pay gap can obscure analysis of the latter, and that the focus on equal pay ‘creates a tendency to focus on direct discrimination against women as the cause of the gender pay gap’<sup>4</sup>. The Committee made clear that the causes of the gender pay gap were much broader <sup>5</sup>:

“Many factors influence women’s employment opportunities and progress at work which are reflected in the pay gap. These are:

- gendered education and career choices
- occupational segregation with women confined to lower grades within organisations and concentrated in lower paid occupational sectors
- devaluation of work deemed a ‘female’ occupation
- non-continuous employment and a shift to part-time work due to caring responsibilities, especially when children are young
- occupational downgrading resulting from women working below their potential due to lack of quality part-time jobs and the absence of flexible career paths
- an unexplained gap sometimes attributed to direct or indirect sex discrimination and systemic disadvantage”.

2.6 As noted, in some cases, the gender pay gap may include unlawful inequality in pay, but this is not necessarily the case<sup>6</sup>. Further information on the law on equal pay and good equal pay practice is set out in the Commission’s *Code of Practice on Equal Pay* and *Equal Pay Toolkit*<sup>7</sup>.

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<sup>4</sup> Ibid at p12.

<sup>5</sup> See Equality and Human Rights Commission (2015), [Submission](#) to Women and Equalities Committee’s Inquiry on Gender Pay Gap, as referenced in Women and Equalities Committee (2016) [Gender Pay Gap. Second Report of Session 2015-16](#), at p12. .

<sup>6</sup> See ACAS, GEO (2017) Guidance: [Managing Gender Pay Reporting](#), p5.

<sup>7</sup> See ECNI (2013) [Code of Practice on Equal Pay](#), and [Equal Pay Review Kit](#).



## Gender Pay Gap Reporting in Northern Ireland: Employment Act (NI) 2016

- 2.7 The particular context for our recommendations is the requirements under the Employment Act (Northern Ireland) 2016 ('the Act'). The Act:
- sets out that the Office of the First Minister and Deputy First Minister ('OFMDFM') [now The Executive Office ('TEO')] is required to publish, within 18 months of the Act receiving Royal Assent<sup>8</sup>, a strategy including an action plan, on eliminating differences in the pay of male and female employees;
  - provides for the making of GPGR Regulations by TEO<sup>9</sup>; with the first Regulations to be made by 30 June 2017.
- 2.8 The gender pay gap reporting framework set out in the Act requires employers, in accordance with requirements in the proposed GPGR Regulations, to publish pay information for the purposes of showing whether gender pay disparities exist between employees<sup>10</sup> and, where they do, to publish an action plan ('gender pay action plan') to eliminate them. The information must also include statistics on workers within each pay band in relation to ethnicity and disability.
- 2.9 The precise nature of these requirements, including the size of employer to which these requirements are to apply<sup>11</sup>; the exact type of information to be published; the time the information is to be published<sup>12</sup>; and the form and manner in which it is to be published, are to be established by the GPGR Regulations. Further details on the key provisions of the Act of relevance are set out in *Annex 1*.
- 2.10 It is important to note that, whilst we understand that work in relation to these provisions under the Act is currently being undertaken by the Department for Communities ('the Department')<sup>13</sup>, these provisions under the Act relating to gender pay gap reporting have not to date been brought into force, nor has statutory responsibility for compliance with the duties in the Act been transferred to the

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<sup>8</sup> The Act received Royal Assent on 22 April 2016.

<sup>9</sup> The Act refers to OFMDFM (now TEO).

<sup>10</sup> The Act also requires employers, in accordance with requirements in the proposed GPGR Regulations, to publish details of the methodology used to calculate any statistics contained in the information.

<sup>11</sup> Size of employer as indicated by the number of employees and workers in the organisation. See Section 19 (4) of the Act.

<sup>12</sup> The Act provides that the Regulations may not require an employer, after the first publication of information, to publish information more frequently than at intervals of 12 months or less frequently than at intervals of 36 months.

<sup>13</sup> The Commission understands that whilst the Department's Minister, prior to absence of the Executive, had consented to the Department progressing the Gender Pay Gap Reporting Regulations, statutory responsibility for the proposed Regulations has not yet formally passed from OFMDFM (now TEO) to the Department.

Department. To date, the Department has not commenced consultation on either draft GPGR Regulations, or on a draft gender pay strategy and action plan. In the absence of an Executive, there is no indication as to when the provisions in the Act may come into force, when a consultation might progress, and/or when the GPGR Regulations will be made or a gender pay strategy or action plan produced.

- 2.11 We look forward to engaging with the Department on draft proposals, informed via stakeholder engagement, ahead of subsequent formal consultation and implementation.

#### Gender Pay Gap Reporting in Great Britain

- 2.12 The current context also includes the requirements already introduced under gender pay gap reporting Regulations in Great Britain (GB) in 2017 (‘the GB GPGR Regulations’), which require large public sector and private and voluntary sector employers (with 250 or more employees)<sup>14</sup> to publish information on gender pay gaps relating to their employees<sup>15</sup>. There are also differing gender pay gap reporting duties on *public sector employers* in Scotland and Wales respectively<sup>16</sup>.

#### Differences in Gender Pay Gap Reporting provisions between Great Britain and Northern Ireland.

- 2.13 It is important to stress at the outset that as a result of provisions in the Act (not yet introduced), there are *already* variations between the requirements to be placed on those employers in Northern Ireland who will be subject to the GPGR Regulations<sup>17</sup>, compared to requirements introduced, to date, across various parts of GB. There are also differences as regards other provisions; for example, relating to enforcement and the publication of a gender pay strategy and action plan.

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<sup>14</sup> See [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#) which came into force on 6 April 2017 and which applies to all private and voluntary sector employers with 250 or more employees in England, Wales and Scotland. Public sector employers with 250 or more employees that are listed in [The Equality Act 2010 \(Specific Duties and Public Authorities\) Regulations 2017](#) are also required to publish information on their gender pay gap. These Regulations came into force on 31st March 2017.

<sup>15</sup> The information must be published within one year of the relevant snapshot date (before March 30th of the following calendar year for public bodies subject to the Specific Duties Regulations, and April 4th for other employers - mainly private and voluntary sector employers). See ACAS, GEO (2017) Guidance: [Managing Gender Pay Reporting](#), p18.

<sup>16</sup> Scottish and Welsh public authorities are subject to specific gender pay gap reporting obligations under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended) and the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

<sup>17</sup> Subject to the Regulations being introduced.

2.14 For example, differences to date are as follows:

- There is no requirement under the GB GPGR Regulations for employers to collect or publish pay data relating to disability and/or ethnicity<sup>18</sup>. However, it will be noted that the UK Government consulted in 2018 on proposals to introduce a mandatory requirement for certain employers to report ethnicity pay data<sup>19</sup>, and the outcome of that consultation is awaited.
- There is no requirement under the GB GPGR Regulations for employers to produce an action plan to eliminate gender pay differences that have been identified<sup>20</sup>. Employers in GB are however strongly encouraged (though it is not compulsory) to provide a voluntary narrative on any apparent gender pay gaps.
- There are different enforcement provisions between Northern Ireland and GB. For example, in Northern Ireland, the GPGR Regulations *must* make provision for a failure to comply with the Regulations to be an offence that can result in fines *per employee*<sup>21</sup>. In contrast, in GB, the GB GPGR Regulations do not provide that a failure to comply with the Regulations is an offence punishable on summary conviction by a fine<sup>22</sup>. It should be noted, however, that the Equality and Human Rights Commission (EHRC) is empowered to take enforcement action under the Equality Act 2006, which could result in an employer, who fails to comply with a court order, being convicted of an offence and liable for an unlimited fine<sup>23</sup>.

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<sup>18</sup> In contrast, the Act states that the GPGR Regulations must include a requirement that information includes statistics on workers within each pay band in relation to ethnicity and disability. These are not, to date, requirements under the GB GPGR Regulations.

<sup>19</sup> Department for Business, Energy and Industrial Strategy (2018), [Government Consultation: Ethnicity pay reporting](#). The Government has indicated in this consultation that it believes that employers of fewer than 250 people should not be expected to publish ethnicity pay data.

<sup>20</sup> In contrast, the Act states that, where there are differences in the pay of male and female employees, employers must publish an action plan to eliminate those differences. This is not a requirement under the GB GPGR Regulations.

<sup>21</sup> The Act states that the GPGR Regulations *must* make provision for a failure to comply with the Regulations to be an offence punishable on conviction by a fine (not exceeding level 5 on the standard scale) for every employee. There is therefore the potential, under the Fines and Penalties (NI) Order 1984, for a fine to be levied up to £5000 per employee. This means that there is the potential for a maximum fine of £1,250,000 to be levied at an employer with 250 employees, who fails to comply with the Regulations. The Regulations must also make provision for a failure to comply with the Regulations to be enforced, otherwise than as an offence (by such means as are prescribed).

<sup>22</sup> Under the Equality Act 2010 (Section 78), the GB GPGR Regulations *may* make provision for a failure to comply with the Regulations to be an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale. The Regulations do not explicitly make provision for enforcement/ sanctions.

<sup>23</sup> The EHRC has enforcement powers under the section 21 of the Equality Act 2006 (EA 2006). If it concludes that an employer has breached the Regulations, it can apply to the court for an order to enforce compliance with the EA 2006. An employer who does not comply with the court order can be convicted of an offence and liable to a 'level 5' fine, which means that there is no maximum limit on the amount that they may

- There is no requirement on the UK Government to publish a gender pay strategy and action plan<sup>24</sup>.

### 3 Overview of Commission Recommendations.

3.1 We set out below our key recommendations on the enactment of Section 19 of the Act; the proposed development and implementation of a Government gender pay strategy and action plan; and the proposed GPGR Regulations.

3.2 In summary, these include:

- **Employment Act (Northern Ireland) 2016:** Bring Section 19 of the Act into force, updated as required; and support good practice prior to its enactment.
- **Gender Pay Strategy:** Implement a gender pay strategy and action plan for Northern Ireland, beginning work without further delay to allow this to occur in tandem with GPGR Regulations.
- **Gender Pay Gap Reporting (GPGR) Regulations:** Introduce GPGR Regulations; *initially* apply requirements to large employers; review after 5 years; and encourage all employers to address gender pay gaps.
- **Employer Duties:** Require publication of gender pay gap data; consider additional pay gap reporting requirements; and clarify provisions of the Act.
- **Employer Gender Pay Action Plans:** Ensure gender pay strategy supports employer actions; clarify employer requirements; ensure employers: consult on, and publish action plans widely; consider actions to address ethnicity/ disability pay gaps; and review annually.
- **Guidance, Compliance, Enforcement:** Ensure support for employers; highlight benefits of alignment with existing equality reviews; ensure effective enforcement mechanisms; and consider roles and resourcing.

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be fined. See EHRC's policy on enforcing the GB GPGR Regulations, EHRC (2018), [Closing the gap: enforcing the gender pay gap regulations](#).

<sup>24</sup> This is in contrast with provisions in the Act that states that OFMDFM (now TEO) is required to publish a strategy including an action plan, on eliminating differences in the pay of male and female employees.

## **4 Employment Act (Northern Ireland) 2016: Bring Section 19 of the Act into force, updated as required; and support good practice prior to its enactment.**

4.1 Government should urgently bring into force Section 19 of the Act, updating provisions where required, including timelines for compliance with the duties and responsibility for implementing the duties. Given delays to enactment, immediate action should be taken to encourage and support employers to proactively address pay gaps.

***Urgently bring Section 19 of the Act into force, updated as required - including timelines for compliance with the duties and responsibility for implementing the duties.***

4.2 We recommend that Section 19 of the Act is brought into force as a matter of urgency. These provisions provide for the making of the GPGR Regulations by the former Office of the First Minister and Deputy First Minister ('OFMDFM') [now The Executive Office ('TEO')], and place a duty on TEO to make the first set of Regulations within a certain time period. There is also a duty to publish a gender pay strategy and action plan within a specified timeframe.

4.3 The timelines set out in the Act as regards compliance with the duties have now expired. Any updated timelines as regards the making of the first set of GPGR Regulations and publishing a gender pay strategy and action plan should be consistent with the broad timelines originally envisaged<sup>25</sup>.

4.4 We understand that it is intended that the Department for Communities ('the Department') be allocated responsibility for the delivery of these provisions, in the event that the provisions are brought into force. As such, the Act would require amendment so as to formally transfer powers and statutory responsibility for compliance with the duties therein, from OFMDFM (now TEO) to the Department.

4.5 Further, as set out in more detail below, there is a need for clarification as regards certain provisions in Section 19 of the Act; for

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<sup>25</sup> For example, the Act provided that the first set of Regulations were to be made by OFMDFM by June 2017 and the gender pay strategy and action plan were to be made within 18 months of the Act receiving Royal Assent. The Act received Royal Assent on 22 April 2016.

example, clarification as regards the term ‘workers’, which is used in contrast to other provisions in the Act which place a requirement to publish information relating to the pay of ‘employees’.

#### *Supporting rationale*

- 4.6 The provisions in Section 19 of the Act are of considerable importance as they not only enable a Government Department to make the GPGR Regulations but they also place a *duty* on a Government Department to make the Regulations and publish a gender pay strategy and action plan within a specified timeframe.
- 4.7 As a result of the delay in bringing these provisions into force, Northern Ireland legislation on gender pay gap reporting has progressively fallen behind developments in GB. In particular, in GB, the GB GPGR Regulations came into force in Spring 2017 and employers subject to these Regulations have to date reported on their second set of gender pay gap data.
- 4.8 The need for these provisions to be introduced has also been recognised internationally by a human rights monitoring body. In particular, in March 2019 the UN Committee on the Elimination of Discrimination against Women (CEDAW) recommended these provisions in the Act were brought into effect in Northern Ireland<sup>26</sup>.
- 4.9 Also, to date, provisions have not been introduced to transfer powers and statutory responsibility for the making of the GPGR Regulations, and for publishing a gender pay strategy and action plan, from OFMDFM (now TEO) to the Department<sup>27</sup>.

#### ***Take steps to encourage and support good practice by employers to tackle pay inequalities, including prior to enactment of the Act’s provisions.***

- 4.10 Given delays to bringing into force Section 19 of the Act, and to the introduction of GPGR Regulations, immediate action should be taken to encourage and support employers across all sectors to proactively identify and address pay gaps, including by publishing pay data
- 4.11 Actions by employers could, for example, include collecting and analysing gender pay gap data and implementing, on a voluntary

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<sup>26</sup> UN CEDAW Committee (2019), [CEDAW Concluding observations on the eight periodic report of United Kingdom of Great Britain and Northern Ireland](#)

<sup>27</sup> The Commission understands that whilst the Department’s Minister, prior to the collapse of the Executive in 2017, had consented to the Department progressing the GPGR Regulations, statutory responsibility for the proposed Regulations has not yet formally passed from OFMDFM (now TEO) to the Department.

basis, a gender pay action plan aimed at addressing any identified pay gaps. It could also include publishing gender pay gap data, as well as data on ethnicity and disability pay, provided it does not breach data confidentiality, and the data allows for reliable and meaningful assessment.

- 4.12 We recommend public bodies, including Government Departments, lead by example, including by voluntarily publishing pay data and by implementing measures to address pay inequalities.

*Supporting rationale*

- 4.13 We recognise that there is the potential for a further delay in the bringing into force of the provisions of the Act, particularly in the current absence of an Executive. We consider, however, that there are benefits to encouraging employers across all sectors to proactively identifying and addressing pay gaps, on a voluntary basis, including relating to gender, disability and ethnicity, and to adopting good practice.
- 4.14 The implementation of such voluntary initiatives could, for example, help employers prepare for the introduction of pay reporting requirements, as well as provide a greater insight into where specific pay inequalities exist both within individual organisations, but also across different sectors and industries. Such initiatives will also help increase pay transparency and accountability.
- 4.15 These good practice recommendations are consistent with our wider recommendations (set out further below) that, should GPGR Regulations be introduced, employers not subject to those Regulations should be encouraged to take proactive action to address gender pay gaps.
- 4.16 It will be noted that, in GB, the UK Government has developed a Framework to encourage the voluntary reporting by employers on disability, mental health and wellbeing in the workplace that includes reporting on disability pay<sup>28</sup>. It has also indicated it is considering working with ‘early adopters’ across the public and private sector to test approaches before mandatory ethnicity reporting is required<sup>29</sup>.
- 4.17 We consider that there is value in public bodies leading by example in the introduction of good practice initiatives, including via the publication of pay data. Actions to tackle pay inequalities, including

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<sup>28</sup> See UK Government (2018): [Guidance: Voluntary reporting on disability, mental health and wellbeing: A framework to support employers to voluntarily report on disability, mental health and wellbeing in the workplace](#).

<sup>29</sup> Department for Business, Energy and Industrial Strategy (2018), [Government Consultation: Ethnicity pay reporting](#). See p.25



on grounds of gender, disability and ethnicity, is consistent with the public sector equality duties on public bodies under Section 75 of the Northern Ireland Act 1998<sup>30</sup>.

- 4.18 In addition, we encourage employers to implement the Commission's good practice recommendations relating to equal pay, including as set out in the Commission's Code of Practice on Equal Pay<sup>31</sup>.

## **5 Gender Pay Strategy: Implement a gender pay strategy and action plan for Northern Ireland, beginning work without further delay to allow this to occur in tandem with GPGR Regulations.**

- 5.1 Government should promptly implement a gender pay strategy and action plan for Northern Ireland to address structural factors within society and the workplace; and should commit to introducing this strategy and action plan in tandem with the implementation of the GPGR Regulations, beginning work without further delay to allow this to occur.

### ***Promptly implement a gender pay strategy and action plan for Northern Ireland to address structural factors within society and the workplace.***

- 5.2 A gender pay strategy and action plan for Northern Ireland is required to address structural factors both within society and within the workplace.
- 5.3 Wider structural actions should include addressing, for example, gender stereotyping; education and career choices<sup>32</sup>; caring roles; occupational segregation with women working in lower grades and being concentrated in low paid occupational sectors; women's

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<sup>30</sup> A number of public sector bodies in Northern Ireland publish pay data on gender and/or other equality grounds, and/or have completed an equal pay review. For example, the NICS annually publishes statistics on pay data that includes data on gender and disability. See Department for Finance, NISRA (2018), [Pay in the Northern Ireland Civil Service Statistical Bulletin, for year ending March 2018](#). The University of Ulster has published a gender pay gap analysis, an equal pay review and an equal pay action plan. See data on [University of Ulster website](#) for further details. Queen's University Belfast (QUB) conducted an equal pay review in 2017. See QUB (2017) [Equal Pay Audit](#) .

<sup>31</sup> ECNI [Code of Practice on Equal Pay](#) (2013).

<sup>32</sup> See ECNI (2017) [Statement on Key Inequalities in Education](#) on the barriers experienced by women in education.



concentration in part-time work where they are at risk of low pay; access to childcare, etc.<sup>33</sup>.

- 5.4 Actions within the workplace should include tackling, for example, gender stereotyping; the lack of well-paid part-time flexible work; that women are less likely to progress to senior levels in an organisation; direct/indirect discrimination against women, including due to pregnancy / maternity<sup>34</sup> and unequal pay; and that there are fewer women working in certain more highly paid professions.
- 5.5 The Commission's 2016 '*Gender Priorities and Recommendations*'<sup>35</sup>, sets out a range of recommendations that will assist directly and indirectly with tackling gender pay disparities. For ease of reference, a number of key recommendations from that publication are summarised in *Annex 2*.

#### *Supporting Rationale*

- 5.6 There is a strong economic case for tackling gender pay disparities and promoting gender equality in the workplace<sup>36</sup>. Actions by Government, employers, trade unions and others to tackle gender pay disparities make good business sense, as they will benefit individual businesses, as well as the wider economy, in addition to helping women fulfil their potential in the workplace.
- 5.7 In addition, a gender pay strategy and action plan has also the potential to contribute to meeting the high-level targets set out in the UN Sustainable Development Goals (SDGs), including on employment (Goal 8)<sup>3738</sup> and gender equality (Goal 5)<sup>39</sup>.
- 5.8 Further, in terms of structural factors that need addressed, an expert study (2018)<sup>40</sup> by the European Commission has highlighted that 'a

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<sup>33</sup> See ECNI (2018) [Statement on Key Inequalities in Employment](#) which highlights the inequalities experienced by women in employment.

<sup>34</sup> See ECNI (2016) [Expecting Equality-Summary: A Formal Investigation into the treatment of pregnancy workers and mothers in Northern Ireland workplaces](#).

<sup>35</sup> ECNI (2016) [Gender Equality Policy Priorities and Recommendations](#), Summary version.

Recommendations include, for example, in the area of gender law reform, prohibiting 'pay secrecy clauses' and introducing mandatory equal pay audits.

<sup>36</sup> The UK Government has stated that the benefits to the economy of gender parity in the workplace are widely recognised with a recent estimate that bridging gender gaps in the labour market has the potential to add £105 billion to annual GDP in 2025, and that increasing the proportion of women in work is the biggest driver. See Women & Equalities Committee (2017) [Gender Pay Gap: Government Response to Committee's 2<sup>nd</sup> Report of session 2015-16](#).

<sup>37</sup> [UN SDG Goal 8](#): By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.

<sup>38</sup> One indicator for Goal 8 is average hourly earnings of female and male employees by occupation, age, people with disabilities. UN (2017) [Global Indicator Framework for the SDGs and 2030 SD Agenda targets - A.RES.71.313 Annex](#).

<sup>39</sup> [UN SDG Goal 5](#). Achieve gender equality and empower all women and girls

<sup>40</sup> Boll Ch., Lagemann A. (2018), [Gender pay gap in EU countries](#), at p8.

mere focus on pay gaps would be short-sighted' and called for the implementation of strategies that break gender stereotypes, avoid long family breaks, combat part-time penalties, and foster female career advancement and leadership.

- 5.9 In addition, Parliament's Women and Equalities Committee (2016) noted that: structural factors are the key cause of the gender pay gap, including occupational segregation; the part-time pay penalty; women's disproportionate responsibility for unpaid caring; and women's concentration in low-paid, highly feminised sectors<sup>41</sup>.
- 5.10 An Inquiry (2018) by Parliament's Business, Energy and Industrial Strategy Committee has also made clear the need for action by both Government and employers. In particular, it stated that *'whilst businesses need to take action to address their own pay gaps, it is up to Government to set the agenda and drive the pace of change, using all the policy tools it has at its disposal'*<sup>42</sup>. It called on the UK Government to work across Government and with businesses to address the gender pay gap.
- 5.11 Government actions recommended by the Committee included, working with businesses to devise policies that provide support for those returning to the workforce after breaks for family or caring leave; addressing the stereotypes that see mothers bearing the larger share of caring responsibilities and seek to ensure that pay policies do not inadvertently reinforce them; the need to tackle the high cost of childcare in order to facilitate mothers returning to the workplace; and the need for long terms actions to address women's underrepresentation in certain sectors, such as STEM. It also called for Government to lead by example in terms of addressing gender pay gaps within individual Departments.
- 5.12 The Committee also outlined a range of actions that employers can take to address gender pay gaps in their organisations, including encouraging flexible working, providing training on unconscious bias, supporting women through mentoring, championing women in industry, undertaking equal pay audits, and setting targets for reducing gender pay gaps, and promoting gender equality through procurement practices<sup>43</sup>.
- 5.13 There is also a need to ensure that a range of actions taken by Government (including the requirements under the proposed GPGR

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<sup>41</sup> House of Commons, Women and Equalities Committee (2016) [Gender Pay Gap. Second Report of Session 2015-16](#), at p82.

<sup>42</sup> BEIS Committee (2018) Inquiry: [Gender pay gap reporting](#), at para 59.

<sup>43</sup> Ibid.

Regulations) will be effective in helping to tackle the specific *nature and extent* of the gender pay gap in Northern Ireland.

- 5.14 For example, in terms of the gender pay gap in Northern Ireland, each of the separate full-time and part-time pay gaps are both currently in *favour* of women<sup>44</sup>. However, when all employees are considered (i.e. full and part time combined) the pay gap is to the detriment of women<sup>45</sup>. The relatively high proportion of women working in part-time work, and the tendency for part-time work to be less well paid, are key structural factors which contribute to these potentially counter-intuitive patterns.
- 5.15 Further, when *all* employees are considered (i.e. full-time and part-time combined), women earn less than men in both the public and private sector, with a significantly higher gender pay gap in favour of men in the private sector<sup>46</sup>. In addition, women earn less than men in all of the nine occupation groups, including in the ‘Managers, directors and senior officials’ occupation group, which is the highest paid group<sup>47</sup>. There are also gender pay gaps in favour of men across many different industrial sectors<sup>48</sup>.
- 5.16 A government gender pay strategy must take account of, and address, the structural factors contributing to these patterns.

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<sup>44</sup> The ‘gender pay gap’ is usually calculated based on the median hourly earnings (excluding overtime) for men and women. In 2018, in Northern Ireland there is a full time (+3.5 %) and part-time (+6.2 %) gender pay gap in favour of women. This is the largest difference in favour of females since females first experienced higher average hourly rates than men in NI in 2010. NI remains the only region in the UK where full-time females earn more per hour on average than full-time males. See NISRA (published Oct 2018, provisional) [NI ASHE](#).

<sup>45</sup> When *all* employees are considered (full time and part time combined), there is a gender pay gap in favour of men, with women earning 9.6% less in 2018 than men. See NISRA (published Oct 2018, provisional) [NI ASHE](#).

<sup>46</sup> In 2018, when *all* employees are considered (full-time and part-time combined), in the public sector women earn 8.4% less than men, and in the private sector women earn 18.2% less than men. When *full-time* employees only are considered, in the public sector women earn 3.0% more than men, and in the private sector women earn 15.9% less than men. See NISRA [ASHE](#) (2018) (published Oct 2018, provisional), Table 13 (NI).6a, Hourly Pay excluding overtime (public/ private sector).

<sup>47</sup> In 2018, as regards full-time employees, women earn less than men on average in all of the nine occupation groups and men earn 3.4% more than women in the Managers and senior officials occupation group, which is the highest paid group. See NISRA (published Oct 2018, provisional) [NI ASHE](#).

<sup>48</sup> For example, in 2018, women earn less than males in 15 of the 16 industrial sector groupings. See, [What is the Gender Pay Gap in Northern Ireland? \(2019\) NI Assembly, Research Matters](#), Blog

***Government should commit to developing and introducing this strategy and action plan in tandem with the implementation of the GPGR Regulations, beginning work without further delay to allow this to occur.***

5.17 To ensure the delivery of coordinated actions at both societal and employer level, we recommend that the Department publishes, following public consultation, an effective gender pay strategy and action plan *in parallel with* the development and implementation of the GPGR Regulations.

5.18 We recommend the Department progresses work to develop a gender pay strategy and action plan without further delay.

*Supporting rationale*

5.19 We welcome the requirement under the Act for a gender pay strategy and action plan<sup>49</sup> to be published.

5.20 We further welcome, based on the timelines set out in the Act, that it was envisaged that a gender pay strategy and action plan would be published broadly in parallel with the GPGR Regulations<sup>50</sup>.

5.21 The introduction of a gender pay strategy and action plan for Northern Ireland, in tandem with employer gender pay reporting, will better ensure complementary, coordinated and effective actions to address key barriers at societal and employer levels.

5.22 While we note that the provisions of the Act are still to be brought into force, we consider that there are merits in the Department progressing work to co-develop with partners a cross-departmental gender pay strategy and action plan, even in the absence of a duty being brought into force requiring its publication.

5.23 The development of such a strategy is consistent with the Department's role and remit and with its Section 75 duties. The development of a gender pay strategy by the Department is not dependent on the introduction of the GPGR Regulations nor the provisions of the Act being brought into force. In addition, it was clearly envisaged by introducing a requirement in the Act to produce a gender pay strategy, that the production of a gender pay strategy was considered essential.

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<sup>49</sup> Section 19 of the Act, still to be brought into force, states that the Department must publish a strategy and action plan on eliminating differences in pay of male and female employees.

<sup>50</sup>Section 19 states that the first regulations must be made by 30 June 2017 and that within 18 months of the Act receiving Royal Assent, the Department must publish a strategy and action plan.

- 5.24 Such a strategy could also consider the introduction of good practice voluntary initiatives by employers in terms of encouraging the publication of pay data, in the absence of the GPGR Regulations being introduced.

**6 Gender Pay Gap Reporting (GPGR) Regulations:  
Introduce GPGR Regulations; *initially* apply requirements to large employers; review after 5 years; and encourage all employers to address gender pay gaps.**

- 6.1 The GPGR Regulations should be introduced as a matter of urgency. The GPGR requirements should *initially* apply to employers with 250 or more employees. The Regulations should be reviewed after 5 years, to include a review of employer threshold size and their general operation. Employers not subject to GPGR requirements should be encouraged to proactively address gender pay gaps.

***Introduce GPGR Regulations as a matter of urgency.***

- 6.2 Government should commit to introducing, as a matter of urgency, GPGR Regulations in Northern Ireland. These Regulations should be effective in helping to tackle the specific nature and extent of the gender pay gap in Northern Ireland; reflect the specific structure and nature of the Northern Ireland workforce, and ensure that any requirements are proportionate, including being mindful of potential costs on employers and to the public purse.
- 6.3 There is a strong economic case for tackling gender pay disparities and promoting gender equality in the workplace. Any consideration of costs should therefore also consider their investment value in advancing equality and improving workforces and work places.

***Supporting rationale***

- 6.4 We support greater pay transparency in the workplace and also welcome, in particular, the proposed introduction of the GPGR Regulations in Northern Ireland.
- 6.5 We consider that there are clear benefits to Section 19 of the Act being brought into force and to ensuring that the GPGR Regulations are brought forward in Northern Ireland, following public consultation, as a matter of urgency.

- 6.6 For example, we consider that gender pay gap reporting will increase pay transparency within organisations and make organisations more accountable for addressing gender pay inequalities in the workplace. We welcome the introduction of gender pay gap reporting by employers as a transparent means of identifying where gender pay gaps may exist, and as an important component of identifying the wider structural and/or employer specific actions that may be required to address these gaps.
- 6.7 Further, the introduction of gender pay gap reporting in Northern Ireland will help ensure that Northern Ireland legislation in this area keeps pace with legislative developments in other parts of the UK, where legislation has been in place since Spring 2017<sup>51</sup>.
- 6.8 In general, as set out in more detail below, if the over-arching approach of the GB GPGR Regulations is to be mirrored in Northern Ireland, we welcome the approach adopted by the GB GPGR Regulations as regards the publication of gender pay gap figures in relation to pay / bonuses of all employees (full and part-time); as well as gender pay gap figures for each pay quartile thereof. However, as outlined below, we also recommend consideration is given to requiring employers to analyse and publish additional gender pay data; for example, the publication of gender pay gap figures for full and part-time work.
- 6.9 Further, in general, we welcome the requirement on employers under the Act to produce a gender pay action plan, where there are differences in pay between male and female employees.
- 6.10 We are however clear that this must be complemented by wider actions by Government under a gender pay strategy and associated action plan.

***Initially apply the GPGR requirements to employers with 250 or more employees.***

- 6.11 If broadly similar gender pay gap reporting requirements are introduced in Northern Ireland to those under the GB GPGR

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<sup>51</sup> Employers subject to the GB GPGR Regulations were required to publish their first set of gender pay gap figures by April 2018 and their second set by April 2019. Employers' published gender pay gap data is available on the UK Government's online [gender pay gap service](#). As at 1 August 2018, overall employer compliance with the Regulations was 100%. As at 23 October 2018, 10,252 employers had complied with the Regulations (1,629 public sector and 8,623 private sector employers) and reported data for 2017/18, with 281 employers who were not in scope of the Regulations opting into reporting their data. See [Government Equalities Office \(GEO\) \(2018\) Gender Pay Gap Information Regulations 2017: Summary of reported data for 2017/18](#). In April 2019, GEO indicated that 8,424 private sector employers and 1,536 public sector employers reported their data for reporting year 2018/19. See GEO [press release](#) dated 5 April 2019.



Regulations, then we recommend that the GPGR requirements should initially apply to public, private, and voluntary sector employers with 250 or more employees.

- 6.12 However, as set out further below, we consider there is a need for clarity on what specific requirements are envisaged in this area at this stage.
- 6.13 For example, should the intent of the legislation be to require employers to publish cross-tabulated information by quartile, gender, disability, and ethnicity, then balancing this requirement with retaining the anonymity of individual employees will be increasingly problematic as disaggregation increases or employer size decreases.
- Supporting rationale*
- 6.14 We consider that there is a need to ensure any requirements are proportionate, and we are mindful of the need to balance initial and long-term benefits with both initial and ongoing potential costs to employers and the public purse.
- 6.15 We consider that, on balance, there are a range of reasons in support of the adoption of an *initial focus on large employers* in Northern Ireland as regards the implementation of, and compliance with, the GPGR Regulations, including as regards action planning.
- 6.16 Legislation introduced in GB (some parts) in 2017 requires large public, private, and voluntary sector employers with 250 or more employees<sup>52</sup> to publish information on gender pay relating to their employees<sup>53</sup>. There are however variations in *public sector* gender pay reporting requirements across GB<sup>54</sup>.
- 6.17 Applying an initial threshold of 250 or more employees in Northern Ireland will help ensure a level of consistency with the approach adopted in GB (some parts) and therefore assist UK-wide employers who will be subject to gender pay reporting requirements both in GB

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<sup>52</sup> See [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#) which came into force on 6 April 2017 and [The Equality Act 2010 \(Specific Duties and Public Authorities\) Regulations 2017](#) which came into force on 31st March 2017.

<sup>53</sup> The information must be published within one year of the relevant snapshot date (before March 30th of the following calendar year for public bodies subject to the Specific Duties Regulations, and April 4th for other employers). See ACAS, GEO (2017) Guidance: [Managing Gender Pay Reporting](#), p18.

<sup>54</sup> GPGR requirements for the public sector vary across GB. Most Scottish and Welsh public authorities are subject to their own specific gender pay gap reporting obligations. Public bodies in Scotland with more than 20 employees are required to publish gender pay gap data every two years and provide equal pay statements every four. In Wales, public bodies are required to consider pay gaps across all of the protected groups and not just between women and men. For public authorities in England and certain cross-border authorities and non-devolved authorities operating across Great Britain, legislation introducing reporting requirements on large public sector employers (with 250 employees or more) came into force in 2017.

and Northern Ireland. This approach will also assist with high level national benchmarking and reporting *across the UK* on gender pay gap disparities at organisational level, both within and across different sectors, as regards large employers.

- 6.18 In making our recommendation we are mindful that an initial threshold of 250 or more employees would at the outset exclude a high proportion of private sector employees from being covered by the GPGR Regulations in Northern Ireland. This is important to note in light of the comparatively higher gender pay gap in the private sector in favour of men, compared with the public sector in Northern Ireland<sup>55</sup>.
- 6.19 In particular, the Commission estimates that, in Northern Ireland, it is likely that only approximately 25% of those in private sector employment would be covered if a threshold of ‘250 or more’ employees was applied.<sup>56 57</sup>
- 6.20 In addition, the Commission estimates that, compared to GB, it is likely that a considerably smaller percentage of those in private sector employment in Northern Ireland would be covered by the Regulations if the threshold is set at the current threshold in GB of ‘250 or more’ employees<sup>58 59</sup>.
- 6.21 However, because of the relative high proportion of smaller businesses in Northern Ireland, the Commission estimates that even

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<sup>55</sup> In 2018, when all employees are considered (full-time and part-time combined), in the public sector women earn 8.4% less than men, and in the private sector women earn 18.2% less than men. When full-time employees only are considered, in the public sector women earn 3.0% more than men, and in the private sector women earn 15.9% less than men. See NISRA [ASHE](#) (2018) (published Oct 2018, provisional), Table 13 (NI).6a, Hourly Pay excluding overtime (public/ private sector).

<sup>56</sup> The Commission’s estimate of NI coverage is based on ‘private sector employment’ estimates and on the private sector business population estimates for NI at the start of 2018. The Commission estimates that in 2018 there were approximately 132,700 NI private sector businesses of which 0.1% had ‘250+’ employees, comprising 25.3% of total employment in NI private sector businesses and 145,000 persons in employment. Figures obtained from Department for Business Energy and Industrial Strategy, [Business population estimates for UK and regions 2018](#) (See Table 9, published 11 October 2018)

<sup>57</sup> It is important to note that ‘employment’ is defined as people working for a business including owners and partners, and includes businesses with zero employees (73.1% of the NI private sector business population had no employees; 26.7% had between 1-249 employees). Ibid.

<sup>58</sup> To allow a comparison with the above NI estimates, the same data source suggests that in 2018, private sector businesses with ‘250+’ employees in Great Britain also comprise 0.1% [5,864] of the total number of private sector businesses. However this is estimated to account for a larger proportion (40%) of total employment in GB private sector businesses. Ibid.

<sup>59</sup> In April 2019, GEO indicated that 8,424 private sector employers had reported their data for reporting year 2018/19. See GEO [press release](#) dated 5 April 2019. Whilst the GEO figures (2019) suggest that the Commission’s estimate for GB, which is based on data from the business population estimates (2018), may be an under-estimation, the Commission’s estimates remain the best comparator information available when making a comparison between GB and NI and the degree to which the Regulations will cover private sector employment.



significantly expanding<sup>60</sup> the coverage of the proposed GPGR Regulations to apply to employers with '100+'<sup>61</sup> or '50+'<sup>62</sup> employees, it is likely would still only cover approximately 40% of those in private sector employment

- 6.22 An initial focus only on large employers will also better ensure they are supported as regards the publication of their pay data and the implementation of gender pay action plans. It will also better ensure that large employers are supported to identify and address gender pay gaps; and enable the early identification of good practice by large employers.
- 6.23 In addition, we are mindful that the gender pay reporting requirements are *new* duties, and have, to date, *different* requirements in some areas to those already introduced in GB. For example, in Northern Ireland, unlike in GB, the requirements include the publication of additional data by pay band on both ethnicity<sup>63</sup> and disability and the requirement to publish a gender pay action plan<sup>64</sup>.
- 6.24 Further, whilst, as outlined below, a number of other European countries have introduced gender pay reporting requirements on SME<sup>65</sup> employers across different sectors, in general, there are variations in these requirements between different countries, including as regards the type and frequency of pay data to be published. Further, to date, there are also variations between these requirements on SME employers compared to the requirements in

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<sup>60</sup> It is estimated by the Commission that a move from an employer threshold of '250+' to '50+' employees would see a 609% increase in the number of private sector businesses covered, but only a 64.8 % increase in the number of those in private sector employment covered. Figures from Department for Business Energy and Industrial Strategy, [Business population estimates for UK and regions 2018](#) See Table 23) (published 11 October 2018).

<sup>61</sup> Private sector businesses in NI with '100+' employees are estimated by the Commission to account for 34.3% of employment in all private sector businesses (500 private sector businesses; 197, 000 persons in employment in those businesses). Ibid.

<sup>62</sup> Private sector businesses in NI with '50+' employees are estimated by the Commission to account for 41.6% of employment in all private sector businesses. (1100 private sector businesses; 239, 000 persons in employment in those businesses) Ibid.

<sup>63</sup> However, it will be noted that the UK Government has consulted on proposals to extend mandatory reporting on ethnicity pay data. See Department for Business, Energy and Industrial Strategy (2018), [Government Consultation: Ethnicity pay reporting](#). There are also differing requirements under the public sector duties in Scotland and Wales on certain listed bodies as regards the collection and publication of ethnicity and disability pay data.

<sup>64</sup> The Act places a requirement where there are differences in the pay of male and female employees.

<sup>65</sup> Small and medium-sized enterprises (SME).

GB that apply to larger employers<sup>66 67</sup>, and requirements set out in the Act<sup>68</sup>.

- 6.25 It will also be noted that under Government proposals to introduce gender pay gap reporting requirements on employers in the Republic of Ireland, it is proposed that these requirements will *initially* apply to employers with 250 or more employees; with a phased lowering of the threshold<sup>69</sup>. To date, these proposals do not include requirements to publish ethnicity and disability pay data; in contrast to requirements set out in the Act in Northern Ireland.
- 6.26 We are also mindful of the need to ensure that any assessment of data will be meaningful. Where small numbers are involved, particularly as regards data by pay bands, it may not be possible to make a meaningful analysis of the causes of any gender pay disparities and/or identify future actions to address these disparities. It is also important that publishing information on gender pay will not result in a breach of data confidentiality.
- 6.27 An initial focus on larger employers will better meet these needs. This is particularly important in the context of the potential publication of information that requires further disaggregation by disability and ethnicity by pay band, which may involve small numbers. For example, the UK Government has recognised in its consultation on ethnicity pay reporting (2019) that breaking down ethnicity pay information by pay bands or quartile may cause issues in some cases where data cannot be published to protect anonymity. It has also indicated that it does not consider that employers with less than 250 employees should be required to publish ethnicity pay data.

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<sup>66</sup> See Section 19 of the Act, which has not to date have not been brought into force.

<sup>67</sup> It will be noted that some European countries, for example, Germany, have applied a higher employer threshold for gender pay reporting requirements than that which applies in GB. Germany imposed gender pay reporting requirements on organisations in the private and public sector with more than 500 employees that are required to produce annual management reports.

<sup>68</sup> For example, requirements to publish data on ethnicity and disability pay. Requirements in the Act still to be brought into force.

<sup>69</sup> Under the proposals, the requirements will initially apply to employers with 250 or more employers, then to employers with 150 or more employees and then to employers with 50 or more employees. See General Scheme of [Gender Pay Gap Information Bill \(2018\)](#), and [Gender Pay Gap Information Bill \(2019\)](#) which is currently progressing through The Oireachtas, and the [Statement](#) on 8 March 2019 by Minister of the Department for Justice and Equality and Minister for State.

***Review the GPGR Regulations after 5 years, including a review of their general operation and employer threshold size.***

- 6.28 Government should commit to reviewing the GPGR Regulations promptly after 5 years of operation, to include a consideration of their general operation and the merits or otherwise of lowering the employer threshold size.
- 6.29 Specifically, we recommend that the five-year review should include, as a minimum, a consideration of:
- an overall assessment of the impact and effectiveness of the GPGR Regulations in helping to eliminate gender pay differences, particularly as regards requirements that are unique to Northern Ireland;
  - the merits or otherwise of lowering the employer threshold, with particular consideration being given to the specific composition of the private sector workforce in Northern Ireland;
  - recommendations arising from Parliamentary Committees in GB; as well as from international best practice, including from the European Commission;
  - the merits or otherwise of employers publishing gender pay gap information by the Standardised Occupation Classification (SOC) categories<sup>70</sup>;
  - the degree of compliance with the GPGR Regulations, including as regards the publication of gender pay information and gender pay action plans;
  - a review of the effectiveness of gender pay action plans, including the degree to which employers have taken steps to eliminate gender pay differentials;
  - the level and effectiveness of advice and support for employers so as to enable them to comply with the GPGR requirements;
  - actions, including wider structural actions, that should be taken to assist employers and others to eliminate gender pay gaps including through the Department's gender pay strategy and action plan (a review of actions should also form part of the evidence base for a review of the gender pay strategy); and
  - any review arising out of the implementation of the GB GPGR Regulations.

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<sup>70</sup> In particular, consideration should be given to employers publishing additional figures showing the gender pay gap by SOC categories or major occupation groups, such as managers, directors, senior officials; professional occupations, skilled trade occupations, etc. Such information would enable employers to assess the nature and degree of the gender pay gap within different occupation groups within their organisation.

## *Supporting Rationale*

### Review of General Operation of Regulations.

- 6.30 A review immediately following 5 years of the operation of the GPGR Regulations should include an overall assessment of the impact and effectiveness of the GPGR Regulations in helping to eliminate gender pay differences in Northern Ireland.
- 6.31 We consider that 5 years is an appropriate timescale for a review, not least given that employers are required to publish gender pay information within a 12-36 month timescale.
- 6.32 The review will therefore enable Government to carry out an overall assessment of the impact and effectiveness of the GPGR Regulations in helping to eliminate gender pay differences in Northern Ireland.
- 6.33 It will also provide an opportunity for Government to consider the merits or otherwise of lowering the employer threshold; review the effectiveness of gender pay action plans; and assess the effectiveness of advice, compliance and enforcement mechanisms.
- 6.34 Further, carrying out such a review is also consistent with the review requirement set out in the GB GPGR Regulations. In particular, under the GB GPGR Regulations, the Secretary of State is required to carry out a review of the Regulations, and to publish a report that includes an assessment of the degree to which the objectives intended to be achieved by the Regulations has been achieved<sup>71</sup>. The first review report must be published within 5 years of the Regulations coming into force<sup>72</sup>.

### Review of Employer Threshold Size

- 6.35 Whilst we support an *initial* focus on large ('250+' employees) employers, a review following 5 years of the operation of the GPGR Regulations should specifically include a consideration of the merits or otherwise of lowering the employer threshold (taking into account the composition of the NI private sector workforce; recommendations from the European Commission; international best practice, and recommendations from GB Parliamentary Committees).

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<sup>71</sup> See [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#) , Section 16.

<sup>72</sup> Subsequent reports are to be published at intervals not exceeding five years.

- 6.36 The review should also take into account concerns raised in GB, including by Parliamentary Committees, that the size threshold for organisations covered by the GB GPGR Regulations is too high.
- 6.37 For example, Parliament’s Women and Equalities Committee in its Inquiry report on the *Gender Pay Gap (2016)*<sup>73</sup> recommended that the UK Government should include all organisations with 150 employees or more within the GB GPGR Regulations, and that within two years of the Regulations commencing, organisations with more than 50 employees should be included<sup>74</sup>.
- 6.38 In addition, a report (2017) by the Scottish Parliament’s Economy, Jobs and Fair Work Committee indicated that it was concerned that the 250 employee threshold for gender pay gap reporting did not capture Scotland’s SME<sup>75</sup> economy. It recommended that, given that this reporting requirement was new, the Scottish Government monitor and review the number of businesses and employees captured by the reporting<sup>76</sup>.
- 6.39 Further, an Inquiry (2018) by Parliament’s Business, Energy and Industrial Strategy Committee recommended that the qualifying threshold remained at 250 employees for 2019, but that the following year it be reduced to organisations of 50 employees or more<sup>77</sup>. To date, the UK Government has not accepted the Committee’s recommendation<sup>78</sup>.
- 6.40 We are also aware that a number of employers *with less than 250 employees* in GB have already on a voluntary basis published their

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<sup>73</sup> Women and Equalities Committee Inquiry report on the [Gender Pay Gap](#) (2016), 2<sup>nd</sup> Report of Session 2015/16.

<sup>74</sup> For example, the Women and Equalities Committee highlighted concerns that ‘the current threshold of 250 employees only covers 34% of the workforce and excludes smaller organisations which have larger gender pay gaps’. Further it stated that ‘it is also inconsistent with the Public Sector Equality duty which applies to organisations with 150 employees. There is international evidence that, with support, smaller organisations can be helped to produce and understand their gender pay gaps’. Ibid, at para 301.

<sup>75</sup> Small and medium-sized enterprises (SME).

<sup>76</sup> Economy, Jobs and Fair Work Committee, [No Small Change: The Economic Potential of Closing the Gender Pay Gap](#), 6th Report, 2017 (Session 5), p5.

<sup>77</sup> BEIS Committee (2018) Inquiry: [Gender pay gap reporting](#).

<sup>78</sup> The Government highlighted that over half of respondents to its consultation agreed with the 250 threshold, and that given the range of metrics required, it was felt that reporting could be particularly burdensome for small and medium sized businesses, and that there were issues relating to the reliability of data from smaller organisations, especially for those firms with 50 or fewer employees. It stated that ‘the reduced number of staff means their GPG figures are much more sensitive to small changes, e.g. staff turnover, pay rises, etc., compared to larger organisations, and that for example, the removal/addition of one staff member could change a firm’s GPG figure from positive to negative (or vice-versa)’. It also indicated that ‘should there be sufficient appetite for lowering the threshold in future reporting years, we will consult with potentially affected stakeholders on the feasibility, and advantages and disadvantages of extending the regulations’. BEIS Committee (2019) [Gender pay gap reporting: Government Response to the Committee’s Thirteenth Report](#), p6.

gender pay data<sup>79</sup>. In addition, the UK Government has urged organisations with fewer than 250 employees to voluntarily publish their data<sup>80</sup>.

- 6.41 The review should also take into account that the European Commission has recommended that the threshold for mandatory gender pay reporting by employers should be 50 employees<sup>81</sup>.
- 6.42 It should also consider examples of international best practice on gender pay reporting. We are aware that a number of European countries have already introduced, or are proposing, gender pay reporting requirements on SME employers.
- 6.43 For example, in Austria it is 150 employees (reporting every other year)<sup>82</sup>, in Sweden it is 25 employees (though employers are required to carry out, but not publish, a pay survey every 3 years)<sup>83</sup>, and in Belgium it is 50 employees (to carry out every 2 years a comparative analysis of gender pay)<sup>84</sup>. Further, in France, there is a phased introduction of duties that will require employers to annually publish their results regarding the Gender Equality Index; with results to be published in March 2020 for companies of 50-250 employees<sup>85</sup>.
- 6.44 As stated above, under Government proposals to introduce gender pay gap reporting requirements on employers in the Republic of Ireland, there is a proposed phased lowering of the threshold; with the requirements initially applying to employers with 250 or more

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<sup>79</sup> It will be noted that in 2017/18, 281 employers who were not within the scope of the GB GPGR Regulations opted into reporting their data. Of these, 271 were from the private and voluntary sector and 54 were from the public sector. See [GEO \(2018\) Gender Pay Gap Information Regulations 2017: Summary of reported data for 2017/18](#).

<sup>80</sup> See BEIS Committee (2019) [Gender pay gap reporting: Government Response to the Committee's Thirteenth Report](#), p6.

<sup>81</sup> [EC Recommendation March 2014](#). "Member States should put in place measures that ensure that employers in undertakings and organisations with at least 50 employees regularly inform employees, workers' representatives and social partners of the average remuneration by category of employee or position, broken down by gender".

<sup>82</sup> In Austria, companies with more than 150 employees must provide information on the gender pay gap every other year to employees or their representatives. The pay gap needs to be provided for each occupational group or pay grade. GEO (2015), [Closing the Gender Pay Gap: Government Consultation](#). GEO

<sup>83</sup> In Sweden, employers with 25 or more employees are required to produce an equal pay action plan every three years, including information on any gender pay gaps within pay grades. The plan has to be submitted to the Equality Ombudsman upon request. Ibid

<sup>84</sup> In Belgium, every two years firms with over 50 workers should establish a comparative analysis of the wage structure of female and male employees. Differences in pay and labour costs between men and women are outlined in companies' annual audit.

<sup>85</sup> In France, the Gender Equality Index includes measuring gaps in salary. Compliance with the duties by employers of different sizes is on a phased basis See Council of Europe (2019) [Commission Staff Working Document 2019 Report on equality between women and men in the EU](#) .



employees, then to employers with 150 or more employees, followed by employers with 50 or more employees<sup>86</sup>.

- 6.45 However, as noted above, it is important to stress that there are variations in the scope and level of disaggregation of gender pay reporting requirements on SME employers between these countries. There also variations between these requirements and the requirements in GB on larger employers, and the requirements set out in the Act.

***Encourage, via Guidance, employers not subject to GPGR Regulations to proactively assess and address gender pay gaps.***

- 6.46 Guidance on gender pay reporting should encourage employers who are not subject to GPGR Regulations, to proactively assess and address any gender pay gaps and adopt good practice.
- 6.47 This should include encouraging such employers to implement, on a voluntary basis, the robust assessment of appropriately collated gender pay data; the implementation of a gender pay action plan aimed at addressing any identified pay gaps; appropriate engagement with employees and employee representatives when developing and/or reviewing their action plans; and voluntarily publishing their gender pay data, provided it does not breach data confidentiality.
- 6.48 Employers should also implement the Commission's good practice recommendations relating to equal pay, including as set out in the Commission's Code of Practice on Equal Pay<sup>87</sup>.

*Supporting rationale*

- 6.49 We consider it beneficial for employers across all sectors who are *not* subject to the GPGR Regulations to be proactive in addressing gender pay gaps and adopt good practice in this area. Tackling gender pay disparities benefits individual organisations as well as the wider economy.
- 6.50 In addition, we consider that the *voluntary* publication of gender pay data will lead to greater pay transparency and accountability within such organisations. As highlighted above, the UK Government has

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<sup>86</sup> See General Scheme of [Gender Pay Gap Information Bill \(2018\)](#), and [Gender Pay Gap Information Bill \(2019\)](#) which is currently progressing through The Oireachtas, and the [Statement](#) on 8 March 2019 by Minister of the Department for Justice and Equality and Minister for State. To date, proposals do not include a requirement to collect ethnicity and disability pay data.

<sup>87</sup> ECNI [Code of Practice on Equal Pay](#) (2013).

encouraged employers in GB with *less than 250 employees* to voluntarily publish their gender pay gap data and a number of these employers have already published their data<sup>88</sup>.

- 6.51 However, as noted, we recognise that where small numbers are involved, there is a need to ensure that any assessment of data will be meaningful and that publishing information on gender pay does not result in a breach of data confidentiality.

## **7 Employer Duties: Require publication of gender pay gap data; consider additional pay gap reporting requirements; and clarify provisions of the Act.**

- 7.1 Action is required to: require employers to publish data on gender pay gap, bonus gender pay gap, and proportion of males / females receiving bonuses and in each quartile band; consider requiring employers to publish full-time and part-time gender pay gap figures; clarify rationale for limiting requirements to publish data on ethnicity and disability; clarify the specific intent of the requirement to publish pay data on ethnicity and disability; consider data to be published versus a wider set of data that employers can collect/ analyse; clarify rationale for the focus on ‘employees’ and/or ‘workers’; require publication of gender pay data on a common fixed date on employer/government websites; and consider coding of employers by SIC.

### ***Require employers to publish data on gender pay gap, bonus gender pay gap, and proportion of males / females receiving bonuses and in each quartile band.***

- 7.2 Employers subject to the GPGR Regulations should be required to publish data relating to their organisations’ gender pay gap (mean and median); bonus gender pay gap (mean and median); proportion of males / females receiving bonus payments; and proportion of males / females in each quartile band.
- 7.3 As set out in more detail further below, we also consider that there is a wider set of data which employers subject to the GPGR Regulations can usefully collect, analyse and/or publish in order to

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<sup>88</sup> See CIPD (2017) [Guide on gender pay reporting](#). See also [GEO \(2018\) Gender Pay Gap Information Regulations 2017: Summary of reported data for 2017/18](#).



develop their evidence base and to assist them with understanding the nature and extent of any gender pay disparities within the workplace.

#### *Supporting rationale*

- 7.4 Publication will promote transparency and action. It will also facilitate comparisons of gender pay gaps between different organisations, as well as with national, sectoral and international figures. An analysis by employers of data relating to any identified gender pay gap (mean and median)<sup>89</sup> will enable employers to better understand, and respond to, any pay disparities within their organisations.
- 7.5 Further, examining bonus gender pay gaps and the proportion of women and men receiving bonus payments is also essential in understanding and identifying whether an employer is achieving pay equality. Bonus payments can constitute a significant element of overall remuneration in some sectors, such as finance and insurance. Differences in bonuses awarded to men and women can also contribute to a gender pay gap<sup>90</sup>.
- 7.6 In addition, analysing data on the proportion of males / females in each quartile band will, for example, assist employers in identifying whether there are fewer women employed at senior/ higher paid positions or whether there is a concentration of women in lower/ less well-paid occupations.
- 7.7 Under the GB GPGR Regulations, employers are required to publish this gender pay data. Adopting an approach that is in line with the requirements adopted in GB will also help ensure a level of consistency in reporting requirements for UK-wide employers, and minimise any cost to employers and the public purse.

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<sup>89</sup> The UK Government has, for example, identified that 'the mean can be useful because women are often over-represented at the low earning extreme and men over-represented at the high earning extreme'. It has also indicated that 'by identifying the wage of the middle earner, the median is the best representation of the 'typical' difference as it is unaffected by a small number of very high earners'. UK Government, [Mandatory Gender Pay Reporting, Consultation on Draft Regulations](#), 2016, at p9

<sup>90</sup> See M Brynin, ISER, University of Essex, commissioned by EHRC (2017), [The Gender Pay Gap](#) and EHRC (2009) [Financial Services Inquiry-Sex Discrimination and Gender Pay Gap Report](#)

***Consider requiring employers to publish full-time and part-time gender pay gap figures.***

7.8 The Department should consider requiring employers to analyse and publish additional discrete gender pay gap figures for each of full-time, and part-time work; and the proportion of males / females in each quartile thereof, where sufficient numbers make it robust to do so.

*Supporting rationale*

7.9 We note the focus of the Act is on reporting a gender pay gap for employees, with no distinction being made as to hours worked (i.e. full and part-time combined).

7.10 Although the gender pay gap is generally considered as the difference by gender in 'median full-time pay', it is also the case that gender pay gaps can exist in part-time pay.

7.11 As noted earlier, structural differences in the shares of males and females working in full-time versus part-time employment can have an impact on the overall (full time and part time combined) gender pay gap, and thus on the identification of actions which might best address the gap.

7.12 We note that the ACAS *Guide* to the GB GPGR Regulations has, for example, highlighted that, in terms of developing the evidence base, employers should consider having data on separate gender pay gap figures for their full-time and part-time employees (for employers with a large number of part-time employees, for example, 25% or more of their workforce)<sup>91</sup>.

7.13 Further, as highlighted below, Parliament's Women and Equalities Committee (2016) recommended that the GB GPGR Regulations required that gender pay gap data be broken down by part-time status (as well as by age)<sup>92</sup>.

7.14 It also noted that the UK Government had recognised that 'calculating separate gender pay gap figures for full-time and part-time employees can provide information that is useful for those

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<sup>91</sup> See ACAS, GEO (2017) Guidance: [Managing Gender Pay Reporting](#), p31

<sup>92</sup> Women and Equalities Committee Inquiry report on the [Gender Pay Gap](#) (2016), 2<sup>nd</sup> Report of Session 2015/16, p88.

employers with a large part-time workforce (i.e. as women are much more likely than men to work part-time)<sup>93</sup>.

- 7.15 Further, an Inquiry (2018) by Parliament's Business, Energy and Industrial Strategy Committee recommended the GB GPGR Regulations were amended to require the publication of both part-time and full-time gender pay gap statistics<sup>94</sup>. It highlighted that 'by publishing pay gap statistics for part-time and full-time employees, organisations would have to explain any substantial discrepancies, and begin to address them'<sup>95</sup>.

***Clarify rationale for limiting requirements to publish data on only ethnicity and disability.***

- 7.16 The Department should clarify the rationale for limiting the requirement in the Act to publish pay information in relation to only *ethnicity* and *disability*, and consider including wider characteristics that may impact on gender pay differences, for example, 'age' and 'with or without dependants'.
- 7.17 We note, for example, there is evidence that the gender pay gap for women over 40 is significantly higher than for women under 40<sup>96</sup> and that the arrival of children accounts for the gradual widening of the gender wage gap with age<sup>97</sup>.

*Supporting rationale*

- 7.18 In understanding any observed gender pay differences, we consider that it will be important to understand the specific dynamics of gender pay, so that actions can be targeted appropriately.
- 7.19 In this context, we recommend the Department clarifies the reasoning for limiting the focus of these additional characteristics to ethnicity and disability, and not including other factors which may contribute to understanding any noted pay gaps; for example, wider anti-discrimination or Section 75 grounds. In particular, we are mindful that studies have correlated 'age' and 'with or without dependents' with gender pay gaps.

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<sup>93</sup> Ibid, at para 278 p74.

<sup>94</sup> BEIS Committee (2018) Inquiry: [Gender pay gap reporting](#).

<sup>95</sup> Ibid, at paragraph 34.

<sup>96</sup> For example, as highlighted in the Women and Equalities Committee's Inquiry Report, the UK Government has recognised that women over 40 experience the most pronounced gender pay gap. The Committee recommended that gender pay gap figures are broken down by age. See Women and Equalities Committee Inquiry report on the [Gender Pay Gap](#) (2016), 2<sup>nd</sup> Report of Session 2015/16.

<sup>97</sup> See IFS (2016) [Gender Wage Gap](#), Briefing Note, BN186.

- 7.20 We note, for example, that the ACAS *Guide* on the GB GPGR Regulations has highlighted that *'the challenge therefore is to ensure that the gender pay gap among women over 40 is tackled now and ensure that there is no significant cumulative impact on a woman's earning potential during her lifetime as younger cohorts of workers move into their 40s and beyond'*<sup>98</sup>. The UK Government has also recognised that women over 40 experience the most pronounced gender pay gap<sup>99</sup>.
- 7.21 Further, the Women and Equalities Committee (2016) has highlighted that more needs to be done to address the *part-time* pay penalty and gender pay gap among women over 40. It indicated that *'the evidence is clear that women over 40 and those working part-time experience the most pronounced gender pay gap. Breaking down gender pay gap statistics by age and part-time status will help organisations to understand and address any issues faced by women in these groups'*<sup>100</sup>.
- 7.22 In addition, a report by the Institute of Fiscal Studies (2016)<sup>101</sup> on the gender wage gap has highlighted that the gender wage gap widens gradually but significantly for women when they reach their late 20s and early 30s, and that the arrival of children accounts for this gradual widening of the gender wage gap with age.

***Clarify the specific intent of the requirement to publish pay data on ethnicity and disability.***

- 7.23 The Department should clarify the intended purpose and focus of the information to be published in relation to the requirement under the Act to publish pay information that includes statistics on *'workers within each pay band'* in relation to *ethnicity* and *disability*.
- 7.24 Specifically, it is not clear what statistics are to be included and if this requirement is intended to mean that the gender data for each pay band should be further cross-tabulated / disaggregated. There is also a need for clarity and guidance for employers on how data in relation to ethnicity and disability should be collected/reported on.

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<sup>98</sup> ACAS, GEO (2017) Guidance: [Managing Gender Pay Reporting](#), p5.

<sup>99</sup> Women and Equalities Committee, [Gender Pay Gap: Government Response to Committee's 2<sup>nd</sup> Report of session 2015-16](#).

<sup>100</sup> Women and Equalities Committee (2016), Inquiry report on the [Gender Pay Gap](#), 2<sup>nd</sup> Report of Session 2015/16, para 281.

<sup>101</sup> IFS (2016) [Gender Wage Gap](#), Briefing Note, BN186. It states that 'there is, on average, a gap of over 10% even before the arrival of the first child. But this gap is fairly stable until the child arrives and is small relative to what follows: there is then a gradual but continual rise in the wage gap and, by the time the first child is aged 12, women's hourly wages are a third below men's'. Ibid p2.

### *Supporting Rationale*

- 7.25 The exact purpose of this requirement is unclear. In particular, it is not clear what the specific 'pay bands' are to be, and whether this will mean a requirement to publish data by quartile, mirroring the gender pay gap methodology approach in GB. If the same approach to 'quartile' reporting is adopted as under the GB GPGR Regulations, it is also not clear if the requirement is to mean that for each quartile of *gender* pay reporting, statistics are *also* to be included for ethnicity and disability.
- 7.26 Specifically, it is not clear which statistics are to be included and if this requirement is intended to mean that the *gender* data for each pay band should be further cross-tabulated / disaggregated. In particular, it is not clear if the data is to be disaggregated:
- by gender, ethnicity and disability together; for example, data for "highly paid, women, without a disability, who are white" etc.;
  - by gender with only one of the sub-categories (ethnicity/ disability) at a time; for example, data for "highly paid, women, without a disability"; or
  - simply as a stand-alone means of reporting disability or ethnicity pay data that does not refer to gender; for example, data for "highly paid, without a disability".
- 7.27 Further, there is a lack of clarity as to whether the pay information on ethnicity and disability is to include 'pay gap' data.
- 7.28 We also consider that there is a need for clarity and clear guidance for employers on how data in relation to ethnicity and disability should be collected and reported on. This includes detailed guidance on how the questions should be asked, the specific response categories to be used, how frequently monitoring needs to be carried out, on addressing issues relating to ensuring data confidentiality and to a potential reluctance by employees to disclose such data. The guidance should also set out the clear rationale for collecting and publishing the data.
- 7.29 As set out further below, there is also the need for clarification as regards the term '*workers*' in this context; which is used in contrast to other provisions in the Act which place a requirement to publish information relating to the pay of '*employees*'.

***Consider data to be published versus a wider set of data that employers can collect/ analyse.***

- 7.30 The Department should consider the specific content and format of data and statistics that employers are required to publish, versus a wider set of data that they may be permitted to collect and analyse.
- 7.31 We consider that there is a wider set of data which employers subject to the GPGR Regulations can usefully collect/ analyse in order to develop their evidence base and to assist them with understanding the nature and extent of any gender pay disparities within the workplace. For example, employers in those sectors where overtime is a significant element of remuneration, should be encouraged to voluntarily collect and analyse details of overtime pay, including within different quartiles.
- 7.32 A distinction between which headline figures / data must be published versus data which may be collected solely for the purpose of underlying analysis may aid the understanding of trends without impacting on individual anonymity.

*Supporting Rationale*

- 7.33 We note that the ACAS *Guide* to the GB GPGR Regulations has highlighted a range of additional data that it has recommended that employers consider in order to ensure effective gender monitoring is in place<sup>102</sup>. This additional data includes, for example, ‘the number of women and men in each job or pay band’.
- 7.34 In addition, the Commission has highlighted in its *Code of Practice on Equal Pay* (2013) that ‘gendered patterns of employment such as gender differences in occupation, part-time work, overtime and incentives also impact on the pay gap between men and women’<sup>103</sup>.
- 7.35 This additional data has the potential to assist such employers in understanding, explaining and tackling any identified gender pay differentials. With regards to overtime for example, this is particularly important as men on average work relatively more overtime than women<sup>104</sup>.
- 7.36 We recognise that while additional information will likely be of assistance in understanding any specific dynamics of gender pay, caution must also be exercised with regards to the analytical value

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<sup>102</sup> See ACAS, GEO (2017) Guidance: [Managing Gender Pay Reporting](#), p32

<sup>103</sup> See ECNI (2013) [Code of Practice on Equal Pay](#), p4.

<sup>104</sup> As highlighted by the UK Government in its response to its consultation on closing the gender pay gap, GEO (2016) [Closing the Gender Pay Gap: Response to consultation](#). p19



of small numbers in any category either generally, associated with repeated disaggregation, and/or as employer size decreases.

- 7.37 Consideration should also be given to the need to ensure that there is no breach of data confidentiality. Should the intent of the legislation be to require employers to publish cross-tabulated information by quartile, gender, disability, ethnicity, then we recognise that balancing this requirement with retaining the anonymity of individual employees will be increasingly problematic as disaggregation increases or employer size decreases.
- 7.38 This is particularly important when considering the potential impact of expanding the scope of the GPGR Regulations and lowering the threshold to include employers with a size threshold below 250 employees.
- 7.39 We note that a number of employers in GB have already, on a *voluntary* basis, not only collected but published additional gender pay information in their gender pay gap reports; including in relation to the composition of women and men in each pay band/scale<sup>105</sup>. The voluntary publication of this additional information assists others, including employees and the wider public, to have a greater understanding of the nature and extent of, and factors contributing to, any identified gender pay gap in the organisation.

### ***Clarify rationale for the focus on ‘employees’ and/or ‘workers’.***

- 7.40 The Department should clarify the purpose and rationale for the focus of separate parts of the Act on ‘employees’ and ‘workers’.
- 7.41 We note the requirement for pay information to also include statistics on “*workers within each pay band in relation to ethnicity, and disability*”<sup>106</sup>. The term ‘workers’ in this context is used in contrast to other provisions in the Act which place a requirement to publish information relating to the pay of ‘employees’ (to see if there is a difference of pay between male and female employees).

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<sup>105</sup> It will be noted that in 2017/18, 281 employers who were not in scope of the Regulations opted into reporting their data. Of these, 271 were from the private and voluntary sector and 54 were from the public sector. See [GEO \(2018\) Gender Pay Gap Information Regulations 2017: Summary of reported data for 2017/18](#).

<sup>106</sup> Section 19 (6) (f) of the Act.

### *Supporting Rationale*

- 7.42 We consider that the use of different terms and categories not only adds to the complexity of collecting, analysing and publishing data but could also potentially lead to a differential focus, and thus incomparability of various provisions of the Act.

### ***Require publication of gender pay data on a common fixed date on employer/ government websites.***

- 7.43 Employers subject to the GPGR Regulations should be required to publish gender pay data on a common fixed date on their own website and a designated government website; and consideration should be given to the merits of the date being consistent with the publication dates under the GB GPGR Regulations.
- 7.44 While we are recommending that the date of publication should be consistent with the dates used in GB, the Commission has not at this time formed a view as to a frequency for the publication of gender pay statistics in Northern Ireland (e.g. annual or triennial).

### *Supporting rationale*

- 7.45 We note that under the Act, the GPGR Regulations cannot require employers to publish information more frequently than at 12 month intervals or less frequently than at intervals of 36 months.
- 7.46 Further, we note that under the GB GPGR Regulations, in general, large public sector employers are required to publish an annual snapshot of their gender pay reporting data as at 31 March in a given year. A different snapshot date applies to large private / voluntary sector employers; namely 5 April in a given year<sup>107</sup>.
- 7.47 We consider that adopting a common date that is consistent with the publication dates under the GB GPGR Regulations would ensure a level of consistency for UK-wide employers and for Government in assessing trends within and across available data (including high-level government reporting and/or the implementation of the wider gender pay strategy).

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<sup>107</sup> In GB, most government departments, the armed forces, local authorities, NHS bodies and many others must follow The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017. The obligations apply if employers have 250 or more employees on the snapshot date of 31 March of a given year. All other private, voluntary and public sector employers must follow The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017. The obligations apply if employers have 250 or more employees on the snapshot date of 5 April of a given year. See ACAS, GEO (2017) Guidance: [Managing Gender Pay Reporting](#), p7.



- 7.48 It is worth noting that under current fair employment monitoring requirements in Northern Ireland, there is no single snapshot date for monitoring that applies to all public, private, voluntary sector employers; as the reporting date is the date (or anniversary) of its registration with the Commission and monitoring returns must be submitted on an annual basis.
- 7.49 Publication of gender pay data that includes *via* a government website *and* on an employer's own website will improve access to information and maintain comparability with the GB approach<sup>108</sup>. In line with the provisions of the Act, employers must also provide a copy of information published to all employees and any recognised trade union<sup>109</sup>.

***Consider coding of employers by Standard Industrial Classification (SIC).***

- 7.50 The Department should consider coding employers by Standardised Industrial Coding (SIC).
- 7.51 SIC provides a framework for the collection, tabulation, presentation and analysis of data by industry, and provides an established and convenient way of classifying industrial activities into a common structure<sup>110</sup>.

*Supporting Rationale*

- 7.52 Coding employers by SIC may assist government and others in any wider analyses of gender pay, aligned to the implementation and review of a gender pay strategy and action plan for Northern Ireland.

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<sup>108</sup> Employers in GB who are subject to the GB GPGR Regulations are required to publish specified gender pay gap data on a place where the information can be reasonably expected to be found on their own website, and a designated government website. Currently, employers publish their gender pay gap information annually on a UK Government online [gender pay gap service](#).

<sup>109</sup> As per Section 19 (3) of the Act.

<sup>110</sup> See ONS (2007) [UK Standard Industrial Classification of Economic Activities 2007](#).

**8 Employer Gender Pay Action Plans: Ensure gender pay strategy supports employer actions; clarify employer requirements; ensure employers: consult on, and publish action plans widely; consider actions to address ethnicity/ disability pay gaps; and review annually.**

8.1 Action is needed to ensure that actions required by employers are supported by the content and delivery of a gender pay strategy and action plan for Northern Ireland; to clarify requirements on employers as regards action plans; and ensure employers should: publish action plans on employer/government websites; consult with employees on action plans; consider actions to address ethnicity/ disability pay gaps; and review action plans at least annually.

***Ensure that actions required by employers are supported by the content and delivery of a gender pay strategy and action plan for Northern Ireland.***

8.2 We welcome the requirement under the Act for employers with gender pay gaps to develop and publish action plans to eliminate gender pay differences.

8.3 Government must however ensure that the delivery of a gender pay strategy and action plan for Northern Ireland complements the actions required from employers, by delivering on a wider set of actions to address structural barriers (for example, childcare; careers advice; stereotyping; caring roles, etc.).

***Supporting Rationale***

8.4 The implementation of employer gender pay action plans, provided they contain robust and effective actions that are resourced and underpinned by a high level organisational commitment, have the potential to help tackle gender pay gaps; more so than the simple publication of gender pay data.

8.5 The publication of employer gender pay action plans will also make it easier to assess the effectiveness of the GPGR duties and help inform the gender pay strategy and action plan to be brought forward by Government, as required by the Act.

8.6 We are mindful however that any actions that can be taken by employers (equal pay audits; flexible working. etc.) with specific pay gaps will, in isolation, be insufficient to secure wider change. The

parallel development and implementation of a gender pay strategy and action plan for Northern Ireland is thus essential, as highlighted above.

### ***Clarify requirements on employers as regards action plans.***

8.7 The Department should clarify whether or not the GPGR Regulations can impose *requirements* on employers as regards the content/ implementation of gender pay action plans under the Act, and if not, if it intends to bring forward legislation to enable it impose such requirements.

8.8 We recommend a number of specific inclusions (set out further below) as requirements, where possible, or failing that as good practice recommendations, to be placed on employers in relation to the development, implementation, monitoring and review of a gender pay action plan.

#### *Supporting Rationale*

8.9 Whilst we welcome the requirement under the Act that where there are differences in the pay of male and female employees, an employer must publish an action plan to eliminate those differences<sup>111</sup>, we also note that the Act does not however stipulate what requirements, if any, should be placed on employers in relation to the form, content, implementation, or review of gender pay action plans.

8.10 It is also not clear that the GPGR Regulations can impose *requirements* on employers as regards the content/ implementation of gender pay action plans under the Act.

8.11 If the GPGR Regulations cannot impose such requirements on employers, there is a need for clarity as to whether or not the Department intends to bring forward legislation to enable it to impose such requirements.

8.12 The imposition of requirements, or in the absence of requirements, good practice recommendations, will help ensure that gender pay action plans are effective in eliminating any identified gender pay differences<sup>112</sup>.

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<sup>111</sup> It also states that 'a copy must be sent to all employees and any trade union recognised by the employer'

<sup>112</sup> As regards the effectiveness of voluntary gender pay action plans in GB, research by the EHRC has found that around one in five employers in its sample (440 reports) had produced an identifiable action plan that was time-bound and included target-driven activities. However, only 11% had set themselves targets that would enable them to measure the progress of their plans year-on-year. See EHRC (2018) [Closing the](#)

***Employers should publish action plans on employer/ government websites.***

8.13 We recommend that employers publish their gender pay action plans on a designated government website, as well as on their own website, at the same time as, and alongside their pay data.

8.14 We note that there is no timetable in the Act for the publication of gender pay action plans.

*Supporting rationale*

8.15 Joint publication of gender pay data and associated actions plans will ensure greater transparency as to how an employer intends to address any pay disparities and help explain why pay disparities exist.

8.16 Under the GB GPGR Regulations, employers (public / private / voluntary) are required to publish data *via* their own website, and a designated government website. Employers in GB do not have to publish a gender pay action plan but are strongly encouraged (though it is not compulsory) to provide a voluntary narrative on any apparent gender pay gaps.

8.17 Publication *via* a government website, as well as on an employer's own website, will help ensure action plans are easier to access and review, including by employees and/or their representatives<sup>113</sup>.

8.18 Publication on a government website will also make it easier for government to review the action plans so as to assess the effectiveness of the GPGR duties and help inform the gender pay strategy to be brought forward, as required by the Act.

8.19 In GB, the UK Government has encouraged employers to publish an action plan alongside their pay data, demonstrating the steps they will take to close the gender pay gap within their organisations. To date, many employers have voluntarily published their action plans alongside their pay data, on both their own websites and on the designated government website<sup>114</sup>.

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[Gender Pay Gap](#). It will be noted that the UK Government has estimated that, as at May 2018, 48% of in - scope employers had published an action plan. See [GEO \(2018\) Gender Pay Gap Information Regulations 2017: Summary of reported data for 2017/18](#).

<sup>113</sup> As highlighted above, the Act requires employers to provide a copy of information published under the GPGR Regulations to all employees and any recognised trade union.

<sup>114</sup> See UK Government online [gender pay gap service](#) .

***Employers should consult with employees on action plans.***

- 8.20 We recommend that employers consult with employees and/or employee representatives during the development and review of their gender pay action plans.

*Supporting Rationale*

- 8.21 Consultation is generally considered as good practice and is consistent with other Commission recommendations – for example, to public bodies when developing and reviewing their disability action plans.
- 8.22 It also provides employees and/or their representatives with the opportunity to give feedback to employers in a constructive manner on potential actions that employers can take to address any identified gender pay gaps.
- 8.23 It also enables employers to use this feedback, when reviewing their action plans, to improve how they addressing any gender pay gap.
- 8.24 Further, UK Government guidance (2019) for employers on developing and implementing a gender pay action plan, recommends employers consult and engage with employees and employee representatives<sup>115</sup>.

***Employers should consider actions to address ethnicity/ disability pay gaps.***

- 8.25 Depending on the specific intended focus of the GPGR requirements, in addition to actions to address any gender pay gap, we recommend that employers consider including measures in action plans designed to address gender pay gaps (or pay gaps) related to the grounds of ethnicity and disability, where such pay differences exist.

*Supporting Rationale*

- 8.26 As set out above, we have highlighted the need for clarification as regards the intended focus and format of the pay information to be published in relation to ethnicity and disability.
- 8.27 We consider that our recommendation with regard to actions plans is consistent with the requirement to publish statistics relating to ethnicity and disability within each pay band.

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<sup>115</sup> GEO (2019) [Four steps to developing a gender pay gap action plan](#)

8.28 It will be noted that in GB, the UK Government has encouraged employers to voluntarily report on the progression and pay of disabled people<sup>116</sup>.

***Employers should review action plans at least annually.***

8.29 We recommend that employers review progress on implementing gender pay action plans at least annually. The review should include an outline of progress made, lessons learnt and any revised actions to address identified gender pay gaps.

8.30 The publication of any subsequent gender pay action plan should include a review of the efficacy of the earlier action plan (to include progress made, lessons learnt and any revised actions to address identified gender pay gaps).

*Supporting Rationale*

8.31 Rolling timely review will assist an employer to ensure that actions committed to in gender pay action plans have been taken; outcomes and targets are being achieved; and that any required remedial action is developed and taken as required.

8.32 Further, the inclusion of this review in a subsequent gender pay action plan, will help increase transparency and accountability and encourage employers to review the efficacy of their earlier action plans.

8.33 Further, UK Government guidance (2019) for employers on developing and implementing a gender pay action plan, recommends employers monitor and evaluate their action plan<sup>117</sup>.

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<sup>116</sup> See UK Government (2018): [Guidance: Voluntary reporting on disability, mental health and wellbeing: A framework to support employers to voluntarily report on disability, mental health and wellbeing in the workplace.](#)

<sup>117</sup> GEO (2019) [Four steps to developing a gender pay gap action plan](#)

**9 Guidance, Compliance and Enforcement: Ensure support for employers; highlight benefits of alignment with existing equality reviews; ensure effective enforcement mechanisms; and consider roles and resourcing.**

9.1 Action is required to ensure effective support and guidance for employers; to highlight *via* Guidance potential benefits of aligning action planning with existing employer equality reviews; clarify enforcement and compliance provisions and ensure effective enforcement mechanisms; set out advice/ guidance roles and remit and resourcing; and set out enforcement roles and remit, and resourcing.

***Ensure effective support and guidance for employers.***

9.2 The Department should ensure that employers have effective support, training and guidance, and allow a sufficient lead in time to the introduction of the GPGR Regulations in order to give employers time to prepare for compliance.

9.3 A sufficient lead in time to the introduction of the GPGR Regulations is also particularly important in light of the unique and additional requirements under the Act that will apply to employers in Northern Ireland who are to be subject the Regulations<sup>118</sup>; including the requirements to produce a gender pay action plan and to publish pay information that includes statistics on ethnicity and disability.

***Supporting Rationale***

9.4 Effective support, training and guidance for employers will assist them to comply with, and fulfil the intent of, the GPGR Regulations.

9.5 Clear and detailed guidance that provides clarity for employers on their obligations under the GPGR Regulations, including as regards how pay gap data is to be calculated, will particularly assist with ensuring compliance with, and the effective implementation of, the Regulations.

9.6 As noted further above, 2016 research<sup>119</sup> in GB revealed that employers had mixed views about the possible effectiveness of Regulations; with some employers raising concerns about their potential to impact on behaviours, the time needed to

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<sup>118</sup> Subject to provisions in Act being brought into force.

<sup>119</sup> See Pay Equality Research Consortium (2016) [Employers views on the Gender Pay Gap Reporting Regulations](#).



prepare/comply with the Regulations, and/or their ability to impact on the gender pay gap within organisations.

- 9.7 In addition, learning from the provision of guidance and support to employers in GB following the introduction of the GB GPGR Regulations should also be considered. For example, an Inquiry (2018) by Parliament’s Business, Energy and Industrial Strategy Committee highlighted the need for greater clarity in outstanding areas of ambiguity and for revised guidance for employers<sup>120</sup>. Further, a UK Government analysis (2018) revealed that employers had reported some difficulty in collating the data required to make gender pay gap calculations in the first year<sup>121</sup>.

***Highlight, via Guidance, potential benefits of aligning action planning with existing employer equality reviews.***

- 9.8 Guidance on gender pay gap reporting should make clear the potential for increased efficiency and effectiveness by developing/ publishing gender pay actions plans *in parallel with* existing employer equality reviews.
- 9.9 We consider that there is potential for such an approach to not only allow for operational efficiencies, but also add to the potential effectiveness of analyses and target interventions.
- 9.10 The potential for increased efficiency and effectiveness by developing/ publishing gender pay actions plans *in parallel with* existing employer equality reviews should therefore be highlighted in any Guidance produced on gender pay gap reporting.

***Supporting Rationale***

- 9.11 We consider that there are likely to be efficiencies of scale by linking the timing of gender pay review processes to those already in place for carrying out wider employment equality reviews.
- 9.12 For example, there may be efficiencies if the timing of the analysis and publication of a gender pay action plan were aligned with the requirement under the Fair Employment and Treatment (NI) Order 1998 for registered employers to compile an Article 55 review (of

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<sup>120</sup> BEIS Committee (2018) Inquiry: [Gender pay gap reporting](#).

<sup>121</sup> See [GEO \(2018\) Gender Pay Gap Information Regulations 2017: Summary of reported data for 2017/18](#). The Government highlighted that 35% of respondents to its survey said it had been ‘difficult’ or ‘very difficult’ to collate the data required to make the GPG calculations. Ibid p4.

workforce composition and employment practices) at least once every three years<sup>122</sup>.

- 9.13 As good practice, the Commission already recommends that employers develop voluntary '*employment equality plans*'<sup>123</sup> beyond the religion / community background scope prescribed by the fair employment legislation, and these may provide an efficient opportunity for the combined consideration of equality in employment, and in pay.
- 9.14 The completion of a gender pay action plan could potentially be built into, and reflected within, these voluntary *employment equality plans* already developed by a number of employers.

***Clarify enforcement and compliance provisions and ensure effective enforcement mechanisms.***

- 9.15 The Department should clarify how the provisions in the Act will be enforced and what constitutes compliance with the Act and the GPGR Regulations.
- 9.16 The Department should give consideration to introducing other measures to ensure effective enforcement; for example, the introduction of sanctions, such as loss of Government grants and exclusion from public contracts, in line with provisions under the fair employment legislation.
- 9.17 In light of the need to ensure that the publication of data will not result in a breach of data confidentiality and the identification of individuals, we also recommend that there is clarity for employers on when they are *not* required to publish gender pay information, as well as pay information on disability and ethnicity, particularly when small numbers are involved.

*Supporting rationale*

- 9.18 There is a need for the GPGR Regulations to be clear and precise and provide clarity and certainty for employers on their obligations, and on what constitutes compliance with the Act and the GPGR Regulations.
- 9.19 This is particularly important in light of the scale of the potential fines that can be levied under the Act<sup>124</sup>. In particular, there is the

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<sup>122</sup> For further information on carrying out Article 55 reviews, see [www.equalityni.org/Employers-Service-Providers/Large-Business/Registration-and-monitoring/Article-55-Review](http://www.equalityni.org/Employers-Service-Providers/Large-Business/Registration-and-monitoring/Article-55-Review).

<sup>123</sup> For further information on Employment Equality Plans, see [www.equalityni.org/EqualityPlans](http://www.equalityni.org/EqualityPlans)

<sup>124</sup> The Act states that the GPGR Regulations *must* make provision for a failure to comply with the Regulations to be an offence punishable on conviction by a fine (not exceeding level 5 on the standard

potential for substantial fines to be levied on employers who act in breach of their obligations; namely, a fine of up to £5000 *per employee*<sup>125</sup>.

- 9.20 It is, for example, not clear what will constitute effective compliance with the requirements in the Act and the GPGR Regulations.
- 9.21 We note, for example, the requirement under the Act for employers to “publish information relating to the pay of employees...”, and to “publish an action plan to eliminate those differences” (where a difference in gender pay is identified) [our emphasis]<sup>126</sup>.
- 9.22 The requirement however to produce an action plan which can effectively ‘*eliminate those differences*’ (presumably in parallel with action by Government to address structural issues under a gender pay strategy) appears, however, to be a higher bar than the simple publication of an action plan.
- 9.23 Therefore, will an employer have failed to comply if it publishes an action plan, but the action plan is ineffective in eliminating gender pay differences? Also, does an employer have to publish an action plan if there are *any* (even minimal) differences in gender pay? In addition, will an employer have failed to comply if it publishes gender pay data, or pay information on disability and ethnicity, that is incorrect, inaccurate or incomplete?
- 9.24 There is also a need for clarity on how the provisions will be enforced, other than by way of an offence. We note that the level of fines<sup>127</sup> are substantially higher than the potential fines that could be levied under the fair employment monitoring regulations<sup>128</sup>.
- 9.25 In addition to the imposition of financial penalties, there is also a need to consider the introduction of other measures so as to ensure effective enforcement; for example, the introduction of sanctions such as loss of Government grants and exclusion from public

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scale) for every employee. There is therefore the potential, under the Fines and Penalties (NI) Order 1984, for a fine to be levied up to £5000 per employee. The Regulations must also make provision for a failure to comply with the Regulations to be enforced, otherwise than as an offence (by such means as are prescribed).

<sup>125</sup> This means that there is the potential for a maximum fine of £1,250,000 to be levied on an employer with 250 employees who fails to comply with the Regulations.

<sup>126</sup> Section 19 (1) and (2) of the Act.

<sup>127</sup> There is the potential, in line with provisions set out in the Act which permits a fine of up to £5000 per employee, for a maximum fine of £1,250,000 to be levied at a company of 250 employees which fails to comply with the Regulations.

<sup>128</sup> For example, a failure to submit a fair employment monitoring return is a criminal offence, as is a failure to submit one within the prescribed period. This carries a penalty of up to £5,000.

contracts, in line with provisions under the fair employment legislation.

***Set out advice/ guidance roles and remit, and resourcing.***

9.26 The Department should give consideration to the specific roles and responsibilities to be delivered in relation to the provision of advice and guidance aligned to the Act and the GPGR Regulations, to ensure its effective implementation and the commensurate resourcing required to deliver this remit.

9.27 An advice and guidance role aligned to the Act could, if appropriately and adequately resourced, be added to the Commission's remit.

9.28 We consider there is scope to work jointly with partners, where this work is relevant to, and within, their remit, on activities related to raising awareness of employer obligations under the GPGR Regulations.

*Supporting Rationale*

9.29 There will be a clear need for advice and guidance to be provided to employers as they work to implement the legislation. Advice provision will, as a minimum, need to cover the production of guidance, as well as advice on the format of annual reporting and the development of effective gender pay action plans (to include meaningful analyses and appropriate actions).

9.30 We consider that considerable resources may be required to fulfil an advice role, both in the initial years of implementation and for some years beyond. Government will therefore need to ensure that any advice provision is appropriately skilled and resourced.

9.31 We consider that the Commission already has a remit and skills that are complementary and applicable to this area. The Commission already provides guidance and support to employers, including training on a range of equality issues, including equal pay and gender equality. For example, the Commission has produced a *Code of Practice on Equal Pay*, an *Equal Pay Toolkit*, as well as providing advice and guidance to employers across all sectors on how to address gender pay gaps and promote gender equality in employment<sup>129</sup>.

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<sup>129</sup> See ECNI (2013) [Code of Practice on Equal Pay](#), and [Equal Pay Review Kit](#).

- 9.32 The Commission has also worked with employers on implementing a range of equality action plans, including disability action plans, employment equality action plans, Article 55 reviews and affirmative action plans, and Section 75 action plans. We have also worked with employers on implementing equal pay and promoting gender equality in the workplace.
- 9.33 We stress however that this additional advice and guidance remit should not be allocated until appropriate and adequate rolling resourcing is confirmed.

***Set out enforcement roles and remit, and resourcing.***

- 9.34 The Department should set out the specific roles and responsibilities to be delivered in relation to the enforcement under the Act and the GPGR Regulations; and the commensurate resourcing required to deliver this remit.
- 9.35 An enforcement role aligned to the Act could, if appropriately resourced, be added to the Commission's remit.

*Supporting Rationale*

- 9.36 As with the advice and guidance role, we consider that considerable resources may be required to fulfil an enforcement role, both in the initial years of implementation and for some years beyond. It is therefore important that any future enforcement role under the GPGR Regulations must be both effectively resourced and resourced on a long-term basis.
- 9.37 Further, such enforcement duties and powers must also be robust and effective in order to support this work and to enable an enforcement body to work strategically and to take enforcement action when required.
- 9.38 We note that in GB, the Equality and Human Rights Commission (EHRC) has an enforcement role in relation to the GB GPGR Regulations<sup>130</sup>. We also note that the European Commission has recommended that national equality bodies' powers and mandates cover issues related to gender pay discrimination, including transparency obligations<sup>131</sup>.

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<sup>130</sup> The EHRC has enforcement powers under the Equality Act 2010 and Equality Act 2006 that enables it to enforce the GB GPGR Regulations. See EHRC's policy on enforcing the GB GPGR Regulations, EHRC (2018), [Closing the gap: enforcing the gender pay gap regulations](#).

<sup>131</sup> Commission Recommendation of 7.3.2014 on strengthening the principle of equal pay between men and women through transparency, [EC Recommendation March 2014](#).

- 9.39 Again, we stress however that this enforcement remit should not be allocated until appropriate and adequate rolling resourcing is confirmed.

## 10 Conclusion

- 10.1 We call for prompt action to bring Section 19 of the Act into force, and to introduce a gender pay strategy and associated action plan, in tandem with the introduction of the GPGR Regulations in Northern Ireland.

### ***Our recommendations:***

- **Employment Act (Northern Ireland) 2016:** Bring Section 19 of the Act into force, updated as required; and support good practice prior to its enactment.
- **Gender Pay Strategy:** Implement a gender pay strategy and action plan for Northern Ireland, beginning work without further delay to allow this to occur in tandem with GPGR Regulations.
- **Gender Pay Gap Reporting (GPGR) Regulations:** Introduce GPGR Regulations; *initially* apply requirements to large employers; review after 5 years; and encourage all employers to address gender pay gaps.
- **Employer Duties:** Require publication of gender pay gap data; consider additional pay gap reporting requirements; and clarify provisions of the Act.
- **Employer Gender Pay Action Plans:** Ensure gender pay strategy supports employer actions; clarify employer requirements; ensure employers: consult on, and publish action plans widely; consider actions to address ethnicity/ disability pay gaps; and review annually.
- **Guidance, Compliance, Enforcement:** Ensure support for employers; highlight benefits of alignment with existing equality reviews; ensure effective enforcement mechanisms; and consider roles and resourcing.

### ***Further Information***

- 10.2 For further information, including our key point briefing and summary versions of this document, see [www.equalityni.org/GenderPayPolicy](http://www.equalityni.org/GenderPayPolicy)

## **11 Annex 1: Employment Act (NI) 2016 provisions (summary)**

Under Section 19, employers must, in accordance with regulations to be made by the Department under this section, publish –

- (a) information relating to the pay of employees for the purpose of showing whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees; and
- (b) details of the methodology used to calculate any statistics contained in the information.

Where there are differences in the pay of male and female employees, an employer must publish an action plan to eliminate those differences.

The Department may prescribe by regulations a limit to the total number of employees and workers in an organisation below which this section does not apply.

The regulations must prescribe –

- (a) descriptions of employer;
- (b) descriptions of employee;
- (c) how to calculate the number of employees that an employer has;
- (d) a standardised method for calculating any differences in the pay of male and female employees;
- (e) descriptions of information;
- (f) a requirement that information include statistics on workers within each pay band in relation to -
  - (i) ethnicity, and
  - (ii) disability;
- (g) the time at which information is to be published; and
- (h) the form and manner in which it is to be published.

The first regulations under this section must be made by 30 June 2017.

Regulations under subsection (6)(g) may not require an employer, after the first publication of information, to publish information more



frequently than at intervals of 12 months or less frequently than at intervals of 36 months.

The regulations shall make provision for a failure to comply with the regulations -

- (a) to be an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale for every employee;
- (b) to be enforced, otherwise than as an offence, by such means as are prescribed.

Within 18 months of the day on which this Act receives Royal Assent, the Department must, in consultation with trade unions, publish a strategy including an action plan, on eliminating differences in the pay of male and female employees.

## 12 Annex 2: ECNI recommendations on tackling gender pay disparities

12.1 The Commission's 2016 '*Gender Priorities and Recommendations*'<sup>132</sup>, sets out a range of recommendations that will assist directly and indirectly with tackling gender pay disparities. For ease of reference, these are summarised below.

### ***Introduction***

12.2 We consider that action to advance both employer gender pay gap reporting (and associated employer gender pay action plans) and a gender pay strategy and action plan for Northern Ireland should contribute to advancing the Commission's '*Gender Priorities and Recommendations*' (2016)<sup>133</sup> and wider recommendations, including our *Programme for Government* recommendations<sup>134</sup>.

12.3 Our gender equality recommendations are summarised below. In light of the reporting requirements under the Act that include a focus on ethnicity and disability, our wider employment related recommendations relating to race and disability are also highlighted.

12.4 Specific recommendations which we consider to be particularly relevant to tackling gender pay disparities and need to be addressed, are highlighted in particular (underlined).

### ***Gender equality recommendations***

#### Overarching recommendation

12.5 We recommend that action to advance both employer gender pay reporting and an overarching government gender pay strategy should contribute to advancing the Commission's recommendation to strengthen institutional mechanisms for gender equality.

- **Ensure Executive action to strengthen institutional mechanisms for gender equality.**

Action is required to ensure a high-level commitment to gender equality; to ensure gender mainstreaming, and take positive action where appropriate; to improve gender data collection and

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<sup>132</sup> ECNI (2016) [Gender Equality Policy Priorities and Recommendations](#), Summary version. Recommendations include, for example, in the area of gender law reform, prohibiting 'pay secrecy clauses' and introducing mandatory equal pay audits. See also [www.equalityni.org/GenderEquality](http://www.equalityni.org/GenderEquality) for our Key Point Briefing and full Report.

<sup>133</sup> Ibid

<sup>134</sup> ECNI (2016) [Programme for Government Recommendations](#) .

disaggregation; and to develop and implement an effective Gender Equality Strategy.

#### Employer Gender Pay Reporting / Employer Action Plans

12.6 We recommend that action to advance employer gender pay reporting (and associated employer action plans) gives effect to the following Commission recommendations.

▪ **Carry out equal pay reviews**

We recommend that employers carry out an equal pay review to include identifying any equal pay gaps.

▪ **Advance gender equality in access to, and progression within, employment; and ensure women's economic independence**

Action is required to mitigate the negative impact on women of post-recession restrictions in public expenditure; eliminate occupational and industrial segregation; promote workplace equality, encourage flexible working practices and sharing of family roles; and address barriers due to gender identity and multiple identities

▪ **Address the negative consequences for those who fulfil caring roles and ensure access to appropriate, accessible and affordable childcare.**

Action is required to consider the economic impact of the pattern of paid / unpaid care work and address the undervaluation of this work; ensure appropriate, accessible and affordable childcare provision; and encourage employers to develop carer friendly policies and practices.

▪ **Tackle gender stereotypes; and prejudicial attitudes**

Action is required to counter gender stereotypes throughout the life course in school, training, work and in the family and wider society, including the media; tackle the objectification and degradation of women and girls; and tackle high levels of prejudicial attitudes towards trans people.

#### Gender Pay Strategy

12.7 We recommend that action to advance a gender pay strategy (and the associated action plan) should not only contribute to the above, but also give effect to the following wider Commission recommendations.

- **Reform sex equality and equal pay law to address gaps and to harmonise, simplify and clarify the law**  
 Action is required to address the significant gaps in protection in sex equality and equal pay legislation, including through the introduction of gender pay reporting requirements; to harmonise, simplify and clarify the law; and strengthen the Commission's enforcement powers, as well as the available remedies.
- **Ensure gender mainstreaming via the curriculum, careers advice, teacher training and key policies; address the under-attainment of boys**  
 Action is required to tackle gender inequalities and stereotyping including through the curriculum, teacher training, subject choice, careers advice and the policies and practices of educational bodies; address the educational under-attainment of boys; and challenge gender based / transphobic bullying.
- **Remove barriers to the participation of pregnant women and new mothers in the workplace**  
 We recommend action to lead change so as to ensure that pregnancy and maternity is not a barrier to women's full participation in the workplace<sup>135</sup>.
- **Increase the participation of women in public life and economic decision making**  
 We recommend action to increase the participation of women in public life and economic decision making
- **Tackle inequalities due to multiple identities in employment / education**  
 We recommend actions to address the specific situation and tackle the further inequalities experienced by women and men, throughout their life cycle, where they experience inequality due to their multiple identities.
- **Ensure no regression from existing equality protections and mechanisms**  
 We recommend Government should commit, including through the Programme for Government, to ensure that there is no regression from current levels of protection under equality law in Northern Ireland including sex equality and equal pay law, and no weakening of supporting equality mechanisms.

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<sup>135</sup> See ECNI (2016) [Expecting Equality-Summary: A Formal Investigation into the treatment of pregnancy workers and mothers in Northern Ireland workplaces](#).

- **Mitigate against the adverse impacts of welfare reform; and ensure gender equality in access to social protection and pension provision**

Action is required to mitigate against the identified adverse impact of welfare reform proposals on women; improve access to social protection for certain groups of minority ethnic women; and protect women with smaller pension provision.

12.8 For more information on these gender equality recommendations see [www.equalityni.org/gender](http://www.equalityni.org/gender).

### ***Race & Disability: Wider Recommendations***

12.9 In Northern Ireland, gender pay reporting requirements under the Act include a focus on ethnicity and disability.

12.10 We recommend that action to advance a gender pay strategy for Northern Ireland (and the associated action plan) should contribute to advancing the following wider Commission employment related recommendations with regards to race and disability.

- **Remove barriers to employment faced by black and minority ethnic people including refugees and asylum seekers**

We recommend action to address the exploitation and forced labour of migrant workers and the concentration of some minority ethnic workers in low paid employment.

- **Support people with disabilities to access and remain in the workplace**

We recommend that the Executive develop further commitments to remove the barriers to work for people with disabilities and to support disabled people to access and remain in the workplace, including through appropriate, affordable, accessible childcare<sup>136</sup>.

12.11 For more information on these recommendations see [www.equalityni.org/race](http://www.equalityni.org/race) and [www.equalityni.org/disability](http://www.equalityni.org/disability)

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<sup>136</sup> ECNI (2017) Response to [PfG-DeliveryPlan-42-Disability](#)