
**IRISH HUMAN RIGHTS AND EQUALITY COMMISSION (GENDER PAY GAP
INFORMATION) BILL 2017**

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ACTS REFERRED TO

Irish Human Rights and Equality Commission Act 2014 (No. 25)

**IRISH HUMAN RIGHTS AND EQUALITY COMMISSION (GENDER PAY GAP
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Bill

entitled

An Act to require certain employers to publish information relating to the pay of employees for the purpose of showing whether there are differences in the pay of male and female employees and, if so, the nature and scale of such differences, for that purpose to amend the Irish Human Rights and Equality Commission Act 2014, and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Amendment of Irish Human Rights and Equality Commission Act 2014

1. The Irish Human Rights and Equality Commission Act 2014 is amended by inserting the following after section 32:

“Gender pay gap information

32A. (1) The Commission may make a scheme under this section (“a scheme”) requiring employers to publish information relating to the pay of their employees for the purpose of showing whether there are differences in the pay of male and female employees and, if so, the nature and scale of such differences.

- (2) A scheme shall not apply to employers having fewer than 50 employees.
- (3) A scheme may prescribe –
- (a) classes of employer to which the scheme relates,
 - (b) classes of employee to which the scheme relates,
 - (c) how to calculate the number of employees that an employer has,
 - (d) how to calculate, for ease of comparison, the pay of employees,
 - (e) details relating to the information required to be published under the scheme, and
 - (f) the form and manner in which, and the frequency with which (which shall not be more frequent than once in each year), information is to be published under the scheme.

- (4) Without prejudice to the generality of the foregoing, a scheme shall require employers to whom the scheme relates to publish information in relation to –
- (i) the difference between the mean hourly rate of pay of male employees and that of female employees,
 - (ii) the difference between the median hourly rate of pay of male employees and that of female employees,
 - (iii) the difference between the mean bonus pay paid to male employees and that paid to female employees,
 - (iv) the difference between the median bonus pay paid to male employees and that paid to female employees,
 - (v) the proportions of male and female employees who were paid bonus pay, and
 - (vi) the proportions of male and female employees in the lower, lower middle, upper middle and upper quartile pay bands.
- (5) A scheme shall require the breakdown of information by reference to the full-time or part-time status of employees and by reference to their ages.
- (6) An employer who contravenes the provisions of a scheme made under this section is guilty of an offence and is liable on summary conviction to a Class A fine.”

Short title and collective citation and construction

2. (1) This Act may be cited as the Irish Human Rights and Equality Commission (Gender Pay Gap Information) Act 2017.

(2) This Act and the Irish Human Rights and Equality Commission Act 2014 may be cited together as the Irish Human Rights and Equality Commission Acts 2014 and 2017 and shall be construed together as one Act.

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EXPLANATORY MEMORANDUM

Purpose of Bill

The Bill's purpose is to require large employers to publish information relating to employee pay, for the purpose of showing whether there are differences in the pay of male and female workers and, if so, the nature and scale of such differences.

Specifically, it is proposed to confer on the Human Rights and Equality Commission a power to create an information disclosure scheme for employers about the gender pay gap, if any, in their operations.

The Bill is in the first instance a diagnostic rather than a curative measure. It enables information to be gathered to assist in public policy formation. Significantly, it also assists employers to benchmark their firms against competitors.

But the information gathered may potentially serve another purpose, in the hands of the Human Rights and Equality Commission. Equal pay legislation is under the aegis of the Commission. Under Part 3 ("Enforcement and compliance") of the Irish Human Rights and Equality Commission Act 2014, the Commission may invite an undertaking to carry out an equality review and, following such a review, to prepare and implement an equality action plan. The Commission is also empowered to carry out a review or prepare an action plan of its own volition.

A review or action plan may relate to equality of opportunity generally or to a particular aspect of discrimination, within an undertaking or group of undertakings, or undertakings making up a particular industry or a sector. To be subject to such a review or action plan, an organisation must have 50 or more employees.

Once a review and action plan is completed by the Commission, it may serve notice if an undertaking fails to implement the requirements of the plan. There is provision for appeal, following which the notice comes into operation after 56 days. Failure to comply is an offence.

The Commission also has powers of inquiry, modelled on the Commissions of Investigation Act, and can serve an 'equality and human rights compliance notice' following or in the course of an inquiry.

Such a notice can specify the nature of the discrimination or violation of rights concerned and require the persons on whom they are served to act on the notice. The notice also outlines the steps to be taken to address the violation and specifies the timeframe which applies.

The Circuit Court may grant an injunction against a person who does not comply with a human rights and equality compliance notice.

The gender pay gap disclosure requirements in this Bill should therefore be read in the context of an existing statutory regime that enables the Commission to acquire information, to assess compliance with employment equality law and to direct steps to be taken by employers where it finds institutional inequalities.

Provisions of Bill

Section 1 inserts a new section 32A into Part 3 of the Irish Human Rights and Equality Commission Act 2014, discussed above. The new section, headed, “Gender pay gap information”, provides that the Commission may make a scheme requiring employers to publish information relating to employee pay, for the purpose of showing whether there are differences in the pay of male and female employees and, if so, the nature and scale of those differences. However, a scheme shall not apply to employers having fewer than 50 employees.

A great deal of the detail is left to the drafting of the scheme. The scheme must prescribe the classes of employer and employee to which it relates, how to calculate, for ease of comparison, the number of employees in a firm and the pay of employees, the details to be published, and the form and manner in which, and the frequency with which information is to be published.

But a scheme must require employers to publish information in relation to –

- the difference between the mean hourly rate of pay of male and of female employees,
- the difference between the median hourly rate of pay of male and of female employees,
- the difference between the mean bonus pay paid to male and to female employees,
- the difference between the median bonus pay paid to male and to female employees,
- the proportions of male and female employees who were paid bonus pay, and
- the proportions of male and female employees in the lower, lower middle, upper middle and upper quartile pay bands.

A scheme must also require the breakdown of information by reference to the full-time or part-time status of employees and by reference to their ages.

Finally, the section provides that an employer who contravenes the provisions of a scheme is guilty of an offence and is liable on summary conviction to a Class A fine.

Section 2 makes standard provision for the Bill’s short title and collective citation and construction.

*Brendan Howlin TD
March 2017*