



EQUALITY COMMISSION FOR NORTHERN IRELAND

Response to Consultation:

**Department for Communities: Gender Pay Gap
Information Regulations**

February 2025

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Executive Summary

- i. The Equality Commission for Northern Ireland (the Commission) welcomes the opportunity to respond to the Department for Communities' consultation on Gender Pay Gap Information Regulations.
- ii. We welcome that the Department for Communities (DfC) is taking steps to advance the implementation of gender pay reporting, taking account of Section 19 of the Employment Act (Northern Ireland) 2016. We also welcome that the Ministers of Communities and Economy have agreed in principle to work together to advance gender pay gap reporting (GPGR) in Northern Ireland.
- iii. However, we are concerned that the consultation proposals do not give effect to the Pay Transparency Directive (PTD)¹. The PTD includes, but is not limited to, provisions related to GPGR.
- iv. You will be aware that the Commission, alongside the NI Human Rights Commission (NIHRC), have formed the view that, further to the dynamic alignment obligations arising out of Windsor Framework Article 2 in conjunction with WF Article 13 (3)², the majority of the PTD must be transposed into NI law by 7 June 2026.
- v. We consider that DfC's consultation proposals, if implemented as drafted, are not sufficient to transpose the PTD into Northern Ireland law, nor enough to comply with the UK Government's 'keeping pace' duty under Windsor Framework Article 2.
- vi. In responding to this consultation, we set out a number of views with regards to the requirements of the PTD. The Commission also continues to consider how many of the more detailed gender pay gap reporting aspects of the PTD, as well as the wider aspects of the PTD, should be transposed to Northern Ireland, including consideration of where the approach taken should go beyond the minimum standards required by the Directive, where this reflects

¹ An EU summary of the Directive is available at EUR-Lex (2023) [Equal pay for equal work or work of equal value between men and women: Rules on pay transparency](#)

² Relating to WF Article 2(1).

best practice, and strengthens rights. We will be happy to engage with the Department on these matters.

- vii. The points below seek to reflect and engage with the questions raised in the consultation document. In summary, our response recommends action to:

Overarching

- Commit as a matter of urgency, to transposing the relevant provisions of the EU Pay Transparency Directive (PTD), including in relation to gender pay gap reporting. There should also be a commitment to work with the Department for the Economy and The Executive Office, to ensure that Northern Ireland legislation keeps pace with other requirements of the PTD that do not relate to GPGR, by 7 June 2026;
- Adopt an approach when implementing the Directive that goes beyond minimum standards where this reflects best practice, and where it seeks to strengthen rights in this area;
- Ensure legislation and public policy and service provision meets the specific needs of Northern Ireland, reflecting international human rights standards and taking account of best practice, including any lessons from Great Britain, Ireland or wider relevant jurisdictions;
- Consider other relevant legislative requirements in Northern Ireland, in particular fair employment monitoring;
- Clarify what changes to primary legislation the Department proposes to make, and the vehicle for doing so;

Scope

- Align with the PTD when considering which individuals are to be included within GPGR requirements;
- Apply GPGR requirements initially to employers with 150 or more employees, with a phased approach to take the eventual scope to employers with 100 or more employees, in line with the PTD;
- Apply provisions to the public, private and voluntary sectors;

Calculating the gender pay gap

- Consider the proposed standardised methodology in light of the requirements of the PTD;
- Define pay in alignment with the PTD;
- Align with the requirements of the PTD as a minimum, when considering data to be provided, including the gender pay gap between workers by categories of workers. In relation to complementary or variable components, we recommend that data should include the bonus pay gap, and proportion of males / females receiving bonuses;
- Clarify whether Government intends to compile GPGR information itself, and if so, how it would do so, while giving effect to the wider recommendations in this response;
- Engage with ECNI in relation to the tools and methodologies in relation to the assessment and comparison of the value of work;
- 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;
- Clarify the purpose and rationale for the focus of separate parts of the Employment Act 2016, and the consultation, on ‘employees’ and ‘workers’;
- 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;
- Require employers subject to the GPGR Regulations to publish gender pay data on a common fixed date on their own website; and consideration should be given to the merits of the date being consistent with the publication dates under Great Britain’s GPGR Regulations³;
- Require confirmation of the accuracy of information from employers, aligned with the PTD;

Form, Manner and Timing of Publication

- Align with the PTD requirement that employers shall provide information on the gender pay gap between workers by categories

³ The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017

of workers, to all their workers and to the workers' representatives of their workers;

- Require employers with 250 employees to report every year, which would align with the PTD. Consideration should be given to the reporting requirements for smaller employers (100-249 employees), aligned with the PTD;
- Consider coding employers by Standardised Industrial Coding (SIC);

Ethnicity and Disability

- Ensure that provisions relating to intersectional discrimination reflect, as a minimum, those required by the PTD;
- Consider how the PTD employer thresholds will interact with collecting data on ethnicity and disability;
- Engage further with the Commission and other key stakeholders in relation to gathering data on ethnicity and disability;
- Consider the definitions of racial groups and disability in equality legislation, when considering provisions and guidance relating to ethnicity and disability;
- Clarify the rationale for limiting the requirement 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';
- Clarify the intended purpose and focus of the information to be published on '*workers within each pay band*' in relation to *ethnicity and disability*;
- Provide clear guidance for employers on how data in relation to ethnicity and disability should be collected and reported on;

Action Plans/ Joint Pay Assessments

- Consider whether provisions for action plans should apply to all organisations with at least 100 employees, mindful of the requirements of the PTD;
- Make specific inclusions in relation to gender pay action plans, including in relation to consultation, publication, ethnicity and disability, reviewing progress and existing employer reviews;

- Make provisions for Joint Pay Assessments and the taking of remedial action, where appropriate, aligned with the PTD;

Monitoring and Enforcement

- Set out the specific roles and responsibilities to be delivered in relation to the monitoring and enforcement under the GPGR Regulations, giving effect to the PTD; and ensuring the commensurate resourcing is provided to deliver these remits;
- Make provision, including adequate funding, for the Commission to undertake the roles and duties required for *equality bodies* under the PTD;
- Subject to adequate and appropriate resourcing, the Commission should also be asked to deliver monitoring and enforcement roles, given the relevance to our existing remits. The Department should engage with us regarding the format, focus and resourcing of these roles;

Implementation Costs

- Ensure that any consideration of costs to business should also consider the investment value in advancing equality and improving workforces and work places;.

Compliance

- Clarify how the GPGR provisions will be enforced and what will constitute compliance;
- Align any provisions relating to enforcement and compliance with the requirements of the PTD;
- Ensure clear and precise Regulations, which provide clarity and certainty for employers on their obligations, and on what constitutes compliance;
- Provide clarity for employers on when they are not required to publish gender pay information;

Guidance

- Ensure effective support, training and guidance for employers

- Provide guidance on gender pay reporting which encourages employers who are not subject to GPGR Regulations, to proactively assess and address any gender pay gaps and adopt good practice;

Review

- Commit to reviewing the GPGR Regulations promptly after 5 years of operation, to include a consideration of their general operation;

Gender Pay Strategy

- Introduce a gender pay strategy and action plan for Northern Ireland, to address structural factors both within society and within the workplace, involving key stakeholders in the design, delivery and review;

Section 75 advice

- Undertake further work on the equality assessment (screening and/or EQIA), providing further policy scoping, more relevant Section 75 data, more robust assessment of impacts, as well as setting out consideration of mitigation, alternative policies and Section 75 Monitoring arrangements;
- Update the ‘assessment’ following consultation on the policy proposals and that this assessment is published as per equality scheme commitments and a copy of it provided to the decisionmaker, prior to decision making on the policy proposals; and

Windsor Framework Article 2 Impact Assessment

- Set out in relevant accompanying documentation to draft legislation (for example, Explanatory Memoranda and Human Rights Memoranda/impact assessments) a detailed consideration of compliance with WF Article 2 in conjunction with the Department for Economy, when bringing forward draft legislation to implement their proposals in this area

- viii. The Commission also has a number of cross-cutting recommendations that it considers important to see implemented

across a range of Government strategies, programmes and plans. These include actions calling for leadership at all levels on equality issues; and recommending stakeholder involvement in design, delivery and review; the targeting of interventions and tracking of impacts; that key datasets contain more comprehensive equality data to facilitate full equality analysis; and to time-bound and resourced action plans, with stakeholder organisations and the Equality Commission resourced so they can support individuals, organisations, and Government / Departments to shape and assist effective delivery

- ix. We look forward to further engagement with stakeholders and decision-makers on gender pay gap reporting, and wider issues, including those in the Pay Transparency Directive.

1 Introduction

- 1.1 The Equality Commission for Northern Ireland ('the Commission') is an independent public body established under the Northern Ireland Act 1998⁴.
- 1.2 Under the Sex Discrimination (Northern Ireland) Order 1976 (as amended) (the 'SDO'), the Commission's duties include⁵:
- to work towards the elimination of discrimination;
 - to promote equality of opportunity between men and women generally, and for people with the protected characteristic of gender reassignment; and
 - to keep the SDO and the Equal Pay Act under review.
- 1.3 Further, the Commission, along with the Northern Ireland Human Rights Commission (NIHRC) is mandated in accordance with Article 2(1) of the Windsor Framework (formerly Protocol on Ireland/Northern Ireland) of the UK-EU Withdrawal Agreement to oversee the UK Government's commitment on rights and equality in Northern Ireland (NI) after EU withdrawal.
- 1.4 The Commission has previously outlined that it considers 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 (GPGR) 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.
- 1.5 It is welcome that the Department is moving to progress GPGR, following the requirements set down in the Employment Act (Northern Ireland) 2016. That Act required GPGR Regulations by June 2017 – a deadline which has been long missed.

⁴ For further information, see www.equalityni.org/AboutUs

⁵ [Article 54 of the Sex Discrimination \(Northern Ireland\) Order 1976](#)

- 1.6 However, since the Employment Act 2016, there have been significant developments in other jurisdictions, with both Great Britain and Ireland introducing gender pay gap reporting.
- 1.7 Of direct relevance, the EU Pay Transparency Directive (PTD) also came into force in June 2023. The PTD includes, but is not limited to, provisions related to gender pay gap reporting (GPGR).
- 1.8 **The Commission, together with the NIHRC, has formed the view that the relevant provisions of the PTD must be transposed⁶ into NI law by 7 June 2026, further to dynamic alignment obligations on the UK Government arising out of Windsor Framework Article 2 in conjunction with WF Article 13 (3)⁷.**
- 1.9 Given this obligation, we are concerned that the Department's consultation proposals do not seek to give effect to the PTD. We urge the Department to give prompt attention to this point, and to engage with the Commission accordingly
- 1.10 The PTD is wide-ranging, but includes substantive provisions relating to pay gap reporting. Therefore, the transposition of the PTD will have a significant impact on the design and implementation of Gender Pay Gap Reporting in Northern Ireland.
- 1.11 We consider that DfC's consultation proposals, if implemented as drafted, are not sufficient to transpose the Pay Transparency Directive into Northern Ireland law, nor enough to comply with the UK Government's 'keeping pace' duty under Windsor Framework Article 2.
- 1.12 Further, it is important to note that introducing pay gap reporting alone will not be sufficient to comply with the keep pace duty, as the PTD includes wider provisions on issues such as pay transparency prior to employment.

⁶ The Commissions have formed the views that all provisions of the PTD, apart from a small number of provisions of the PTD that are no longer relevant now that the UK has left the EU, amend and/or replace provisions in the [Recast Directive](#) which is contained in Annex 1 of the WF. This includes as regards changes to substantive rights and procedural rights and rights relating to access to remedies, in this area. We have set out views on this matter in a detailed [briefing paper](#).

⁷ Relating to WF Article 2(1).

- 1.13 In this context, the Department will wish to consider how advancing Gender Pay Gap Reporting provisions at this time can contribute to delivering the requirements of the PTD ahead of its June 2026 deadline.
- 1.14 The Department published a ‘screening’ of the Gender Pay Regulations along with the proposed policy. The Commission has reviewed the screening assessment and has provided S75 advice in Section 16. We have recommended that:
- The Department undertake further work on the equality assessment (screening and/or EQIA), providing further policy scoping, more relevant Section 75 data, more robust assessment of impacts, as well as setting out consideration of mitigation, alternative policies and Section 75 Monitoring arrangements; and
 - The ‘assessment’ is updated following consultation on the policy proposals and that this assessment is published as per equality scheme commitments and a copy of it provided to the decisionmaker, prior to decision making on the policy proposals.
- 1.15 We have also recommended that the Department, in conjunction with the Department for Economy, when bringing forward draft legislation to implement their proposals in this area sets out in relevant accompanying documentation to draft legislation (for example, Explanatory Memoranda and Human Rights Memoranda/impact assessments) a detailed consideration of compliance with WF Article 2. Further information is available in Section 17.

Context

The Gender Pay Gap

- 1.16 As below, there is value in collecting information on both the median and mean gender pay gap. Median measures the hourly pay of the ‘middle’ employee i.e. the level of earnings at which 50% of people earn more than this and 50% earn less⁸.
- 1.17 The UK Government⁹ has, for example, identified that ‘the mean can be useful because women are often over-

⁸ NISRA (2024) [Gender Pay Gaps in Northern Ireland](#), p. 6.

⁹ UK Government (2016) [Mandatory Gender Pay Reporting, Consultation on Draft Regulations](#), p. 9.

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'.

- 1.18 In relation to the mean gender pay gap, it is important to note that a small number of individuals with a very high pay to the dataset could increase the mean pay markedly, therefore using the mean in isolation can be misleading¹⁰.

Median pay gap

- 1.19 NISRA¹¹ reports on the gender pay gap in Northern Ireland, largely based on the median hourly earnings excluding overtime. This includes basic pay, commissions, shift premium pay, bonus or incentive pay and allowances, and is before deductions for PAYE, National Insurance, pension schemes, student loan repayments and voluntary deductions.
- 1.20 As of April 2024, the median gender pay gap¹² for all employees in NI was 7.3% in favour of men, who earned £1.14 more per hour (excluding overtime) on average than women (£15.64 compared to £14.50 for females). This means that for every £1 earned by men, women earned 93p.
- 1.21 In April 2024¹³, median part-time earnings for women (£12.52) were 2.6% higher than part-time earnings for men (£12.20). For the first time in 15 years, median full-time earnings for men (£16.73) were higher than full-time earnings for women (£16.59), although this was by less than 1%. NISRA have suggested¹⁴ that the delay in the public sector pay awards may have contributed to the reversing of the full-time gender pay gap in 2024, as in previous years when considering full-time employees only, the pay gap was in favour of women.
- 1.22 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.

¹⁰ NISRA (2024) [Gender Pay Gaps in Northern Ireland](#), p. 6.

¹¹ NISRA (2024) [Employee Earnings in Northern Ireland](#)

¹² NISRA (2024) [Employee Earnings in Northern Ireland](#)

¹³ NISRA (2024) [Employee Earnings in Northern Ireland](#), 3.1.

¹⁴ NISRA (2024) [Employee Earnings in Northern Ireland](#), 3.5.

1.23 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 sector¹⁵. 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 group¹⁶. There are also gender pay gaps in favour of men across many different industrial sectors¹⁷.

Mean pay gap

1.24 As above, caution is needed in relation to mean gender pay gaps, as a small number of individuals can skew the data. Nevertheless, it is worth noting that provisional data suggests that the mean gender pay gap was in favour of men in 2024, regardless of working pattern¹⁸.

2 Overarching Recommendations

2.1 **Government should commit, as a matter of urgency, to transposing the relevant provisions of the EU Pay Transparency Directive (PTD)**, including in relation to gender pay gap reporting, as outlined further below.

2.2 We recommend that legislation and public policy and service provision should **meet the specific needs of Northern Ireland, reflect international human rights standards and take account of best practice**, including any lessons from Great Britain, Ireland or wider relevant jurisdictions.

2.3 When considering best practice, the Department will wish to consider lessons learnt from the gender pay gap reporting provisions in Great Britain and Ireland.

2.4 We recommend that the Department consider **other relevant legislative requirements in Northern Ireland, in particular**

¹⁵ NISRA (2024) [Employee Earnings in Northern Ireland](#), 3.2.

¹⁶ NISRA (2024) [Employee Earnings in Northern Ireland](#), 3.4.

¹⁷ 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

¹⁸ NISRA (2024) [ASHE 2024 \(Provisional\), Table 1 \(NI\).6a](#)

fair employment monitoring, which includes monitoring requirements in relation to sex¹⁹.

2.5 **The Department will also wish to consider TEO's proposals²⁰ in relation to ethnic equality monitoring, as discussed below.**

2.6 The Department will also wish to monitor the UK Government's plans for further reform, including in relation to the Employment Rights Bill, and other steps to 'Make Work Pay'²¹. Likewise, the Department will wish to consider the steps Ireland has already or plans to take to transpose the PTD.

2.7 We recommend that the **Department clarifies what changes to primary legislation it proposes to make, and the vehicle for doing so.**

2.8 We note the consultation document's statement that '*in order to ensure that Section 19 can safely be implemented, amendments will be required to the existing primary legislative elements*', and that this can only be done through a new legislative Bill. However, the consultation does not outline what amendments are proposed, or how this will be achieved.

2.9 We understand these amendments are likely to be implemented through the Good Jobs Bill²², but this is not made clear within the consultation document.

Cross-cutting Policy Recommendations

2.10 There is need for action to address a number of recommendations that the Commission considers important to see implemented across a range of Government strategies, programmes and plans, including:

- **Targeting Interventions, Tracking Impacts:** We recommend that all key measures are not only tracked in aggregate, but also for the impact on individuals from across the full range of equality grounds. Including comprehensive equality metrics will facilitate

¹⁹ ECNI (2011) [A Step-by-Step Guide to Monitoring](#)

²⁰ TEO (2024) [Review of the Current Race Relations \(NI\) Order 1997: Consultation Response Report](#), pp. 71-72.

²¹ UK Government (2024) [Next Steps to Make Work Pay](#)

²² NI Assembly (28/10/2024) [AQW 15701/22-27](#)

the targeting and delivery of interventions across the full range of equality groups.

- **Equality Data:** Improving the collection and sharing of comprehensive equality data will better underpin the targeting and tracking of equality impacts. Key datasets should contain comprehensive equality data to facilitate full equality analysis. Making such information more accessible will assist a wide range of decision makers and stakeholders.
- **Leadership:** Leadership should promote positive attitudes, challenge stereotypes and discrimination and ensure that options to advance equality are considered at the earliest point and across the lifecycle of law, public policy and service delivery.
- **Stakeholder Involvement:** We recommend full and routine stakeholder involvement and co-design. To benefit from their expertise and experience, key stakeholders from across the equality grounds should be fully involved in the design, delivery and review of law, public policy and service delivery.
- **Implementation Friendly Design:** When drafting policy and legislation, it is important to consider and provide for implementation – including via prioritised, measurable, time-bound and resourced actions.
- **Resources:** Appropriate and sufficient resourcing is a key element of successful implementation. The Equality Commission and/or stakeholder organisations should be appropriately resourced to support individuals, organisations, and/or Government / Departments as relevant.

3 Pay Transparency Directive

- 3.1 As reflected in its full title²³, the PTD aims to strengthen the application of the principle of equal pay for equal work or work

²³ 'Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms'.

of equal value between men and women through pay transparency and enforcement mechanisms.

- 3.2 Implementing this Directive in NI law would lead to greater accountability and transparency by certain employers on gender pay gaps within their organisations. For example, the PTD introduces new obligations on certain employers in terms of pay reporting and joint pay assessments linked to ensuring compliance with the principle of equal pay.²⁴ It also introduces enhanced enforcement measures to improve access to justice and enforcement of rights, for example, the right of ‘equality bodies’ to engage in court or administrative procedures in support of workers regarding equal pay discrimination,²⁵ and strengthened rights relating to compensation.²⁶
- 3.3 We also note that there is support for this legislative change amongst equality and human rights stakeholders. For example, the Women’s Manifesto, issued by the Women’s Policy Group NI, recommended the transposition of the PTD into domestic law as soon as possible, calling it a ‘a crucial step for eliminating gender-based discrimination in the workplace and tackling the gender pay gap’.²⁷
- 3.4 The Commission, alongside the NI Human Rights Commission (NIHRC), considers that, apart from a small number of provisions of the PTD that are no longer relevant now that the UK has left the EU, all other provisions of the PTD amend and/or replace provisions in the Recast Directive.²⁸ This includes changes to substantive rights and procedural rights and rights relating to access to remedies in this area.
- 3.5 We therefore consider that, **further to the dynamic alignment obligations arising out of WF Article 2 in conjunction with WF Article 13 (3)²⁹, these provisions of the PTD must be transposed into NI law by 7 June 2026.**
- 3.6 We stress that the **requirements of the PTD should be considered minimum requirements.** We encourage the NI

²⁴ Article 9 and 10 of the Pay Transparency Directive

²⁵ Article 15 of the Pay Transparency Directive

²⁶ Article 16 of the Pay Transparency Directive

²⁷ Women’s Policy Group NI (2024) Women’s Manifesto: General Election 2024, p. 11.

²⁸ [Directive 2006/54/EC](#) ‘EU Parliament and Council Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)’, 5 July 2006.

²⁹ Relating to WF Article 2(1).

Executive to adopt an approach when implementing the Directive that goes beyond these minimum standards where this reflects best practice, including international human rights best practice, and where it seeks to strengthen rights in this area.

- 3.7 For further detail on the two Commissions' analysis of the Pay Transparency Directive and the UK Government's dynamic alignment obligations relating to Windsor Framework Article 2, please see briefing paper: [ECNI and NIHRC Briefing Paper: The EU Pay Transparency Directive](#).

4 Scope

Scope of the Pay Transparency Directive

- 4.1 **When considering which individuals are to be included within GPGR requirements, the Department should align with the PTD.**
- 4.2 The PTD outlines at Article 2 (2) that the provisions relate to '*all workers who have an employment contract or employment relationship as defined by law, collective agreements and/or practice in force in each Member State with consideration to the case-law of the Court of Justice*'.
- 4.3 Recital 18 of the Directive also outlines:

This Directive should apply to all workers, including part-time workers, workers on a fixed-term contract and persons with a contract of employment or employment relationship with a temporary agency, as well as workers in management positions, who have an employment contract or employment relationship as defined by law, collective agreements and/or practice in force in each Member State, taking into account the case-law of the Court of Justice³⁰. Provided that they fulfil relevant criteria, domestic workers,

³⁰ Judgment of the Court of Justice of 3 July 1986, Lawrie-Blum, 66/85, ECLI:EU:C:1986:284; judgment of the Court of Justice of 14 October 2010, Union Syndicale Solidaires Isère, C-428/09, ECLI:EU:C:2010:612; judgment of the Court of Justice of 4 December 2014, FNV Kunsten Informatie en Media, C-413/13, ECLI:EU:C:2014:2411; judgment of the Court of Justice of 9 July 2015, Balkaya, C-229/14, ECLI:EU:C:2015:455; judgment of the Court of Justice of 17 November 2016, Betriebsrat der Ruhrlandklinik, C-216/15, ECLI:EU:C:2016:883; judgment of the Court of Justice of 16 July 2020, Governo della Repubblica italiana (Status of Italian magistrates), C-658/18, ECLI:EU:C:2020:572.

on-demand workers, intermittent workers, voucher based-workers, platform workers, workers in sheltered employment, trainees and apprentices fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship.

- 4.4 The Department will note that those considered to be in 'employment,' as **defined in Northern Ireland's anti-discrimination legislation³¹, is wider than those who would fall within the definition of 'employee' in the Employment Rights (Northern Ireland) Order 1996³²**. For instance, anti-discrimination legislation includes those who are in employment under a contract of service or of apprenticeship or a contract personally to execute any work or labour.
- 4.5 The Department will wish to consider how best to ensure protection to those covered by the PTD, taking account also of relevant groups protected from discrimination under NI equality laws. The Commission will be happy to engage with the Department as part of its considerations.
- 4.6 In this response, where we refer to employees or workers (the latter primarily when referencing the PTD's text), we are referring to those who fall under PTD Article 2(2), unless otherwise specified.

Employee Threshold

- 4.7 **We recommend that gender pay gap reporting requirements should *initially* apply to employers with 150 or more employees, with a phased approach to take the eventual scope to employers with 100 or more employees, in line with the EU Pay Transparency Directive.**
- 4.8 The PTD requires³³ that employers provide information on the pay gap between female and male employees. It required that:

³¹ For example, Article 2(2) of the Sex Discrimination (Northern Ireland) Order 1976.

³² Article 3 of the Employment Rights (Northern Ireland) Order 1996.

³³ Article 9 (2)-(4) of the Pay Transparency Directive

- Employers with over 150 workers³⁴ or more shall provide the relevant information by 7 June 2027 relating to the previous calendar year.
- Employers with 100 to 149 workers shall provide the relevant information by 7 June 2031 relating to the previous calendar year.

4.9 These thresholds should be adhered to in any GPGR provisions in Northern Ireland.

4.10 We note that the Department is proposing a threshold of 250 employees. This would align with the threshold for most employers in Great Britain³⁵, although we note that this lowers to 20 employees for listed Scottish public authorities³⁶. Fawcett Society analysis of GPGR internationally³⁷ suggests that Great Britain has a comparatively high employee threshold.

4.11 Fair Employment monitoring data from 2022 shows that there were over 467 000 employees, or 80.9% of monitored employees, in Northern Ireland, working in an organisation with at least 100 employees. 764 employers were that size, equating to 20.6% of monitored employers. There were 311 employers with at least 250 employees, covering over 397 000 employees.

4.12 It is important to note that this data relates to the workforce composition of monitored (registered and specified) employments, and not to all employers / employees in Northern Ireland.

Sectors

4.13 **We agree that the provisions should apply to the public, private and voluntary sectors.**

4.14 The PTD does not make any distinction between sectoral employers, stating at Article 2 (1) that the Directive applies to employers in public and private sectors.

³⁴ As below, the PTD requires annual reporting for employers with over 250 employees, and triennial reporting for employers with 150-249 employees.

³⁵ EHRC (2022) [Find out if you are required to report your gender pay gap](#)

³⁶ EHRC (2022) [Public Sector Equality Duty: specific duties in Scotland](#)

³⁷ Fawcett Society (2020) [Gender Pay Gap Reporting: A Comparative Analysis](#), p. 17.

5 Calculating the gender pay gap

Standardised methodology

- 5.1 We note the standardised methodology for calculating the mean and median Gender Pay Gaps and the mean and median gender bonus gaps and salary quartiles set out in Annex C.
- 5.2 This will **need consideration in light of the requirements of the PTD.**
- 5.3 For example, the consultation refers primarily to hourly pay. Article 3 1(c) of the PTD defines the gender pay gap as '*the difference in average pay levels between female and male workers of an employer expressed as a percentage of the average pay level of male workers*'. Pay level is defined as '*gross annual pay and the corresponding gross hourly pay*'.
- 5.4 We note that Recital 22 of the PTD states that '*pay levels should be expressed as gross annual pay and the corresponding gross hourly pay. It should be possible to base the calculation of pay levels on the actual pay specified in regard to the worker, regardless of whether it is set annually, monthly, hourly or otherwise*'.

Calculating the gender pay gap

Definition of pay

- 5.5 **We recommend that the definition of pay aligns with that used in the PTD.**
- 5.6 As above, the PTD refers to both hourly and annual pay. Article 3 of the PTD defines pay as '*the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which a worker receives directly or indirectly (complementary or variable components) in respect of his or her employment from his or her employer*'.
- 5.7 Article 9 of the PTD requires that employers subject to GPGR provisions provide information relating to both the gender pay gap, and the gap in relation to complementary or variable components.

- 5.8 We note the intention to use the ONS definition of pay, as used in the ASHE survey, as defined in Annex B of the consultation document. This defines ‘ordinary pay’, which includes basic pay; allowances; pay for piecework; pay for leave; and shift premium pay. It excludes redundancy and overtime remuneration; remuneration in lieu of leave; and remuneration provided otherwise than in money.
- 5.9 It also defines ‘bonus pay’ as including any remuneration that is in the form of money, vouchers, securities, securities options, or interests in securities, or relates to profit sharing, productivity, performance, incentive or commission.
- 5.10 It is **welcome that the Department intends to require information on a bonus pay gap**, which the Commission has previously recommended. However, as below, the **Department will wish to consider other complementary or variable components**, aligned with the PTD. For instance, the Department’s proposed definition does not currently include any consideration of overtime
- 5.11 The Recitals³⁸ of the PTD outlines that ‘*Such complementary or variable components may include, but are not limited to, bonuses, overtime compensation, travel facilities, housing and food allowances, compensation for attending training, payments in the case of dismissal, statutory sick pay, statutory required compensation and occupational pensions*’.

Data to be gathered

- 5.12 We recommend that, **when considering data to be provided, the Department aligns with the requirements of the PTD as a minimum.**
- 5.13 The PTD requires data in relation to:
- the gender pay gap;
 - the gender pay gap in complementary or variable components (*defined above*);
 - the median gender pay gap;
 - the median gender pay gap in complementary or variable components;

³⁸ Recital 21 of the Pay Transparency Directive.

- the proportion of female and male workers receiving complementary or variable components;
- the proportion of female and male workers in each quartile pay band;
- the gender pay gap between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components.

5.14 We note that the **PTD allows Government to compile much of the relevant information**³⁹ themselves, on the basis of administrative data such as that provided by employers to the tax or social security authorities. However, this information must still be provided by employers, and be able to be compared between employers, sectors and regions.

5.15 We would understand from the consultation document that it is not the Department's intention that Government would compile the information itself. However, it would be **helpful to clarify this.**

5.16 **If the Department does intend to take such an approach, it will wish to make clear how it would do so, and consider how the wider recommendations from the Commission could be appropriately addressed.**

Complementary or Variable Components

5.17 We **welcome** that the Department proposes provisions relating to the requirement to collect and present data on the **proportion of male and female employees that received a bonus, and mean and median gender bonus gaps.**

5.18 However, as above, the **Department will wish to consider other complementary or variable components of pay which may be relevant to gather data on.**

5.19 For instance, as well as requiring data on the mean and median gender pay gap, the gender bonus gap and quartile pay bands, the approach in Ireland requires data to be gathered on the mean and median hourly pay gaps for part time and temporary

³⁹ Article 9(8) of the Pay Transparency Directive. This provision does not refer to States compiling information themselves on the gender pay gap between workers by categories of workers.

employees⁴⁰ and the proportions of men and women receiving Benefits in Kind⁴¹.

Categories of Workers

- 5.20 We recommend that the Department aligns with the **PTD requirements in relation to provision of information on the gender pay gap between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components.**
- 5.21 This provision goes beyond the current requirements in Great Britain and Ireland. However, it will have to be transposed in Ireland.
- 5.22 Article 3 of the PTD outlines that categories of workers are '*workers performing the same work or work of equal value grouped in a non-arbitrary manner based on the non-discriminatory and objective gender-neutral criteria.*
- 5.23 This criteria shall include skills, effort, responsibility and working conditions, and, if appropriate, any other factors which are relevant to the specific job or position. The criteria shall be applied in an objective gender-neutral manner, excluding any direct or indirect discrimination based on sex. In particular, relevant soft skills shall not be undervalued.
- 5.24 The PTD requires that Government, in consultation with equality bodies, take the necessary measures to ensure that analytical tools or methodologies are made available and are easily accessible to support and guide the assessment and comparison of the value of work in accordance with the specified criteria.
- 5.25 It is not clear that the Department has considered these requirements. We would **urge the Department to engage with us at earliest opportunity in relation to these tools and methodologies.**

⁴⁰ Regs 7 (1), 8(1) of the [Employment Equality Act 1998 \(Section 20a\) \(Gender Pay Gap Information\) Regulations 2022](#)

⁴¹ Reg 9 (1) (d) of the [Employment Equality Act 1998 \(Section 20a\) \(Gender Pay Gap Information\) Regulations 2022](#)

Additional voluntary data

- 5.26 We recommend that 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.**
- 5.27 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.
- 5.28 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.
- 5.29 As above, Ireland requires data to be gathered on the mean and median hourly pay gaps for part time and temporary employees⁴² and the proportions of men and women receiving Benefits in Kind⁴³.
- 5.30 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 place⁴⁴. This additional data includes, for example, ‘the number of women and men in each job or pay band’.
- 5.31 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’⁴⁵.

⁴² Regs 7 (1), 8(1) of the [Employment Equality Act 1998 \(Section 20a\) \(Gender Pay Gap Information\) Regulations 2022](#)

⁴³ Reg 9 (1) (d) of the [Employment Equality Act 1998 \(Section 20a\) \(Gender Pay Gap Information\) Regulations 2022](#)

⁴⁴ ACAS, GEO (2017) Guidance: [Managing Gender Pay Reporting](#), p32

⁴⁵ ECNI (2013) [Code of Practice on Equal Pay](#), p4.

- 5.32 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 on average men work relatively more overtime than women⁴⁶.
- 5.33 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 of small numbers in any category either generally, associated with repeated disaggregation, and/or as employer size decreases.
- 5.34 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.
- 5.35 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/scale⁴⁷. 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.

Employees/ workers

- 5.36 We recommend that the **Department should clarify the purpose and rationale for the focus of separate parts of the Act, and the consultation, on ‘employees’ and ‘workers’.**
- 5.37 We note the Employment Act 2016’s requirement for pay information to also include statistics on “*workers within each pay band in relation to ethnicity, and disability*”⁴⁸. The term

⁴⁶ GEO (2016) [Closing the Gender Pay Gap: Response to consultation](#). p19

⁴⁷ It will be noted that in 2023/24, 438 employers who were not in scope of the Regulations opted into reporting their data. See [GEO \(2024\) Gender Pay Gap Data: Reporting Year 2023 to 2024](#).

⁴⁸ Section 19 (6) (f) of the Act.

'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).

- 5.38 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.
- 5.39 The Employment Act 2016 seemingly does not define either employee nor workers.
- 5.40 As above, Article 2 (2) of the PTD provides that it applies to all 'workers'⁴⁹, and therefore, at a minimum, **gender pay gap reporting should align with this scope.**

Full-time and Part-time

- 5.41 We recommend that 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.
- 5.42 This would go beyond the minimum standards required by the PTD. As above, the approach in Ireland currently requires data to be gathered on the mean and median hourly pay gaps for part time and temporary employees⁵⁰.
- 5.43 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).
- 5.44 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.

⁴⁹ Article 2 (2) of the Pay Transparency Directives – 'This Directive applies to all workers who have an employment contract or employment relationship as defined by law, collective agreements and/or practice in force in each Member State with consideration to the case-law of the Court of Justice'.

⁵⁰ Regs 7 (1), 8(1) of the [Employment Equality Act 1998 \(Section 20a\) \(Gender Pay Gap Information\) Regulations 2022](#)

- 5.45 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)⁵¹.
- 5.46 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)⁵².
- 5.47 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 employers with a large part-time workforce (i.e. as women are much more likely than men to work part-time)⁵³.
- 5.48 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 statistics⁵⁴. 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'⁵⁵.

Common Fixed Date

- 5.49 **We recommend that employers subject to the GPGR Regulations should be required to publish gender pay data on a common fixed date on their own website; and consideration should be given to the merits of the date being consistent with the publication dates under the GB GPGR Regulations.**
- 5.50 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

⁵¹ See ACAS, GEO (2017) Guidance: [Managing Gender Pay Reporting](#), p31

⁵² Women and Equalities Committee Inquiry report on the [Gender Pay Gap](#) (2016), 2nd Report of Session 2015/16, p88.

⁵³ Women and Equalities Committee Inquiry report on the [Gender Pay Gap](#) (2016), 2nd Report of Session 2015/16, p74.

⁵⁴ BEIS Committee (2018) Inquiry: [Gender pay gap reporting](#).

⁵⁵ BEIS Committee (2018) Inquiry: [Gender pay gap reporting](#), para 34.

given year. A different snapshot date applies to large private / voluntary sector employers; namely 5 April in a given year⁵⁶.

- 5.51 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).
- 5.52 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. The Department will wish to consider any impacts on the monitoring body, referred to below, if a common fixed date is adopted, including appropriate resources if necessary.
- 5.53 We note that the PTD requires that employers with over 150 workers⁵⁷ or more shall provide the relevant information by 7 June 2027 relating to the previous calendar year. Employers with 100 to 149 workers shall provide the relevant information by 7 June 2031 relating to the previous calendar year.

Accuracy

- 5.54 **We recommend that there are requirements to confirm the accuracy of information from employers, aligned with the PTD.**
- 5.55 The PTD requires⁵⁸ that *'the accuracy of the information shall be confirmed by the employer's management, after consulting workers' representatives. Workers' representatives shall have access to the methodologies applied by the employer'*.

⁵⁶ 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.

⁵⁷ The PTD requires annual reporting for employers with over 250 employees, and triennial reporting for employers with 150-249 employees.

⁵⁸ Article 9 (6) of the Pay Transparency Directive.

- 5.56 In Great Britain, there is a requirement⁵⁹ that the relevant gender pay gap information must be accompanied by signed statement from senior employee/ Director/ Partner that information is accurate.

6 Form, Manner and Timing of Publication

Location of publication

Monitoring Body

- 6.1 We **recommend that a monitoring body is established with appropriate resources**, with its duties aligning with the PTD.
- 6.2 Under the PTD, there is a requirement⁶⁰ for a monitoring body to be established, as discussed further below in relation to compliance. This monitoring body is sent all the relevant gender pay gap data, including data in relation to the gender pay gap between workers by categories of workers.
- 6.3 The duties of the monitoring body include publishing most of the gender pay gap data⁶¹ in an easily accessible and user-friendly manner that allows comparison between employers, sectors and regions, and ensuring that the data from the previous four years is accessible if available.
- 6.4 It is not clear that the consultation has considered the establishment of such a monitoring body, as discussed further below.

Employers' Website

- 6.5 Alongside the monitoring body's work, we **recommend that employers subject to the GPGR Regulations should be required to publish gender pay data on a common fixed date on their own website**.
- 6.6 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

⁵⁹ Regulation 14 of the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017

⁶⁰ Article 29 of the Pay Transparency Directive.

⁶¹ Article 29 (3)(c) of the Pay Transparency Directive. This Article does not require publishing data in relation to the gender pay gap between workers by categories of workers.

approach⁶². The Employment Act 2016 requires that employers must also provide a copy of information published to all employees and any recognised trade union⁶³.

- 6.7 The Irish provisions⁶⁴ require that information is published on the relevant employer's website in a manner that is accessible to all the relevant employer's employees and the public, or in physical form if no website
- 6.8 The Department will wish to consider whether employers should be required to publish data relating to the gender pay gap between workers by categories of workers on their website.

Gender Pay Gap between Categories of Workers

- 6.9 We recommend that the Department aligns with the PTD requirement⁶⁵ that **employers shall provide information on the gender pay gap between workers by categories of workers**, to all their workers and to the workers' representatives of their workers.
- 6.10 The PTD specifies that employers shall also provide the information to the labour inspectorate and the equality body upon request. The information from the previous four years, if available, shall also be provided upon request.

Annual reporting

- 6.11 **The proposal in the consultation document to require employers with 250 employees to report every year** would align with the PTD.
- 6.12 The PTD requires that **smaller employers (100-249 employees) have to report a minimum of every three years**.

Standards Industrial Classification

- 6.13 We recommend that **the Department considers coding employers by Standardised Industrial Coding (SIC)**.

⁶² 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](#).

⁶³ Section 19 (3) of the Employment Act 2016.

⁶⁴ Regulation 6 (2) of the [Employment Equality Act 1998 \(Section 20a\) \(Gender Pay Gap Information\) Regulations 2022](#)

⁶⁵ Article 7 (9) of the Pay Transparency Directive.

- 6.14 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 structure⁶⁶.
- 6.15 Coding employers by SIC may assist the monitoring body, 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.

7 Ethnicity and disability

- 7.1 The PTD defines⁶⁷ intersectional discrimination as discrimination based on a combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or 2000/78/EC (which include race; religion and belief; age; sexual orientation and disability).
- 7.2 The Directive refers to intersectionality in relation to compensation, penalties and the monitoring body⁶⁸. The Department will **wish to consider these issues in relation to the transposition of the PTD more widely** and ensure that provisions relating to intersectional discrimination reflect, as a minimum, those required by the PTD.
- 7.3 The pay gap reporting provisions of the PTD do not however refer to ethnicity and disability. The Recitals state⁶⁹ that the PTD does not require employers to gather data related to protected grounds other than sex.
- 7.4 Given the PTD requirement that organisations with over 100 employees must provide information in relation to the gender pay gap, the Department will **wish to consider the size of employers required to collect and consider data on ethnicity and disability**.
- 7.5 For instance, the Department will wish to consider whether any requirement to gather statistics on ethnicity and disability

⁶⁶ See ONS (2007) [UK Standard Industrial Classification of Economic Activities 2007](#).

⁶⁷ Article 3 (2) (e) of the Pay Transparency Directive

⁶⁸ Articles 16 (3), 23 (3) and 29 (3(a)) of the EU Pay Transparency Directive.

⁶⁹ Recital 25 of the EU Pay Transparency Directive.

should apply to organisations with at least 100 employees, or larger employers (over 250 employees) only.

- 7.6 We would recommend that the **Department engages further with the Commission and other key stakeholders in relation to its intended approach to data collection, analysis and reporting with regards to ethnicity and disability.**
- 7.7 The Department will **wish to be mindful of definitions of racial groups and disability**, under the Race Relations Order (Northern Ireland) 1997, and the Disability Discrimination Act 1995, respectively, when considering provisions and guidance relating to ethnicity and disability.
- 7.8 The Commission has **produced guidance⁷⁰ in relation to voluntary equal opportunities monitoring in employment, which the Department would likely find useful to consider.**
- 7.9 TEO has also indicated⁷¹ that, subject to Ministerial agreement, they propose introducing ethnic equality monitoring to improve policy making. DfC will wish to engage with TEO on this work.
- 7.10 The UK Government has indicated⁷² it intends to ‘require larger companies to publish information on their ethnicity and disability pay gaps’. The **Department will wish to consider any lessons which can be learned from their approach.**

Rationale

- 7.11 We recommend that the Department **should clarify the rationale for limiting the requirement 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’.**
- 7.12 We note, for example, that the gender pay gap in Northern Ireland is most pronounced for those aged 40 and over⁷³ and

⁷⁰ ECNI (2016) [A Unified Guide to Promoting Equal Opportunities in Employment](#), Section 7 and Appendix 10.

⁷¹ TEO (2024) [Review of the Current Race Relations \(NI\) Order 1997: Consultation Response Report](#), pp. 71-72.

⁷² UK Government (2024) [Next Steps to Make Work Pay](#), para 33.

⁷³ NISRA (2024) [Employee Earnings in Northern Ireland](#), 3.3. In 2024, females earned less than males across all age groups. The difference was less pronounced for the age groups under 40 (less than 50p), compared to the older age groups (had differences of around £1.50 or £2.00)..

that the arrival of children accounts for the gradual widening of the gender wage gap with age^{74 75}.

- 7.13 Research⁷⁶ based on the Understanding Society Survey suggests that both there is a median hourly earnings gender pay gap in Northern Ireland of 24% in favour of men when considering men and women who have children, and a gap of 36% in favour of men, when considering men and women with two or more children.
- 7.14 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.
- 7.15 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.
- 7.16 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*’⁷⁷. The UK Government has also recognised that women over 40 experience the most pronounced gender pay gap⁷⁸.
- 7.17 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*

⁷⁴ Women and Equalities Committee Inquiry report on the [Gender Pay Gap](#) (2016), 2nd Report of Session 2015/16.

⁷⁵ IFS (2016) [Gender Wage Gap](#), Briefing Note, BN186.

⁷⁶ L Wilson and C O’Gorman (2023) [How are we unequal? The adjusted gender pay gap in Northern Ireland](#), Table 4.

⁷⁷ ACAS, GEO (2017) Guidance: [Managing Gender Pay Reporting](#), p5.

⁷⁸ Women and Equalities Committee, [Gender Pay Gap: Government Response to Committee’s 2nd Report of session 2015-16](#).

*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*⁷⁹.

- 7.18 In addition, a report by the Institute of Fiscal Studies (2016)⁸⁰ 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

- 7.19 We recommend that the Department should **clarify the intended purpose and focus of the information to be published in relation to the requirement under the Employment Act 2016 to publish pay information that includes statistics on ‘workers within each pay band’ in relation to ethnicity and disability.**
- 7.20 There is a need for clarity and guidance for employers on how data in relation to ethnicity and disability should be collected/reported on.
- 7.21 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. 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.
- 7.22 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.;

⁷⁹ Women and Equalities Committee (2016), Inquiry report on the [Gender Pay Gap](#) , 2nd Report of Session 2015/16, para 281.

⁸⁰ IFS (2016) [Gender Wage Gap](#) , Briefing Note, BN186. p2.

- 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”.

7.23 Further, there is a lack of clarity as to whether the pay information on ethnicity and disability is to include ‘pay gap’ data.

7.24 We note that the consultations proposed format for employers to publish Gender Pay Gap information, on pg. 17 of the consultation document, does not refer at all to ethnicity nor disability. It is therefore unclear how the Department envisages this information being published.

Disability and Ethnicity Data Collection

7.25 We recommend **clear guidance for employers on how data in relation to ethnicity and disability should be collected and reported on.**

7.26 We note that the consultation document states ‘*Whilst there is currently no legal obligation for employers to record an employee’s ethnic origin, where this is available it should be recorded. Where the relevant employee has notified the employer of a disability, the employer should report on this also.*’

7.27 It is **unclear from this whether the Department intends that employers will have to gather data on ethnicity and disability.**

7.28 As above, the Department will **wish to consider ongoing work by TEO in relation to ethnic equality monitoring,** which may be relevant.

7.29 There is a need for detailed guidance on how any 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.

7.30 As set out above, 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 Employment Act which place a requirement to publish information relating to the pay of ‘employees’.

7.31 Although the PTD does not place requirements to collect data on ethnicity and disability, the Department will wish to consider whether it would be most consistent to align with the PTD definition of ‘workers’, as discussed above, in relation to gathering data in relation to ethnicity and disability.

8 Action plans/ Joint Pay Assessments

8.1 We **welcome the requirement under the Employment Act 2016 for employers with gender pay gaps to develop and publish action plans to eliminate gender pay differences**. Consideration should be given as to whether this should apply to all organisations with at least 100 employees, mindful of the requirements of the PTD.

8.2 We would highlight that the **PTD requires joint pay assessments, in relation to gender pay gap between workers by categories of workers**. We recommend that the the Department should make provisions for such joint pay assessments, aligned to PTD requirements. Further detail on joint pay assessments can be found below.

8.3 We are mindful 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 below.

Action Plans

8.4 We note the consultations proposal that ‘where differences exist in the pay of male and female employees, employers must publish an action plan to eliminate those differences’. However,

it is not clear when the requirement will be triggered i.e. what size of a gender pay gap will require an action plan.

- 8.5 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.
- 8.6 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 Employment Act 2016.
- 8.7 The PTD⁸¹ requires that, *‘Where gender pay differences are not justified on the basis of objective, gender-neutral criteria, employers shall remedy the situation within a reasonable period of time in close cooperation with workers’ representatives, the labour inspectorate and/or the equality body’.*
- 8.8 We note that the current Irish provisions⁸² require that, where any pay gaps are identified, employers must provide a statement setting out the reasons for this and the measures (if any) being taken, or proposed to be taken, to eliminate or reduce any such pay gaps.
- 8.9 We also note that the UK Government plans⁸³ to introduce gender pay gap action plans.
- 8.10 The consultation outlines that the Department does not intend to prescribe the content of action plans. We previously recommended that the Department clarify whether it could make such requirements.
- 8.11 **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.**

⁸¹ Article 9 (10) of the Pay Transparency Directive

⁸² Regulation 6 (4) of the [Employment Equality Act 1998 \(Section 20a\) \(Gender Pay Gap Information\) Regulations 2022](#)

⁸³ UK Government (2024) [Next Steps to Make Work Pay](#), paras 33-34.

8.12 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 differences⁸⁴, 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.

8.13 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.

Publication of Action Plans

8.14 We recommend that **employers publish their gender pay action plans on a designated government website or the monitoring body website**, as well as on their own website, at the same time as, and alongside their pay data. We note that there is no timetable in the Act for the publication of gender pay action plans.

8.15 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. As above, the UK Government has indicated it intends to introduce action plans⁸⁵.

8.16 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 representatives⁸⁶.

8.17 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.

⁸⁴ It also states that 'a copy must be sent to all employees and any trade union recognised by the employer'

⁸⁵ UK Government (2024) [Next Steps to Make Work Pay](#), paras 33-34.

⁸⁶ 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.

8.18 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 website⁸⁷.

Consultation

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

8.20 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.

8.21 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.

8.22 It also enables employers to use this feedback, when reviewing their action plans, to improve how they addressing any gender pay gap.

8.23 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 representatives⁸⁸.

Ethnicity and disability

8.24 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.

⁸⁷ See UK Government online [gender pay gap service](#) .

⁸⁸ GEO (2019) [Four steps to developing a gender pay gap action plan](#)

8.25 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.

8.26 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.

8.27 It will be noted that in GB, the UK Government has encouraged employers to voluntarily report on the progression and pay of disabled people⁸⁹.

Progress review

8.28 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.

8.29 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).

8.30 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.

8.31 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.

8.32 Further, UK Government guidance (2019) for employers on developing and implementing a gender pay action plan, recommends employers monitor and evaluate their action plan⁹⁰.

⁸⁹ 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](#).

⁹⁰ GEO (2019) [Four steps to developing a gender pay gap action plan](#)

Existing employer equality reviews

- 8.33 We **recommend that 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.**
- 8.34 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.
- 8.35 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.
- 8.36 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.
- 8.37 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 workforce composition and employment practices) at least once every three years⁹¹.
- 8.38 As good practice, the Commission already recommends that employers develop voluntary '*employment equality plans*'⁹² 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.
- 8.39 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.

⁹¹ For further information on carrying out Article 55 reviews, see www.equalityni.org/Employers-Service-Providers/Large-Business/Registration-and-monitoring/Article-55-Review.

⁹² For further information on Employment Equality Plans, see www.equalityni.org/EqualityPlans

Joint Pay Assessments

- 8.40 In addition to the gender pay action plans, we **recommend the Department make provisions in relation to Joint Pay Assessments**, aligned with the PTD.
- 8.41 The joint pay assessments would⁹³ identify, remedy and prevent discriminatory pay differences when an employer's pay reporting reveals a gender pay gap above 5% in any category of workers, that cannot be justified by objective, gender-neutral criteria and was not tackled within 6 months.
- 8.42 The Commission has a long-standing recommendation⁹⁴ for a requirement on employers to carry out mandatory pay audits or to regularly conduct a review of their policies and practices adopted for the purpose of maintaining or promoting equality of opportunity. We consider that these provisions will encourage a more proactive approach by employers to addressing equal pay.
- 8.43 We note that the OECD has highlighted⁹⁵ the benefits of equal pay audits to delve deep into pay gaps, to identify underlying causes and recommending targeted actions. They point to the PTD's joint pay assessments as an example.
- 8.44 The Commission has published guidance on Equal Pay Reviews⁹⁶, which the Department will wish to consider.
- 8.45 Specifically, the joint pay assessments should include⁹⁷:
- an analysis of the proportion of female and male workers in each category of workers;
 - information on average female and male workers' pay levels and complementary or variable components for each category of workers;
 - any differences in average pay levels between female and male workers in each category of workers;

⁹³ Article 10 of the Pay Transparency Directive

⁹⁴ ECNI (2016) [Gender Law Reform Summary Report: Policy Priorities and Recommendations](#), pp. 5-6.

⁹⁵ OECD (2023) [Reporting Gender Pay Gaps in OECD Countries: Guidance for Pay Transparency Implementation, Monitoring and Reform](#), pp. 102-129.

⁹⁶ ECNI (2013) [Equal Pay Review Kit: Step By Step Guidance](#)

⁹⁷ Article 10 (2) of the Pay Transparency Directive.

- the reasons for such differences in average pay levels, on the basis of objective, gender-neutral criteria, if any, as established jointly by the workers' representatives and the employer;
- the proportion of female and male workers who benefited from any improvement in pay following their return from maternity or paternity leave, parental leave or carers' leave, if such improvement occurred in the relevant category of workers during the period in which the leave was taken;
- measures to address differences in pay if they are not justified on the basis of objective, gender-neutral criteria;
- an evaluation of the effectiveness of measures from previous joint pay assessments

9 Monitoring and Enforcement

- 9.1 We recommend that the the Department should **set out the specific roles and responsibilities to be delivered in relation to the monitoring and enforcement under, in line with the Pay Transparency Directive; and the commensurate resourcing required to deliver this remit.**
- 9.2 The PTD sets out specific roles for 'equality' and 'monitoring' bodies.
- 9.3 We note that the consultation document does not propose which body / organisation should be responsible for monitoring and enforcing the gender pay information that employer's will be expected to calculate and publish, in Northern Ireland.
- 9.4 We recommend that the Department should **make provision, including securing adequate funding, for the Commission to undertake the roles and duties required for equality bodies under the PTD.**
- 9.5 We also recommend that, **subject to the provision of adequate and appropriate resourcing, the Commission should also be asked to deliver the monitoring and enforcement roles, given relevance to our existing remits.**

The Department should engage with the Commission regarding the format, focus and resourcing of these roles.

- 9.6 We consider that the Commission already has a remit and skills that are complementary and applicable to this area, including a range of enforcement powers in relation to the Sex Discrimination Order (Northern Ireland) 1976 (the SDO) and the Equal Pay Act (Northern Ireland) 1970.
- 9.7 The Commission also has duties under the SDO⁹⁸ to work towards the elimination of discrimination; to promote equality of opportunity between men and women generally; and to keep under review the workings of the SDO and the Equal Pay Act 1970.
- 9.8 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 employment⁹⁹.
- 9.9 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.
- 9.10 Appropriate and additional rolling resources would be required for the Commission to fulfil new roles required by gender pay gap reporting provisions, and the wider requirements of the PTD.
- 9.11 The Department will wish to consider the resources required by equivalent bodies in other jurisdictions to enable them to fulfil such roles.

⁹⁸ Article 54 of the Sex Discrimination Order 1976.

⁹⁹ See ECNI (2013) [Code of Practice on Equal Pay](#), and [Equal Pay Review Kit](#).

Pay Transparency Directive Requirements

9.12 The PTD establishes roles for the equality body, and a monitoring body.

Equality Body

9.13 The Commission is Northern Ireland's equality body. The PTD requires that the relevant equality bodies shall be competent with regard to matters falling within the scope of this Directive¹⁰⁰.

9.14 The PTD also outlines specific roles for the equality body in relation to the Directive, including:

- To be consulted with by Government, in relation to analytical tools or methodologies to support and guide the assessment and comparison of the value of work¹⁰¹
- Allowing workers to request relevant information through the equality body, including information on individual pay level and the average pay levels, broken down by sex, for categories of workers performing the same work as them or work of equal value to theirs¹⁰²;
- Asking employers for information on gender pay gaps¹⁰³;
- Where GPGs are not justified, may work with employers to remedy the situation¹⁰⁴;
- May be asked to participate in joint pay assessments¹⁰⁵;
- To engage in any administrative procedure or court proceedings regarding an alleged infringement of the rights or obligations relating to the principle of equal pay. They may act on behalf of, or in support of, a worker who is an alleged victim of an infringement of

¹⁰⁰ Article 28 (1) of the Pay Transparency Directive. This is without prejudice to the competence of labour inspectorates or other bodies that enforce the rights of workers.

¹⁰¹ Article 4(2) of the Pay Transparency Directive

¹⁰² Article 7 (2) of the Pay Transparency Directive

¹⁰³ Article 9 (9) and (10) of the Pay Transparency Directive

¹⁰⁴ Article 9 (10) of the Pay Transparency Directive. This role may be carried out with workers' representatives, the labour inspectorate and/or the equality body.

¹⁰⁵ Article 10 (4) of the Pay Transparency Directive. The labour inspectorate and/ or the equality body may be asked to participate in the process.

any right or obligation relating to the principle of equal pay, with that person's approval¹⁰⁶

- 9.15 The PTD requires¹⁰⁷ that Government provide their equality bodies with the adequate resources necessary for effectively carrying out their functions with regard to the respect for the right to equal pay.

Monitoring body

- 9.16 As above, the PTD also requires the designation of a monitoring body, which may be a part of an existing body, or have duties split over more than one body.
- 9.17 The monitoring body's roles¹⁰⁸ include:
- raising awareness, including amongst public and private organisations and the public to promote the principle of equal pay and the right to pay transparency, including by addressing intersectional discrimination in relation to equal pay for equal work or work of equal value;
 - analysing the causes of the gender pay gap and devising tools to help assess pay inequalities;
 - collecting GPGR data received from employers and promptly publishing the relevant data¹⁰⁹ in an easily accessible and user-friendly manner that allows comparison between employers, sectors and regions, and ensuring that the data from the previous four years is accessible if available;
 - collecting the joint pay assessment reports;
 - aggregating data on the number and types of pay discrimination complaints brought before the competent authorities.
- 9.18 As above, we recommend that the subject to the provision of adequate and appropriate resourcing, the Commission should be asked to deliver the monitoring body role, given its

¹⁰⁶ Article 15 of the Pay Transparency Directive. This Article also refers to associations, organisations, and workers' representatives or other legal entities which have, in accordance with criteria laid down in national law, a legitimate interest in ensuring equality between men and women

¹⁰⁷ Article 28 of the Pay Transparency Directive

¹⁰⁸ Article 29 (3) of the Pay Transparency Directive.

¹⁰⁹ Does not require publishing data in relation to the gender pay gap between workers by categories of workers.

relevance to our existing remits. The Department should engage with the Commission regarding the format, focus and resourcing of this role.

- 9.19 We recommend that advice and guidance is provided to employers as they work to implement the legislation. We consider that advice provision should, 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).
- 9.20 We note that the OECD, after considering international approaches to GPGR, recommended¹¹⁰ that Governments should make more focused efforts to communicate pay gap reporting requirements to employers, as this is foundational to the success of a pay reporting regime.

Enforcement

- 9.21 We recommend that the Department also ensure **any enforcement/ compliance provisions at least meet the requirements of the PTD.**
- 9.22 An enforcement role could, if appropriately and adequately resourced, be added to the Commission's remit.
- 9.23 As with the above roles, we consider that considerable resources may be required to fulfil an enforcement role, both in the initial years of implementation and in the years beyond. It is therefore important that any enforcement role under GPGR Regulations must be both effectively resourced and resourced on a long-term basis.
- 9.24 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.

¹¹⁰ OECD (2023) [Reporting Gender Pay Gaps in OECD Countries: Guidance for Pay Transparency Implementation, Monitoring and Reform](#), pp. 130-151.

10 Implementation Costs

- 10.1 The Department will wish to mindful that any **consideration of costs to business should also consider the investment value in advancing equality and improving workforces and work places.**
- 10.2 There are economic and societal benefits to promoting gender equality in the employment¹¹¹. 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.
- 10.3 Alongside points made further above the Department will wish to consider costs to business and ensure appropriate support alongside **training and guidance**, as outlined in further detail in Section 12.

11 Compliance

- 11.1 We recommend that the **Department should clarify how the GPGR provisions will be enforced and what will constitute compliance.**
- 11.2 **Any provisions relating to enforcement and compliance should align with the requirements of the PTD.**
- 11.3 The PTD requires¹¹² that ‘Member States shall lay down the rules on effective, proportionate and dissuasive penalties applicable to infringements of the rights and obligations relating to the principle of equal pay.
- 11.4 The Department will **wish to consider how it can address combined discrimination**, on more than one ground. The PTD requires¹¹³ that the relevant penalties shall take into account any relevant aggravating or mitigating factors applicable to the circumstances of the infringement which may include **intersectional discrimination.**

¹¹¹ Women & Equalities Committee (2017) [Gender Pay Gap: Government Response to Committee's 2nd Report of session 2015-16](#), p. 2; PWC (2024) [Women in Work: Unmasking Inequalities: Delving Deeper into the Gender Pay Gap](#), pp. 24-25.

¹¹² Article 23 (1) of the Pay Transparency Directive

¹¹³ Article 23 (3) of the Pay Transparency Directive

- 11.5 More widely, there is a **need to reflect the PTD's requirement**¹¹⁴ that if a worker has '*sustained damage as a result of an infringement of any right or obligation relating to the principle of equal pay has the right to claim and to obtain full compensation or reparation*'.
- 11.6 We recommend that **GPGR Regulations are clear and precise and provide clarity and certainty for employers on their obligations, and on what constitutes compliance.**
- 11.7 This is particularly important in light of the scale of the potential fines that can be levied under the Employment Act 2016. In particular, there is the 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*¹¹⁵. The consultation document does not indicate that the Department intends to amend the level of the potential fines,
- 11.8 It is not clear what the Department considers will constitute effective compliance with the GPGR provisions. As above, such provisions should align with the requirements of the PTD.
- 11.9 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 are substantially higher than the potential fines that could be levied under the fair employment monitoring regulations¹¹⁶.
- 11.10 We note that in Great Britain, the Equality Act 2010 had allowed for regulations which may make provision for a fine not exceeding level 5 on the standard scale (in total, not per employee). However, the resultant regulations¹¹⁷ did not include provisions for such a fine.
- 11.11 Nevertheless, a Fawcett Society comparative analysis of international GPGR provisions found¹¹⁸ that a success of the British legislation has been its high levels of compliance, contrasting with other countries (although as above, the

¹¹⁴ Article 16 of the Pay Transparency Directive.

¹¹⁵ 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.

¹¹⁶ 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.

¹¹⁷ The [Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#)

¹¹⁸ Fawcett Society (2020) [Gender Pay Gap Reporting: A Comparative Analysis](#), p. 28.

provisions in Great Britain has a comparatively high employee number threshold).

- 11.12 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 contracts, in line with provisions under the fair employment legislation.
- 11.13 We note that the PTD outlines¹¹⁹ that Member States shall consider requiring contracting authorities to introduce, as appropriate, penalties and termination conditions ensuring compliance with the principle of equal pay in the performance of public contracts and concessions.
- 11.14 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.

12 Guidance

- 12.1 We recommend that the **Department should ensure that employers have effective support, training and guidance.**
- 12.2 The PTD¹²⁰ requires the provision of '*support, in the form of technical assistance and training, to employers with fewer than 250 workers and to the workers' representatives concerned, to facilitate their compliance with the obligations laid down in this Directive.*'
- 12.3 We consider that Government should go beyond these minimum standards, and that support should be provided to all employers subject to GPGR provisions, as well as to smaller employers who wish to voluntarily comply, as below.
- 12.4 Effective support, training and guidance for employers will assist them to comply with, and fulfil the intent of, the GPGR

¹¹⁹ Article 24 of the Pay Transparency Directive

¹²⁰ Article 11 of the Pay Transparency Directive

Regulations. This will be particularly important for smaller employers.

- 12.5 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.
- 12.6 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 employers¹²¹. 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 year¹²².

Voluntary Reporting

- 12.7 We recommend that **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.**
- 12.8 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.
- 12.9 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 Pay¹²³.

¹²¹ BEIS Committee (2018) Inquiry: [Gender pay gap reporting](#).

¹²² 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.

¹²³ ECNI (2013) [Code of Practice on Equal Pay](#)

- 12.10 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.
- 12.11 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 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 data¹²⁴.
- 12.12 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.

13 Review

- 13.1 We recommend that **Government commit to reviewing the GPGR Regulations promptly after 5 years of operation**, to include a consideration of their general operation.
- 13.2 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;
 - 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) categories¹²⁵;

¹²⁴ 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](#).

- 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, or wider jurisdictions.

13.3 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.

13.4 We consider that 5 years is an appropriate timescale for a review, not least given that employers may be required to publish gender pay information within a 12-36 month timescale.

13.5 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.

13.6 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.

13.7 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 achieved¹²⁶. The first review report was to be published within 5 years of the Regulations coming into force¹²⁷. However, we are not aware that such a Review has been published by the UK Government.

- 13.8 Although the UK is no longer subject to EU reporting requirements and therefore does not have to report on implementation of PTD to the European Commission, reviewing and reporting on progress post Brexit is consistent with this previous approach and increases transparency and accountability.
- 13.9 We note that, under the PTD¹²⁸, by June 2033, the European Commission shall submit a report to the European Parliament and to the Council on the implementation of this Directive. The report shall include examination of the employer thresholds and the 5% trigger for the joint pay assessment.

14 Gender Pay strategy

- 14.1 We recommend the introduction of a **gender pay strategy and action plan for Northern Ireland**, to address structural factors both within society and within the workplace.
- 14.2 The delivery of a gender pay strategy and action plan for Northern Ireland should complement 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.).
- 14.3 We recommend that the Commission and wider **key stakeholders from across the equality grounds should be fully involved in the design, delivery and review of the Strategy**.
- 14.4 As noted in the consultation, the Employment Act 2016¹²⁹ required the development of a Strategy, including an action

¹²⁶ [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#) , Section 16.

¹²⁷ Subsequent reports are to be published at intervals not exceeding five years.

¹²⁸ Article 35 (2) of the Pay Transparency Directive.

¹²⁹ Section 19 (11) of the Employment Act (Northern Ireland) 2016

plan, on eliminating differences in the pay of male and female employees.

- 14.5 Although this timeline has not been met, we had understood that the Gender Pay Strategy would be developed as part of the Gender Equality Strategy (GES), which had been due to be launched by December 2021¹³⁰, and was a commitment in the New Decade, New Approach political agreement.
- 14.6 However, the GES has not been progressed, and is not referred to in the Department's 2024/25 Business Plan¹³¹.
- 14.7 Within the Strategy, wider structural actions should include addressing, for example, gender stereotyping; education and career choices¹³²; caring roles; occupational segregation with women working in lower grades and being concentrated in low paid occupational sectors; women's concentration in part-time work where they are at risk of low pay; access to childcare, etc.¹³³.
- 14.8 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 / maternity¹³⁴ and unequal pay; and that there are fewer women working in certain more highly paid professions.
- 14.9 The Commission's 2016 '*Gender Priorities and Recommendations*'¹³⁵, sets out a range of recommendations that will assist directly and indirectly with tackling gender pay disparities.
- 14.10 In addition, a gender pay strategy and action plan has also the potential to contribute to meeting the high-level targets set out

¹³⁰ DfC (2020) [Social Inclusion Strategies](#) (accessed 06/01/2024).

¹³¹ DfC (2024) [Business Plan 2024-25](#)

¹³² ECNI (2017) [Statement on Key Inequalities in Education](#) on the barriers experienced by women in education.

¹³³ ECNI (2018) [Statement on Key Inequalities in Employment](#) which highlights the inequalities experienced by women in employment.

¹³⁴ ECNI (2016) [Expecting Equality-Summary: A Formal Investigation into the treatment of pregnancy workers and mothers in Northern Ireland workplaces](#).

¹³⁵ ECNI (2016) [Gender Equality Policy Priorities and Recommendations](#),

in the UN Sustainable Development Goals (SDGs), including on employment (Goal 8)¹³⁶¹³⁷ and gender equality (Goal 5)¹³⁸.

- 14.11 We recommend that a government gender pay strategy take account of, and address, the structural factors contributing to pay gap patterns.
- 14.12 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.
- 14.13 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. 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.
- 14.14 We recommend that the **Department should also be mindful of other relevant work in Government**, in particular:
- The duty on the Secretary of State for NI¹³⁹ to implement the relevant CEDAW recommendations¹⁴⁰ in respect of Northern Ireland, including that the State Party '*Adopt a **strategy to combat gender-based stereotypes regarding women's primary role as mothers***'; and
 - **The development of the Executive Early Learning and Childcare Strategy**. The Commission has previously recommended that this Strategy tackle

¹³⁶ [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.

¹³⁷ 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](#).

¹³⁸ [UN SDG Goal 5](#). Achieve gender equality and empower all women and girls

¹³⁹ Section 9(1) of the Northern Ireland (Executive Formation etc) Act 2019

¹⁴⁰ CEDAW (2018) [Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#), para 85-86.

gender stereotypes concerning Childcare and Early Learning roles¹⁴¹.

15 Wider requirements of the Pay Transparency Directive

15.1 We would highlight that the PTD does not solely relate to gender pay gap reporting, but also a range of other measures, including, but not limited to:

- pay transparency for applicants for employment;
- a requirement to make the criteria used to determine pay and pay progression accessible; and
- a prohibition on employers asking applicants about their pay history

15.2 The PTD also has a range of ramifications for equal pay, including in relation to procedural and remedy issues.

15.3 Many of these rights will apply to all those within scope of the PTD, and not just those working in larger employers.

15.4 The Department should **take action now, along with other relevant Departments, including TEO and Department for Economy, to consider how it will fulfil these requirements.**

16 Section 75 Advice

16.1 The Department must follow its approved Section 75 equality scheme relating to new and revised policies. Screening' and EQIA are policy development tools, used to '*inform*' the policy development. It is unclear how this screening assessment has informed the policy.

Screening versus EQIA

16.2 Given (a) the criteria for undertaking an EQIA, (b) the relevance of the policy to the Section 75 statutory goals and (c) that the Department is already consulting on the policy proposals, **an EQIA might reasonably have been anticipated.**

¹⁴¹ See www.equalityni.org/Childcare

Policy Scoping

- 16.3 The published 'screening' assessment does not include any reference to, or consideration of, the wider legal and broader context, for example the interaction of:
- Pay Transparency Directive, as referred to above;
 - The Fair Employment and Treatment Order (FETO) 1998 requirement to monitor sex; and
 - The Executive Office (TEO) current proposals for 'race equality monitoring'.
- 16.4 Setting out each aspect of the current policy proposals and assessing the equality impacts of each proposal within the current consultation, would provide a more comprehensive consideration of the potential equality impacts.

Section 75 data/evidence used in the assessment

- 16.5 The screening assessment lists 3 sources of data. The assessment should consider a broad range of relevant population level as well as policy related Section 75 data, both qualitative and quantitative
- 16.6 For example, data from other jurisdictions such as Great Britain (GB), who already implement part of the proposed policy.
- 16.7 The screening does not consider data / evidence in relation to potential pay gaps for other S75 categories, for example, in relation to disability, age, people with and without dependants etc. In addition, data could have been considered on sub-categories of people with a disability and different racial groups, as to whether some groups experience greater pay gaps than others.
- 16.8 Further advice relating to using data for screening and EQIA is here: [Section75 Data Signposting Guide.pdf](#)

Assessment of impacts

- 16.9 The screening assessment notes the 'level of impacts' of the proposed policy on all Section 75 groups as 'none', although data presented suggests significant pay gaps for some Section 75 groups.

- 16.10 The screening refers mainly to identifying ‘adverse impacts’ of the proposed policy. Section 75 includes the need to ‘seek out’ any opportunities to better promote equality and good relations in relation for each of the nine Section 75 categories.

Mitigation and Alternative policies

- 16.11 There is no mitigation or alternative policies. Whilst the initial policy proposal is primarily aimed at addressing ‘gender’ pay gaps, Section 75 requires consideration is given to inequalities for other S75 groups related to this policy and that any evidence and consideration is captured within the screening assessment. The public authority is then required to set out how it could mitigate inequalities and/or choose an alternative policy that might better promote equality of opportunity and good relations for a wider range of Section 75 groups. Capturing this in a screening or EQIA ensures the decision maker is aware, in this case for example of other pay gap inequalities which may need to be addressed, even if the policy under consideration is not the appropriate mechanism for addressing this.
- 16.12 The screening assessment should be updated post consultation, reflecting any further consideration given to mitigations / alternative policies in light of any equality issues raised in consultee responses.

Section 75 monitoring

- 16.13 There are no Section 75 monitoring arrangements for this proposed policy in the screening template. The screening form refers to generic monitoring. The Department needs to put in place Section 75 monitoring arrangements to monitor the actual impacts of the policy, once adopted and record these arrangements in the screening/EQIA document.
- 16.14 Gaps in the availability of data identified during policy development should be addressed and set out in the Section 75 monitoring section of the screening template.
- 16.15 Further advice relating to establishing appropriate Section 75 monitoring arrangements is available here: [Section 75 Monitoring Guidance for Public Authorities \(pdf\)](#) - [Addendum to the S75 Monitoring Guide \(pdf\)](#)

Decision making

- 16.16 Case law shows that the equality assessment information (whether screening or EQIA) should be provided to the ‘decisionmaker’ before and at the point of decision making.

Recommendations

- 16.17 We recommend that:
- The **Department undertake further work on the equality assessment** (screening and/or EQIA), providing further policy scoping, more relevant Section 75 data, more robust assessment of impacts, as well as setting out consideration of mitigation, alternative policies and Section 75 Monitoring arrangement.
 - The **‘assessment’ is updated following consultation on the policy proposals and that this assessment is published as per equality scheme commitments and a copy of it provided to the decisionmaker**, prior to decision making on the policy proposals.

17 Windsor Framework Article 2 Impact Assessment

- 17.1 The Commission has **recommended that in the development of any laws or policies the UK Government and NI Executive ensure that compliance with WF Article 2 is embedded in policy and processes at an early stage**. This should include consideration of the extent to which any change engages Article 2 and ensuring that there is no diminution of the rights and safeguards which fall within its scope.¹⁴²
- 17.2 The Commission has recommended that the UK Government and NI departments ensure that Explanatory Memoranda/notes and Human Rights Memoranda/impact assessments on Bills and draft statutory instruments that may engage Article 2 set out detailed consideration of compliance.¹⁴³

¹⁴² NI Human Right Commission and Equality Commission for NI, ‘[Annual Report of the Equality Commission for NI and NI Human Right Commission on the implementation of Article 2 of the Windsor Framework 2023-2024](#)’ (NIHRC and ECNI, June 2024), para 3.52.

¹⁴³ *ibid*, para 3.60.

- 17.3 It should be noted that in 2023, the Executive Office published an accompanying WF Article 2 Impact Assessment as part of its consultation on the Draft Strategic Framework to End Violence Against Women and Girls. This was welcomed by ECNI and NIHRC.¹⁴⁴ We are disappointed that there is no reference in the Department for Communities consultation as to what consideration it has given to compliance with WF Article 2.
- 17.4 As outlined above, the Commission considers that Department for Communities' consultation proposals, if implemented as drafted, are not sufficient to transpose the Pay Transparency Directive into Northern Ireland law, nor enough to comply with the UK Government's 'keeping pace' duty under WF Article 2.
- 17.5 As such, we **recommend that the Department, in conjunction with the Department for Economy, when bringing forward draft legislation to implement their proposals in this area sets out in relevant accompanying documentation to draft legislation (for example, Explanatory Memoranda and Human Rights Memoranda/impact assessments) a detailed consideration of compliance with WF Article 2.**

18 Conclusion

- 18.1 We welcome that the Department is taking steps to advance the implementation of gender pay reporting. However, we are concerned that the consultation proposals do not give effect to the PTD.
- 18.2 It is the view of the Equality Commission and the NIHRC that the relevant provisions of the PTD must be transposed into NI law by June 2026.
- 18.3 We urge the Department to implement proposals which give effect to the PTD, and to engage with us, wider Departments and key stakeholders as relevant to these issues.

Equality Commission for Northern Ireland February 2025

¹⁴⁴ Equality Commission for Northern Ireland, '[Response to consultation: The Executive Office: Strategic Framework to End Violence Against Women and Girls and Foundational Action Plan](#)' (ECNI, 2023) NI Human Rights Commission, '[Submission to the Executive Office's Consultation on the Ending Violence Against Women and Girls Strategic Framework](#)' (NIHRC, 2023).