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*Number 20 of 2021*

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**Gender Pay Gap Information Act 2021**

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ACTS REFERRED TO

Companies Act 2014 (No. 38)

Data Protection Act 2018 (No. 7)

Education Act 1998 (No. 51)

Education and Training Boards Act 2013 (No. 11)

Employment Equality Act 1998 (No. 21)

Employment Equality Acts 1998 to 2015

Interpretation Act 2005 (No. 23)

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

Local Government Act 2001 (No. 37)

Public Service Pay and Pensions Act 2017 (No. 34)

Taxes Consolidation Act 1997 (No. 39)



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**GENDER PAY GAP INFORMATION ACT 2021**

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An Act to amend the Employment Equality Act 1998 to require regulations to be made that will require certain employers to publish information relating to the remuneration of their employees by reference to the gender of such employees for the purpose of showing whether there are differences in such remuneration referable to gender and, if there are such differences, the size of such differences and to require such employers to publish statements setting out the reasons for such differences and the measures (if any) taken, or proposed to be taken, by those employers to eliminate or reduce such differences; to make a consequential amendment to the Irish Human Rights and Equality Commission Act 2014; and to provide for related matters. [13th July, 2021]

**Be it enacted by the Oireachtas as follows:**

**Definitions**

1. In this Act—

“Minister” means the Minister for Children, Equality, Disability, Integration and Youth;

“Principal Act” means the Employment Equality Act 1998.

**Gender pay gap information**

2. The Principal Act is amended by the insertion of the following section after section 20:

“20A.(1) The Minister shall, as soon as is reasonably practicable after the commencement of *section 2* of the *Gender Pay Gap Information Act 2021* and in accordance with this section, make regulations requiring—

- (a) employers to publish information relating to the remuneration of their employees for the purpose of showing whether there are differences in such remuneration referable to gender and, if so, the size of such differences,
- (b) that information referred to in paragraph (a) include the following:

- (i) the difference between the mean hourly remuneration of employees of the male gender and that of employees of the female gender expressed as a percentage;
  - (ii) the difference between the median hourly remuneration of employees of the male gender and that of employees of the female gender expressed as a percentage;
  - (iii) the difference between the mean bonus remuneration of employees of the male gender and that of employees of the female gender expressed as a percentage;
  - (iv) the difference between the median bonus remuneration of employees of the male gender and that of employees of the female gender expressed as a percentage;
  - (v) the difference between the mean hourly remuneration of part-time employees of the male gender and that of part-time employees of the female gender expressed as a percentage;
  - (vi) the difference between the median hourly remuneration of part-time employees of the male gender and that of part-time employees of the female gender expressed as a percentage;
  - (vii) the percentage of all employees of the male gender who were paid bonus remuneration and the percentage of all employees of the female gender who were paid such remuneration;
  - (viii) the percentage of all employees of the male gender who received benefits in kind and the percentage of all employees of the female gender who received such benefits,
- and
- (c) employers to publish, concurrently with the publication of information referred to in this section that shows differences relating to remuneration that are referable to gender, a statement setting out—
    - (i) in the employer's opinion, the reasons for such differences in that employer's case, and
    - (ii) the measures (if any) being taken, or proposed to be taken, by the employer to eliminate or reduce such differences in that employer's case.
- (2) In making regulations under this section, the Minister shall have regard to the estimated costs of complying with, and enforcing, such regulations.
- (3) (a) Regulations made under this section shall not apply to an employer having fewer than 50 employees.

- (b) Subject to paragraph (d), regulations made under this section shall not apply to an employer having fewer than 250 employees until the 2nd anniversary of the making of the first regulations under this section.
  - (c) Subject to paragraph (d), regulations made under this section shall not apply to an employer having fewer than 150 employees until the 3rd anniversary of the making of the first regulations under this section.
  - (d) When regulations made under this section apply to an employer referred to in paragraph (b) or (c), the regulations shall continue to apply to the employer except during such times (if any) as the employer falls within paragraph (a).
- (4) Regulations made under this section may prescribe any, or any combination of, the following:
- (a) the classes of employer to which the regulations apply (whether by reference to the number of employees that an employer has or otherwise);
  - (b) the classes of employee to which the regulations apply;
  - (c) the classes of remuneration to which the regulations apply;
  - (d) how the number of employees that an employer has is to be calculated;
  - (e) how the remuneration or classes of remuneration of employees is to be calculated.
- (5) Regulations made under this section may prescribe the form and manner in which, and the frequency (which shall not be more frequent than once in each year) with which, information is to be published under the regulations in order to bring such information to the attention of—
- (a) the employees to whom the information relates, and
  - (b) the public.
- (6) (a) Regulations made under this section may require the employer to publish information in respect of a public body.
- (b) In this subsection—
- ‘Act of 1998’ means the Education Act 1998;
  - ‘Act of 2014’ means the Companies Act 2014;
  - ‘board’ has the same meaning as it has in the Act of 1998;
  - ‘company’ means a company formed and registered under the Act of 2014 or an existing company within the meaning of that Act;

‘education and training board’ means an education and training board established under section 9 of the Education and Training Boards Act 2013;

‘enactment’ has the same meaning it has in the Interpretation Act 2005;

‘information’ includes data;

‘public body’ means—

- (a) a Department of State,
- (b) the Attorney General,
- (c) the Comptroller and Auditor General,
- (d) the Revenue Commissioners,
- (e) the Commissioners of Public Works in Ireland,
- (f) the Commissioner of Valuation,
- (g) the Garda Síochána,
- (h) the Defence Forces,
- (i) a local authority for the purposes of the Local Government Act 2001,
- (j) the Health Service Executive,
- (k) an education and training board,
- (l) a recognised school established and maintained by an education and training board,
- (m) a board of a recognised school established and maintained by an education and training board,
- (n) a body established—
  - (i) by or under an enactment (other than the Act of 2014 or a former enactment relating to companies within the meaning of section 5 of that Act), or
  - (ii) under the Act of 2014 (or a former enactment relating to companies within the meaning of section 5 of that Act) in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government,

in respect of which a public service pension scheme exists or applies or may be made,



- (o) a body that is wholly or partly funded directly or indirectly out of moneys provided by the Oireachtas or from the Central Fund or the growing produce of that Fund and in respect of which a public service pension scheme exists or applies or may be made, or
- (p) any subsidiary of, or company controlled (within the meaning given by section 10 of the Taxes Consolidation Act 1997) by, a body to which paragraph (i), (j), (k), (n) or (o) relates and in respect of which a public service pension scheme exists or applies or may be made;

‘public service pension scheme’ has the same meaning as it has in Part 4 of the Public Service Pay and Pensions Act 2017;

‘recognised school’ has the same meaning as it has in the Act of 1998.

- (7) (a) Paragraph (b) applies where an employer does not have access to information which the employer requires in order to comply with regulations made under this section but another person (in this section referred to as the ‘other person’) does have access to such information.
  - (b) Regulations made under this section may require the other person to give the information, or give access to the information, to the employer to the extent necessary to enable the employer to comply with such regulations.
- (8) (a) Paragraph (b) applies to the personal data of employees included, or to be included, in information referred to in this section.
  - (b) Regulations made under this section may prescribe, in addition to any relevant measures or steps that an employer or the other person is required to take in respect of personal data, measures or steps to be taken by—
    - (i) the employer to ensure that personal data have undergone pseudonymisation before or when they are published, or
    - (ii) the other person to ensure that personal data have undergone pseudonymisation before or when the other person gives the data, or gives access to the data, to an employer.
  - (c) In this subsection—

‘Data Protection Regulation’ means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>1</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

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<sup>1</sup> O.J. No. L 119, 4.5.2016, p. 1

‘personal data’ has the meaning assigned to it by Article 4 of the Data Protection Regulation;

‘pseudonymisation’ has the meaning assigned to it by Article 4 of the Data Protection Regulation;

‘relevant measures or steps’—

(a) in relation to an employer and personal data, means the measures or steps that the employer is required to take in respect of the data—

(i) pursuant to a provision of the Data Protection Regulation, or

(ii) by or under the Data Protection Act 2018,

or

(b) in relation to the other person and personal data, means the measures or steps that the other person is required to take in respect of the data—

(i) pursuant to a provision of the Data Protection Regulation, or

(ii) by or under the Data Protection Act 2018.

(9) Regulations made under this section may require the employer to publish information—

(a) in respect of any of the following:

(i) the difference between the mean hourly remuneration of employees of the male gender on temporary contracts and that of employees of the female gender on such contracts expressed as a percentage;

(ii) the difference between the median hourly remuneration of employees of the male gender on temporary contracts and that of employees of the female gender on such contracts expressed as a percentage;

(iii) the respective percentages of all employees who fall within each of—

(I) the lower remuneration quartile pay band,

(II) the lower middle remuneration quartile pay band,

(III) the upper middle remuneration quartile pay band, or

(IV) the upper remuneration quartile pay band,

who are of the male gender and who are of the female gender,

or

(b) by reference to job classifications.

- (10) In making regulations under this section, the Minister shall have regard to the principle that employees and the public need to have access to any information which shows whether there are differences relating to the remuneration of employees by reference to the gender of such employees and, if there are such differences, the reasons for such differences and the measures being taken, or proposed to be taken, to eliminate or reduce such differences.”.

### **Amendment of Principal Act - insertion of sections 85B and 85C**

3. The Principal Act is amended by the insertion of the following sections after section 85A:

#### **“Application to Circuit Court or High Court in case of failure to comply with regulations made under section 20A**

**85B.** (1) Subject to subsection (3), where the Irish Human Rights and Equality Commission is satisfied that it has reasonable grounds for believing that there has been a failure by a person (in this section referred to as the ‘person concerned’) to comply with regulations made under section 20A, it may make an application to the Circuit Court or the High Court for the grant of an order requiring the person concerned to comply with those regulations.

(2) The Circuit Court or the High Court may grant the order sought by an application under subsection (1) if the Court is satisfied that the person concerned has failed to comply with regulations made under section 20A.

(3) The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge for the time being assigned to the circuit where the person concerned ordinarily resides or carries on any profession, business or occupation.

#### **Redress through Workplace Relations Commission**

**85C.** (1) An employee (in this section referred to as the ‘complainant’) who claims that his or her current employer (in this section referred to as the ‘respondent’) has failed to comply with regulations made under section 20A (such claim in this section being referred to as the ‘complaint’) may refer the complaint to the Director General of the Workplace Relations Commission.

(2) (a) Subject to paragraphs (b) and (d), the Director General shall investigate the complaint if he or she is satisfied that there is a *prima facie* case to warrant the investigation.

(b) (i) The Director General may, by notice in writing given to the complainant or respondent, or both, require the complainant or respondent, or both, to give to the Director General, within the period specified in the notice (being a period reasonable in the

circumstances), such further information that the Director General may reasonably require in order to assist the Director General to decide whether or not there is a *prima facie* case referred to in paragraph (a).

- (ii) The complainant or respondent given a notice under subparagraph (i) shall comply with the notice.
  - (c) The Director General may, as part of an investigation (if any) of the complaint and if he or she considers it appropriate to do so, hear persons appearing to the Director General to be interested and desiring to be so heard.
  - (d) Section 77A shall, with all necessary modifications, apply to a complaint as that section applies to a claim.
- (3) Subsections (3A) and (4) of section 79 shall, with all necessary modifications, apply in relation to an investigation by the Director General under subsection (2) as they apply in relation to an investigation by the Director General under that section.
- (4) At the conclusion of an investigation under subsection (2) (including an investigation of a preliminary issue under subsection (3A) of section 79), the Director General shall make and issue a decision and, if the decision is in favour of the complainant—
- (a) the Director General may provide for an order that the respondent take a specified course of action in order to comply with regulations made under section 20A, or
  - (b) in the case of a decision on a preliminary issue under subsection (3A) of section 79, it shall be followed by an investigation of the complaint.
- (5) Not later than 42 days from the date of such a decision, the complainant, on notice to the respondent, or the respondent, on notice to the complainant, may appeal to the Labour Court by notice in writing specifying the grounds of the appeal.
- (6) Proceedings under subsection (5) shall be conducted in public unless the Labour Court, upon the application of a party to the proceedings, determines that, due to the existence of special circumstances, the proceedings (or part thereof) should be conducted otherwise than in public.
- (7) The Labour Court shall issue a determination on the appeal under subsection (5) and the Court shall have power to grant such redress as the Director General has under subsection (4)(a).
- (8) Notwithstanding anything in section 89, the publication of decisions and determinations shall include the names of the complainant and respondent.”.

**Amendment of section 88 of Principal Act**

4. Section 88 of the Principal Act is amended, in subsection (3)—
- (a) in paragraph (c), by the substitution of “section,” for “section, and”, and
  - (b) by the insertion of the following paragraph after paragraph (c):
    - “(ca) in the case of a decision or determination under section 85C, the complainant and the respondent, within the meaning of that section, and”.

**Amendment of section 32 of Irish Human Rights and Equality Commission Act 2014**

5. Section 32 of the Irish Human Rights and Equality Commission Act 2014 is amended by the insertion of the following subsection after subsection (4):
- “(5) Arising out of the operation of section 20A of the Employment Equality Act 1998 as read with regulations made thereunder, the Minister may request the Commission to consider exercising its powers under this section in relation to a particular undertaking, group of undertakings or the undertakings making up a particular industry or sector thereof and the Commission shall comply with such request.”.

**Review**

6. The Minister shall cause a review of the functioning of the amendments made by *sections 2 to 5* to be carried out before the 4th anniversary of the date of commencement of this section.

**Short title, collective citations and commencement**

7. (1) This Act may be cited as the Gender Pay Gap Information Act 2021.
- (2) The Employment Equality Acts 1998 to 2015 and *sections 2 to 4* may be cited together as the Employment Equality Acts 1998 to 2021.
  - (3) The Irish Human Rights and Equality Commission Act 2014 and *section 5* may be cited together as the Irish Human Rights and Equality Commission Acts 2014 and 2021.
  - (4) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.