

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT EQUALITY ACT 2010 (SPECIFIC DUTIES
AND PUBLIC AUTHORITIES) REGULATIONS 2017

Wednesday 22 February 2017

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The Committee consisted of the following Members:

Chair: MR DAVID NUTTALL

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|---|---|
| † Beckett, Margaret (<i>Derby South</i>) (Lab) | † Johnson, Gareth (<i>Dartford</i>) (Con) |
| † Borwick, Victoria (<i>Kensington</i>) (Con) | † Kennedy, Seema (<i>South Ribble</i>) (Con) |
| † Bridgen, Andrew (<i>North West Leicestershire</i>) (Con) | † Mactaggart, Fiona (<i>Slough</i>) (Lab) |
| † Champion, Sarah (<i>Rotherham</i>) (Lab) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Crawley, Angela (<i>Lanark and Hamilton East</i>) (SNP) | † Phillips, Jess (<i>Birmingham, Yardley</i>) (Lab) |
| † Davies, Dr James (<i>Vale of Chwyd</i>) (Con) | Sharma, Mr Virendra (<i>Ealing, Southall</i>) (Lab) |
| † Dinenage, Caroline (<i>Parliamentary Under-Secretary of State for Women and Equalities</i>) | † Sturdy, Julian (<i>York Outer</i>) (Con) |
| † Gray, Neil (<i>Airdrie and Shotts</i>) (SNP) | † Thomas, Derek (<i>St Ives</i>) (Con) |
| † Heaton-Harris, Chris (<i>Daventry</i>) (Con) | Peter Stam, Joanna Welham, <i>Committee Clerks</i> |
| † Jenkyns, Andrea (<i>Morley and Outwood</i>) (Con) | † attended the Committee |

Seventh Delegated Legislation Committee

Wednesday 22 February 2017

[MR DAVID NUTTALL *in the Chair*]

Draft Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017

2.30 pm

The Parliamentary Under-Secretary of State for Women and Equalities (Caroline Dinenage): I beg to move,

That the Committee has considered the draft Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017.

It is a great pleasure to serve under your chairmanship, Mr Nuttall. The regulations, which are being introduced under powers in section 153 of the Equality Act 2010, replace and amend the Equality Act 2010 (Specific Duties) Regulations 2011. They replicate the measures from the previous specific duties regulations—namely, that public bodies must publish information every year to demonstrate their compliance with the equality duty and must set equality objectives every four years.

Tackling the gender pay gap is a priority for this Government, which is why we have used these powers to include new duties for the relevant public authorities, if they have 250 or more employees, to report on their gender pay differences. We have already delivered on our manifesto commitment to introduce mandatory gender pay gap reporting for large employers in the private and voluntary sectors, and the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 were approved by both Houses last month and signed by the Secretary of State on 6 February.

It is only right that public bodies, including Government Departments, are subject to the same reporting requirements. That is why we announced that we would extend the manifesto commitment to the public sector in October 2015. My Department's gender pay gap is much lower than the average, at only 5.9%, but I want the Government to be a trailblazer and to lead by example.

The regulations apply to specified public authorities in England, to non-devolved organisations and to certain cross-border organisations and authorities. Scottish and Welsh public bodies are subject to separate specific duties regulations. The devolved Administrations in Scotland and Wales have been kept informed of the proposed changes. Both sets of regulations will require the same gender pay gap calculations and use the same methodology for calculating the data.

Neil Gray (Airdrie and Shotts) (SNP): Will the Minister advise us on what measure was taken to fall upon the figure of 250 employees? She mentioned Scotland. We in Scotland are further ahead on that, as are other nations in Europe. Why not fewer than 250?

Caroline Dinenage: That is a good question. The reason is that we were fundamentally keen that this manifesto commitment was delivered hand in hand with business and that we were with business every step of the way. We are really serious about this and want

businesses to be 100% committed to it. Business felt that this number was manageable. I know that the Scottish Government have imposed a lower threshold in Scotland, but it should be noted that the requirements there are less specific and do not include the full range of calculations that will apply to public bodies in England. We want businesses to see this as being in their interests. They want to be able to identify and promote the skills of every single one of their workforce, and we do not want to make this too burdensome. We want to bring them with us every step of the way, hence the number we have settled on.

All specified public bodies will need to publish their gender pay gap data on a website that is accessible to members of the public. Organisations will also need to upload data to a Government-sponsored website, which will also allow us to establish a database of compliant employers and to monitor compliance closely. We have aligned the reporting timetables and obligations as closely as possible, for employers in different sectors to achieve consistency and comparable sets of data.

I firmly believe that the two sets of regulations will provide unprecedented transparency on gender pay differences in all sectors and create the environment we need to drive change.

2.34 pm

Sarah Champion (Rotherham) (Lab): It is a real pleasure to serve under your chairmanship, Mr Nuttall. I am pleased to be standing opposite the Minister, because I know that she is incredibly committed to this area. It has been a pleasure to see how things have started going forward at a pace under her watch.

It was a proud day last month when we were in this room and the Government finally, after seven years, introduced mandatory paid audits for larger companies in the private and voluntary sectors. It is frustrating that it took the Government quite so long to bring forward those measures, which were created by the previous Labour Government, but, although they are small steps, we are making progress. I am grateful for that. I commend the Government for extending the mandatory pay gap reporting duties to public sector employers. As the Minister said, they promised to do so in October 2015. It is another welcome yet long overdue step—but we are getting there under the Minister.

The regulations, which relate to section 153 of the Equalities Act 2010, almost exactly mirror the regulations relating to section 78. Unsurprisingly, I therefore have concerns that these new duties could have gone further. As with the duties on private and voluntary sector organisations, they apply only to public authorities with 250 employees or more, which has already been raised by the hon. Member for Airdrie and Shotts. Maintaining such a high employee threshold for the application of these duties in the public sectors was raised as a concern by a significant number of organisations and individuals when responding to the Government's consultation, yet the Government have chosen not to set a lower threshold for public bodies.

It is understandable that the Government would want to create comparable data between the public sector and the private and voluntary sectors, but limiting the application to public sector bodies with more than 250 employees will severely limit the number of public authorities caught under the regulations. The Government

claim that a public authority of any size could choose to adopt mandatory reporting, but to what extent will a voluntary expectation create practice in reality? What communications does the Minister intend to have with all public bodies, regardless of their number of employees, to encourage them to publish their gender pay gap information? How many have indicated that they will take that up voluntarily? In the consultation response, the Government promised to keep the setting of a lower employee threshold under review, but they failed to give assurances on the timescales. Will the Minister tell us when that will be reviewed? What evidence does the Minister need in order to persuade her that 250 employees is too high a threshold?

The regulations impose a reporting duty on public authority employers that oblige them to publish information that demonstrates their compliance with the public sector equality duty, and how they will work towards achieving any of the three core objectives in the duty. Despite the requirement to make those objectives specific and measurable, the regulations do not require an employer to publish an action plan or equality objectives aimed specifically at tackling the gender pay gap, as recommended by the Equality and Human Rights Commission. In its consultation response, the EHRC stated that

“public authorities should be required to publish one or more objectives showing how they will contribute to reducing the gender pay gap, supported by an action plan setting out the steps they will take to achieve their objective(s) and the timescales for taking those steps.”

Considering that the then Prime Minister, David Cameron, referred to public sector equality duty impact assessments as “bureaucratic nonsense”, I am hesitant to take on good faith that the Government are truly committed to ensuring that employers actually act to tackle the issues raised through mandatory gender pay gap reporting. That worry is compounded by the fact that the information demonstrating compliance by employers with the public sector equality duty is to be published by 30 March 2018, and then only every four years after that. I look forward to the first gender pay gap report under these new regulations being published in March 2018. However, it is not enough just to know that employers have a problem; the Government must do all they can to ensure that those problems are tackled. I fail to see how the regulations alone will help with that. Again, the consultation said that the issue will be reviewed. Will the Minister tell us when?

The Government have said that they will publish tables on employers reporting gender pay gaps by sector under section 78 of the Equality Act 2010. Will they do the same for public authorities? Will the Minister go further and publish an annual league table that ranks public bodies by pay gap? Will the Government commit today to bringing an annual report to Parliament with the raw data responses, information from authorities that demonstrates compliance with the public sector equality duty and—this is of fundamental importance—a Government action plan to narrow the gap in the following 12 months?

I will make a wider point before I sit down. Progress to tackle the gender pay gap cannot be incremental and piecemeal. Progress initiated by the previous Labour Government has already been implemented far too slowly by the coalition and Tory Governments. We know that deep and corrosive structural barriers are at

the core of the gender pay gap: occupational segregation, with women stuck in chronically low-paid and undervalued sectors of the economy; unequal caring responsibilities; the undervaluing of roles predominantly done by women; maternity discrimination and so on. I know that the Minister is very aware of those and is really trying to move forward on them.

Clearly such pervasive, structural issues are not fixed only through transparency, so I hope that the Minister can shed some light on why the Government have rejected almost all of the 17 recommendations made by the cross-party Women and Equalities Committee on tackling the gender pay gap. Those recommendations were sincerely aimed at improving working conditions for women of all ages and in all sectors right across the country. I am afraid that it shows contempt to ignore the evidence of experts and the voices and lived experiences of thousands of women in chronically low-paid and undervalued sectors of the economy such as care, hospitality and retail.

I hope that the Minister will tell us why the Government appear to be failing even to act on their own evidence and analysis. I am talking about the Government research with the Equality and Human Rights Commission that estimates that 54,000 women are forced out of their jobs every year because of maternity discrimination. Yet, since the introduction of employment tribunal fees, less than 1% of maternity discrimination cases end up in a tribunal. On 31 January 2017 the Government published their own review of employment tribunal fees, admitting that the fall in claims has been significantly greater than what was estimated when the fees were first introduced. The only ability that women have to enforce their rights at work is through employment tribunals. How on earth can this Government claim to show any commitment to tackling the gender pay gap when they have effectively priced women out of their own employment rights?

Ahead of the spring statement the Government should be outlining how they plan to tackle the wider issue of economic inequality for women, conducting a gender impact analysis of their policies, seeking evidence and acting on it. Instead, on the issue of women’s economic equality the Government have turned their back on the evidence and are effectively walking away from structural reforms that would take us from tiny steps forward to meaningful action on the gender pay gap.

2.42 pm

Fiona Mactaggart (Slough) (Lab): It is a pleasure to serve under your chairmanship, Mr Nuttall. I believe and welcome what the Minister has said but, frankly, taking eight years after the Equality Act 2010 does not seem a very convincing commitment to equal pay.

When we look at what these regulations do not include, we see that there will be real gaps. For example, regulation 2(3) states that

“an employee of an English local authority at a maintained school is to be treated as an employee of the governing body of that school.”

That means I can think of no primary school, except perhaps the enormous one in my constituency, that will be affected by these measures. Primary school teachers, who can be real victims of pay inequality, and the dinner ladies in such schools, who can be even greater victims of pay inequality, will not be able to compare their pay to that of men. There are real issues about

[*Fiona Mactaggart*]

scope and coverage and about the time that women have had to wait. We get very used to waiting for equality—some of us have got old waiting for equality—and that is a further issue I am concerned about.

There is a bit of the Equality Act that this Government and their predecessors did not commence: the provision that means where age discrimination and gender discrimination cross, the power to contest that combined discrimination should be available to women. When it comes to pay, where is the biggest pay gap? It is the one for older women. Women reach peak pay at 39, whereas men reach it in their late 50s. Frankly, it is not right, and this pay audit is not likely to highlight that issue sufficiently. I am deeply concerned that we are still stuck with legislation that was perhaps right for eight years ago but is now out of date and we are just getting it implemented now. That is a very serious question.

I have one more question, about the meaning of “employment” in regulation 2. The biggest pay gap, as well as by age, is between people who are employed in the gig economy—on flexible, precarious contracts—and those who are on secure contracts. Public authorities use those precarious contracts less than private companies, but they do use them. I do not know, looking at the regulations, how someone on that kind of precarious contract could use the information that will be made public to secure a fairer pay deal for themselves. That is another example of where taking eight years to do something that would have been right eight years ago means that the regulations have become out of date.

Although I welcome the fact that we are at last seeing these regulations, they are nearly a decade out of date. I urge the Minister to look at what she will do about the question of age pay inequality and what she will do to tackle the pay inequality that is so gross in those precarious jobs in the gig economy.

2.46 pm

Caroline Dinéage: I thank everyone who has contributed to this debate. I start by emphasising that we fully agree that it is unacceptable that the gender pay gap exists in this day and age. The UK’s overall gender pay gap is just over 18%. While that is the lowest on record and has consistently fallen, it is doing so too slowly, and voluntary reporting has not led to sufficient progress.

This challenge faces us all. I am really proud that the Government will lead by example. The regulations, alongside those aimed at private and voluntary sector employees, will drive action that promotes better, greater gender equality in workplaces across the country. The gender pay gap obligations apply to specified public authorities if they have 250 or more employees. We estimate that around 3.8 million employees in the public sector will be covered by the new gender pay gap reporting requirement. Indeed, the combination of these regulations and those for the private and charitable sectors will cover more than 15 million employees in 9,000 organisations, representing nearly half the total workforce. That is a massive step in the right direction.

Public bodies with more than 150 employees are already required to report on the diversity of their workforce and are encouraged to publish gender pay gap information. We are very keen in the first instance to place the same requirement for gender pay gap

reporting on all employers, to ensure consistency and comparability. We have started in the public sector with the threshold of 250 employees, which aligns with section 78 of the Equality Act, but we will keep the threshold under review. The regulations and the ACAS guidance will, in any case, help organisations of any size to analyse their gender pay gap. We are not limiting reporting to those with 250 or more staff. Anybody can do it, but at present, those with 250 need to.

We have consulted massively on this. The right hon. Member for Slough said that the regulations were out of date. The idea may have arisen in 2010, but we have consulted on the regulations numerous times over the past year or so in order to get them exactly right, to make them timely and relevant and to ensure we took on board the views and expectations of all the different aspects of society. The majority of respondents to the public consultation who answered the question about the proposed scope agreed that the gender pay gap obligations should apply to authorities with 250 or more employees. Having said that, I have already spoken to employers with somewhere between 200 and 250 employees who are doing that reporting because they feel it is too close for comfort and do not want to be in a position where they suddenly slip into that larger number and get caught out.

The gender pay gap reporting requirements will be reviewed by the Secretary of State five years after commencement. Although that is the formal point for reviewing the obligations, we will of course closely monitor compliance on a much more regular basis, to ensure that the measures are effective and are working as intended. Ensuring that employers comply with the regulations is, of course, of the utmost importance to the Government. The Government Equalities Office will closely monitor that compliance by reviewing the data uploaded to a Government-sponsored website.

The Equality and Human Rights Commission can take enforcement action if a particular public authority has not complied. In line with the rest of the specific duties regulations, the Commission has powers to issue a compliance notice and can apply to the courts for orders requiring compliance. We have discussed with EHRC how the new system will operate and we will work closely together after reporting begins in March.

Sarah Champion: The Government have been great at naming and shaming businesses that are not paying the minimum wage. Does the Minister envisage that she will be doing the same thing with the gender pay gap?

Caroline Dinéage: That is an excellent question. That is the whole point behind ensuring that businesses and employers have to publish their data publicly. They cannot be hidden away in the murky depths of their website. They need to be in a really accessible place so that we can compare the data and tackle any worrying sectors or employers.

The regulations do not require mandatory equality objectives connected to gender pay gap data or action plans, but all employers will be strongly encouraged to publish information on how they intend to tackle the gender pay gap in their organisations. That is why we have strongly encouraged a narrative. Many public bodies have indicated that they are keen to publish a narrative alongside their gender pay gap calculations, so that they can provide more context for any gender pay differences,

and highlight work to reduce any gaps. We know that sometimes the organisations that are doing some of the best work to bring women through the pipeline have, on paper, some of the worst gender pay gaps, but they are investing in a much more long-term strategy. That is where that narrative is really important.

We know that transparency is not a silver bullet. The hon. Member for Rotherham and the right hon. Member for Slough have spoken about the things that are missing here. We are not pretending for one second that this is a silver bullet, but it will incentivise employers to analyse the drivers behind their gender pay gap, which is what this is all about, and the extent to which their policies and practices might contribute to that gap.

We are also working closely with ACAS to deliver guidance for public bodies to help employers fully understand and implement the regulations and understand why they are good for their organisations and businesses.

The hon. Member for Rotherham asked why the Government had not accepted all the recommendations from the Women and Equalities Committee. Of course, we massively appreciate the important role that that Committee plays on the issue. I was one of the MPs in the previous Government who campaigned hard to get a Women and Equalities Committee. We carefully consider all the recommendations it makes. The report makes a number for Government, several of which we have already actioned. For example, the right to request flexible working already allows those with fewer than full-time hours to request the opportunity to work more.

Many of the recommendations would involve significant cost to business and, because we are so early in the process, they would also require changes to primary legislation, which has been in place for only 12 to 18 months. In particular, shared parental leave and flexible working are very new. We would rather wait until these new policies have had time to become established and sufficient evidence has been gathered on what works before changes are made.

Jess Phillips (Birmingham, Yardley) (Lab): I thank the Minister for what she is saying. I wonder, when she says that the Government are going to wait, whether she could give us an indication of how long.

Caroline Dinanage: The hon. Lady knows that I am passionate about this and will not let it drag on forever. I will keep it under constant review. She knows, as well as I do, that I am not in the business of spending taxpayers' money before knowing that that money is going to be well spent and will make a real and positive difference to working women—and men and employers—up and down the UK.

Angela Crawley (Lanark and Hamilton East) (SNP): The Minister mentioned earlier the work of the Women and Equalities Committee inquiry. A number of witnesses to that inquiry outlined that the European Commission recommends a threshold of 50 employees. Does the

Minister accept that a more ambitious target would bring forward the kind of changes that we want a bit earlier?

Caroline Dinanage: That is in terms of the number of employees one would have to have. As I said at the outset, we wanted to do this hand in hand with business. One concern articulated by business right at the beginning was that, if businesses did not feel that they had bought into this and could not see the advantages, the more unscrupulous ones might subcontract all their lower paid jobs to microbusinesses or very small companies to get round the gender pay gap reporting. We do not want to be in that position. We want to be in a position where businesses, authorities and public bodies all see that there is a genuine benefit in maximising the potential of every single member of their talented workforce, bringing them through the pipeline and making sure they reach the absolute pinnacle of what their skills allow them to do—and that they look at all the different resources available to them such as flexible working and shared parental leave.

It is important to note that we may not have such a low threshold of staff as other European countries, but the way we want to report is much more onerous. We cover bonus pay gaps as well. We know that the bonus pay gap is significantly larger than the gender pay gap on average. Men get paid significantly more and that is why we are asking for a median and mean average for bonus pay gaps. Our requirements are a little bit more arduous, but we think that they are the way we are going to get to the nub of this problem and really begin to tackle it.

The right hon. Member for Slough spoke about older workers and older women in particular. I am really dedicated to looking at ways to tackle the challenges facing older women in work. We are really committed to unlocking the skills, talents and experience of all women and supporting them to reach their economic potential. We will shortly publish “Fuller Working Lives: a partnership approach”, which sets out how working longer can benefit businesses, individuals and the economy, and the key actions that Government are taking. In the meantime the Women's Business Council, which this Government established, has set up its own action group on staying on. It specifically looks at what businesses can do to support older workers, such as encouraging greater use of flexible working and providing practical support.

I am really pleased that the Committee broadly welcomes the regulations and that we agree on the underlying policy intention to accelerate action to close the gender pay gap. On that basis, I hope that hon. Members will support the regulations, which I commend to the Committee.

Question put and agreed to.

2.57 pm

Committee rose.

