

STATES OF JERSEY



PAY GAP REPORTING (P.13/2024) – COMMENTS

Presented to the States on 26th April 2024
by the Chief Minister

STATES GREFFE

COMMENTS

The proposition seeks to encourage, and ultimately require, businesses with over 50 employees to report on their gender pay gap data with accompanying narrative and action plan.

While the gender pay gap is a significant concern, the Council of Ministers does not feel that the Deputy's proposal is the most effective mechanism in the short term to address the gender pay gap, nor the best targeting of government resources, or a proportionate demand on local businesses.

There are economic reasons for gender pay equality but just as importantly there is a moral imperative to strive for gender equality and beyond that to address specific needs faced by women and girls.

The commitment of this Government is demonstrated by our promise to deliver on the recommendations of the Taskforce on Violence Against Women and Girls, as well as the significant efforts being made by the Minister for Education and Lifelong Learning to expand the availability of childcare to parents which will have a significant impact on pay equality.

General feasibility and complexity

Voluntary reporting in absence of any framework

Currently, there is no framework or central reporting structure in place to receive gender pay gap information. This will mean that under the voluntary arrangement specified in parts (a) and (b) of the proposition, the burden of devising and managing pay gap reporting will fall to each individual business. There will therefore be no meaningful quality control over the reporting from each business, and no way to draw evidence-based comparisons between various methods of reporting.

It is also unclear how government could assess the achievement of any percentage target for reporting as required by part (b). Without central management, any business could choose to publish a figure showing its own individual understanding of the pay gap without any shared methodology. To establish whether, say, 80% of businesses had meaningfully reported their pay gap would either require government to accept any published numbers on trust, or to undertake an investigation into the methodology that would require central resources to be allocated, and in some cases to seek information that the government has no right to demand.

Effects of legislation

The rules on gender pay gap reporting in the UK are drawn from [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#), and supported by 7 [guidance documents](#) from the Government Equalities Office.

The UK legislation requires employers of over 250 staff (not 50 as in the current proposition) to publish data categorised as follows-

- (a) difference in mean hourly full-pay rate difference of pay of male and female relevant employees
- (b) difference in median hourly full-pay rate difference of pay of male and female relevant employees
- (c) difference in mean bonus pay paid to male and female relevant employees
- (d) difference in median bonus pay paid to male and female relevant employees
- (e) proportions of male and female relevant employees paid bonus pay
- (f) proportions of male and female full-pay relevant employees in the lower, lower middle, upper middle and upper quartile pay bands

The various types of ‘pay’, and the formula for calculations to be made are defined throughout the Regulations.

The provision of the necessary information is a legal duty, and if information is not supplied, or if the information is not accurate (having been signed off by a named individual) then the business may be found to have committed an ‘unlawful act’ within the Equality Act 2006, which empowers the Equality and Human Rights Commission (EHRC) to take enforcement action or to launch an investigation.

Jersey has no direct equivalent of the Equality Act 2010, with the Discrimination Jersey Law 2014 having no direct equivalent of the EHRC. Any legislation intended to give effect to gender pay gap reporting will not therefore be able to draw on existing frameworks but will have to develop a novel system of oversight. As there is no equivalent to the EHRC, the gender pay gap law will either need to replicate significant components of the UK’s 2010 Act or establish a new regulatory and reporting framework as an integral part of the law.

Without the formation of an independent regulatory authority with a tribunal management capacity, any sanction for non-compliance (or partial compliance, or incorrect reporting) will need to be through the established court systems, and rely on the normal prosecution process, either against the business concerned or the individual who certified the gender pay gap report. The only available sanction against a company would be a fine, and as this legislation would be required to drive compliance from large organisations, that may need to be sizeable.

Effects on business

To make all businesses undertake reporting either on a voluntary or statutory basis would place a significant burden on businesses at a time when many companies are struggling with staffing and with the impact of the current cost of living increases on costs and sales.

We also cannot know the full implications for all the estimated 180 businesses which will fall in scope. Some businesses are international and are more likely to already produce reporting within their annual report, and they may well have staff with the necessary expertise to facilitate this reporting. There will be other local companies with no experience of this reporting that would require support from government and additional resources, such as revised data systems.

We are writing to several business organisations at this time to ascertain their views – and notwithstanding the above concerns, it would be premature to proceed in advance of more discussion with them in any case.

Effects for Government

The proposals would create a significant requirement for additional work from government, far beyond the level the proposition indicates.

The proposition purports to be cost neutral (or cost-limited) by utilising “*an existing work scheme within Justice and Home Affairs, entitled Equity, Diversity and Inclusion (“EDI”), which could support this work*”. While that resource does exist, it is currently at the level of 0.2 FTE dedicated staffing with support from across government as needed. While the intention is to redeploy resource to increase this resource, the staff have neither the capacity or skills to develop new data collection methodologies and support businesses in reporting, and any additional capacity could be better used to support diversity, equality and inclusion.

In reality, working with 180 businesses, providing guidance, support and structure will inevitably be resource intensive.

It would require further policy and statistical resource. If legislation were required, with the necessary development of a central reporting hub, guidance, and enforcement capacity then the costs would be significantly higher.

The best approximation of total project cost was made in 2023 and totalled over £500,000, and although further work may refine that figure, the significant setup and ongoing costs of a new regulatory structure cannot be ignored.

Impact of publication on gender pay gap or ethnicity or disability pay gaps.

Whilst data publication and transparency are important, simply reporting is not in itself a solution to reducing the gender pay gap. For business and indeed the government as an employer to make real change, complex socio-economic factors including systemic biases need to be addressed. This will require a holistic approach which should include actions to tackle the causes of gender disparities with targeted policies such as improved recruitment practices, retention and career advancement. These are areas that the government has worked and continues to work on.

Considering the issue more widely, we are working to put policies in place to promote ethnicity and disability pay equity within government. The starting point of this work is a presumptive understanding that minority ethnic communities and those with disabilities can be disadvantaged and the government must work on policies that work to address these issues. Like many employers, Government data collection in this area has historically been poor and we are seeking to ensure that accurate and meaningful data can be collected on the ethnicity and disability status of our employees. In addition, work is ongoing through the respective Accountable Officers to encourage the Arms-Length Organisations funded by Government to report their gender pay gap statistics where it is feasible for them to do so.

Conclusion

Action to reduce the gender pay gap is supported, but the Council cannot support this proposition for the reasons outlined, notably, the additional burden on businesses and on government resources, when other actions, such as expanding childcare, are more impactful.

Notes on the amendments

Two amendments have been proposed to this proposition, both of which are addressed by the points made above and so for ease of Members' reference they are addressed here.

Amendment proposed by Deputy Jeune

This amendment would insert a new paragraph (c), requiring the Council of Ministers to develop an action plan to address and reduce the underlying causes of the gender pay gap and before the end of 2026. This is arguably a more practical use of scarce resources than the reporting requirements in the proposition, but it shares the issues of cost and complexity. It also relies on the data gathering from the main proposition.

Amendment No. 2 proposed by Deputy Andrews

This amendment would remove text in paragraph (c), with the effect that legislating for gender pay gap reporting would be required regardless of any voluntary compliance. This shares all of the challenges of the base proposition and for those reasons we cannot accept it.

Annex 1 – Business in scope

Sector	50 or more staff
Agriculture and fishing	+
Manufacturing; utilities and waste	10
Construction and quarrying	10
Wholesale and retail	20
Hotels, restaurants and bars	30
Transport and storage	10
Information and communication	10
Financial and legal activities	60
Miscellaneous business activities	10
Private education, health and other services	30
Private sector total	180