

Equal Pay Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Baroness Prosser, the member in charge of the Bill, have been ordered to be published as HL Bill 65 – EN.

Equal Pay Bill [HL]

CONTENTS

- 1 Right to Know Information: amendment to Equality Act 2010
- 2 Right to Know Information: amendments to Equality Act 2006
- 3 Comparators
- 4 Time limits
- 5 Remedies in non-pensions cases
- 6 Statement of particulars
- 7 Gender and ethnic origin pay gap reporting
- 8 Extent, commencement and short title

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Make provision for a right for employees to obtain information relating to the pay of a comparator; to reform remedies and time limits relating to equal pay; to provide a right to equal pay where a single source can rectify unequal pay; to amend the statutory statement of particulars to include equal pay; to provide for requirements on certain employers to publish information about the differences in pay between male and female employees and between employees of different ethnic origins; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Right to Know Information: amendment to Equality Act 2010

- (1) The Equality Act 2010 is amended as follows.
- (2) After section 77 insert—

“77A Right to know information

- (1) In this section—
 - (a) A is or was an employee, worker or personal or public office holder who suspects that B is a comparator for the purposes of Chapter 3 of Part 5 (equality of terms) of this Act; 5
 - (b) P is a person who is either—
 - (i) A’s employer or former employer; 10
 - (ii) an associated employer;
 - (iii) a person or body which has the power to rectify any difference in the terms of work applicable to A and B; or
 - (iv) a person responsible for paying remuneration in respect of a personal or public office that A holds or held. 15
 - (c) B is a person or group of persons of the opposite sex to A who—
 - (i) is identified by A by name or by the work B performs; or
 - (ii) has the benefit of a specified term which is more favourable to B than a corresponding term of A’s is to A,

or has the benefit of a term which benefits B and does not correspond to a term of A's.

- (2) By virtue of this section, A has a right (“the Right to Know”) to know the information in subsection (4) (“Right to Know Information” or “the Information”), subject to A making a request to P in the prescribed form referred to in subsection (3) (“a Request”). 5
- (3) The Secretary of State must, as soon as possible and no later than 12 months after the passing of this Act, make regulations by statutory instrument prescribing –
- (a) the form by which A may obtain the Information; 10
 - (b) the form by which P must supply the Information to A (“the Reply”); and
 - (c) the questions which A is entitled to pose in order to obtain the Information.
- (4) The regulations under subsection (3) must prescribe the Information which must include, in relation to the period of six years preceding the Request – 15
- (a) where B is an individual, B’s gross annual basic pay and hours worked in respect of such pay;
 - (b) where B is a group of workers performing the work in question, a list in rank order for each worker in that group of their gross annual basic pay and hours worked in respect of such pay; 20
 - (c) information about other terms in relation to pay or benefits, including terms relating to –
 - (i) bonus; 25
 - (ii) overtime;
 - (iii) shift working;
 - (iv) standby;
 - (v) bank holidays or time off in lieu;
 - (vi) attendance; 30
 - (vii) performance related pay; and
 - (viii) any other terms relevant to equal pay;
 - (d) in the event that any term about which information is sought is not a term of B’s contract, a statement to that effect;
 - (e) the information contained in the Form P60 specified in section 67 of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682), for each year of employment, in relation to B; 35
 - (f) B’s job descriptions and, if the work has changed, any previous job descriptions;
 - (g) where there is a job evaluation system or study, or grading system, whether or not any system or study has been implemented for A, identification of the following in respect of both A and B – 40
 - (i) the grade awarded to their work under the job evaluation study; 45
 - (ii) the score and salary boundaries for their grade;
 - (iii) the score awarded for their work; and
 - (iv) a copy of the final job evaluation record for their work; and

- (h) where—
- (i) any of A's terms is less favourable to A than a corresponding term of B's terms is to B; or
 - (ii) A does not have a term which corresponds to a term of B's that benefits B,
- a statement of any material factors explaining the difference in terms between A and B. 5
- (5) In making the Request, A must provide—
- (a) A's name;
 - (b) A's National Insurance number; 10
 - (c) A's address for service and, if not the address for service, the address used by A in connection with A's employment with P;
- (6) P must provide the Information to A or to A's representatives no later than 20 working days from the date the Request is received.
- (7) Where exceptional circumstances cause a delay in providing the Information, P must provide it as soon after the period set out in subsection (6) as is reasonably practical. 15
- (8) References in this section to the work done by B are not restricted to work done contemporaneously with the work done by A.
- 77B Right to Know Information: supplementary provisions** 20
- (1) A may make more than one Request under section 77A, identifying a different comparator.
- (2) Information obtained by A under section 77A may only be used in pursuing a contravention by P of Chapter 3 of Part 5 (equality of terms) of this Act in relation to— 25
- (a) A;
 - (b) any person doing the same or similar work to A or B;
 - (c) any other person rated as equivalent to A or B in a job evaluation study; or
 - (d) any person doing work believed by A to be of equal value to A or B. 30
- (3) A may share the Information only with—
- (a) their nominated representative, including legal and trade union representatives;
 - (b) the persons mentioned in subsection (2), or a nominated representative acting for such persons in connection with a suspected breach of Chapter 3 of Part 5 (equality of terms), including legal and trade union representatives; 35
 - (c) their employer;
 - (d) a police officer acting in that capacity; 40
 - (e) a regulated health care professional acting in that capacity;
 - (f) the Equality and Human Rights Commission;
 - (g) a Minister of the Crown;
 - (h) a prescribed person for the purposes of section 43F of the Employment Rights Act 1996. 45

- (4) A statutory instrument containing regulations under section 77A may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

77C Failure to provide Right to Know Information

- (1) If— 5
- (a) A makes a Request to P under section 77A;
 - (b) P does not comply, wholly or in part, with the Request;
 - (c) A then makes an application to any court or tribunal for the disclosure of information that was the subject of the Request; and 10
 - (d) an order for disclosure is granted by the court or tribunal (“an Order for Disclosure”);
- the court or tribunal must consider whether it is appropriate to make an order that P pay the full costs and expenses incurred by A or A’s representatives, or any proportion of those costs, and must assess those costs. 15
- (2) If, after an Order for Disclosure is made under subsection (1),—
- (a) A makes an application to amend the claim to add information which had been the subject of a Request and which was disclosed pursuant to the Order for Disclosure; and 20
 - (b) the application is granted;
- the court or tribunal must consider whether it is appropriate to make an order that P pay the full costs and expenses incurred by A or A’s representatives, or any proportion of those costs, and must assess those costs. 25
- (3) If the court or tribunal makes a costs order under subsections (1) or (2), P must pay the full sum as ordered within 28 days of the date of the costs order or be debarred from defending the claim.
- (4) The court or tribunal may at any time order that P may not rely on any material factor defence which P did not include in the Information provided pursuant to a Request under section 77A. 30
- (5) A court or tribunal may draw an inference where the circumstances specified in subsection (1)(a) and (b) apply.
- (6) Subsection (5) does not apply if—
- (a) P reasonably asserts that to have answered differently or at all might have prejudiced a criminal matter; or
 - (b) P reasonably asserts that to have answered differently or at all would have revealed the reason for not commencing or not continuing criminal proceedings.” 35

2 Right to Know Information: amendments to Equality Act 2006 40

- (1) The Equality Act 2006 is amended as follows.

(2) After section 24A insert –

“24B Failure to comply with the Right to Know: notice and financial penalty

- (1) Subsection (3) applies where the Commission is of the opinion that, under the provisions in section 77A of the Equality Act 2010, a person P has not complied with one or more Requests made by a person A. 5
- (2) For the purposes of this section, A can only be treated as suspecting that B is a comparator if that would be within the range of possibilities open to a reasonable person.
- (3) The Commission may, subject to this section, serve on P a notice of failure to comply with the Right to Know. 10
- (4) In this Act, “notice of failure to comply with the Right to Know” means a notice under this section.
- (5) A notice of failure to comply with the Right to Know must specify, for each employee to whom it relates – 15
- (a) the date or dates of the Request or Requests;
 - (b) the name of the person or persons who made the Request; and
 - (c) the nature of the failure to comply with section 77A.
- (6) In this section “the 20-day period” means the period of 20 working days beginning with the date of service of the notice of failure to comply with the Right to Know. 20
- (7) After the expiry of the 20-day period, if the Commission is of the view that subsection (1) still applies it may, subject to this section, serve a “Right to Know penalty notice” requiring P to pay a financial penalty specified in the notice to the Commission within a further 20-day period. 25
- (8) The Secretary of State must by regulations prescribe the amount of financial penalties under this section, which are to be calculated by reference to the number of people employed by P or P’s turnover.
- (9) The Secretary of State must in each tax year review the financial penalties in subsection (8) in order to determine whether they have retained their value in relation to the general level of prices in the United Kingdom estimated in such manner as the Secretary of State deems fit. 30
- (10) If the review under subsection (9) finds that the financial penalties have lost value, the Secretary of State must increase them by regulations. 35
- (11) A Right to Know penalty notice must, in addition to specifying the amount of any financial penalty, state how that amount was calculated.
- (12) A financial penalty paid to the Commission pursuant to this section shall be retained by the Commission.

24C Failure to comply with the Right to Know: appeals 40

- (1) A person on whom a notice of failure to comply with the Right to Know or a Right to Know penalty notice is served may, in accordance with this section, appeal against any one or more of the following –
- (a) the decision to serve either notice;

- (b) any requirement imposed by the notice to pay a financial penalty.
- (2) An appeal under subsection (1)(a) may be made only on the grounds that P has not failed to comply with section 77A of the Equality Act 2010. 5
- (3) An appeal under subsection (1)(b) may be made only on the grounds that the amount of the financial penalty specified in the Right to Know penalty notice has been incorrectly calculated (whether because the notice is incorrect in some of the particulars which affect that calculation or for another reason). 10
- (4) An appeal under this section lies to an employment tribunal.
- (5) An appeal under this section must be made before the end of the applicable 20-day period.
- (6) Where the employment tribunal allows an appeal under subsection (1)(a), it must rescind the notice. 15
- (7) Where, in a case where subsection (6) does not apply, the employment tribunal allows an appeal under subsection (1)(b) –
- (a) the employment tribunal must rectify the Right to Know penalty notice, and
- (b) the Right to Know penalty notice shall have effect as rectified from the date of the employment tribunal’s determination. 20

24D Failure to comply with the Right to Know: recovery of penalty

- A financial penalty payable under a Right to Know penalty notice –
- (a) in England and Wales, is recoverable, if the county court so orders, under section 85 of the County Courts Act 1984 or otherwise as if it were payable under an order of that court; 25
- (b) in Scotland, may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.”
- (3) In section 39 (order and regulations) after subsection (3)(a) insert – 30
- “(aa) section 24B,”

3 Comparators

- (1) Section 79 (comparators) of the Equality Act 2010 is amended as follows.
- (2) For subsection (3) substitute –
- “(3) This subsection applies if B is employed by A’s employer or by an associate of A’s employer.” 35
- (3) For subsection (4) substitute –
- “(4) This subsection applies if there is a single person or body which has the power to rectify any difference in the terms of work applicable to A and B.” 40

(4) For subsection (5) substitute –

“(5) If A holds a personal or public office, B is a comparator if B holds a personal or public office and –

(a) the person responsible for paying A is also responsible for paying B; or

(b) there is a single person or body which has the power to rectify any difference in the terms of work applicable to A and B.”

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4 Time limits

(1) Section 129 (time limits) of the Equality Act 2010 is amended as follows.

(2) In subsection (3), after “sections 140A and 140B”, insert “or such other period as the employment tribunal deems just and equitable.”

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5 Remedies in non-pensions cases

In section 132 of the Equality Act 2010 (remedies in non-pensions cases), in subsection (2)(b), after “damages” insert “, which may include compensation for injured feelings, personal injury, and loss of pension rights,”.

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6 Statement of particulars

(1) Section 1 (statement of initial employment particulars) of the Employment Rights Act 1996 is amended as follows.

(2) After subsection (4) insert –

“(4A) The statement must also contain a description of the employee’s rights under Part 5 Chapter 3 (equality of terms) of the Equality Act 2010, to equal pay for equal work, including work of equal value, in such a form as the Secretary of State must prescribe in regulations made by statutory instrument.”

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(3) After subsection (5) insert –

“(6) A statutory instrument containing regulations under subsection (4A) is subject to annulment in pursuance of a resolution of either House of Parliament.”

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7 Gender and ethnic origin pay gap reporting

(1) Section 78 (gender pay gap information) of the Equality Act 2010 is amended as follows.

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(2) In the heading, omit “Gender”.

(3) In subsection (1) –

(a) for “may” substitute “must, within a year of the commencement of this section”;

(b) after “female employees” insert “and the pay of employees of different ethnic origins”.

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- (4) After subsection (1), insert –
- “(1A) Regulations must require employers to publish a document setting out the course of action they plan to pursue in order to reduce any differences in pay between male and female employees, and employees of different ethnic origins”.
- (5) In subsection (2), for “fewer than 250 employees” substitute “fewer than 100 employees”.
- (6) In subsection (3), after “The regulations”, insert “under subsection (1)”.
- (7) After subsection (3), insert –
- “(3A) The regulations under subsection (1) must prescribe, in respect of the pay of male and female employees, and employees overall –
- (a) the publication of information on the mean and median average hourly pay earned;
- (b) the publication of information on the mean and median average sums of money earned by part-time and by full-time employees;
- (c) the publication of information described in paragraphs (a) and (b) for employees within each quartile pay band;
- (d) the publication of information described in paragraphs (a) and (b) for employees of different ethnic origins.”
- (8) After subsection (4) insert –
- “(4A) The regulations under subsection (1A) may prescribe –
- (a) types of inequalities between women and men, and employees with different ethnic origins, within the workplace that an employer must address;
- (b) types of employees an employer must consult when creating an action plan;
- (c) a requirement to set targets within the plan;
- (d) the time at which an action plan is to be published;
- (e) the form and manner in which it is to be published.”

8 Extent, commencement and short title

- (1) This Act extends to England and Wales and Scotland.
- (2) This Act comes into force on the day on which it is passed.
- (3) This Act may be cited as the Equal Pay Act 2020.

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Baroness Prosser

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