

**Government Mandatory Gender Pay Gap Reporting  
Consultation on Draft Regulations  
Response deadline 11 March 2016**

**Response from MM&K Limited**

MM&K is an independent remuneration consultancy based in the City of London but with clients drawn from across the UK economy.

We feel our useful contribution to these regulations will be in connection with technical issues to do with the definitions of pay used. The broader principles of pay equality and the contribution pay gap reporting can make to improving equality have already been commented on by organisations and individuals better qualified to deal with those issues.

The Summary of the Draft Regulations and the regulations themselves make it clear that “pay” includes bonuses. Regulation 2 (2)(b) stipulates that “bonus pay” also includes long term incentive plans or schemes (LTIs). The intention, as we understand it, is that companies will report the gender gap for total normal hours earnings and separately for bonuses and LTIs.

We think that this is the correct way to approach reporting in that we believe it is important to report a “total pay” gap. However, the bonuses and LTIs to be included will both need a considerably fuller definition than is included in the draft regulations. Reporting bonuses and LTIs is rather complex, and reporting might be easier and faster if fixed pay and bonuses were reported rather than total pay and bonuses.

**Bonuses (ie annual bonuses and shorter term variable payments)**

Bonuses are paid at intervals – in the case of annual bonuses, yearly intervals. If “pay” is to include the value of bonuses, some method must be prescribed for averaging the payment over the performance period and then including it in the “gross hourly rate of pay”. With pay surveys, the most common practice is to report on the bonus(es) paid in the year up to the base date of the survey. With the Government’s own Directors’ Remuneration Reporting Regulations (DRRR)<sup>1</sup>, which apply to quoted companies, the reported bonus is that earned in the relevant financial year to which the company Remuneration Report applies. A clearer definition and methodology is needed here.

Then regulation 6 requires companies to calculate mean and median bonus pay paid to each gender “during the period of 12 months preceding the relevant date”. This could lead to distortion if the relevant bonus period for men and women were significantly different, for example if there were a large recruitment

---

<sup>1</sup> The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008

of people during the year with an imbalance of men and women. Two possible solutions to this problem are (i) to change the wording to “employed by the relevant employer *throughout* the period of 12 months...” and (2) to calculate the weekly value of the bonus by dividing the payments by the number of relevant performance weeks.

### **Long term incentives**

This is a bit of a minefield and BIS employed the help of the FRC to find a suitable definition for its “Single Total Figure of Remuneration” in the DRRR. We would not recommend this definition for the purpose of the Gender Pay Gap Reporting Regulations. It is important to understand that there are at least three common definitions of long term incentive value in use in remuneration reporting and surveys:

***The Single Total Figure definition:*** long term incentive value is included in the year in which the long term performance period ends. Cash payments are included as the total amount paid out; whole share plan payments (performance share plans and nil-priced options) are valued and included at the market price when they vest; share options are valued and included at the “in the money” value at the time they vest (ie become exercisable).

***Long term incentives realised:*** a similar definition, except that share options are valued and included at the time they are exercised.

***Long term incentives awarded:*** grants of cash long term incentives, whole share incentives and share options are valued at the Expected or Fair Value at the time of grant.

In the UK, for quoted companies, the performance period will normally be three years or more. These regulations will need to determine which definition to use and how the value should be spread to derive a weekly (and thus hourly) value. Our view is that the value of long term incentives awarded in the past year spread over a full single year is probably most meaningful.

A further potential complication is the common practice of deferring part of annual bonus payments, typically for three years. The DRRR values and includes this deferred amount in the year the bonus is earned – ie along with that part of the bonus that is not deferred. We think that is the simplest treatment for the purpose of these regulations.

### **Other points**

We have one or two other small points:

1. The word “quartile” is used with two meanings in statistics. Strictly it means the points that divide the ranked sample into four quarters and that is the meaning used in the regulations themselves. It is sometimes used interchangeably with the word “quarter”, ie each quarter of the ranked sample. The important thing is to be consistent. The Summary, on page 10, uses both meanings of “quartile” in the same paragraph and

then goes on to use the word “quarter”. This is something to avoid in future supporting documentation.

2. Regulation 2(1)(b) refers to the value of salary sacrifice schemes. A little more detail would be helpful here. The regulation presumably means the value of a matching contribution to a pension scheme that a company makes when an employee makes a salary sacrifice for additional personal contributions.
3. The use of the word “pay range” in regulation 7(1) could be confusing, as the words pay range are so frequently used in pay management to mean the range of salary available for a specific job or job grade. Here we think range means the spread of pay for the whole sample of men or women and it might be better to use our words.
4. Regulation 1(2) defines “median” as the middle value in a ranked list. This only applies if there is an odd number of values. Where there is an even number, it will be the mean of the two central values. Pedantic, but we think necessary to say.
5. The current format seems a blunt instrument as it does not make a distinction for full time v part time. We consider that this should be somewhere in the information disclosed. Given that there is a requirement to publish pay bands, it would seem a simple job to add how many people in each band, of each sex, were full or part time.

We hope our comments are helpful. MM&K would be very happy to advise the Government Equalities Office on precise definitions for bonuses and long term incentives.

For any questions, please contact Damien Knight on 020 7283 7200 or [damien.knight@mm-k.com](mailto:damien.knight@mm-k.com)