



## BRIEFING PAPER

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# The Gender Pay Gap

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## Summary

The gender pay gap measures **the difference between average hourly earnings of men and women**. This briefing paper provides statistics on the size of the gender pay gap in the UK, looks at some of the reasons why the gender pay gap arises and discusses the duty on large employers to report on the size of the gender pay gap in their workforce.

### How big is the gender pay gap?

Median hourly pay for **full-time employees was 8.9% less for women** than for men at April 2019, while median hourly pay for **part-time employees was 3.1% higher for women** than for men (figures exclude overtime pay).

Because a larger proportion of women is employed part-time, and part-time workers tend to earn less per hour, the gender pay gap for all employees is considerably larger than the full-time and part-time gaps. Median pay for all employees was **17.3% less for women than for men** at April 2019.

There has been a downward trend in the full-time pay gap since 1997 and the overall pay gap has also decreased over the period. The part-time pay gap has generally remained small and negative, with women earning more than men on average.

**The gender pay gap has decreased over the past twenty years**  
% difference in median hourly pay excluding overtime for male and female employees



Source: ONS, Annual Survey of Hours and Earnings

### Why is there a gender pay gap?

The size of the gender pay gap depends on a number of factors:

- **Age:** There is little difference in median hourly pay for male and female full-time employees aged in their 20s and 30s, but a large gap emerges among full-time employees aged 40 and over;
- **Occupation:** The gap tends to be smaller for occupation groups where a larger proportion of employees are women;
- **Industry:** The pay gap is largest in the financial & insurance industry and the professional, scientific & technical industry, and smallest in the transportation and storage industry and administrative and support services industry;

- **Public and private sector:** For full-time workers, the pay gap is larger in the private sector than in the public sector. There is no gender pay gap for part-time workers in the private sector, which contrasts with a large part-time pay gap in the public sector;
- **Region:** The gender pay gap is highest in London and the South East and negative in Northern Ireland;
- **Pay:** The highest earners have a larger pay gap than the lowest earners.

## Gender pay gap reporting

From 2017/18, public and private sector employers with 250 or more employees are required annually to publish data on the gender pay gap within their organisations.

In 2018/19 approximately 78% of reporting employers stated that median hourly pay was higher for men than for women in their organisation, while 14% of employers stated median hourly pay was higher for women. 8% stated that median hourly pay was the same for women as for men.

# 1. What is the gender pay gap?

The Office for National Statistics (ONS) defines the gender pay gap as the gap between the median hourly earnings, excluding overtime, of men and women:

- The median is the point at which half of employees earn more and half earn less. It is preferred to the mean (simple average) as a better measure of pay of the 'typical' employee; otherwise results may be affected by the presence of a small number of people on very high levels of pay.
- Overtime is excluded because men work more overtime than women.
- Hourly earnings are used so that results are not distorted by differences in hours worked by men and women.

## The gender pay gap

The gender pay gap can be defined as the difference between the median hourly earnings of men and of women.

Median hourly pay offers a useful comparison of men's and women's earnings, but it is too broad to be a measure of the differences in rates of pay for similar jobs and does not take account of the different employment characteristics of men and women.

In particular, the gender pay gap looks very different depending on whether we look at the gap among all employees, full-time employees only or part-time employees only, as discussed in section 2. Women are much more likely than men to work part-time and part-time employees tend to have lower pay and work in different roles to full-time employees.

Since the overall gap is strongly dependent on these differences between part-time and full-time employees, analysis often focuses on full-time and part-time employees separately (as indeed does much of this briefing paper). However, the reasons women are more likely to work part time are often integral to understanding gender pay differences, so the overall gender pay gap is still a valuable comparison.

## 2. How big is the gender pay gap?

### 2.1 The gender pay gap and hours worked

The gender pay gap for all employees was 17.3% at April 2019. Somewhat confusingly, the overall gap is higher than the gender pay gap for full-time employees (8.9%) as well as that for part-time employees (-3.1%). This reflects the fact that part-time workers tend to earn less than full-time workers and women are more likely to work part-time: at June-August 2019, 39% of female employees were working part-time compared to 11% of male employees.

Median hourly pay for full-time employees at April 2019 was £14.80 (excluding overtime), compared with £9.94 for part-time employees.

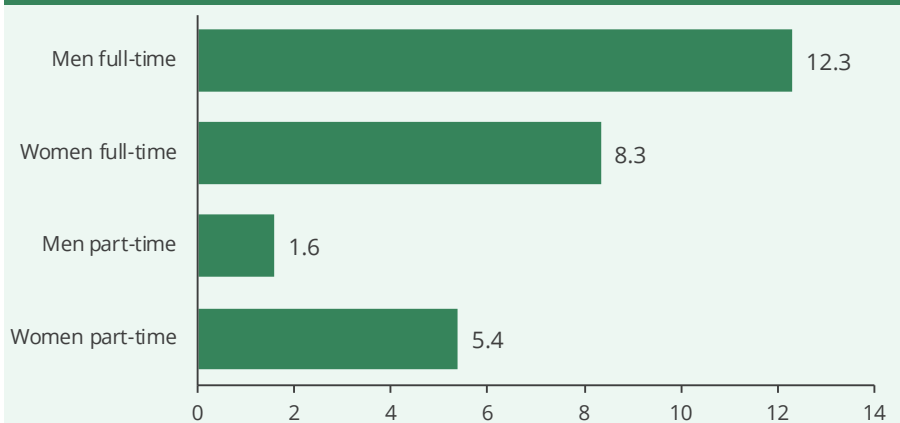
The gender pay gap for all employees was 17.3% in 2019.

The full-time pay gap was 8.9%.

The part-time pay gap was -3.1%.

#### Employees by gender and working pattern, Q2 2019

Millions, seasonally adjusted



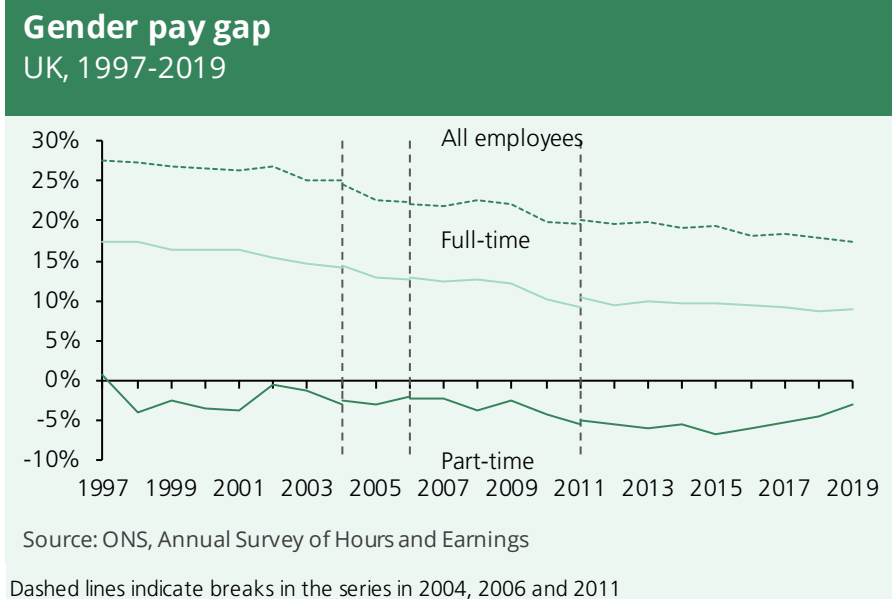
Source: ONS, Labour Market Statistics, October 2019, Table EMP01

### 2.2 How has the gap changed over time?

The gender pay gap for full-time employees has been gradually decreasing since 1997. Over the same period the part-time gender pay gap has stayed small or negative.

The proportion of full-time employees who are women increased between 1997 and 2019, from 34% to 38%. At the same time the share of part-time employees who are men increased, from 16% in 1997 to 26% in 2018.<sup>1</sup> These changes have led to a decrease in the overall gender pay gap.

<sup>1</sup> ONS, [UK Labour Market, October 2019](#), Table EMP01 SA. Data at April-June.



## 2.3 Employers reporting gender pay gap data

From 2017/18, public and private sector employers with 250 or more employees are required to publish data on the gender pay gap within their organisation.

10,559 employers reported data for 2017/18, and 10,812 reported for 2018/19. So far, 587 employers have reported data for 2019/20.

In 2018/19, 78% of reporting employers stated that median hourly pay was higher for men than for women in their organisation, while 14% of employers stated median hourly pay was higher for women. 8% stated that median hourly pay was the same for women as for men.

Across all employers who reported, the gender pay gap averaged 11.9% based on median hourly pay.<sup>2</sup>

By comparison, the gap in median hourly pay (excluding overtime) across employers of all sizes was 17.9% at April 2018, based on estimates from the Annual Survey of Hours and Earnings. The gap in mean hourly pay across all employers was 17.2%.

These figures hide very wide variation in the gender pay gaps reported by individual employers. For over a quarter of reporting employers (27%), median hourly pay for men was at least 20% higher than for women.

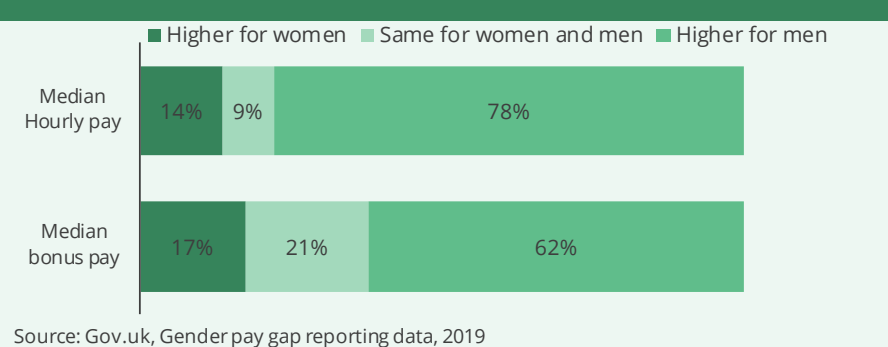
Large employers are required to report gender pay gap information for their company from 2017/18

78% of reporting employers stated that median pay for men in their organisation was higher than for women.

<sup>2</sup> Figures are the mean average of the median pay gap for reporting employers. Other analyses may provide different figures, in particular where they take a *median* average across all employers. For example, see Financial Times, [Three out of four UK companies pay men more than women on average](#), 5 April 2018

## Share of reporting employers where median pay is higher or lower for women than men

% of employers



The gap in median hourly pay tended to be smaller for the largest employers. The average pay gap in businesses with at least 20,000 employees was 9.1%, compared to 12.4% in employers with 250-499 employees.

Across all reporting employers, the proportion of male employees receiving bonuses was 35.7% in 2018-19. The average proportion of female employees receiving bonuses was slightly lower at 34.4%. For businesses with 250-499 employees, 34.8% of men and 33.8% of women received bonuses. For businesses with at least 20,000 employees, 50.6% of men and 51.4% of women received bonuses.

### Reporting requirements

Employers are required to publish the gender pay gaps in their organisation measured in terms of:

- mean hourly rates of pay;
- median hourly rates of pay;
- mean bonus pay;
- median bonus pay.

Employers also must publish the proportion of male and female employees who were paid bonus pay, as well as the proportion of employees in each pay quartile (25% band) who are men and women. The relevant regulations and reporting requirements are discussed in more detail in section 9 of this briefing.

The requirements only apply to businesses with at least 250 employees, although some smaller employers have reported their gender pay gap on a voluntary basis. At the start of 2019, UK businesses with at least 250 employees accounted for 16.87 million employee jobs.<sup>3</sup> This represented around 56% of all employee jobs in the UK, out of a total of 23.25 million across all businesses.<sup>4</sup>

<sup>3</sup> Reporting data is published on the gov.uk website, [Gender pay gap service](#) [accessed 03 January 2020]. Figures include businesses who reported after the deadline.

<sup>4</sup> Department for Business, Energy & Industrial Strategy, [Business population estimates for the UK and regions 2019](#), 10 October 2019



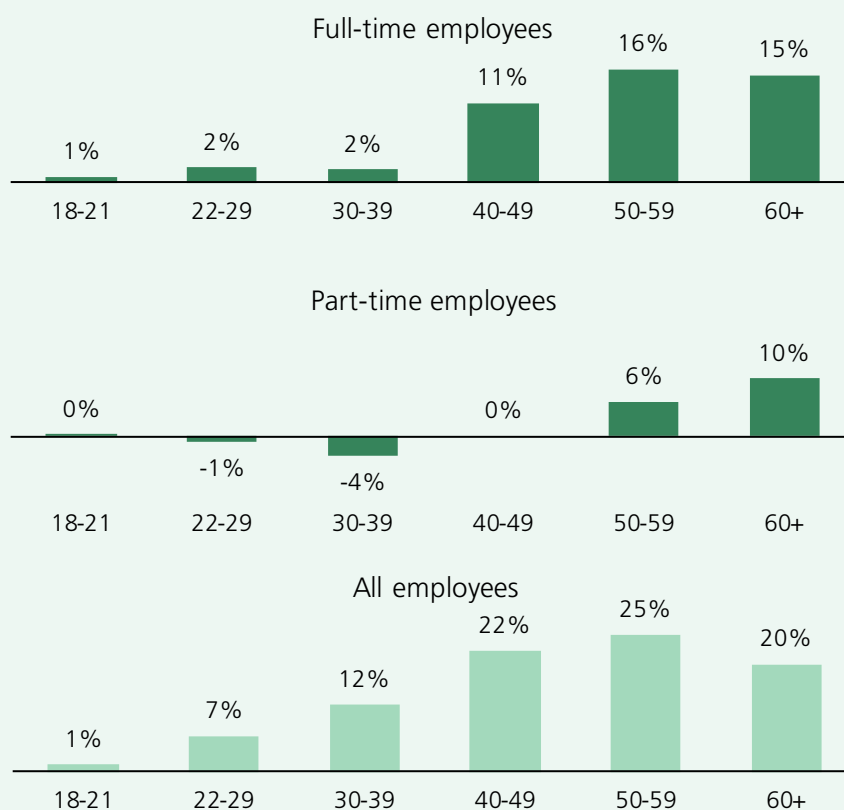
### 3. Age

The gender pay gap varies markedly by age. The gap is small or negative for full-time and part-time employees in their 20s or 30s. Among full-time employees aged 40 and over, the gap widens considerably.

Nevertheless, since women are more likely than men to work part-time across all age groups and since part-time jobs tend to pay less per hour than full-time jobs, the gender pay gap for *all employees* in their 30s is still 12%. This is despite the very small full-time and part-time pay gaps.

There is little or no gender pay gap for full-time employees under 40.

#### Gender pay gap by age group, April 2019



Source: ONS, Annual Survey of Hours and Earnings, 2019

One reason for the age differences in the pay gap is that factors affecting women's employment and earnings opportunities become more evident when women are in their 30s and 40s. For example, time spent out of the labour market to care for children or elderly relatives could affect future earnings when a person returns to work.

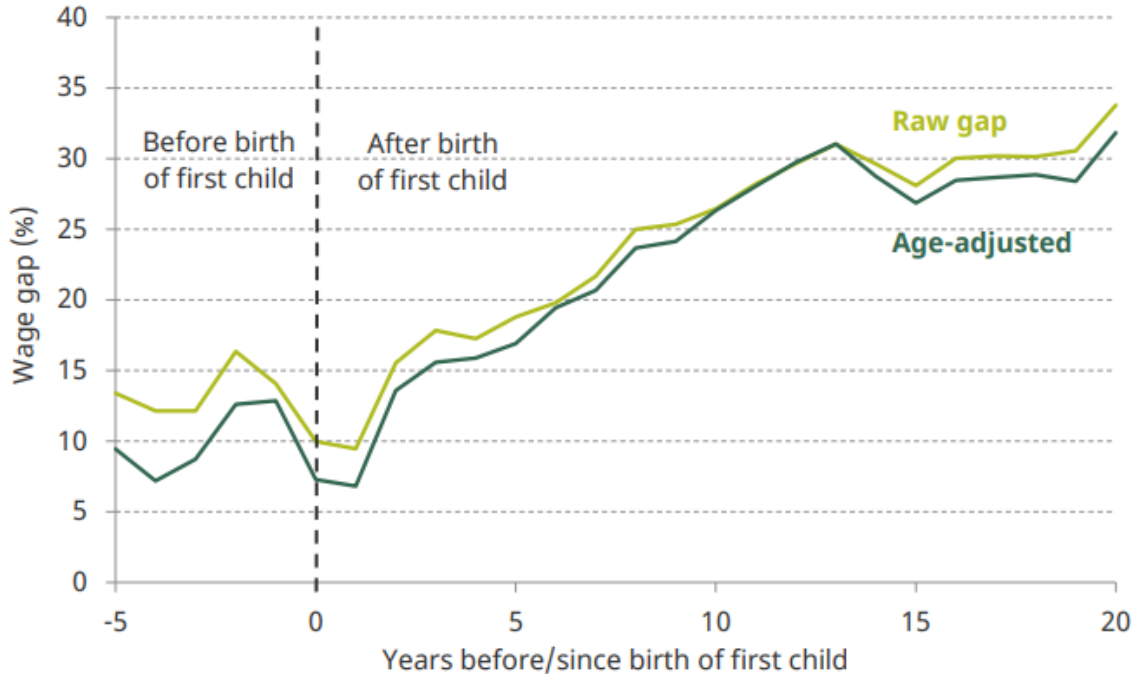
Another explanation is generational differences: younger workers have higher levels of educational attainment on average and may be more likely to work in certain industries or occupations.

#### 3.1 Motherhood and the gender pay gap

Analysis by the Institute for Fiscal Studies (IFS) finds that, looking at the period 1991 to 2015, the gap between male and female hourly earnings grows gradually but steadily in the years after parents have

their first child.<sup>5</sup> The pay gap (based on mean hourly earnings<sup>6</sup>) between mothers and fathers is around 10% before the birth of their first child, but widens to a gap of around 30% by the time the child is aged 13:

**Gender pay gap by time to/since birth of first child**



Note: Wage gap based on mean hourly pay. The age-adjusted series takes account of the fact that a small part of the gap is due to age differences: men tend to be slightly older than women when their first child is born. Figures exclude individuals in the bottom two percentiles of the hourly wage distribution. Source: IFS BN223, Figure 5

**Effect of full-time and part-time work**

The gradual widening in the pay gap between mothers and fathers after the arrival of the first child is reflected in a widening gap in the amount of time spent in the workplace. Many mothers leave employment for a time after the birth of the first child (this is observed for mothers across all education levels but is particularly pronounced for the lowest-educated) while many others move from full-time to part-time work. Both effects result in a loss of labour market experience among mothers which accumulates over time. By the time the first child is aged twenty, mothers have on average been in paid work for three years less than fathers: they have spent ten years less in full-time work, but seven years more in part-time work.

The pay gap between men and women widens in the years after the birth of children. Part (but not all) of the explanation is that mothers are less likely to work full-time.

The pay gap between mothers and fathers increases by around 21 percentage points between the birth of the first child and the child's twentieth birthday, from 8% to around 30% (figures do not sum due to

<sup>5</sup> Monica Costa Dias, Robert Joyce and Francesca Parodi, [Wage progression and the gender wage gap: the causal impact of hours of work](#), IFS Briefing Note BN223, 5 February 2018, Figure 5. Note the IFS analysis uses data from the British Household Panel Survey for 1991-2008 and the Understanding Society survey for 2009-2015, rather than the ONS Annual Survey of Hours and Earnings. Therefore the IFS figures may differ from those presented elsewhere in this paper.

<sup>6</sup> The rest of this paper looks at the gender pay gap based on median hourly pay.

rounding). The IFS estimates that on average, **half of the increase is explained by mothers spending less time in full-time work.**

Gender differences in part-time working explain more of the widening in the pay gap than the time mothers spend out of employment. According to the IFS, extra years of experience make almost no difference to a woman's wages if she works part time.<sup>7</sup>

What is more, full-time experience makes a larger difference to wage progression for graduates than for those whose highest qualification is at GCSE or A level standard. Thus, the loss of full-time experience explains a much larger part of the pay gap for mothers and fathers who are graduates than it does for non-graduates. For non-graduates, other factors play a greater role in widening the pay gap after the birth of the first child.

The IFS research tells us that part-time work is also associated with much weaker **growth** in hourly wages. Thus, a gender pay gap arises in part due to the cumulative effect of a lack of wage progression for part-time workers.

### What else might cause an increase in the pay gap following birth of children?

As noted above, time spent in full-time work only explains half of the increase in the pay gap between mothers and fathers during the twenty years following the birth of their first child. Other potential factors include women being less likely to successfully bargain for higher wages within a given firm, and more likely to enter family-friendly occupations over high-paying ones.<sup>8</sup>

Caring responsibilities may also constrain the **length of time that people can spend travelling to work.** A wide "**gender commuting gap**" opens up in the years following the birth of parents' first child, which evolves over time in a very similar way to the gender pay gap between mothers and fathers (shown in the chart on page 10 above). Nevertheless, this does not necessarily mean that the gender pay gap is caused by a gender commuting gap (although the research intends to explore this further): it is possible that both could arise from some other factor.<sup>9</sup>

## 3.2 Generational differences and education

The larger gender pay gap for older age groups may also stem from generational differences, in which case we might expect the gap to shrink as younger generations grow older. For example, the gender pay gap for full-time employees aged in their forties was 11% in 2018, down from 24% for people in their forties in 1997.

Part-time experience leads to much less growth in earnings than full-time experience. Women are more likely than men to work part-time.

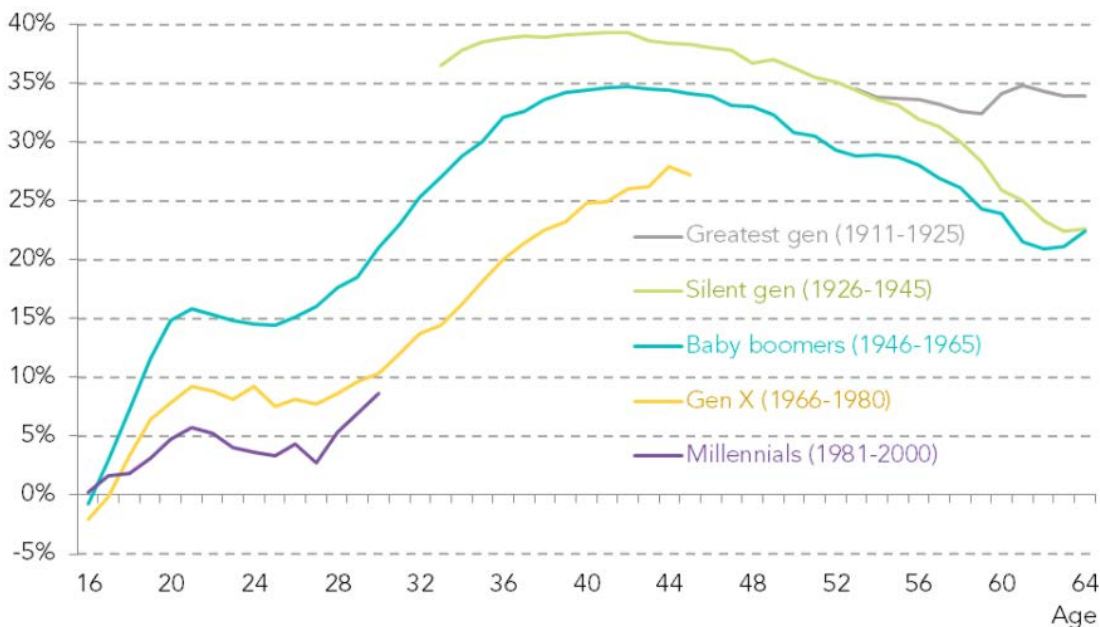
<sup>7</sup> [IFS BN223, p16](#)

<sup>8</sup> [IFS BN223, p3](#)

<sup>9</sup> Robert Joyce and Agnes Norris Keiller, [The 'gender commuting gap' widens considerably in the first decade after childbirth](#), IFS Observation, 7 November 2018.

Resolution Foundation analysis shows how the gender pay gap at a given age has reduced for successive generations. For example, the gender pay gap for people in their twenties was around 16% for the baby boomer generation (born 1946-65) but had shrunk to 5% for millennials (born 1981-2000), as shown in the chart below.<sup>10</sup>

Gender pay gap for median gross hourly earnings, by generation: UK, 1975-2016



The reduction in the gender pay gap between generations is likely to be due in part to a more highly educated workforce. The IFS notes that while the population has become much more highly educated over the past two decades, women have experienced a more rapid rise in education levels than men. We can expect this to have reduced the gender pay gap since workers who are more highly educated tend to have higher earnings. Despite more women being educated to a higher level, there has been **little or no change in the gender pay gap within the groups of workers qualified to degree standard** since the early 1990s.<sup>11</sup>

There has been a larger increase in average education levels among women than among men over the past 20 years.

At the same time, the gender pay gap has reduced for workers whose highest qualifications are GCSEs or A Levels. Thus, the reduction in the overall gender pay gap reflects rising education levels as well as some decrease in the gap for less well-educated individuals.

### 3.3 Where women work

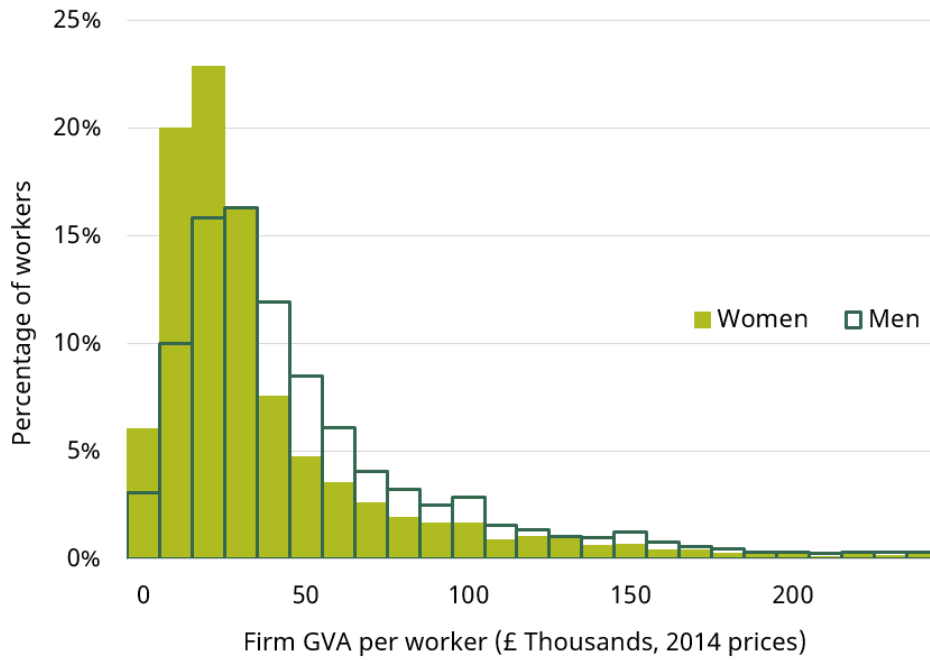
An IFS report finds that women tend to work in less productive, lower paying firms, as shown in the chart below<sup>12</sup>

<sup>10</sup> Laura Gardiner, [Is the gender pay gap on the brink of closure for young women today?](#) Resolution Foundation blog, 4 January 2017

<sup>11</sup> [IFS BN223, p7](#). The analysis is based on data from the ONS Labour Force Survey data for Q1 1993 to Q3 2015 rather than the ONS Annual Survey of Hours and Earnings, so is not directly comparable with figures presented elsewhere in this paper.

<sup>12</sup> Robert Joyce and Xiaowei Xu, [The gender pay gap: women work for lower-paying firms than men](#), IFS Observation, 3 April 2019, Figure 1.

**Distribution of men and women by firm productivity**



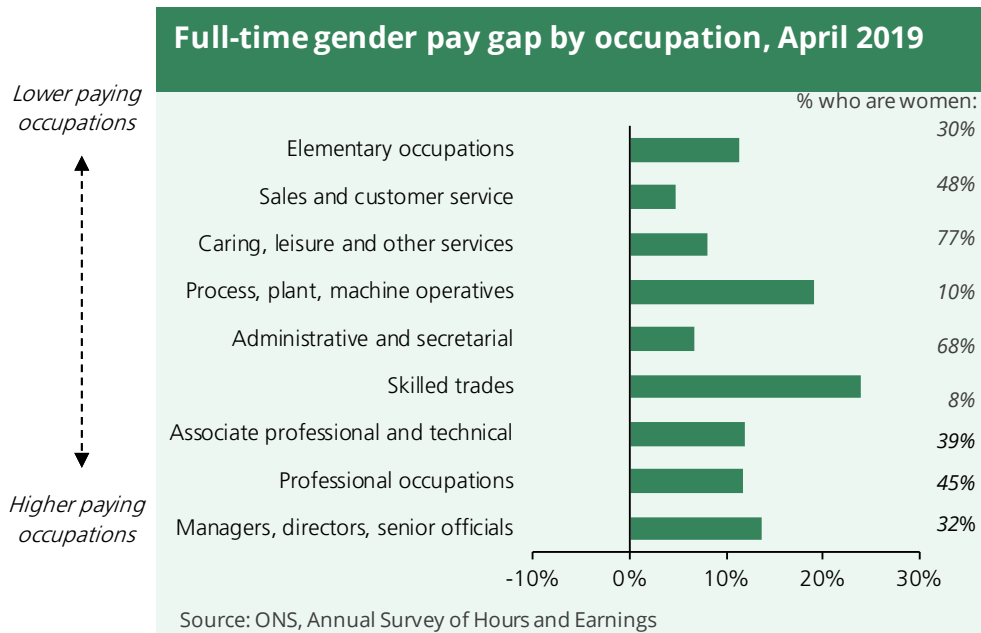
This effect becomes larger when women reach their mid- 30s and 40s. Women aged 18-34 are approximately 5 percentage points less likely to work for the top fifth most productive firms than men over the same age. This increases to approximately 15-20 percentage points for women from the age of 44. As the report explains, this partly reflects differences in sector, but this does not explain the entire effect.

## 4. Occupation

The gender pay gap for full-time employees varies widely by type of occupation. The gap tends to be smaller for occupation groups where a larger proportion of employees are women.

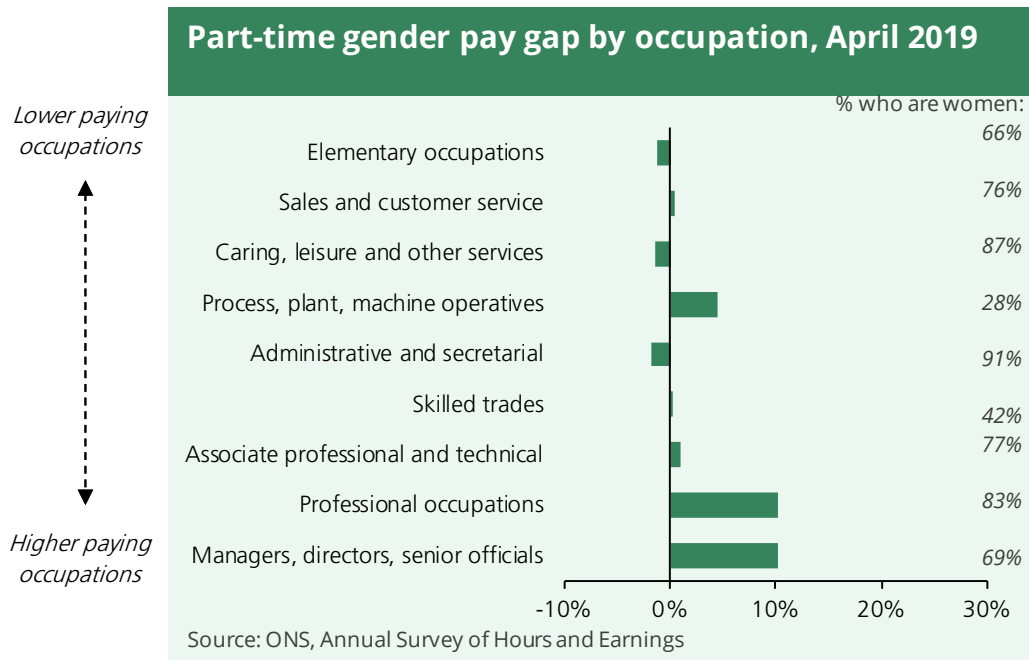
There is a large gender pay gap in skilled trades occupations and process, plant and machine operatives. Men comprised 90+% of full-time employees in these occupations at Q2 2019. However, the gap is relatively small among administrative and secretarial roles and caring, leisure and other service occupations, where women comprised over two-thirds of full-time employees.

The gender pay gap is lowest for sales and customer service occupations at 4.7%. A similar number of men and women are employed full-time in these occupations.<sup>13</sup>



For part-time employees, the gender pay gap is very small or negative except for the higher skilled categories of professional occupations and managers, directors and senior officials.

<sup>13</sup> ONS, *UK Labour Market, October 2018*, Table EMP04 (not seasonally adjusted)



## Occupational segregation

Even if men and women working in the same role are paid the same on average, a gender pay gap could still arise if women are concentrated in those occupations which pay less. This is sometimes known as occupational segregation. But within each of the broad occupation groups listed above, there is a diverse range of roles: professional occupations encompass both solicitors and midwives; skilled trades include both plumbers and chefs. Average earnings may vary considerably across roles contained within the same occupation group.

Therefore, the charts below use a more finely-grained classification of occupations (around 350 occupations in all).<sup>14</sup> Occupations are grouped into four categories:

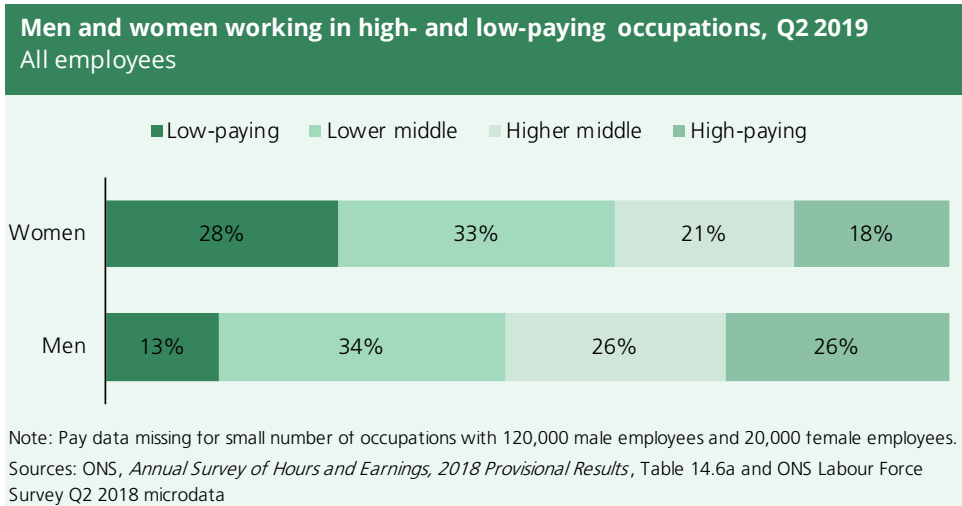
- **Low-paying occupations** are defined as those where median hourly pay is less than the 25<sup>th</sup> percentile of the overall distribution, which was £9.62 in 2019 (the 25<sup>th</sup> percentile is the point at which 25% of people earn less, and 75% earn more).
- **Lower middle occupations** are those with median hourly pay between the 25<sup>th</sup> percentile and median of the overall distribution, so between £9.62 and £13.21.
- **Higher middle occupations** are those with median hourly pay between the median and 75<sup>th</sup> percentile of the overall distribution, so between £13.21 and £19.99.
- **High-paying occupations** are those with median hourly pay above the 75<sup>th</sup> percentile of the overall distribution, so above £19.99.

*A higher share of women than men are employed in low-paying occupations, while men are more concentrated in high-paying roles.*

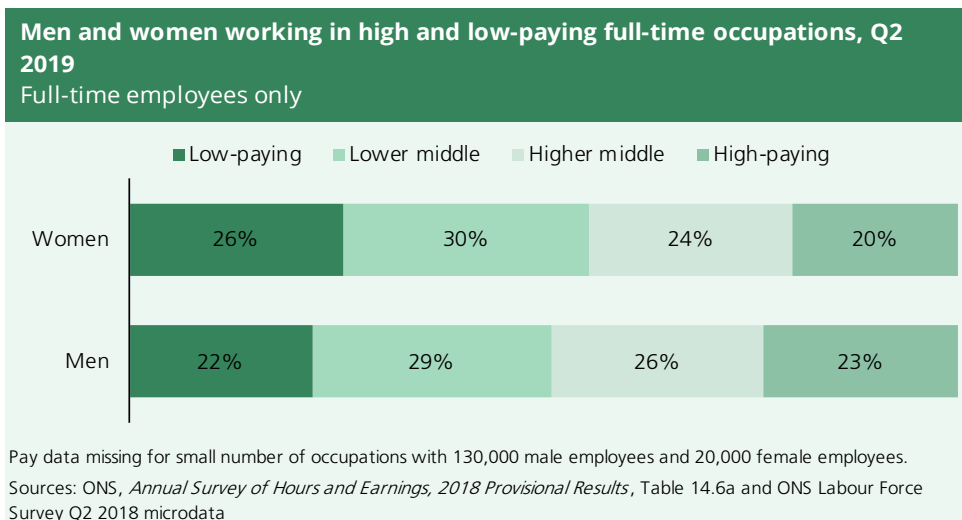
<sup>14</sup> Analysis is based on occupations as listed in the ONS Standard Occupational Classification, 4 digit codes.

(Note the thresholds for high and low pay used here differ from other analysis).<sup>15</sup>

Looking at the proportion of male and female employees in each group, we find a higher share of women than men are employed in the lowest-paying occupations: 28% of female employees compared to 13% of men at Q2 2019. The reverse was true for high-paying occupations, which employed 18% of female employees but 26% of men:<sup>16</sup>



To repeat this analysis for full-time employees, the thresholds are modified to reflect the full-time pay distribution, where the 25<sup>th</sup> percentile is £10.75 and the 75<sup>th</sup> is £21.49. Women working full-time are still more likely to be employed in low-paying occupations and less likely to be employed in high-paying occupations than men working full-time.



<sup>15</sup> For example, a common threshold for low pay is two-thirds of median earnings, as used in ONS, [Low and high pay in the UK: 2019](#), 29 October 2019. The above thresholds are preferred in this analysis because the employee population is more evenly spread across the low-paying, middle-paying and high-paying groups.

<sup>16</sup> This does not mean that 27% of female employees earned below the 25<sup>th</sup> percentile of the distribution; rather, 27% worked in occupations where median pay was below this threshold.



However, the proportions of men and women in low- and high-paying occupations are more similar among full-time employees than when we looked at full-time and part-time employees together. This arises because most part-time roles are found in lower-paying occupations, and many more women than men are employed part-time: over three-quarters of people working part-time in Q2 2018 were employed in “low-paying” or “lower middle” occupations (based on the pay distribution for all employees).

### **How much do occupational differences contribute to the gender pay gap?**

Analysis by the Office for National Statistics found that occupational differences explained around 23% of the gender pay gap.<sup>17</sup>

As well as pay differences between occupations, there may remain substantial differences in average pay for men and women within certain occupations. Such differences could arise if a higher share of male employees is found in senior roles than women (or vice versa, in which case we would expect a negative pay gap) or may reflect the amount of experience employees have in a particular role.

ONS analysis found that 23% of the gender pay gap could be explained by occupational differences between women and men.

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<sup>17</sup> Anna Ardanaz-Badia and Joshua Rawlings, [Understanding the gender pay gap in the UK](#), Office for National Statistics, 17 January 2018

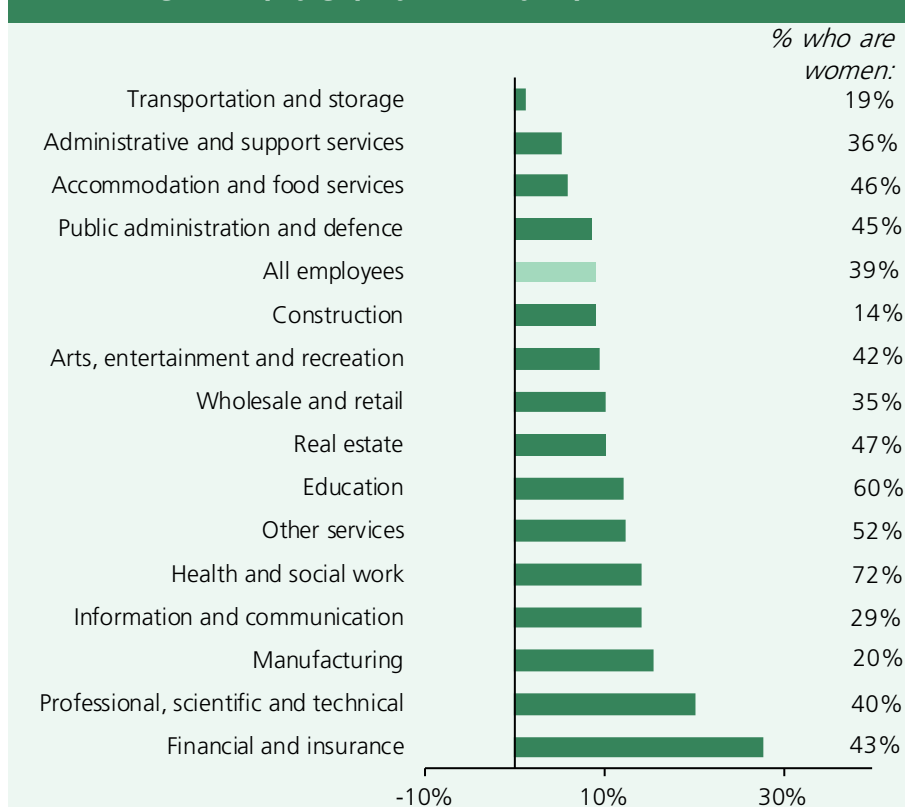
## 5. Industry

There is wide variation in the gender pay gap between industries, although people working the same industry may do very different kinds of work. Some of the pay gap in an industry may be explained by differences in the kind of roles undertaken by men and women.

For full-time employees, the gender pay gap is largest in financial & insurance activities (27.8%). Median hourly pay is about the same for men and women working full-time in the transportation & storage sector, meaning the gender pay gap is negligible.

The gender pay gap for full-time employees is also relatively small in administrative & support services and accommodation & food services.<sup>18</sup>

### Full-time gender pay gap by industry, April 2019



Source: ONS, Annual Survey of Hours and Earnings, 2019

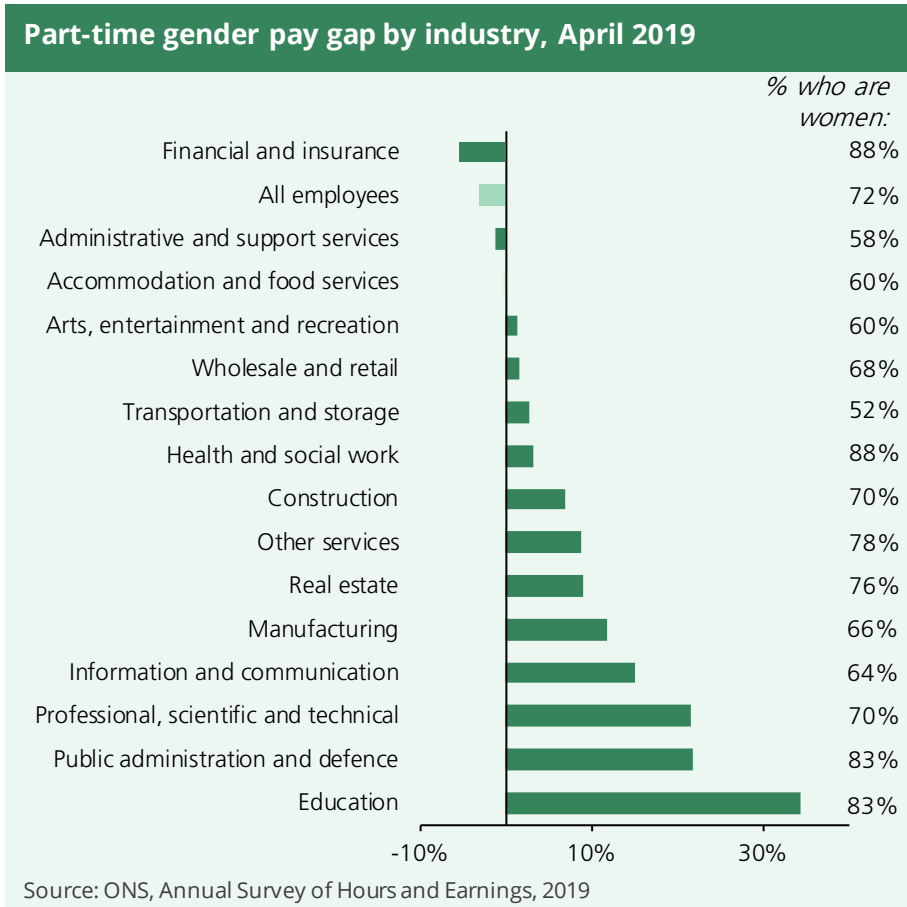
In many sectors, the pay gap for part-time employees is small or negative. The part-time pay gap is largest in the education sector at +34.4%, as can be seen in the chart below.

Counter-intuitively, the overall pay gap for part-time employees is smaller than the part-time pay gap in any of the industry sectors in the chart. This is because there is a higher concentration of female part-time employees than men in sectors with higher than average pay for part-

<sup>18</sup> Percentage figures in industry charts show the proportion of employee jobs in each sector that were held by women at Q2 2019, based on the ONS Workforce Jobs series (accessed via Nomis).

## 19 The Gender Pay Gap

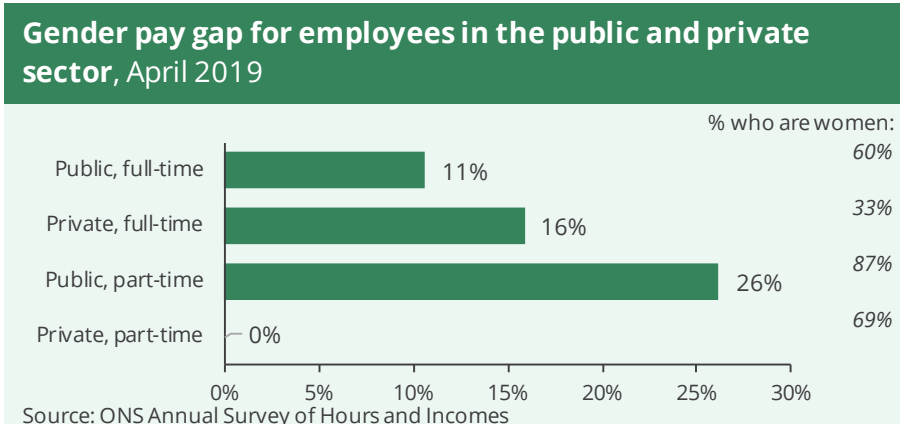
time employees (even if men working part-time in those sectors tend to earn more): for example, education and health & social work.



## 6. Public and private sector

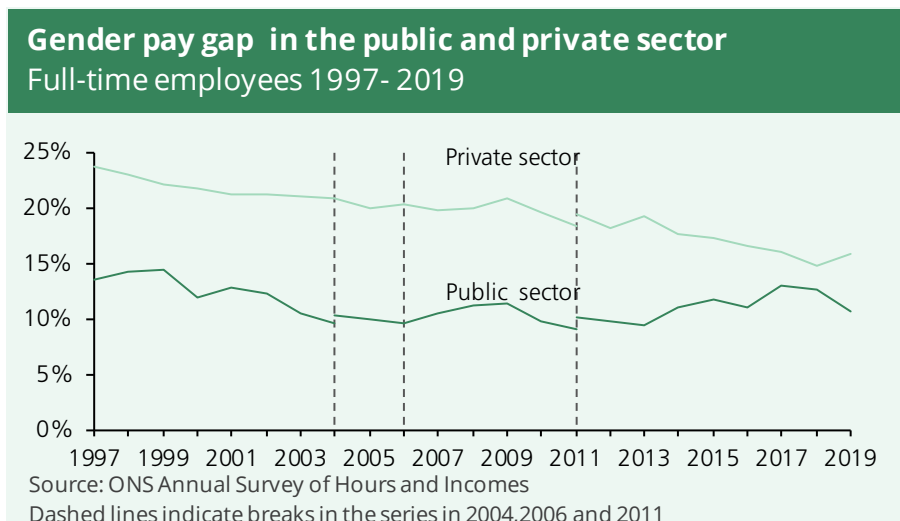
At April 2019, the gender pay gap for full-time employees was 10.6% in the public sector and 15.9% in the private sector.

Both these figures are higher than the 8.9% gender pay gap for all full-time employees. This is because women make up a higher share of employees in the public sector than in the private sector, and average earnings tend to be higher in the public sector.



For part-time employees, there is no gender pay gap in the private sector, which contrasts with a large part-time gender pay gap in the public sector (+26.1%). One of the reasons behind the large gap in the public sector is likely to do with the composition of the workforce: there are relatively very few men working part-time in the public sector (13% of public sector part-time employees compared to 31% of private sector part-time employees) so we may expect this group to have quite different characteristics to the rest of the public sector workforce.

The full-time gender pay gap fell in both the public and private sectors from 1997 to the mid-2000s. However, while the private sector pay gap has continued to fall, the public sector pay gap has widened since 2013, though it has decreased again since 2017.



## 7. Region

The gender pay gap for full-time employees was negative in Northern Ireland at April 2019, at -2.9%. It was positive in all other regions and countries of the UK, ranging from 6.3% in Wales to 13.8% in London. (Note these estimates are based on where people work, rather than where they live.)

Part of the explanation for the negative full-time pay gap in Northern Ireland is the higher proportion of public sector jobs than in the rest of the UK. There are more women employed in the public sector and these jobs tend to be higher paid, in general, than in the private sector.



For part-time employees there is a negative gender pay gap in every country and region of the UK except the North West:



Gender pay data for all countries and regions are provided in [data tables](#) published alongside this paper.

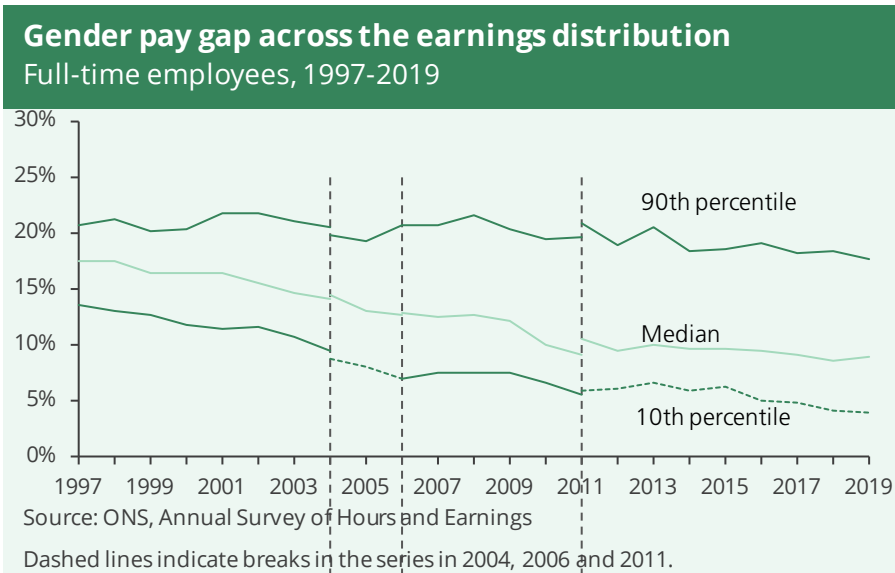
## 8. Higher-paid and lower-paid employees

So far in this paper, we have looked at the pay gap between men and women at the middle of the pay distributions. We can also look at the pay gap between men and women who are relatively high-paid compared to other male or female employees, and similarly for those who are relatively low-paid. The gender pay gap is larger among high-paid workers than it is among low-paid workers.

At April 2019, to be in the highest-paid 10% of female full-time employees required hourly earnings greater than £27.19 (excluding overtime). To be in the highest-paid 10% of male full-time employees required hourly earnings greater than £30.02. This gives a **gender pay gap of 17.7% at the 90<sup>th</sup> percentile** of the pay distribution (the point at which 10% of people earn more and 90% earn less).

At the bottom end of the distribution, an employee would have had to earn less than £8.67 an hour to be in the lowest-paid 10% of female full-time employees and less than £9.02 to be in the lowest-paid 10% of men. This gives a **gender pay gap of 3.9% at the 10<sup>th</sup> percentile** of the pay distribution (the point where 90% of people earn more and 10% earn less).

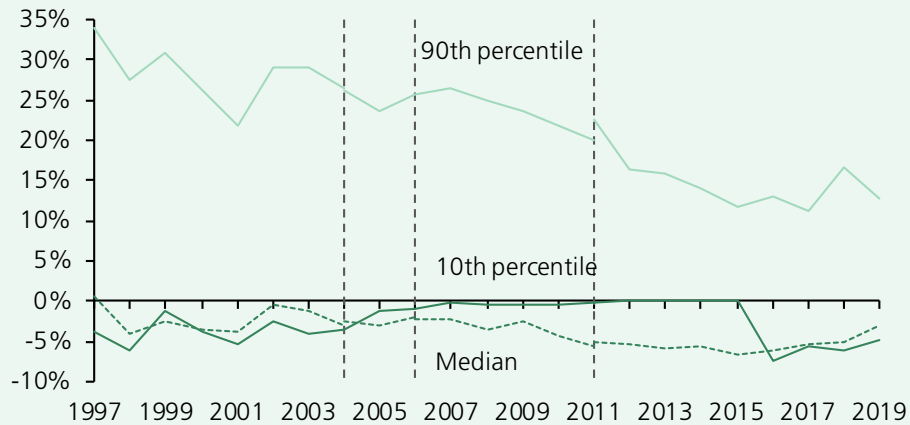
The gender pay gap at the bottom and middle of the full-time earnings distribution has decreased since 1997. For higher earners, the gap has been slower to close:



Turning to part-time employees, a different picture emerges. Median pay for part-time employees is higher for women than for men. However, the highest-paid male part-time employees tend to earn more than the highest-paid female part-time employees, so that there is a substantial gender pay gap at the 90<sup>th</sup> percentile of the pay distribution.

As can be seen in the chart, the estimated gap at the 90<sup>th</sup> percentile fluctuates from year to year. Some of this volatility is likely to arise from survey error rather than genuine changes in the gap.

### Gender pay gap across the earnings distribution, Part-time employees 1997- 2019



Source: ONS Annual Survey of Hours and Incomes

Dashed lines indicate breaks in the series in 2004, 2006 and 2011

From 2007 to 2015, the 10<sup>th</sup> percentile of the male and female part-time earnings distributions was equal or very similar to the adult rate of the National Minimum Wage for people aged 21 and over (previously 22 and over). This meant there was no gender pay gap among the lowest-paid part-time employees. However, the gap turned negative in 2016 following the introduction of the National Living Wage, a higher minimum wage for people aged 25 and over.

From 2016 onwards, the 10<sup>th</sup> percentile of the female part-time earnings distribution has been the National Living Wage while the 10<sup>th</sup> percentile of the male part-time earnings distribution has been the National Minimum Wage rate for people aged 21-24. This reflects the different profile of men and women working part-time. Young people on the minimum wage comprise a larger share of men employed part-time than is the case for women employed part-time. Among those aged 25 and over, men are much more likely to be working full-time.

## 9. Gender pay gap reporting

From 2017/18, public and private sector employers with 250 or more employees are required annually to publish data on the gender pay gap within their organisations. The deadline for publishing gender pay data relating to 2017/18 has now passed. Public sector employers were required to report by 30 March 2018, while private and voluntary sector employers had to report by 4 April 2018.

[Section 2.3](#) of this briefing paper summarises the gender pay gap data reported by employers for 2017/18. This current section sets out the background to the reporting duties and relevant regulations and discusses enforcement.

### 9.1 Background

The gender pay gap reporting duties in the private and voluntary sectors result from regulations made under section 78 of the *Equality Act 2010*. When the Coalition Government came to power following the 2010 General Election, it decided against commencing section 78, preferring a voluntary approach to gender pay gap reporting. However, an Opposition amendment to the Bill that became the *Small Business, Enterprise and Employment Act 2015* required the Government to use the power in section 78.

The Government ran a number of consultations in 2015-16 on mandatory gender pay gap reporting, deciding to extend reporting obligations to the public sector. The relevant regulations came into force in March and April 2017.

The following summarises the background to section 78, the *Small Business, Enterprise and Employment Act 2015* and the gender pay gap regulations.

#### Equality Act 2010

[Section 78](#) of the *Equality Act 2010* provides a power to make regulations to

require employers to publish information relating to the pay of employees for the purpose of showing whether, by reference to factors of such description as is prescribed, there are differences in the pay of male and female employees.<sup>19</sup>

The power does not apply to employers with fewer than 250 employees, nor can it require publication of information at intervals shorter than 12 months.<sup>20</sup>

Section 78(5) provides that the regulations may make provision for a failure to comply with the regulations to be an offence punishable on summary conviction by a fine, or to be enforced “otherwise than as an offence, by such means as are prescribed.”

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<sup>19</sup> *Equality Act 2010*, section 78(1)

<sup>20</sup> *Equality Act 2010*, section 78(2), (4)



The *Equality Act 2010* came into force on 8 April 2010, although many of its provisions required commencement by Order.<sup>21</sup> Section 78 was one such section, and was not brought into force with the rest of the Act. Following the May 2010 General Election, there were various calls, mainly from Labour Members, for the section to be brought into force and for regulations to be made (e.g. Sarah Champion's [Equal Pay \(Transparency\) Bill 2014-15](#)). These calls eventually resulted in an amendment to the *Small, Business, Enterprise and Employment Bill* requiring the Government to commence section 78.

## Small Business, Enterprise and Employment Act 2015

During debate on the *Small, Business, Enterprise and Employment Bill* the Opposition tabled an amendment in the Lords that would require the Government to make regulations under section 78.<sup>22</sup> The Government supported the amendment. In introducing the amendment Baroness Thornton said:

One of the strengths of this House is that we can and do seize the moment on issues. I suggest that this is one of those times. We were wise to put the powers on transparency in Section 78 of the Equality Act 2010 and I hope that we will now be wise to enact those powers. It is 46 years since the machinists walked out of Dagenham's Ford plant in protest over the pay divide which prompted the Equal Pay Act. Overall, women in the UK are still earning just 81p to every pound that men earn. According to the new figures based on the Office for Statistics annual survey of hours and incomes, the pay gap between men and women in their twenties has almost doubled since 2010, from 2.6% to 5%, and it has also increased for women over 50.

We are falling down the international scales on equal pay. Women across the world still earn only 77% of the amount that men earn, a figure that has improved by only three percentage points in the past 20 years, according to the United Nations International Labour Organization report this week. Frankly, I do not think we can wait another 40 years to get equal pay.

The most exciting moment for me in the recent equal pay campaign was meeting the Dagenham women last December. They were right to be astonished and dismayed that we still do not have equal pay. At the time, I wished we had better news for them. Perhaps after today's business we can say that we are absolutely on our way to delivering the equal pay that they fought for all those years ago.<sup>23</sup>

[Section 147](#) of the *Small Business, Enterprise and Employment Act 2015* required the Government to make regulations under section 78:

### Equal pay: transparency

(1) The Secretary of State must, as soon as possible and **no later than 12 months after the passing of this Act, make regulations under section 78** of the Equality Act 2010 (gender pay gap information) for the purpose of requiring the publication

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<sup>21</sup> [Equality Act 2010, section 216](#)

<sup>22</sup> [HL Deb 11 March 2015 cc666](#)

<sup>23</sup> [HL Deb 11 March 2015 cc667](#)

of information showing whether there are differences in the pay of males and females.

(2) The Secretary of State must consult such persons as the Secretary of State thinks appropriate on the details of such regulations prior to publication.

The 2015 Act was passed on 26 March 2015, suggesting that regulations would have to be made before 26 March 2016. The Government managed to avoid this timescale through the simple device of declining to bring section 147 into force. Nonetheless, in the period that followed the enactment of the 2015 Act, the Government consulted on the issue and ultimately made regulations requiring gender pay gap reporting in the both the private and public sectors.

## 9.2 The regulations

The initial consultation, [Closing the gender pay gap](#), ran from 14 July 2015 to 6 September 2015.<sup>24</sup> The Government published its [response](#) on 12 February 2016.<sup>25</sup> The consultation was followed by [another](#), seeking views on draft gender pay gap (GPG) regulations. That consultation ran from 12 February 2016 to 11 March 2016, with the Government publishing its [response](#) on 6 December 2016.<sup>26</sup> The [Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017 \(SI 2017/172\)](#), were made in February 2017 and came into force on 6 April 2017. They require private and voluntary sector employers with 250-or-more employees to publish gender pay gap reports.

Section 78 of the 2010 Act does not apply to public sector employers. However, the Government believed there was a good case for mirroring in the public sector the arrangements in the private sector. The Government [consulted](#) on the issue between 18 August 2016 and 30 September 2016,<sup>27</sup> and [responded](#) to the consultation on 24 January 2017.<sup>28</sup> The [Equality Act 2010 \(Specific Duties and Public Authorities\) Regulations 2017 \(SI 2017/353\)](#) were made on 9 March 2017 and came into force on 31 March 2017. Given that section 78 did not extend to the public sector, the regulations were made under the public sector equality duty, creating a regime similar to that which applies to private sector employers.

## 9.3 The reporting duty

### Private and voluntary sectors

The [Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017 \(SI 2017/172\)](#) require relevant employers with 250 or more employees to publish gender pay gap information.

<sup>24</sup> GEO, *Closing the Gender Pay Gap*, July 2015

<sup>25</sup> GEO, *Closing the Gender Pay Gap Government response to the consultation*, February 2016

<sup>26</sup> [Mandatory Gender Pay Gap Reporting](#), Gov.uk [accessed 18 December 2017]

<sup>27</sup> GEO, [Mandatory Gender Pay Gap Reporting – Public Sector Employers](#) [accessed 18 December 2017]

<sup>28</sup> GEO, *Mandatory Gender Pay Gap Reporting – Public Sector Employers Government Response to the Public Consultation*, January 2017

The number of employees is measured at the “snapshot date”, defined as 5 April in the year to which the pay reporting duties apply. The information must be published within 12 months of the snapshot date. As such, private and voluntary sector employers had until 4 April 2018 to publish their first gender pay information. [Regulation 2](#) sets out what relevant employers must publish:

- the difference between the mean hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees;
- the difference between the median hourly rate of pay of male full-pay relevant employees and that of female full-pay relevant employees;
- the difference between the mean bonus pay paid to male relevant employees and that paid to female relevant employees;
- the difference between the median bonus pay paid to male relevant employees and that paid to female relevant employees;
- the proportions of male and female relevant employees who were paid bonus pay; and
- the proportions of male and female full-pay relevant employees in the lower, lower middle, upper middle and upper quartile pay bands

Under [regulation 14](#), the information must be accompanied by a statement certifying its accuracy. Under [regulation 15](#), the information must be published on the employer’s own website and uploaded to [Gov.uk](#), where the information is publicly accessible.<sup>29</sup>

### Public sector

The [Equality Act 2010 \(Specific Duties and Public Authorities\) Regulations 2017 \(SI 2017/353\)](#) provide similar requirements to that which apply under the private sector regulations. For public sector employers the snapshot date is 31 March (with the first reports due by 30 March 2018). As with the private and voluntary sectors, the duties apply only to employers with 250-or-more employees. The bodies subject to the duty are set out in [Schedule 2](#) to the regulations.

### Enforcement

The explanatory memoranda to both sets of regulations indicate that the Equality and Human Rights Commission (EHRC) will enforce the reporting duties. The EHRC has, under the *Equality Act 2006*, statutory powers to enforce the provisions of the *Equality Act 2010*.

As regards the regulations applying to the private and voluntary sectors, made under [section 78](#) of the 2010 Act, the [explanatory memorandum](#) provides:

Failure to comply with these Regulations would be an “unlawful act” for the purposes of Part 1 of the Equality Act 2006 and would fall within the existing enforcement powers of the Equality and Human Rights Commission under that Act.

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<sup>29</sup> Report your gender pay gap data, Gov.uk

Accordingly, the Regulations do not create any specific additional civil or criminal penalties. Levels of compliance with the Regulations will be monitored so that the Government can consider alternative enforcement mechanisms if necessary.<sup>30</sup>

In relation to public sector employers, the [memorandum](#) provides:

The Equality and Human Rights Commission is responsible for monitoring how public authorities are complying with the specific duties and can take enforcement action. The Commission has powers to issue a compliance notice to a public body that it believes has failed to comply with the Regulations, and can apply to the courts for an order requiring compliance<sup>31</sup>

The EHRC has published an [enforcement policy](#). It describes the EHRC's proposed approach to, among other things, investigating non-compliant businesses and issuing unlawful act notices for failure to comply with reporting duties.<sup>32</sup>

Although it is clear that the reporting duty in the public sector may be enforced by the EHRC,<sup>33</sup> it is less clear that the same is true of the regulations made under section 78 of the 2010 Act. Some commentators have voiced doubt about the validity of the claim that failure to comply with the gender pay gap regulations is an "unlawful act" under the *Equality Act 2006*.<sup>34</sup>

Under [section 34](#) of the 2006 Act:

"unlawful" means contrary to a provision of the Equality Act 2010

Thus, the EHRC may enforce the gender pay gap regulations if failure to comply with those regulations equates to acting "contrary to a provision of the Equality Act 2010". That interpretation involves reading a breach of the duties in the regulations as being, by extension, contrary to section 78 of the 2010 Act.

There is a good case for that interpretation. Section 34(2) contemplates the possibility of the term "unlawful" extending to action contrary to duties "under or by virtue of" the 2010 Act, and the duties in the regulations are clearly "by virtue of" section 78. Read as a whole, then, the term "unlawful" in section 34 might be thought to apply to any action contrary to a provision of the *Equality Act 2010* or provisions of regulations made under it.

The most compelling reason for doubting the EHRC's ability to enforce the regulations is that section 78(5) could be seen as the sole basis for enforcement:

(5) The regulations may make provision for a failure to comply with the regulations—

<sup>30</sup> *Explanatory Memorandum to the Equality Act 2010 (Gender Pay Gap Information) Regulations*, para 7.12

<sup>31</sup> *Explanatory Memorandum to the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017*, para 7.16

<sup>32</sup> EHRC, *Closing the gap: enforcing the gender pay gap regulations*, March 2018

<sup>33</sup> The EHRC has specific oversight powers in relation to public authorities; see *Equality Act 2006*, sections 31-32

<sup>34</sup> Darren Newman, [Can you afford to ignore the Gender Pay Gap Regulations?](#), A Range of Reasonable Responses blog, 9 January 2017

- (a) to be an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale;
- (b) to be enforced, otherwise than as an offence, by such means as are prescribed.

Notably, the gender pay gap regulations do not make any provision for a failure to comply with them. It is arguable that the express inclusion of a power in section 78(5) to specify the means of enforcement shuts the door to enforcement mechanisms outside of those so specified.

The Commons committee stage debate on the *Equality Bill* supports that interpretation. During the debate, Members proposed subjecting public sector employers to regulations under section 78 (then, clause 73). The Government opposed that on that basis that public sector employers are already subject to oversight by the EHRC under separate provisions, and adding criminal and civil sanctions to this would be “overkill”. The Solicitor General at the time, Vera Baird, said:

also subjecting the public sector to clause 73 would introduce a sort of unwarranted double jeopardy situation. Public authorities that do not comply with their duty obligations will be subject to Equality and Human Rights Commission compliance notices, which are enforceable in the civil courts. It would be overkill to hit them with civil and criminal action under clause 73.<sup>35</sup>

It is difficult to square the Solicitor General’s comments with the idea of the EHRC enforcing section 78. They suggest Parliament understood civil and criminal action under section 78(5) as the sole means of enforcement. On this view, contrary to the Government and the EHRC’s positions, the EHRC cannot enforce the gender pay gap regulations.

Given the above arguments in either direction, the precise legal position is somewhat uncertain. The enforcement question will remain ambiguous until either it is tested in the courts or the Government amends the regulations to clarify the law.

Furthermore, even if there is a legal basis for EHRC enforcement of the regulations, the means of enforcement are somewhat cumbersome. The EHRC enforcement policy states:

If a private or voluntary sector employer does not comply after our initial correspondence, we will carry out an investigation into whether they have committed the suspected unlawful act

...

We will:

- provide the employer with draft terms of reference for the investigation and allow the employer or their nominated legal representative 14 days to make written representations about the drafts terms of reference
- consider any representations and aim to publish the final terms of reference within a further 14 days
- gather and analyse any relevant evidence, including representations from third parties, within 14 days

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<sup>35</sup> [HC Deb 23 June 2009 cc419-420](#)

- aim to provide the employer with a draft report within 14 days, then allow them a further 28 days to make representations on it, and
- consider those representations and aim to publish the final report within a further 14 days.<sup>36</sup>

Following this, if the employer still refuses to comply, the policy indicates the EHRC will issue an unlawful act notice, requiring the employer to prepare an action plan to remedy the breach. If the employer still refuses, the next step would be to institute court proceedings.<sup>37</sup>

Some question whether this protracted process of letter-writing, investigation, unlawful act notice, then court order is a sustainable means of enforcing the reporting duties. An employment law commentator, Darren Newman states:

Since we all know what is being investigated, do we really need draft terms of reference for each investigation to be submitted to the employer for comment? Why doesn't the Commission simply say 'publish your data by the end of the month or we'll take you to court'?

The answer is that the Commission has no choice. The procedure set out in the strategy is the procedure that the Commission is required to follow when it believes that an employer is committing an 'unlawful act' as defined by the Equality Act 2006. The Act sets out the Commission's enforcement powers and they are quite specific. The Commission cannot just take someone to court or impose a fine.

...

It is manifestly absurd to apply the formal investigation process to a simple failure to publish data. But that is the logical consequence of the Commission insisting that its general powers can be used to enforce the gender pay gap regulations.<sup>38</sup>

## 9.4 The reporting deadline

Prior to the 4 April 2018 deadline the Government set out the measures it had taken to encourage employers to comply with their reporting duties:

We have written to all employers in scope of the gender pay gap reporting regulations that have not yet registered to report, on four separate occasions, ensuring they are aware of the requirement and urging them to report.

In recent weeks we have telephoned all organisations who have not yet registered on the gender pay gap website to ensure that they are on track to report.

We have also run an intensive social media campaign, and placed advertisements in national newspapers.

<sup>36</sup> Equality and Human Rights Commission, *Closing the gap: Enforcing the gender pay gap regulations*, March 2018, pp7-8

<sup>37</sup> Ibid., p12

<sup>38</sup> Darren Newman, '[Last Chance Saloon' for gender pay gap reporting?](#), A Range of Reasonable Responses blog, 27 March 2018

To date, more than 9,000 organisations in the public, private and voluntary sectors have registered to report on the government portal, a clear indication that they are aware of their responsibility.<sup>39</sup>

Despite this, the Equality and Human Rights Commission initially estimated that 1,456 firms failed to report on time.<sup>40</sup> On 29 March 2018 the Chair of the Women and Equalities Committee, Maria Miller, wrote to EHRC Chair David Isaac to request monthly updates about the Commission's enforcement activity.<sup>41</sup> On 9 April 2018 the EHRC wrote to employers who had missed the deadline, giving them 28 days within which to respond or confirm that they were out of scope of the regulations. Ultimately, 10,528 employers reported their gender pay gap. On 13 July 2018 David Issac wrote to the Chair of the Women and Equality Committee stating that "all employers believed to be in scope of the regulations have now published their gender pay gap information".<sup>42</sup>

### 9.5 BEIS Committee report

On 23 July 2018 the Business, Energy and Industrial Strategy (BIES) Committee published a report entitled '[Gender pay gap reporting](#)', the first output from a broader inquiry into corporate governance. The report made several observations and recommendations about the reporting regulations.<sup>43</sup>

It recommended that the Government and EHRC **publish revised guidance** as some employers had found the reporting obligations to be unclear:

In this first year of reporting, it is clear that many organisations had difficulty in producing the figures required, or were reluctant to devote the resources to doing so. The resulting set of figures published initially was therefore inaccurate, although to an unknown degree. We recommend that the Government works with the Equalities and Human Rights Commission, business groups and other stakeholders to clarify outstanding areas of ambiguity and to publish revised guidance accordingly. We also recommend that the Government reviews the gender pay gap reporting requirements with a view to aligning them with other business reporting requirements from next year.<sup>44</sup>

The Committee observed that the regulations do not require employers to publish any supporting information to explain possible reasons for their gender pay gaps. Yet, where employers had done this the Committee felt it provided useful contextual information and could be combined with action plans to address pay gaps. As such, the

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<sup>39</sup> [Equal Pay: Written question – 134058, 23 March 2018](#)

<sup>40</sup> [Warning to companies that missed gender pay deadline](#), FT.com, 5 April 2018

<sup>41</sup> [Letter to the Chair of the Equality and Human Rights Commission, relating to gender pay gap reporting, 29 March 2018](#)

<sup>42</sup> [Letter from Chair of the Equality and Human Rights Commission, regarding Gender Pay Gap](#), 13 July 2018

<sup>43</sup> House of Commons Business, Energy and Industrial Strategy Committee, *Gender pay gap reporting*, Thirteenth Report of Session 2017–19, HC 928, 23 July 2018

<sup>44</sup> *Ibid.*, p8

Committee recommended that employers should be required to provide **narrative reporting** alongside their gender pay gap statistics, accompanied by **action plans** setting out how pay gaps are being and will be addressed.<sup>45</sup>

In view of the initial uncertainty about the level of compliance with the regulations, and in particular the lack of clarity about which employers were and were not in scope of the duties, the Committee recommended that the **Government maintain a list of employers within scope of the regulations**.<sup>46</sup>

On the subject of enforcement, the Committee criticised both the **lack of legal certainty** and the **unwieldy enforcement mechanisms** purportedly available to the EHRC. The Committee recommended that:

the Government, at the next available opportunity, ends the legal uncertainty surrounding the ECHR's enforcement powers by providing for specified fines for non-compliance.<sup>47</sup>

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<sup>45</sup> Ibid., p9

<sup>46</sup> Ibid., p11

<sup>47</sup> Ibid., p12



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