



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the Department for
Communities' Consultation on the Gender
Pay Gap Information Regulations**

February 2025

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Summary Recommendations

- 2.6 The NIHRC recommends that the Department for Communities, working with the NI Executive and NI Assembly, urgently bring forward legislation to amend NI law by June 2026 to ensure it keeps pace with those provisions of the EU Pay Transparency Directive that amend and/or replace provisions of the EU Gender Equality (Employment) Directive.**
- 3.8 The NIHRC recommends that the Department of Communities, supported by the NI Executive, introduce regulations on gender pay gap reporting which are sufficiently led by the context of employment sectors in NI, and capture as many employers as possible to ensure a complete view of the gender pay gap in NI.**
- 3.9 The NIHRC recommends that the Department for Communities, working with the NI Executive and NI Assembly, urgently bring forward legislation to ensure NI law reflects the minimum employer thresholds in the EU Pay Transparency Directive for gender pay gap reporting by June 2026.**
- 4.5 The NIHRC welcomes the proposed approach of adopting a standardised methodology for calculating gender pay information is welcomed. The NIHRC recommends that the Department for Communities ensures that gender pay gap monitoring assesses both the steps taken and the results achieved in the elimination of discrimination, this can be aided by considering the principles of gender budgeting when establishing which methodology to adopt in NI, such as transparency, enabling evidence-based decision-making, and robust analysis of gendered impacts across all equality groups.**
- 4.6 The NIHRC recommends that the Department for Communities considers how gender pay gap reporting will**

feed into wider work on gender mainstreaming and the Gender Equality Strategy, and any relevant cross-departmental work, such as the Department of Finance in the development of gender budgeting approaches.

5.4 The NIHRC recommends that Department for Communities ensures that the regulations place a requirement on employers to regularly publish comprehensive gender pay gap information that is understandable, fully accessible and considers specific needs, including providing for reasonable accommodation where required.

6.5 The NIHRC recommends that the Department for Communities requires other characteristics, such as race/ethnicity, disability, age, sexual orientation, language, and urban/rurality to be provided by employers on gender pay gap. This should include a requirement that data is collected and published in a way that accommodates and identifies multiple intersectionality, where relevant.

7.5 The NIHRC recommends that the Department for Communities ensures that any sanction imposed for the purposes of ensuring reliability and accountability for gender pay gap reporting is reasonable and effective. Also, that the process for making an individual or collective complaint that could lead to a sanction is affordable, accessible and timely.

1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC is also required, under section 78A(1) of the Northern Ireland Act 1998, to monitor the implementation of Article 2 of the Windsor Framework.¹ In accordance with these functions, the following advice is submitted to the Department for Communities in relation to Gender Pay Gap reporting.

1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and treaty obligations of the Council of Europe (CoE) and United Nations (UN). The relevant regional and international treaties in this context include:

- European Convention on Human Rights 1950;
- European Social Charter 1961;
- UN Convention on the Elimination of All Forms of Racial Discrimination 1965;
- UN International Covenant on Economic, Social and Cultural Rights 1966;
- UN Convention on the Elimination of All Forms of Discrimination against Women 1981;
- UN Convention on the Rights of the Child 1989; and
- UN Convention on the Rights of Persons with Disabilities 2006.

1.3 In addition to these treaty standards, the following declarations and principles provide further guidance in respect of specific areas:

¹ The Windsor Framework was formerly known as the Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement and all references to the Protocol in this document have been updated to reflect this change. (see Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework).

- UN CEDAW Committee General Comment No 6;²
- UN CRC Committee General Comment No 5;³
- UN ICESCR Committee General Comment No 16;⁴
- UN ICESCR Committee General Comment No 20;⁵
- UN CEDAW Committee General Comment No 28;⁶
- UN CEDAW Committee General Comment No 27;⁷
- UN ICESCR Committee General Comment No 23;⁸
- UN CEDAW Committee General Comment No 34;⁹
- UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK;¹⁰
- UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK;¹¹ and
- UN CRPD Committee General Comment No 8.¹²

1.4 The NIHRC also advises on the compatibility of this consultation with the UK Government's commitment, in Windsor Framework Article 2(1), to ensure there is no diminution of rights, safeguards and equality of opportunity in the relevant section of the Belfast (Good Friday) Agreement as a result of the UK's withdrawal from the EU. This is given effect in UK law by section 7A of the EU (Withdrawal) Act 2018. In addition, Section 6 of the Northern Ireland Act 1998 provides that the NI Assembly is prohibited from making any law which is incompatible with Windsor Framework Article 2.

² 'UN CEDAW Committee General Comment No 6: Effective National Machinery and Publicity', 1988.

³ CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General Measures of Implementation of the UN CRC', 27 November 2003.

⁴ E/C.12/2005/3, 'UN ICESCR Committee General Comment No 16: Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights', 13 May 2005.

⁵ E/C.12/GC/20, 'UN ICESCR Committee General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights', 2 July 2009.

⁶ CEDAW/C/GC/28, 'UN CEDAW Committee General Comment No 28: Core Obligations of States Parties Under Article 2 of the UN CEDAW', 16 December 2010.

⁷ CEDAW/C/GC/27, 'UN CEDAW Committee General Comment No 27: Older Women and Protection of their Human Rights', 16 December 2010.

⁸ E/C.12/GC/23, 'UN ICESCR Committee General Comment No 23: Right to Just and Favourable Conditions of Work', 27 April 2016.

⁹ CEDAW/C/GC/34, 'UN CEDAW Committee General Comment No 34: Rights of Rural Women', 7 March 2016.

¹⁰ E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016.

¹¹ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019.

¹² CRPD/C/GC/8, 'UN CRPD Committee General Comment No 8: Right of Persons with Disabilities to Work and Employment', 7 October 2022.

1.5 The NIHRC welcomes this opportunity to respond to the Department for Communities consultation gender pay gap reporting in NI. In addition to advice on the relevant international human rights standards in this area, we will provide a brief overview of the importance of Windsor Framework Article 2. However, in accordance with our statutory functions and to avoid duplication of work in this area, we recommend that the Department consider submission by the Equality Commission for NI to this consultation for further detailed analysis of Gender Pay Gap Information Regulations in respect of the EU Pay Transparency Directive and Windsor Framework Article 2.

2.0 Windsor Framework Article 2

2.1 Windsor Framework Article 2 requires the UK Government to ensure that no diminution of rights, safeguards and equality of opportunities contained in the relevant part of the Belfast (Good Friday) Agreement 1998 occurs as a result of the UK's withdrawal from the EU. This includes an obligation to "keep pace" with any changes made to the six Annex 1 equality directives¹³ which improve the minimum levels of protection available, after 1 January 2021.¹⁴ For other EU obligations which underpin the rights, safeguards and equality of opportunity in Windsor Framework Article 2, the UK Government commitment to ensure 'no diminution' is measured by the relevant EU standards as they were on the 31

¹³ These are the Racial Equality Directive (Directive 2000/43/EC, 'Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin', 29 June 2000); the Employment Equality (Framework) Directive (Directive 2000/78/EC, 'Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000); the Gender Goods and Services Directive (Directive 2004/113/EC, 'Council Directive on Implementing the Principle of Equal Treatment between Men and Women in the access to and supply of goods and services', 13 December 2004); Gender Equality (Employment) Directive (Directive 2006/54/EC, 'Directive of European Parliament and of the Council on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006); the Self-Employment Equality Directive (Directive 2010/41/EU, 'Directive of the European Parliament and of the Council on the Application of the Principle of Equal Treatment between Men and Women Engaged in an Activity in a Self-employed Capacity', 7 July 2010); and the Equality in Social Security Directive (Directive 79/7/EEC, 'Council Directive on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security', 19 December 1978).

¹⁴ Article 13, Windsor Framework to the UK-EU Withdrawal Agreement.

December 2020.¹⁵ This keeping pace obligation includes monitoring and complying with relevant current and future CJEU case law across these different areas and different equality and non-discrimination grounds.¹⁶

- 2.2 The EU Gender Equality (Employment) Directive, in Annex 1, aims to implement the principle of equal treatment and equal opportunities in employment, including through working conditions and pay.¹⁷ In 2023, the EU legislated to strengthen the principle of equal pay between men and women through the EU Pay Transparency Directive.¹⁸
- 2.3 The NIHRC and the Equality Commission for NI have published a joint briefing paper¹⁹ providing detailed analysis of the EU Pay Transparency Directive, concluding that the provisions of the Directive²⁰ amend and/or replace provisions in the EU Gender Equality (Employment) Directive.²¹ As this is listed in Annex 1 of the Windsor Framework, NI equality law must keep pace with these changes.²² To date, the UK Government has not expressed a view on the extent to which the EU Pay Transparency Directive impacts dynamic obligations under Windsor Framework Article 2.
- 2.4 Implementing the EU Pay Transparency Directive in NI law would lead to greater accountability and transparency by employers on gender pay gaps within their organisations, including enhanced enforcement measures to improve access to justice and

¹⁵ UK Government, 'UK Government Commitment to No-diminution of Rights, Safeguards and Equality of Opportunity in Northern Ireland' (NIO, 2020), at para 13.

¹⁶ Article 13(3), Windsor Framework.

¹⁷ Directive 2006/54/EC, 'EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006.

¹⁸ Directive 2023/970/EU, 'Directive of the European Parliament and of the Council of the EU to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms', 10 May 2023.

¹⁹ Equality Commission for NI and NI Human Rights Commission, 'Briefing Paper: The EU Pay Transparency Directive: The UK Government's dynamic alignment obligations relating to Windsor Framework Article 2' (ECNI and NIHRC, 2024)

²⁰ Apart from a small number of provisions of the EU Pay Transparency Directive that are no longer relevant now that the UK has left the EU.

²¹ Directive 2006/54/EC, 'EU Parliament and Council Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast)', 5 July 2006.

²² Article 13(3), Windsor Framework.

enforcement of rights and strengthened rights relating to compensation.²³

2.5 The EU Pay Transparency Directive came into force on 6 June 2023 and must be transposed by Member States by 7 June 2026.²⁴ To ensure compliance with the obligation to keep pace with amendments to the EU Gender Equality (Employment) Directive, NI law must be updated to reflect the relevant provisions of the EU Pay Transparency Directive by the transposition deadline. The NIHRC is concerned that the Department for Communities has not taken the opportunity in this consultation to address how the EU Pay Transparency Directive will be reflected in NI law by June 2026.

2.6 **The NIHRC recommends that the Department for Communities, working with the NI Executive and NI Assembly, urgently bring forward legislation to amend NI law by June 2026 to ensure it keeps pace with those provisions of the EU Pay Transparency Directive that amend and/or replace provisions of the EU Gender Equality (Employment) Directive.**

3.0 Gender Pay Gap Threshold

3.1 The consultation suggests that NI will adopt similar measures to record the gender pay gap as the currently in place in England, Scotland and Wales, including by only requiring organisations with over 250 employees to comply with reporting regulations.²⁵

²³ See chapter III on remedies and enforcement, including Article 16, Directive 2023/970/EU, 'EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms' 10 May 2023.

²⁴ Directive 2023/970/EU, 'EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms', 10 May 2023.

²⁵ Department for Communities, 'The Gender Pay Gap Information Regulations: Public Consultation', (DfC, 2024).

3.2 Human rights law provides for the right to work,²⁶ which includes the right of everyone to enjoy just and favourable conditions of work, such as:

fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.²⁷

3.2 The UN ICESCR Committee has expanded that workers should receive equal remuneration when they perform the same or similar jobs or “when their work is completely different but nonetheless of equal value when assessed by objective criteria”.²⁸ This extends to wages and other payments or benefits paid directly or indirectly to workers.²⁹ To ensure this there are specific protections within human rights law which promote and protect the equal right of men and women to all economic, social and cultural rights.³⁰ This is supported by Article 11 of the UN CEDAW Committee, which requires that States take all appropriate action to eliminate discrimination against women in relation to employment, “in particular... the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work”.

3.3 Specific to gender pay gap, Article 7 of the UN ICESCR:

requires, inter alia, that the State party identifies and eliminates the underlying causes of pay differentials, such as gender biased job evaluation or the perception that productivity differences between men and women exist.³¹

²⁶ Article 6, UN International Covenant on Economic, Social and Cultural Rights 1966.

²⁷ Article 7, UN International Covenant on Economic, Social and Cultural Rights 1966. See also, Article 4(3), European Social Charter 1961.

²⁸ E/C.12/GC/23, ‘UN ICESCR Committee General Comment No 23: Right to Just and Favourable Conditions of Work’, 27 April 2016, at para 11.

²⁹ Ibid.

³⁰ Article 3, UN International Covenant on Economic, Social and Cultural Rights 1966.

³¹ E/C.12/2005/3, ‘UN ICESCR Committee General Comment No 16: Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights’, 13 May 2005, at para 24.

3.4 Expanding on this the UN ICESCR Committee specifically recommended that the UK Government and NI Executive:

adopt effective measures to eliminate the persistent gender pay gap, including by addressing the significant vertical and horizontal gender-based segregation in the labour market, which results in women occupying lower - paid positions and facing obstacles to the enjoyment of career opportunities on an equal footing with men.³²

3.5 The UN CEDAW Committee has also recommended that the UK Government and NI Executive:

ensure that the provisions regarding mandatory pay gap reporting in the Employment Act (Northern Ireland) 2016 are brought into effect in Northern Ireland; and

encourage employers to publish a narrative with their gender pay gap data, with a view to better understanding the reasons behind the gender pay gap, and to take appropriate remedial measures.³³

3.6 The EU Pay Transparency Directive sets out a staged approach to reporting on the pay gap between women and men, starting with reporting obligations on employers with 150 workers by 2027 and those with 100 workers by 2031.³⁴ It further provides that this does not prevent employers with fewer than 100 workers from reporting on a voluntary basis or States requiring employers with fewer than 100 workers to provide information on pay.³⁵ As noted above, in

³² E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016, at para 27(b).

³³ CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019.

³⁴ Article 9(3) and (4), Directive 2023/970/EU, 'EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms' 10 May 2023. Article 9(2) also placed more onerous obligations on employers of more than 250 workers by 2027, requiring annual reporting, whereas the obligations on smaller employers in Article 9(3) and 9(4) relates to reporting every three years.

³⁵ Article 9(5), Directive 2023/970/EU, 'EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms' 10 May 2023.

accordance with Article 2 and 13 of the Windsor Framework, NI law must be amended to reflect this obligation by June 2026.

- 3.7 The human rights standards are clear that the right to work and its various components, including fair wages and equal remuneration, apply to everyone. Considering the need to ensure gender pay gap reporting is effective in practice and reflective of the context in NI, setting a threshold similar to that in the rest of UK is not an appropriate course of action for NI. As of March 2023, 89 per cent of businesses in NI were micro businesses with less than 10 employees. In the same period, just over 2 per cent of businesses in NI had over 50 employees.³⁶ The vast majority of businesses in NI represent micro, small or medium sized organisations. Only requiring employers of over 250 employees will cut out most of the private and voluntary sector organisations, which would be unlikely to give an indicative picture of the true nature of the gender pay gap in NI.
- 3.8 **The NIHRC recommends that the Department of Communities, supported by the NI Executive, introduce regulations on gender pay gap reporting which are sufficiently led by the context of employment sectors in NI, and capture as many employers as possible to ensure a complete view of the gender pay gap in NI.**
- 3.9 **The NIHRC recommends that the Department for Communities, working with the NI Executive and NI Assembly, urgently bring forward legislation to ensure NI law reflects the minimum employer thresholds in the EU Pay Transparency Directive for gender pay gap reporting by June 2026.**

³⁶ Department for the Economy, 'NI Business: Activity, Size, Location and Ownership' (DfE, 2023).

4.0 Methodology

- 4.1 The consultation proposes that a standardised methodology for calculating gender pay information is adopted.³⁷
- 4.2 The UN CEDAW Committee has elaborated that policies to eliminate discrimination against women should “establish indicators, benchmarks and timelines” and “provide for mechanisms that collect relevant sex-disaggregated data”.³⁸ It should also “allow for the revision or supplementation of existing measures and the identification of any new measures that may be appropriate”.³⁹ The UN ICESCR Committee has also stated that “monitoring should assess both the steps taken and the results achieved in the elimination of discrimination”.⁴⁰⁴¹
- 4.3 The EU Pay Transparency Directive requires Member States in consultation with equality bodies to ensure that analytical tools or methodologies are made available and are easily accessible to support and guide the assessment and comparison of the value of work, in line with the criteria set out in the directive.⁴² It notes in particular the role of social partners in the development of those analytical tools and methodologies for reporting.⁴³
- 4.4 Research has identified that there is a “persistence of deeply embedded gendered inequalities which continue to inhibit women’s life opportunities in NI”.⁴⁴ Gender pay gap reporting will help to address this, but only if the correct methodology is adopted. A

³⁷ Department for Communities, ‘The Gender Pay Gap Information Regulations: Public Consultation’, (DfC, 2024).

³⁸ CEDAW/C/GC/28, ‘UN CEDAW Committee General Comment No 28: Core Obligations of States Parties Under Article 2 of the UN CEDAW’, 16 December 2010, at para 28.

³⁹ Ibid.

⁴⁰ E/C.12/GC/20, ‘UN ICESCR Committee General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights’, 2 July 2009, at para 41.

⁴¹ Ibid.

⁴² Article 4, Directive 2023/970/EU, ‘EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms’, 10 May 2023.

⁴³ Article 33, Directive 2023/970/EU, ‘EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms’ 10 May 2023.

⁴⁴ Joan Ballantine et al, ‘Gender Budgeting: Working Paper 1 – What Does the Literature Tell Us? Lessons for NI’ (Ark Working Papers, 2021).

standardised methodology will help to ensure that the data available enables useful and comprehensive comparison. However, careful consideration should be given to how the standardised approach is formulated. It is acknowledged that this is largely a question of processes and mathematic equations, yet to identify the correct methodology, you must be clear on the questions being posed and the answers that are sought. Therefore, considering gender budgeting principles in identifying the correct methodology may assist this process. This includes principles of transparency, enabling evidence-based decision-making, and robust analysis of gendered impacts across all equality groups.⁴⁵ Consideration should also be given to the specifics of NI.

4.5 The NIHRC welcomes the proposed approach of adopting a standardised methodology for calculating gender pay information is welcomed. The NIHRC recommends that the Department for Communities ensures that gender pay gap monitoring assesses both the steps taken and the results achieved in the elimination of discrimination, this can be aided by considering the principles of gender budgeting when establishing which methodology to adopt in NI, such as transparency, enabling evidence-based decision-making, and robust analysis of gendered impacts across all equality groups.

4.6 The NIHRC recommends that the Department for Communities considers how gender pay gap reporting will feed into wider work on gender mainstreaming and the Gender Equality Strategy, and any relevant cross-departmental work, such as the Department of Finance in the development of gender budgeting approaches.

⁴⁵ See for example, Organisation for Economic Co-operation and Development, 'Toolkit for Mainstreaming and Implementing Gender Equality 2023' (OECD, 2023); Organisation for Economic Co-operation and Development, 'Best Practices for Gender Budgeting' (OECD, 2023); Organisation for Economic Co-operation and Development, 'Designing and Implementing Gender Budgeting A Path to Action', (2020) 20(2) *Organisation for Economic Co-operation and Development Journal on Budgeting* 67-96.

5.0 Public Scrutiny

- 5.1 The consultation proposes that employers publish gender pay gap information on an annual basis.⁴⁶ The consultation also queries whether the regulations should specify where the employer publishes their gender pay gap information.⁴⁷
- 5.2 The UN CEDAW Committee has elaborated that policies to eliminate discrimination against women should “enable effective monitoring” and “facilitate continuing evaluation” and “allow for the revision or supplementation of existing measures and the identification of any new measures that may be appropriate”.⁴⁸ The UN CRPD provides principles of best practice on ensuring rights are promoted and protected for everyone. It requires that consideration is given to specific needs and that reasonable accommodation is identified and undertaken, where necessary.⁴⁹ It requires making “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case”.⁵⁰ It includes for example, considering the different formats to ensure that information is available, understandable and accessible.⁵¹ The UN CRPD identifies this as a specific requirement within the workplace.⁵²
- 5.3 Human rights standards are not prescriptive on how often information should be made available or where information should be published. However, there are clear requirements that the information available is regularly gathered and published in an accessible and understandable manner.

⁴⁶ Department for Communities, ‘The Gender Pay Gap Information Regulations: Public Consultation’, (DfC, 2024).

⁴⁷ Ibid.

⁴⁸ CEDAW/C/GC/28, ‘UN CEDAW Committee General Comment No 28: Core Obligations of States Parties Under Article 2 of the UN CEDAW’, 16 December 2010, at para 28.

⁴⁹ Articles 2, 5(3) and 27(i), UN Convention on the Rights of Persons with Disabilities 2006.

⁵⁰ Article 2, 5(3) and 27(i), UN Convention on the Rights of Persons with Disabilities 2006.

⁵¹ CRPD/C/GC/8, ‘UN CRPD Committee General Comment No 8: Right of Persons with Disabilities to Work and Employment’, 7 October 2022, at para 70.

⁵² Article 27(i), UN Convention on the Rights of Persons with Disabilities 2006.

- 5.4 **The NIHRC recommends that Department for Communities ensures that the regulations place a requirement on employers to regularly publish comprehensive gender pay gap information that is understandable, fully accessible and considers specific needs, including providing for reasonable accommodation where required.**

6.0 Intersectionality

- 6.1 The consultation identifies that section 19 of the Employment Act (NI) 2016 stipulates that the information provided by employers on gender pay gap, must include statistics on ethnicity and disability.⁵³ The consultation asks whether information on gender pay gap should include information relating to a workers' ethnicity and/or disability.⁵⁴
- 6.2 Effective monitoring is essential to ensuring human rights compliance and is a recurring requirement of human rights standards.⁵⁵ For monitoring to be effective it "should assess both the steps taken and the results achieved" and "should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination".⁵⁶ In addition to gender, human rights standards have recognised that special consideration should be given in a work and employment setting to the needs of racial groups,⁵⁷ children,⁵⁸ older women,⁵⁹ persons with

⁵³ Department for Communities, 'The Gender Pay Gap Information Regulations: Public Consultation', (DfC, 2024).

⁵⁴ Ibid.

⁵⁵ E/C.12/GC/20, 'UN ICESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights', 2 July 2009, at para 41; 'UN CEDAW Committee General Comment No 6: Effective National Machinery and Publicity', 1988, at para 1(b); CRC/GC/2003/5, 'UN CRC Committee General Comment No 5: General Measures of Implementation of the UN CRC', 27 November 2003, at para 45.

⁵⁶ E/C.12/GC/20, 'UN ICESCR Committee General Comment No 20: Non-discrimination in Economic, Social and Cultural Rights', 2 July 2009, at para 41.

⁵⁷ Article 5(e)(i), UN Convention on the Elimination of All Forms of Racial Discrimination 1965.

⁵⁸ Article 32(1), UN Convention on the Rights of the Child 1989; Article 7, CoE European Social Charter 1961.

⁵⁹ CEDAW/C/GC/27, 'UN CEDAW Committee General Comment No 27: Older Women and Protection of their Human Rights', 16 December 2010, at para 2.

disabilities,⁶⁰ and rural women.⁶¹ The general provision on non-discrimination regarding all economic, social and cultural rights also refers to “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.⁶² Consideration should be given to “various forms of intersectional discrimination”⁶³ and “multiple discrimination”.⁶⁴

- 6.3 In Article 3, the EU Pay Transparency Directive defines discrimination as including intersectional discrimination, which is based on a combination of sex and a number of other equality ground/s protected under EU equality directives, such as racial or ethnic origin, religion or belief, disability, age or sexual orientation.⁶⁵ The EU Pay Transparency Directive recognises that disabled women, women of diverse racial and ethnic origin including Roma women, and young or elderly women are among groups which may face intersectional discrimination and notes that “an intersectional approach is important for understanding and addressing the gender pay gap”.⁶⁶
- 6.4 Thus, a requirement to include statistics on ethnicity and disability is welcomed, however this should be expanded out to other characteristics as relevant, such as race, age, sexual orientation, language and/or urban/rurality. It should provide the full picture to ensure a comprehensive monitoring and analysis of inequalities. It is also crucial that the data collected and published accommodates and identifies multiple intersectionality, where relevant.

⁶⁰ Article 27, UN Convention on the Rights of Persons with Disabilities 2006.

⁶¹ Article 14(1), UN Convention on the Elimination of All Forms of Discrimination against Women 1981; CEDAW/C/GC/27, ‘UN CEDAW Committee General Comment No 27: Older Women and Protection of their Human Rights’, 16 December 2010, at para 32; CEDAW/C/GC/34, ‘UN CEDAW Committee General Comment No 34: Rights of Rural Women’, 7 March 2016; at paras 16 and 17.

⁶² Article 3, UN International Covenant on Economic, Social and Cultural Rights 1966. See also, Preamble, European Social Charter 1961.

⁶³ CEDAW/C/GC/28, ‘UN CEDAW Committee General Comment No 28: Core Obligations of States Parties Under Article 2 of the UN CEDAW’, 16 December 2010, at para 26.

⁶⁴ E/C.12/GC/20, ‘UN ICESCR Committee General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights’, 2 July 2009, at para 17.

⁶⁵ Article 3, Directive 2023/970/EU, ‘EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms’, 10 May 2023.

⁶⁶ Recital 25, Directive 2023/970/EU, ‘EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms’, 10 May 2023.

6.5 The NIHRC recommends that the Department for Communities requires other characteristics, such as race/ethnicity, disability, age, sexual orientation, language, and urban/rurality to be provided by employers on gender pay gap. This should include a requirement that data is collected and published in a way that accommodates and identifies multiple intersectionality, where relevant.

7.0 Effective Remedy

7.1 The consultation identifies that the requirements for the information to be signed off and published by employers are intended to ensure reliability of, and accountability for, the data and to identify for the public record those employers who have complied.⁶⁷ It queries what sanctions are appropriate if an employer fails to comply with these regulations.⁶⁸

7.2 The right to an effective remedy is a core component of ensuring workers' rights are promoted and protected in practice.⁶⁹ The UN CEDAW Committee requires that "women can invoke the principle of equality in support of complaints of acts of discrimination contrary to the [UN CEDAW]".⁷⁰ This requires that States ensure that "women have recourse to affordable, accessible and timely remedies".⁷¹

7.3 Human rights standards are not prescriptive on what a reasonable sanction is, however, they are clear that, where a sanction is imposed, it must be effective. This requires consideration of the

⁶⁷ Department for Communities, 'The Gender Pay Gap Information Regulations: Public Consultation', (DfC, 2024).

⁶⁸ Ibid.

⁶⁹ Article 13, European Convention on Human Rights 1950; E/C.12/GC/23, 'UN ICESCR Committee General Comment No 23: Right to Just and Favourable Conditions of Work', 27 April 2016, at para 70; CEDAW/C/GC/23, 'UN CEDAW Committee General Comment No 28: Core Obligations of States Parties Under Article 2 of the UN CEDAW', 16 December 2010, at para 32; E/C.12/GC/20, 'UN ICESCR Committee General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights', 2 July 2009, at para 40.

⁷⁰ CEDAW/C/GC/28, 'UN CEDAW Committee General Recommendation No 28: Core Obligations of States Parties Under Article 2 of the UN CEDAW', 16 December 2010, at para 34.

⁷¹ Ibid. See also E/C.12/GC/20, 'UN ICESCR Committee General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights', 2 July 2009, at para 40.

balance between ensuring a sanction is reasonable and that it also achieves the purpose of deterring non-compliance.

7.4 The EU Pay Transparency Directive requires Member States to ensure that, after possible recourse to conciliation, court proceedings for the enforcement of rights and obligations relating to the principle of equal pay are available to all workers.⁷² It also requires that remedies include empowering courts to make an order to take measures to ensure that the rights or obligations related to the principle of equal pay are applied.⁷³ Article 47 of the EU Charter of Fundamental Rights on the right to an effective remedy continues to be relevant to the interpretation and application of the EU Pay Transparency Directive.

7.5 **The NIHRC recommends that the Department for Communities ensures that any sanction imposed for the purposes of ensuring reliability and accountability for gender pay gap reporting is reasonable and effective. Also, that the process for making an individual or collective complaint that could lead to a sanction is affordable, accessible and timely.**

⁷² Article 14, Directive 2023/970/EU, 'EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms' 10 May 2023.

⁷³ Article 17, Directive 2023/970/EU, 'EU Parliament and Council Directive to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms' 10 May 2023.

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