



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?

Among full-time employees, women tend to be paid less per hour than men, while the opposite is true for part-time employees. Median hourly pay for full-time employees was 9.1% less for women than for men at April 2017, while median hourly pay for part-time employees was 5.1% higher for women than for men (figures exclude overtime pay). The median is the point at which half of people earn more and half earn less.

However, a much higher share of women than men are employed part-time and part-time workers tend to earn less per hour than those working full-time. Consequently, when we look at the gender pay gap for all employees, it is considerably larger than the full-time or part-time pay gaps: on this basis, median pay was 18.4% higher for men than for women at April 2017.

Broadly speaking there has been a downwards 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 widened since the early 2000s, with women earning more than men.

Why is there a gender pay gap?

Differences in average pay for men and women arise for various reasons, including the types of jobs that people do and the number of years they have spent in the workplace.

There is little difference in median hourly pay for men and women aged in their 20s and 30s, but a large gap emerges between men and women aged 40 and over working full-time. One reason for this is that factors affecting women's employment and earnings opportunities become more evident among women aged in their 30s and 40s. For example, time spent out of the workplace to care for children or elderly relatives could affect future earnings when a person returns to work. Similarly, the need to balance work with family commitments and the availability of flexible working practices may restrict individuals' employment options.

Research by the Institute for Fiscal Studies found that the pay gap between men and women widens substantially following the birth of their first child. Some of this effect is attributable to mothers spending less time in full-time employment than fathers and more time in part-time employment. Experience working part-time appears to have very little impact on growth in hourly wages compared to experience in full-time work.

Generational effects, including differences in average education levels and the occupational profile of younger and older workers, may also partly explain why the gender pay gap varies with age. Over the past twenty years there has been a more rapid increase in education levels among women than among men. More highly-educated workers tend to have higher earnings, so the relative increase in education levels for women probably explains some of the reduction in the overall gender pay gap during this time. Over the same period the gender pay gap has reduced for workers qualified to GCSE or A level standard, although it has changed little for graduates.

Another likely driver of the gender pay gap is that women are more concentrated than men in certain occupations which may attract lower levels of pay. This effect is often referred to as “occupational segregation”.

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**.

Around 10,100 employers reported data for 2017/18. 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. Measuring the gender pay gap

There is no single measure which adequately summarises differences between men and women's pay. The Office of National Statistics (ONS) prefers to use median hourly earnings, excluding overtime:

- 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 relatively more overtime than women. Thus including overtime pay could skew the results.
- Hourly earnings are used so that results are not distorted by differences in hours worked by men and women.

Looking at median hourly pay overall can offer a useful comparison of men's and women's earnings, but it does not take account of the differences in rates of pay for comparable jobs. This is because it 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, this begs the question of why women are more likely to be working part-time: some people may be constrained from taking up full-time roles, for example because of the need to balance work and caring responsibilities. In this case, the distribution of women and men between full-time and part-time roles (and how that affects the overall gender pay gap) may be seen as an essential part of understanding gender pay differences.

More broadly, this paper looks at how the gender pay gap varies across different groups of employees, including by age group, occupation, industry and region. All data are taken from the ONS *Annual Survey of Hours and Earnings* unless otherwise stated.

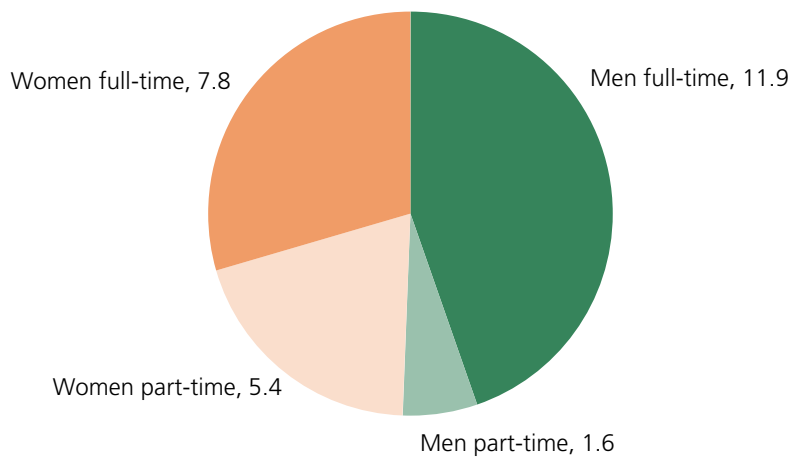
There are other factors that are also likely to have some effect on the gender pay gap, which are discussed here to a more limited extent: for example, qualifications, employment experience and parental status. This information is not collected in the Annual Survey of Hours and Earnings. Other surveys do collect the information (see the discussion in section 3) but do not offer the same quality of data on earnings.

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 18.4% at April 2017. Somewhat confusingly, the overall gap is higher than the gender pay gap for full-time employees (9.1%) as well as that for part-time employees (-5.1%). This reflects the fact that part-time workers tend to earn less than full-time workers and women are more likely to be working part-time: at April-June 2017, 40% of female employees were working part-time compared to 12% of male employees.

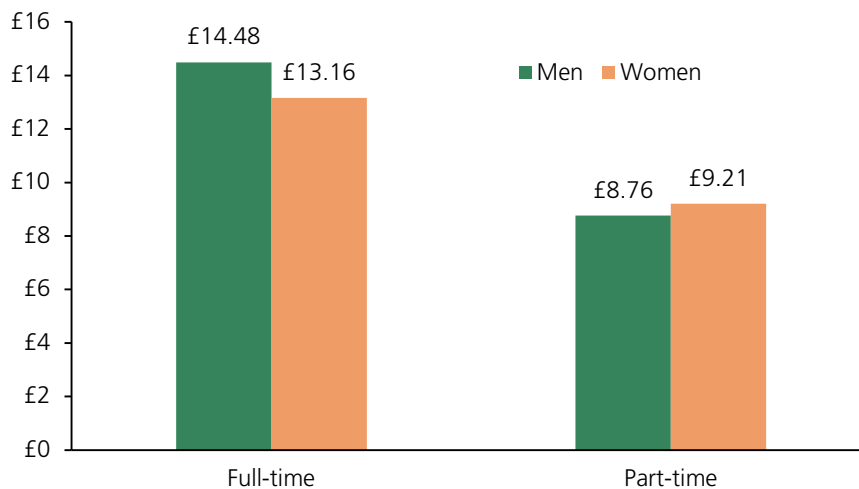
Employees by gender and working pattern, Q2 2017
Millions, seasonally adjusted



Source: ONS *Labour Market Statistics, October 2017*, Table EMP01

Median hourly pay for full-time employees at April 2017 was £13.94 (excluding overtime), compared with £9.12 for part-time employees.

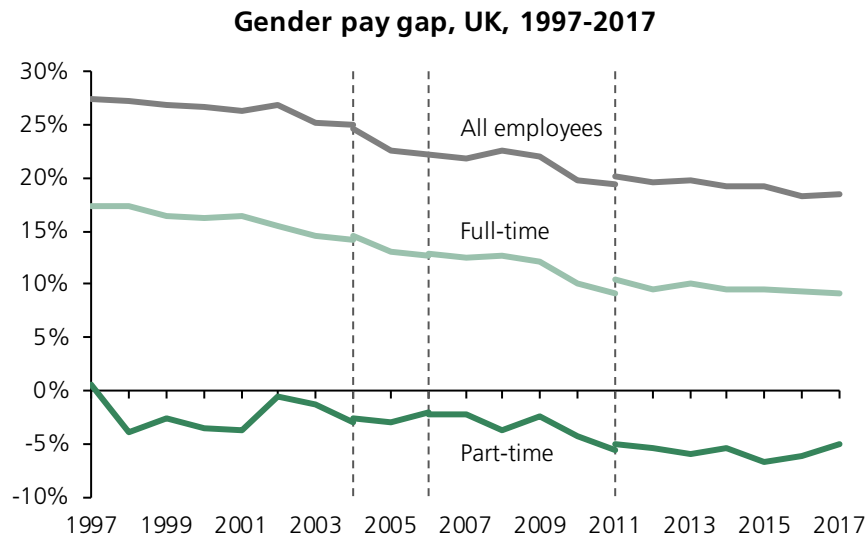
Median hourly pay excluding overtime, April 2017



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 very small or negative.

The proportion of full-time employees who are women increased between 1997 and 2017, from 36% to 40%. At the same time the share of part-time employees who are men increased, from 16% in 1997 to 23% in 2017.¹



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

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

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

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

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 6 April 2018, 10,104 employers had reported data for 2017/18 (including 476 businesses with fewer than 250

¹ ONS, *UK Labour Market, October 2017*, Table EMP01 SA. Data at April-June.

employees or who did not state their number of employees).² At the start of 2017, UK businesses with at least 250 employees accounted for 16.45 million employee jobs. This represented around 56% of all employee jobs in the UK (29.47 million across all businesses).³

Across all employers who reported, the gender pay gap averaged:⁴

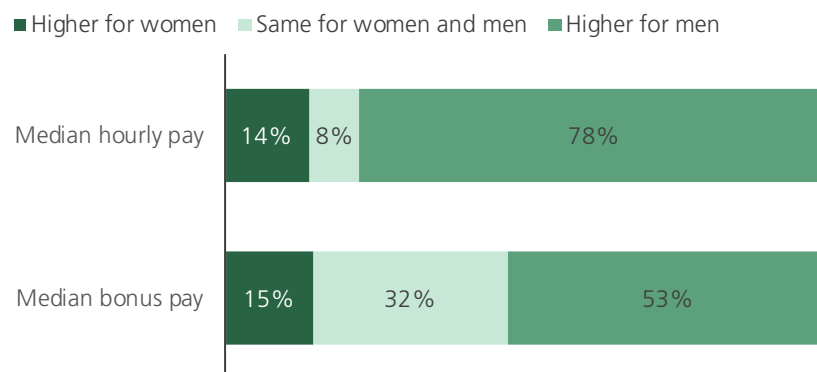
- 12.0% based on median hourly pay
- 14.5% based on mean hourly pay

By comparison, the gap in median hourly pay (excluding overtime) across employers of all sizes was 18.4% at April 2017, based on estimates from the Annual Survey of Hours and Earnings. The gap in mean hourly pay across all employers was 17.4%.

These figures hide very wide variation in the gender pay gaps reported by individual employers. 22% of employers reported that median hourly pay for female employees was higher than or equal to median pay for men. 78% of employers reported that median hourly pay was higher for men than for women. For over a quarter of reporting employers (27%), median hourly pay for men was at least 20% higher than for women.

Share of reporting employers where average pay was higher or lower for women than for men

% of employers where median pay is:



Source: Gov.uk, Gender pay gap reporting data

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 8.7%, compared to 12.8% in employers with 250-499 employees. However, larger firms tended to award higher bonus pay to men than to women.

Across all reporting employers, the proportion of male employees receiving bonuses was 35.9%. The average proportion of female employees receiving bonuses was slightly lower at 34.3%.

Employers included in the reporting requirements accounted for around 56% of UK employees

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

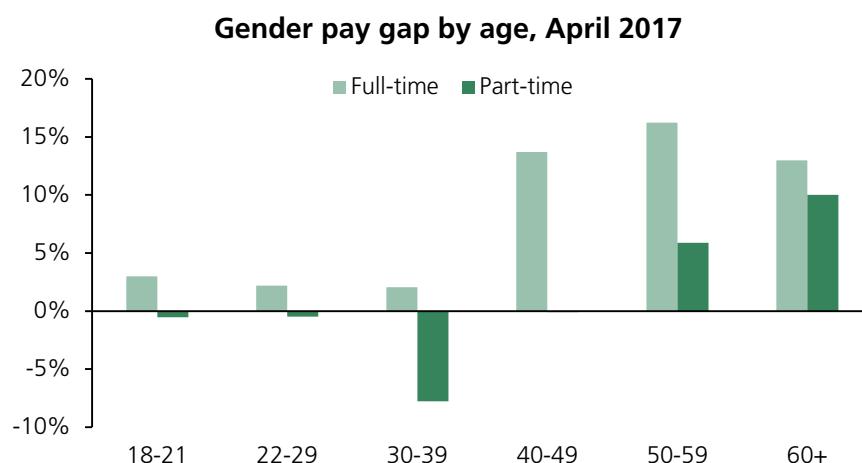
² Reporting data is published on the gov.uk website, [Gender pay gap service](#) [accessed 6 April 2018].

³ Department for Business, Energy & Industrial Strategy, [Business population estimates for the UK and regions 2017](#), 30 November 2017

⁴ Figures are the mean average of the median and mean pay gaps 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

3. Age

The gender pay gap varies markedly by age. The gap is small or negative for employees in their 20s or 30s. For older age groups, the gap widens considerably (although less so for part-time employees).



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. A reduction in working hours appears to have an adverse impact on growth in earnings, as discussed below. Individuals' employment options may also be restricted by the need to balance work with family commitments and the availability of flexible working practices.

Another explanation is generational differences: younger workers tend to have different characteristics to older workers. For example, they 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

To what extent does the difference in the gender pay gap between older and younger age groups reflect differences in pay between mothers and non-mothers?

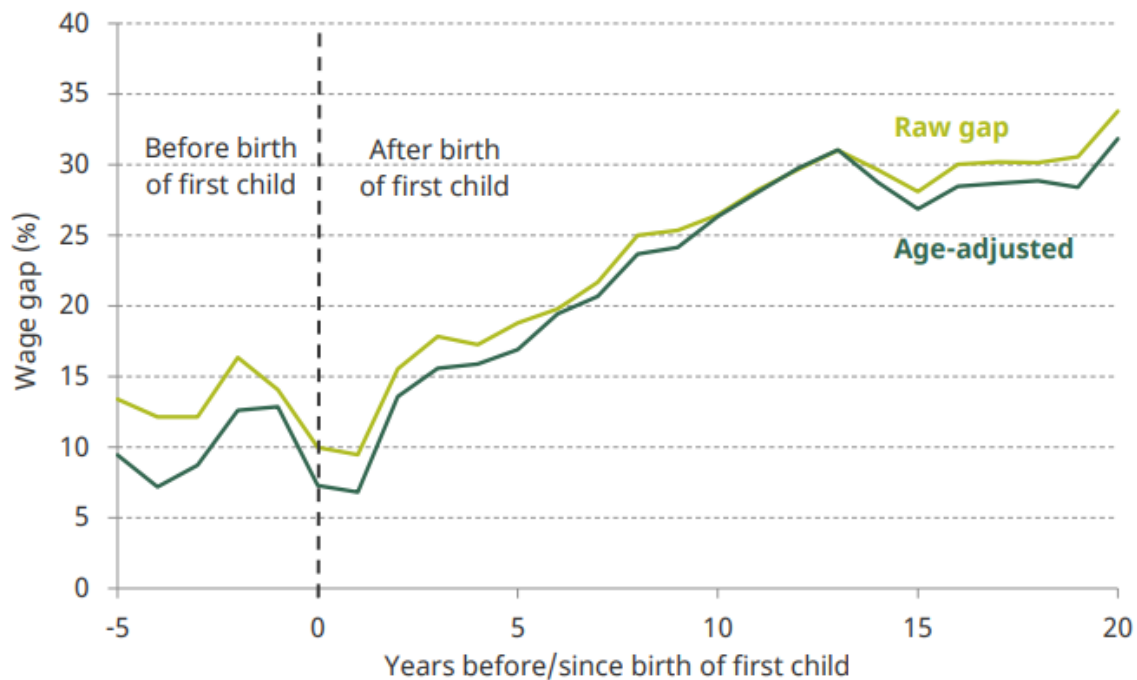
Analysis by the Institute for Fiscal Studies (IFS) finds that, looking at the period 1991 to 2015, the gap between male and female hourly earnings grows gradually but steadily in the years after parents have their first child.⁵ The pay gap (based on mean hourly earnings⁶) between mothers and fathers is around 10% before the birth of their first child,

⁵ 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.

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

but this widens to a gap of around 30% by the time the child is 13 years old:

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, Figure 5

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% 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 rounding). The IFS estimates that on average, **around half of the increase is explained by mothers spending less time in full-time work**. The remainder of the increase is down to other factors besides experience, which the research does not explore. However, these factors may include "women being less likely to work in more productive firms, less likely to successfully bargain for higher wages within a given firm,

and more likely to enter family-friendly occupations over high-paying ones.”⁷

It is possible to distinguish between the effect on the pay gap of taking time out of employment all together, and the effect of working part-time rather than full-time. **Gender differences in part-time working explain more of the widening in the pay gap than the time mothers spend out of employment.** Indeed, “the effect of extra part-time experience on women’s wages is negligible.”⁸

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

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. Conversely, for non-graduates other factors besides experience play a greater role in widening the pay gap after the birth of the first child.

The IFS research indicates that the explanation for the gender pay gap is more complicated than a simple narrative where a gap arises because women switch from full-time jobs to lower-paid part-time jobs. As observed earlier in this paper, it remains true that average pay for part-time jobs is lower than full-time jobs. However, this 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.

3.2 Generational differences and education levels

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 14% in 2017, down from 24% for people in their forties in 1997.

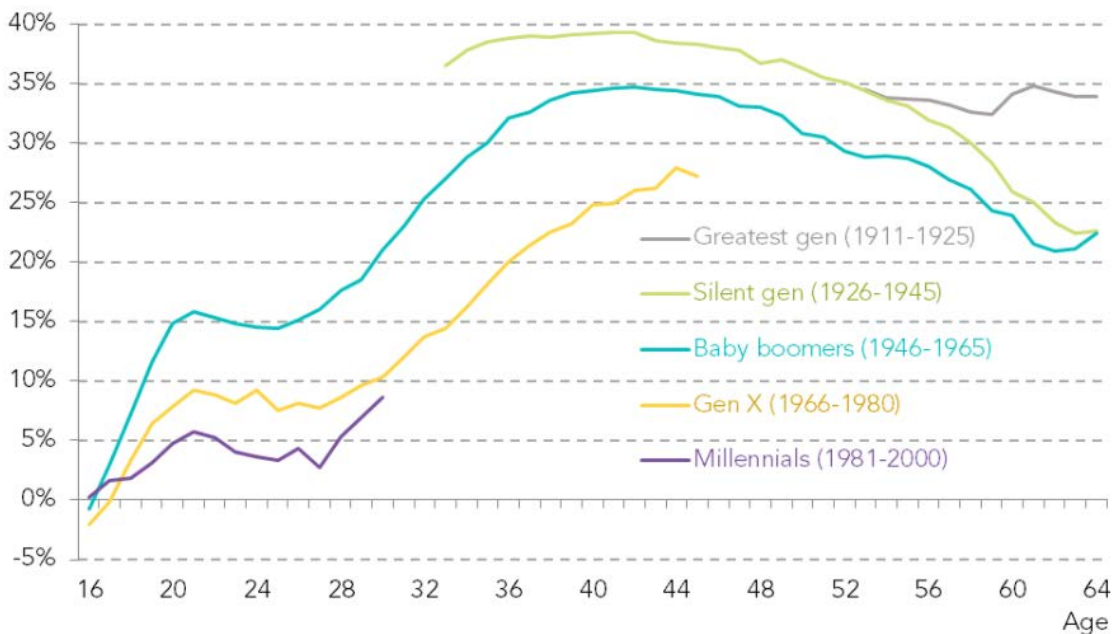
Resolution Foundation analysis shows how the gender pay gap at a given age has reduced for successive generations. For example, the gender pay gap for people in their twenties was around 16% for the baby boomer generation (born 1946-65) but had shrunk to 5% for millennials (born 1981-2000), as shown in the chart below.⁹

⁷ [IFS, p3](#)

⁸ [IFS, p16](#)

⁹ Laura Gardiner, [Is the gender pay gap on the brink of closure for young women today?](#), Resolution Foundation blog, 4 January 2017

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



Notes: The gender pay gap is the difference between the median hourly earnings of men and women as a proportion of men's median hourly earnings; figures for each generation are derived from a weighted average of estimates by single year of age for each single-year birth cohort within that generation; generations are included if at least five birth years are present in the data; for the years in which it is available, published Annual Survey of Hours and Earnings pay estimates (which cover the UK as a whole, as opposed to the microdata which only covers Great Britain) are used as control totals, and the results from each individual dataset are indexed to those from the Annual Survey of Hours and Earnings to create a consistent series over time.

Source: RF analysis of ONS, *Quarterly Labour Force Survey*; ONS, *Annual Survey of Hours and Earnings*; ONS, *New Earnings Survey Panel Dataset*

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.

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. 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.¹⁰

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

The gender pay gap has reduced since the 1990s for people qualified to GCSE or A Level standard, but has changed little for graduates.

¹⁰ [IFS_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.

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.

The gap is very large for skilled trades occupations and process, plant and machine operatives where men comprise a very large majority of full-time employees (92% and 89% respectively at Q2 2017). However, the gap is relatively small among administrative and secretarial roles and caring, leisure and other service occupations, where women form the large majority of full-time employees (66% and 78% respectively).

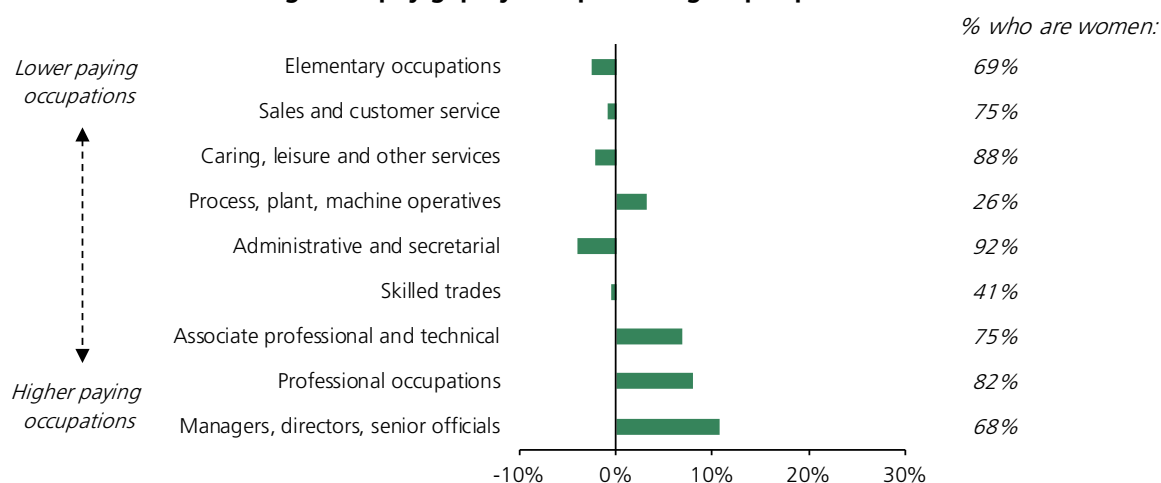
The gap is lowest for sales and customer service occupations (3.6%), where similar numbers of men and women are employed full-time.¹¹

Full-time gender pay gap by occupational group, April 2017



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.

Part-time gender pay gap by occupational group, April 2017



¹¹ ONS, *UK Labour Market, October 2017*, 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 look at the share of male and female employees working in different occupations based on a more finely-grained classification (around 350 occupations in all).¹² We look at full-time employees first, then look at all employees. Occupations are grouped according to how average pay for each occupation compares to the overall pay distribution.¹³

- **Low-paying occupations** are defined as those where median pay is less than the 25th percentile of the overall distribution (the 25th percentile is the point at which 25% of people earn less, and 75% earn more): this is £10 per hour for full-time employees and £8.95 for all employees
- **Lower middle occupations** are those with median pay between the 25th percentile and median of the overall distribution: so between £10 and £13.94 per hour for full-time employees, or £8.95 to £12.44 for all employees
- **Higher middle occupations** are those with median pay between the median and 75th percentile of the overall distribution: so between £13.94 and £20.28 for full-time employees, or £12.44 to £18.81 for all employees
- **High-paying occupations** are those with median pay above the 75th percentile of the overall distribution: over £20.28 per hour for full-time employees, or over £18.81 for all employees.

Looking first at full-time employees, a higher share of women than men are employed in the lowest-paying occupations. In April-June 2017, 28% of female full-time employees worked in occupations with median pay below £10 an hour, compared to 21% of men.¹⁴

Men working full-time are more concentrated in the highest-paying occupations. 24% of male full-time employees were employed in occupations with median pay above £20.28 an hour, compared to 20% of women.

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

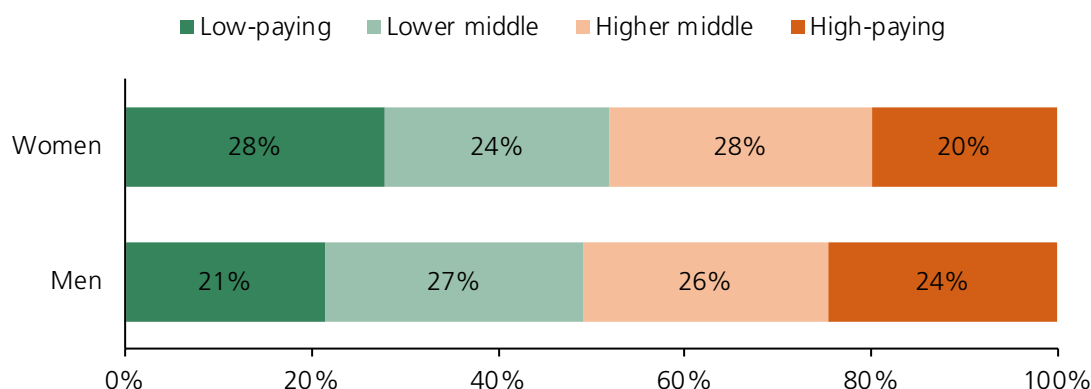
¹² Analysis is based on occupations as listed in the ONS Standard Occupational Classification, 4 digit codes.

¹³ When looking at full-time employees, occupations are grouped according to median pay of full-time employees in each occupation. When looking at all employees, occupations are grouped according to median pay of all employees. So an occupation may be categorised differently in the full-time analysis than in the 'all employee' analysis.

¹⁴ This does not mean that 28% of female full-time employees earned below £10 an hour; rather, 28% worked in occupations where median pay was less than £10 an hour.

Men and women working in high- and low-paying occupations, UK, Q2 2017

Full-time employees



Note: Pay data are missing for a small number of occupations with around 140,000 male full-time employees and 20,000 female full-time employees.

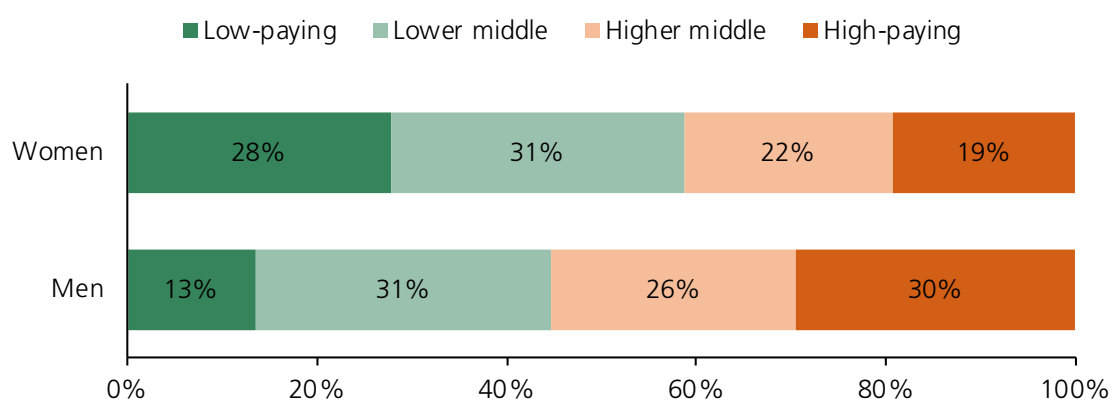
Sources: ONS, *Annual Survey of Hours and Earnings - 2017 Provisional Results*, Table 14.6a and ONS Labour Force Survey Q2 2017 microdata

If we include part-time employees also, then the differences between men and women become starker. This is because many more women than men work part-time and part-time workers are more concentrated in lower-paid occupations.

Thus 28% of all female employees are found in occupations with median pay below £8.95 an hour, compared to 13% of men. 30% of men work in occupations with median pay above £18.81 an hour, compared to 19% of women.

Men and women working in high- and low-paying occupations, UK, Q2 2017

All employees



Note: Pay data are missing for a small number of occupations with around 120,000 male employees and 10,000 female full-time employees.

Sources: ONS, *Annual Survey of Hours and Earnings - 2017 Provisional Results*, Table 14.6a and ONS Labour Force Survey Q2 2017 microdata

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

Recent analysis by the Office for National Statistics attempted to quantify how much of the gender pay gap is attributable to differences in occupation and other characteristics of male and female employees,

based on data from the Annual Survey of Hours and Earnings (ASHE). Occupational differences explained around 23% of the gender pay gap. However, looking across all the factors included in the model, the analysis could only explain around 36% of the gender pay gap in total, meaning almost two-thirds of the gap was left unexplained.¹⁵

One reason why the model could not explain so much of the gap is that it only included a limited range of factors: it took account of employees' age, length of time in post, whether or not the employee was working full-time, occupation, region, business size and industry sector. It did not take into account other factors likely to be relevant, but on which no information is available from the Annual Survey of Hours and Earnings. Ideally, the model would also have looked at factors including whether employees have children or other caring responsibilities, their education level, or the number of years for which they have been working full-time or part-time (see section 3.1 above).

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 are 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.

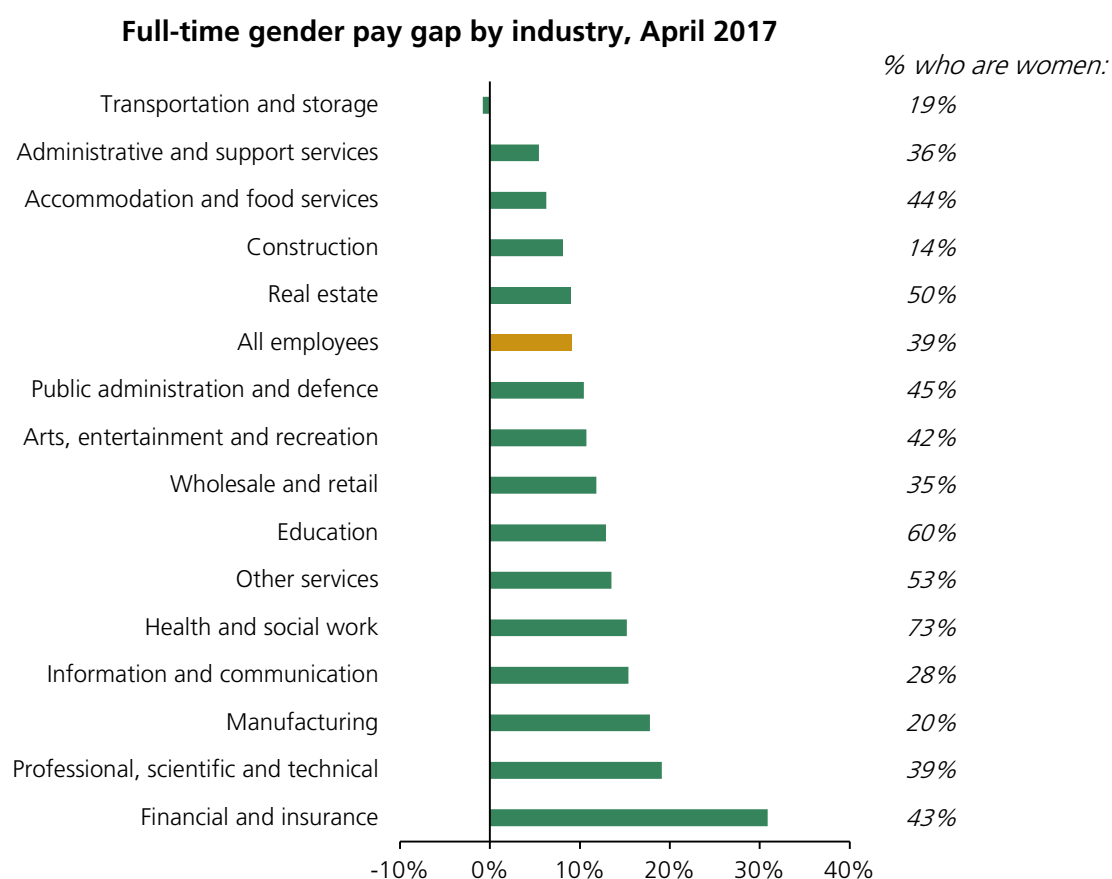
¹⁵ Anna Ardanaz-Badia and Joshua Rawlings, [Understanding the gender pay gap in the UK](#), Office for National Statistics, 17 January 2018

5. Industry

Similarly to occupations, 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 in that sector.

For full-time employees, the gender pay gap is largest in financial & insurance activities (30.9%). 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.¹⁶



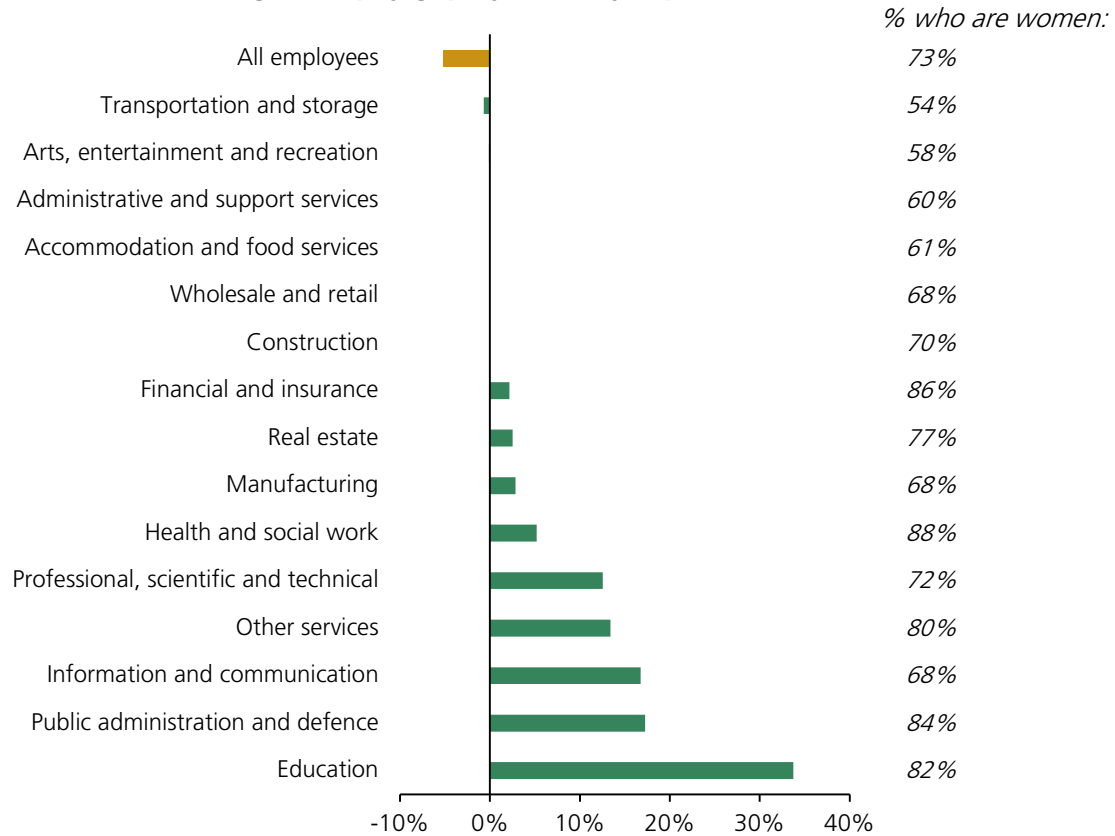
In most sectors, the pay gap for part-time employees is small or even negligible. The part-time pay gap is largest in the education sector at +33.7%, as can be seen in the chart below.

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

¹⁶ Percentage figures in industry charts show the proportion of employee jobs in each sector that were held by women at Q2 2017, based on the ONS Workforce Jobs series (accessed via Nomis).

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

Part-time gender pay gap by industry, April 2017

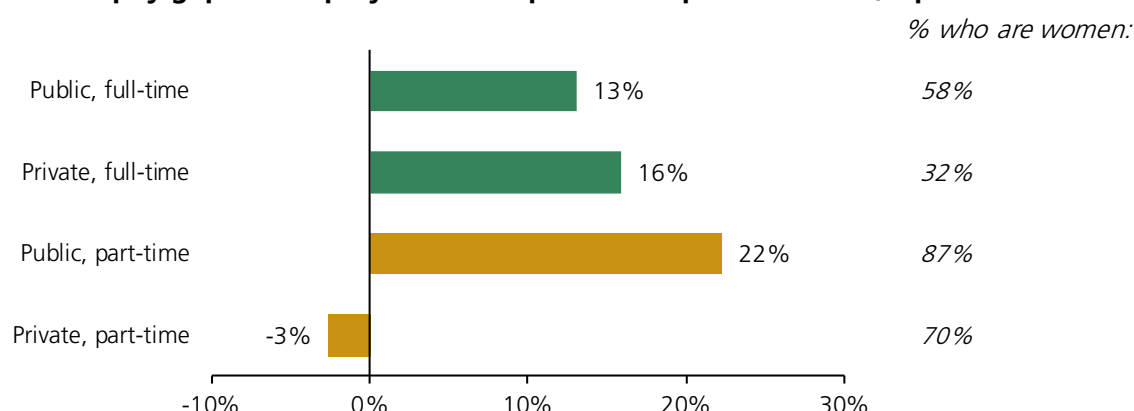


6. Public and private sector

At April 2017, the gender pay gap for full-time employees was 13.1% in the public sector and 15.9% in the private sector.

Both these figures are higher than the 9.1% 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.

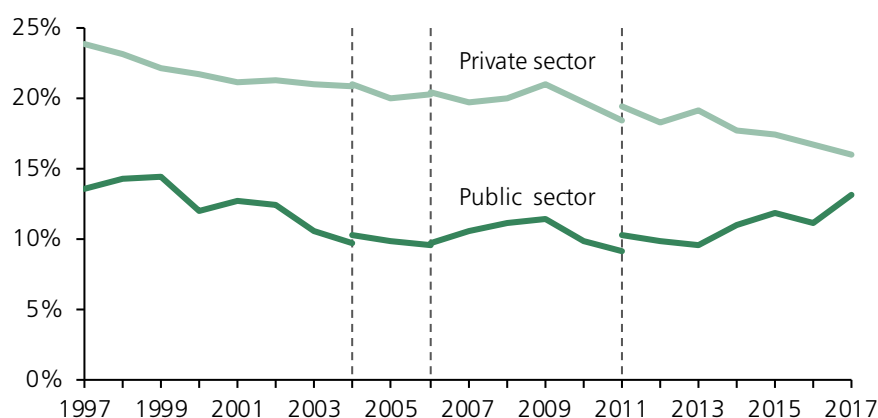
Gender pay gap for employees in the public and private sector, April 2017



For part-time employees, a small negative gender pay gap in the private sector (-2.6%) contrasts with a large part-time gender pay gap in the public sector (+22.3%). 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) 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:

Gender pay gap in the public and private sector Full-time employees, 1997-2017



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

7. Region

The gender pay gap for full-time employees was negative in Northern Ireland in April 2017, at -3.4%. It was positive in all other regions and countries of the UK, ranging from 6.3% in Wales to 14.6% 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.

Gender pay gap for full-time employees, April 2017

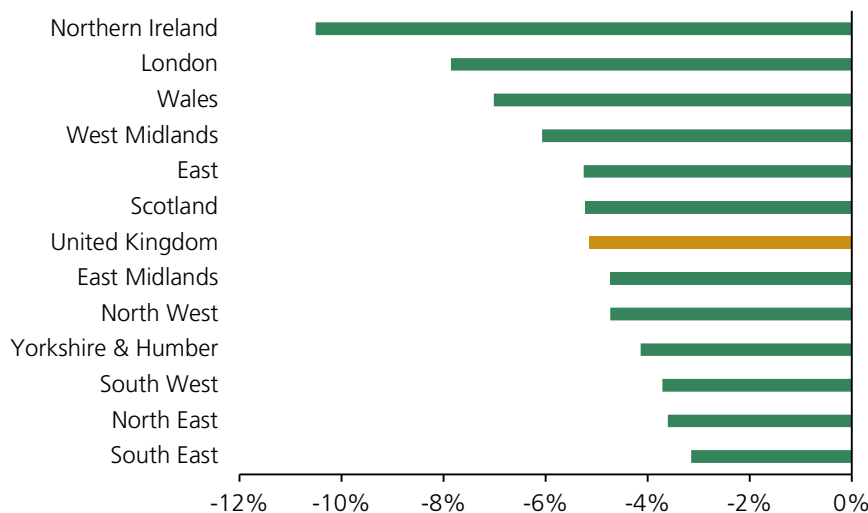
By country and region of workplace



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

Gender pay gap for part-time employees, April 2017

By country and region of workplace



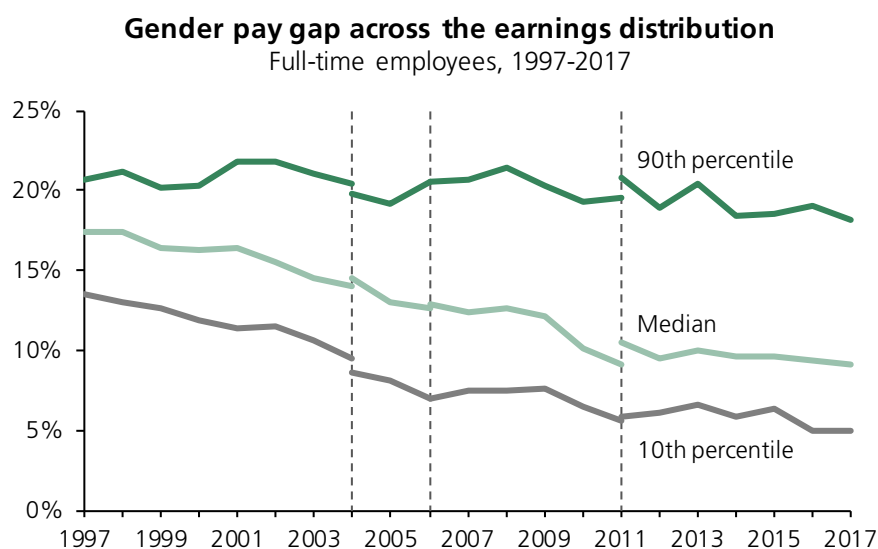
8. Gender pay gap for higher-paid and lower-paid employees

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 wider for high-paid workers than it is for low-paid workers.

As of April 2017, to be in the highest-paid 10% of male full-time employees required hourly earnings greater than £31.25 (excluding overtime). To be in the highest-paid 10% of female full-time employees required hourly earnings greater than £25.57. This gives a **gender pay gap of 18.2% at the 90th 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 £7.97 an hour to be in the lowest-paid 10% of female full-time employees and less than £8.39 to be in the lowest-paid 10% of men. This gives a **gender pay gap of 5.0% at the 10th 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 but has reduced since 2008:



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

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.¹⁷

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.¹⁸

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.”

¹⁷ *Equality Act 2010*, section 78(1)

¹⁸ *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.¹⁹ 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 78.²⁰ 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.²¹

[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

¹⁹ [Equality Act 2010, section 216](#)

²⁰ [HL Deb 11 March 2015 cc666](#)

²¹ [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 2015.²² The Government published its [response](#) on 12 February 2016.²³ 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 2016.²⁴ 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 2016,²⁵ and [responded](#) to the consultation on 24 January 2017.²⁶ 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.

²² GEO, *Closing the Gender Pay Gap*, July 2015

²³ GEO, *Closing the Gender Pay Gap Government response to the consultation*, February 2016

²⁴ [Mandatory Gender Pay Gap Reporting](#), Gov.uk [accessed 18 December 2017]

²⁵ GEO, [Mandatory Gender Pay Gap Reporting – Public Sector Employers](#) [accessed 18 December 2017]

²⁶ 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.²⁷

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.

²⁷ 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.²⁸

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 compliance²⁹

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.³⁰

Although it is clear that the reporting duty in the public sector may be enforced by the EHRC,³¹ 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*.³²

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—

²⁸ *Explanatory Memorandum to the Equality Act 2010 (Gender Pay Gap Information) Regulations*, para 7.12

²⁹ *Explanatory Memorandum to the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017*, para 7.16

³⁰ EHRC, *Closing the gap: enforcing the gender pay gap regulations*, March 2018

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

³² 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 73.³³

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

³³ [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.³⁴

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.³⁵

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.³⁶

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.

³⁴ Equality and Human Rights Commission, *Closing the gap: Enforcing the gender pay gap regulations*, March 2018, pp7-8

³⁵ Ibid., p12

³⁶ 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.³⁷

Despite this, the Equality and Human Rights Commission initially estimated that 1,456 firms failed to report on time.³⁸ 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.³⁹ 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".⁴⁰

9.5 BEIS Committee report

On 23 July 2018 the Business, Energy and Industrial Strategy (BEIS) 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.⁴¹

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.⁴²

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

³⁷ [Equal Pay: Written question – 134058, 23 March 2018](#)

³⁸ [Warning to companies that missed gender pay deadline](#), FT.com, 5 April 2018

³⁹ [Letter to the Chair of the Equality and Human Rights Commission, relating to gender pay gap reporting, 29 March 2018](#)

⁴⁰ [Letter from Chair of the Equality and Human Rights Commission, regarding Gender Pay Gap](#), 13 July 2018

⁴¹ House of Commons Business, Energy and Industrial Strategy Committee, *Gender pay gap reporting*, Thirteenth Report of Session 2017–19, HC 928, 23 July 2018

⁴² 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.⁴³

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**.⁴⁴

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.⁴⁵

⁴³ Ibid., p9

⁴⁴ Ibid., p11

⁴⁵ Ibid., p12

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