

Irish Corporate Governance (Gender Balance) Bill 2021 – New Bill seeks to better gender balance on Irish Boards

by Sarah Fagan

Demonstrating its commitment to gender balance in the workplace the House of the Oireachtas passed the Gender Pay Gap Information Act 2021 on 13th July 2020 and was signed into law by the President on 15th July 2021. The Act requires every state body and a large number of private sector organisations to report their gender pay information along with supporting narrative.

While this Act is a very welcome piece of legislation, there are still some issues with gender balance at senior levels in Irish businesses. To help address this imbalance, a new private member's bill has been brought forward, which proposes to establish a 40% quota for female representation on company boards.

The Irish Corporate Governance (Gender Balance) Bill 2021 (the "Bill") is currently at second stage in the Dáil after being submitted in September 2021. In this article, Sarah Fagan, recently appointed Managing Director at Adare Human Resource Management provides background and context to both the Act and Private Member's Bill and what employers need to consider.

Gender Pay Gap Information Act 2021

The Gender Pay Gap Information Act 2021 had been in discussion for some years with a number of commitments given to have it enacted as early as January 2020. Therefore, it should be no surprise that it is a legal requirement for organisations to disclose the gap in pay between female and male employees, such that it is defined as the difference in the mean and median hourly remuneration of women compared with men in a particular organisation. While initially relating to larger organisations of 250+ employees, all employers can expect to be impacted by the Act over the coming years and should therefore take the

appropriate measures now.

Under the Act, organisations are obliged:

- to analyse and publicly report the pay gap between its male and female employees, including bonuses.
- to publish a statement setting out the reasons for the differences and any proposed actions to be taken by the employer to eliminate the gap. This element is seen as crucial as it sets out the narrative the employer is putting forward, which can help or hinder its efforts to attract talent, particularly female talent.

Despite much publicity about the introduction of the Act, it is surprising to see that just one in ten (11%) organisations currently record their gender pay gap, according to our HR Barometer Report (November 2021). Despite such a low number of organisations recording and analysing their gender pay data, two thirds (69%) believe their gender pay gap is in line with the national average of 14.4% or below it.

To achieve a more meaningful gender balance, a holistic approach must be taken. Awareness is just step one; practical policies and practices should be put in place to back up the intention for real change. Measurable, practical strategies need to be implemented to shift the scales in favour of a fairer and more transparent gender

balance landscape, including setting meaningful targets for change and involving both genders to deliver a better balance.

In addition to the ethical argument for gender balance, there are additional far-reaching benefits to an equal opportunity workplace. We know getting the balance right across organisations drives a more successful and cohesive business environment for everybody. This includes growth in revenue/fundraising and ultimately success. It creates better workplaces and better decision making led by an engaged workforce with opportunities for everyone.

For real change to happen, the workplace must become a more welcoming environment for both men and women. Balance is not exclusively a women's issue, it involves everyone from the top down, and success in shifting the dial comes when balance is embraced by all. There are so many practical initiatives that can be introduced, but these cannot just be targeted at women: there must be a universal approach.

Gender balance is about changing the dynamic towards a more inclusive working environment without instilling fear that the pendulum will swing too far in the opposite direction. Ultimately, it's about fairness and equality, something every employer should be striving for in their organisation.

Gender Balance on Irish Boards

While the Gender Pay Gap Information Act 2021 helps support the overall gender balance, there is still an issue with senior positions in Irish organisations. According to the Gender Balance in Business Survey 2021 from the Central Statistics Office just 13.4% of CEOs in Ireland are female, up slightly on 2019 when the figure stood at 11.5%.

The same survey found that 14% of Chairpersons of Irish companies were female, women made up 21.8% of Boards of Directors and 28.1% were Chief Financial Officers.

In 2021, more than a third (36%) of persons appointed to Senior Executive positions who were in their role for less than one year were women while 24% of Senior Executives in their roles for five or more years were women. In 2021, three quarters (76%) of all Senior Executives in their roles for five or more years were men.

Irish Corporate Governance (Gender Balance) Bill 2021

To help address this issue a new Private Members' Bill was brought forward by Fine Gael TD, Emer Higgins in October 2021. The Irish Corporate Governance (Gender Balance) Bill 2021, would, if enacted, establish a 40% quota for female representation on company boards. This was also supported in a submission to the Citizen Assembly in 2020 by the Irish Human Rights and Equality Commission who recommended that the Government implement a system of statutory gender quotas for company board membership.

The Bill includes a stipulation that 33% of a company's board must be women after the first year of its enactment. This quota would then rise to 40% after three years.

The Bill would require companies to submit a statutory declaration to be made by the chairperson of the governing body, e.g., board, in the Annual Return or annual financial statements that the gender

balance requirements have been complied with. If they are unable to comply then they will be required to disclose the reasons why. And, where a company failed to meet the gender balance quota without a credible explanation, they could become liable for an application to the High Court for an order directing them to comply with Bill (or Act if enacted). The quotas would apply to boards and governing councils of designated companies, corporations, undertakings, charities and bodies in the State.

There are a few exemptions laid out, including for companies with fewer than 20 employees. Other exemptions include:

- unincorporated associations,
- partnerships,
- limited liability partnerships,
- single director companies,
- micro company, or,
- other corporate body that has an annual turnover of less than €750,000

A report from the Balance for Better Business Review Group, published in December 2021, highlighted that Boards of the ISEQ20 comprised 30% women and that 42% of ISEQ20 listed companies had more than three female Board members.

Attracting & Retaining Female Talent

But more needs to be done to attract and retain female talent, particularly at the most senior levels of organisations. The idea of introducing a quota led approach is supported by international evidence and is an approach adopted by many other countries. In Europe, France, Belgium, Italy, Norway, Germany and the Netherlands operate on a quota-based approach.

One of the main barriers that has frequently been highlighted as to why more women do not progress in the workplace is the link to flexibility and managing work and family life balance. If one good thing has come from the current health crisis it is that

employers have accepted degrees of remote working practices and models, thus affording the same level of flexibility that previously didn't exist prior to Covid.

It is generally acknowledged that prior to the pandemic requests for remote working arrangements would have been difficult to get managerial consent, but the last two years have demonstrated that remote, and hybrid working can benefit both the employer and employee. Therefore, greater flexibility around working arrangements will become more common amongst Irish organisations, helping to share parental responsibilities and strike a balance between work and family responsibilities in order to level the playing field somewhat.

Regardless of any introduction of gender quotas (or sometimes what is seen as more acceptable are gender targets), organisations need to ensure there are clear pathways for female employees and a uniform approach to providing the necessary support to succeed and progress to senior levels. But gender balance is not just about getting more women into senior positions; it's about getting the right person with the right skills into the position they deserve, regardless of their gender and the employer's responsibilities in carving the way and investing in career development and progression.



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Recently appointed Managing Director of Adare Human Resource Management.