

Proposals for promoting greater transparency in the private sector:

A consultation on improving gender
equality in the workplace

August 2009



**Equality and
Human Rights**
Commission

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Foreword by the Equality and Human Rights Commission

Trevor Phillips

Chair

**Equality and Human Rights
Commission**

Next year will mark 40 years of the Equal Pay Act – an anniversary well worth marking. It may not have achieved everything it set out to do, but nevertheless we should pause and give credit to a piece of law which helped to challenge and change the society we live in. We know, though, that one piece of legislation cannot and did not solve what is a major and persistent problem. In 2009, we still live in a society where for every pound earned by our sons, our daughters will take home less than 85 pence. The pay gap between men and women is not just a moral issue, it is an economic issue. For markets to function and businesses to deliver, reward needs to be fairly distributed. At its simplest, if we do not make proper use of all the talents that our workforce has to offer, we are failing to make the most of our opportunities. We have seen the evidence. A gender pay gap still exists at levels that nearly all of us, whether

in the private or public sector, believe is untenable, economically inefficient and morally wrong.

A central problem is that, while the Equal Pay Act has enabled individuals to challenge instances of inequality (assuming they have the time, money and energy to pursue a case) the law as it stands has failed to generate systematic action to tackle the underlying causes of the pay gap. We know that direct discrimination against women is an element driving unequal pay in some cases, but we also know that, far more often, the causes of the pay gap involve the interplay of much more subtle factors. These include such things as educational background and the influence of social norms on the kind of work which men and women choose to do, as well as organisational issues such as the availability of quality part-time work at all grades. These underlying causes may be well understood at a macro or policy level, but they need to be more widely understood and engaged with at an organisational level as well.

That is why the Equality and Human Rights Commission (the Commission) welcomes the Government's drive to promote gender pay transparency in the private sector. As we know, if you cannot see a problem it is often very hard to tackle it. I would actually say it is impossible. You are left relying on anecdote and broad-brush approaches rather than actually helping business to see where there may be an issue and discover the best mechanisms for dealing with it. But this debate is also broader than that. It is about business reputation and seeing gender pay transparency as a helpful management tool for change. Shareholders, consumers and staff are demanding even more transparency from the companies they have a stake in, use and work for. We want to work with businesses on the best ways to promote change using the most innovative approaches to employment and retaining and promoting the most talented without any artificial barriers. A lot of businesses are already doing this. We want to learn from them and share best practice.

We believe that, once organisations start to embrace greater transparency on pay, progress on recognising and challenging patterns of pay inequality will follow naturally, step by step. Within the Government's proposals for the private sector is a reserve power in the Equality Bill which, if engaged, could lead to mandatory reporting of information about their gender pay gap by companies of 250 or more employees. But the aim is to empower the non-public sector employers to report on a voluntary basis, so that this power would only be exercised if progress on gender pay transparency on a voluntary basis has not been made by the end of a four-year period.

The Commission along with the Confederation of British Industry and the Trades Union Congress and other key partners are working with the Government, the business community and stakeholders to help develop the proposals for gender pay reporting by non-public sector employers – which will be promoted on a voluntary basis. This consultation document is an important stage in the work being done to identify the most appropriate way for employers to carry out this reporting. We have outlined a range of possible approaches in this document and look forward to receiving your input. In particular, we are keen to hear

from employers about examples of work they are already doing to promote gender pay equality and transparent approaches. This will help us to better understand the challenges and opportunities in the private sector so that we can develop proposals on the back of existing good practice.

It is the Commission's belief that most employers appreciate the need for progress and recognise that action to deliver equality for all their employees is part of being a successful, responsible and respected employer. But we also recognise that we have a key role to play in helping to develop a reporting framework which suits different organisational structures and builds on the work already in place in many businesses. The responsibility for progress rests on many shoulders. We know it is not right that, nearly 40 years on from the introduction of equal pay legislation, women are still paid less than men, and we must, as a society, renew the imperative to eradicate this basic but persistent inequality.

Chapter 1

Preface

Purpose of the document

1.1 This consultation document seeks to identify the most appropriate and least burdensome way for employers to report on progress on recognising and challenging gender pay inequality. By invitation from the Government, the Commission is working with relevant organisations to develop the most suitable basis for companies to report voluntarily on their gender pay gap, as well as on how this information could be published. In this document we outline a range of possible approaches and look forward to receiving your input on these, but we also want to find out what is already happening in non-public sector organisations and we would therefore also like you to tell us how your organisation and your industry approaches the gender pay gap.

Who this consultation is aimed at

1.2 This consultation is aimed at non-public sector employers of 250 or more employees, as well as representative bodies and trade unions organising in these sectors. We would also like to hear from organisations working towards gender equality, and other stakeholders with an interest in gender pay reporting.

1.3 The Government's proposals in respect of the public sector are the subject of a separate consultation being run by the Government Equalities Office. These are set out in Appendix 3. The questions in Appendix 3 do not form part of this consultation.¹

Duration of this consultation

1.4 Comments are invited for receipt by the **28 October 2009**.

How to respond

1.5 Please respond to this consultation by using the response form at Annex 1. Responses should be sent:

By email: genderpayreporting@equalityhumanrights.com

By post: Gender Pay Reporting Consultation, Brid Scanlon, Equality and Human Rights Commission, 3 More London, Riverside Tooley Street, London SE1 2RG

Queries about the consultation

1.6 If you have any queries about this consultation or if you require this document in a different format, please contact Brid Scanlon:

By telephone: 020 3117 0223

By email: Brid.Scanlon@equalityhumanrights.com

By post: Gender Pay Reporting Consultation, Brid Scanlon, Equality and Human Rights Commission, 3 More London, Riverside Tooley Street, London SE1 2RG

Freedom of Information

1.7 The information contained in your response to this consultation may be shared with colleagues within the Equality and Human Rights Commission (the Commission) and with the partners with whom we are working to develop the proposals. Your response may also be published in a summary of responses received.

1.8 All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000 or the Data Protection Act 1998. We would be grateful if you could let us know if you want information that you provide to be treated as confidential and also provide an explanation as to why you regard the information as confidential. We will always take account of a request for confidentiality and the reasons for it, but unfortunately we cannot give an assurance that confidentiality can be guaranteed in all circumstances.

1.9 The Commission will process your personal data in accordance with the Data Protection Act 1998. This means that, in the majority of circumstances, your personal data will not be disclosed to third parties.

Code of practice on consultation

1.10 The Commission is committed to effective and accessible consultation. We adhere to the Government's Code of Practice on Consultation which sets out seven consultation criteria:

1. When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to and clearly targeted at those people the exercise is intended to reach.

5. The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Chapter 2

Executive Summary

2.1 The Commission is working with the Government, the business community, trade unions and stakeholders to help develop proposals for gender pay reporting by non-public sector organisations, which will be promoted on a voluntary basis. This consultation document seeks input from employers, unions and others about their preferred approach.

2.2 Nearly 40 years after the Equal Pay Act, the gender pay gap remains at 22.6 percent. This is higher in the private sector where around 80 percent of all employees work. Our own inquiry into the financial services sector has revealed gender pay gaps of up to 60 percent in annual gross pay and as much as 79 percent in annual incentive (bonus) pay.² Clearly we can only tackle the pay gap if we can see it and measure it at the organisational level.

2.3 It is the Commission's belief that most employers appreciate the need for progress and recognise that action to deliver equality for all their employees is part of being a successful, responsible and respected employer. Shareholders, consumers and staff are demanding ever more transparency from the companies they have a stake in, use, and work for. It is essential we work with businesses on the best ways to promote change using the most innovative approaches to employment and retaining and promoting the most talented without any artificial barriers.

2.4 The Equality Bill contains a reserve power to make regulations requiring mandatory reporting of information about their gender pay gap by non-public sector employers with 250 or more employees. We believe that if businesses start to embrace greater transparency on pay, progress on recognising and challenging patterns of pay inequality will follow naturally, step by step, thereby avoiding the need for Ministers to consider new regulation.

2.5 We also recognise that we have a key role to play in helping to develop a reporting framework which suits different organisational structures and builds on the excellent work that is already in place in many businesses, but also takes account of the fact that some organisations will have little experience of reporting on equality issues. We are therefore seeking to strike a balance between establishing a framework for consistent reporting of meaningful information and ensuring that the proposals developed are proportionate, reflect good practice, and are flexible enough to reflect progress across a number of criteria.

2.6 In order to help achieve this balance, the Commission is inviting employers to tell us about any work they are doing to promote gender pay transparency. We want to hear what companies are doing to tackle the causes of any gender pay gap as well as what they are doing to collect pay data. We particularly want to know what works and what does not, so we are urging employers to describe any barriers or opportunities they may face or have overcome in engaging in this work, as well as any information about the nature of their business which might be relevant. Where employment data or non-pay indicators such as take up of flexible working or improved maternity

provision and promotion rates are concerned it would be helpful to know how their impact on the gender pay is being tracked.

2.7 Alongside the above we are seeking views on both the quantitative and qualitative measures which employers could use. We are inviting views on:

- The role of narrative;
- Using a single figure (comprising both full-time and part-time hourly pay) to represent the overall pay gap in an organisation;
- Using both full-time and part-time figures;
- Employing a breakdown by pay grade and data on employment by grade and type of work;
- Using the findings of a non-discriminatory analytical job evaluation; and
- Using the findings of an equal pay audit.

2.8 As we recognise that it may not be possible to come up with a ‘one size fits all’ approach, we are also asking for views on the possibility of providing employers with a range of reporting options, including any or all of those outlined above, plus any others that are deemed to be helpful, so that they could choose to report in the way best suited to their circumstances.

2.9 Government is committed to improving transparency in all sectors, and as part of the consultation on the specific duties underpinning the Public Sector Equality Duty the Government Equalities Office is consulting on specific duties for public bodies to report their gender pay gap and proposing they use the single figure (comprising both full-time and part-time hourly pay) to measure the overall pay gap in an organisation.

2.10 We are also asking for views about publication of information about the gender pay gap. We know that this is a matter of particular concern to employers and we would like to understand what those concerns are and how those who do publish data go about doing so.

Next steps

2.11 We expect to be asked to produce guidance to help employers use whatever approaches are adopted, but while such guidance will be informed by working directly with employers, it does not form the subject of this consultation document. We want to develop clear and meaningful proposals which will enable employers to undertake this exercise more simply and we will use the responses to inform the approaches we come up with. We are seeking a wide range of responses and look forward to hearing your views.

Chapter 3

The context for promoting gender pay transparency in the private sector

Measuring the gender pay gap at a national level

3.1 The gender pay gap, as officially calculated, is based on statistics from the Annual Survey of Hours and Earnings (ASHE).³ This is a government survey which provides information about earnings for employees by sex and full-time / part-time workers. Further breakdowns include by region, occupation, industry and age groups.

3.2. The gender pay gaps based on hourly earnings excluding overtime are:

- Overall gender pay gap = 22.6 percent (median), 21.0 percent (mean)
- Full-time gender pay gap = 12.7 percent (median), 17.1 percent (mean)
- Part-time gender pay gap = 39.9 percent (median), 36.6 percent (mean)⁴

3.3 Statistics show that the pay gap is wider in the private sector than in the public (a full-time gap of 20 percent (median) or 21.7 percent (mean) as compared to 11.1 percent (median) or 13.8 percent (mean))⁵ and evidence produced for the Commission in 2008 showed that far fewer private than public sector employers have carried out, are carrying out, or intend to carry out, equal pay reviews, 23 percent as compared to 43 percent.⁶ Of these, 17 percent (private sector) and 24 percent (public sector) have actually completed equal pay reviews.

3.4 At a national level, as calculated by the Government and Office for National Statistics, the gender pay gap is calculated on the basis of the median pay for women and men based on their full-time hourly earnings, excluding overtime.⁷ The median is the middle value above and below which equal numbers of employees fall when their earnings are arranged numerically.

Median women's pay is calculated as a percentage of median men's pay and the gender pay gap is the difference between this percentage and 100 percent. For example, the pay gap is 20 percent if women's pay is 80 percent of men's. The advantage of using the median is that the results are not distorted by a few extreme values. The disadvantage is that the middle value does not adequately capture concentrations of low or high pay.

3.5 The median combined single figure covering both full-time and part-time workers is the Government's measure against which tackling the gender pay gap is measured under PSA 15 on Equality. It is also the proposed measure for use in the public sector by organisations with over 150 employees.

3.6 The mean gender pay gap is the simple average of all employees' earnings: mean women's pay is calculated as a percentage of mean men's pay and the gap is the difference between this percentage and 100 percent. The advantage of calculating the mean or average is that it takes into account the full range of earnings. The disadvantage is that a few extreme values (such as a relatively small number of very high earners) can skew the results.

3.7 There is no single 'correct' measure of the gender pay gap – and there are various ways in which it can be measured. In particular there is an ongoing debate as to whether the mean or the median is to be preferred.⁸ As we have seen, the median is the measure preferred by the Government and the ONS.

The relevance of national statistics to employers and employees

3.8 The Commission recognises that the national statistics reflect the position in the labour force as a whole, and may not necessarily reflect the situation either within an individual workplace or for an individual employee. However, it is possible to infer from national statistics that an average woman working full-time from age 18 to 59 would lose £369,000 over the course of her working life,⁹ as compared to an equivalent male, and it is this which makes the progress towards closing the gender pay gap of such vital importance. Unequal pay can also imply low pay, which is a substantial cause not only of women's poverty (in work and in retirement), but also impacts on their partners and their children.

3.9 The Commission also appreciates that the causes of the pay gap are multiple and sometimes complex. They can include straightforward discrimination, but are also often the result of the more indirect influences of organisational culture, educational backgrounds, the influence of social norms on the kind of work which men and women choose to do; the context within which the business works, and the availability of quality flexible working at all levels. Also significant are how we as a society view childcare, the types of work that we encourage men and women to do, and the value we set on different kinds of work. Employers and unions will wish to see factors such as these taken into account when ways of measuring and reporting on the gender pay gap are being developed, because as well as knowing that there is a gender pay gap we need to know what is causing it if we are to tackle it effectively. We are inviting employers to suggest ways of incorporating this contextual information.

Work done to tackle the gender pay gap

3.10 Britain has a long history of working to reduce gender inequalities in the workplace, including the gender pay gap, with the Government, the former Equal Opportunities Commission (EOC), employers' associations and trade unions all making efforts to understand the causes of gender inequality and promote good equal pay practice. The EOC, and now the Commission, and others have produced a range of good practice advice, all of which has been widely taken up.

3.11 There have also been a number of major inquiries into the gender pay gap: the EOC Equal Pay Task Force; the Kingsmill Review of women's employment and pay, and the Women and Work Commission, chaired by the Commission's Deputy Chair, Baroness Prosser. The Women and Work Commission's latest report was published on the 29 July 2009.¹⁰

Good business practice

3.12 The Commission believes that most employers today recognise that ensuring women get equal pay for equal work is good business practice. It is about getting the best out of people and rewarding them appropriately for their contribution to profitability. It is also about recognising that women are as well educated as are men and, most importantly, they expect (and indeed have a legal entitlement to) equal pay for equal work. In a competitive world, equal pay is a business necessity.

3.13 The Commission also believes that most employers would acknowledge that a better understanding of the factors affecting women's experience in the labour market, including pay and reward, is essential to any effort to tackle the gender pay gap. It is only by gathering information about what the indicators are and what organisations are doing that we can start to move away from a reiteration of headline figures and towards a better understanding of the causes of the gap. We think that most businesses recognise that fair treatment and reward in business, as well as transparency on data, are important parts of building a strong organisation with a good business reputation.

The principles underpinning this consultation

3.14 The Commission is working in close consultation with business, unions and others to help develop proposals for gender pay reporting, but both we and they know that, if we are to create a useful and useable set of proposals, it is essential to learn from examples of good practice in the private sector.

3.15 We recognise that many private sector employers are already engaged in meaningful efforts to identify and address the obstacles to women's participation and progression that contribute to gender pay gaps. We are keen to hear about the work that organisations are doing, in order that this knowledge and experience can be developed and shared. We particularly want to know what works when measuring progress towards closing the gender pay gap, what evidence there is that it works, and what does not work. The more that we enable experience to be shared, the more likely it is that employers can make meaningful progress.

3.16 The Commission is firmly committed to the principles of good regulation which maintain that regulation should be proportionate, accountable, consistent, transparent and targeted.¹¹ We know that badly designed regulation can complicate issues, inhibit productivity and undermine efforts to change attitudes. The priority for our work on gender pay transparency in non-public sector is that we strike the right balance between establishing a framework for consistent reporting of meaningful information and ensuring that the measures we come up with are proportionate, build on existing good practice, and are flexible enough to reflect progress across a number of criteria.

3.17 To ensure that the Commission's work in developing ways of measuring and reporting on the gender pay gap is fully informed by current good equal pay practice, the Commission has set up high level stakeholder and technical advisory groups to help us develop the gender pay gap reporting measures and give them appropriate context and meaning to any numerical measures. The high level group will also consider and advise on wider contextual and other measures that will help to provide a more comprehensive understanding of gender inequality. The high level

group's terms of reference appear in Appendix 1. The Commission will also be drawing on the expertise of pay specialists. This consultation document is an important part of a structured process bringing together all relevant parties including major employers and asking them about their approach to the issues and possible solutions.

Chapter 4

Invitation to provide examples of existing good practice on measuring the gender pay gap and to respond to the consultation on proposals for measures (qualitative and quantitative)

Invitation to provide examples of existing practice

4.1 The Commission recognises that organisations have different ways of dealing with gender pay gaps, and will take different action depending on the challenges they face, and we hope that our questions will prompt employers to think broadly about the positive initiatives they are engaging in.

4.2 The Commission is committed to developing the most effective and appropriate way for employers in the private sector to achieve transparency of reporting on their gender pay gaps

and we are keen to hear from employers, business and union leaders and workforce representatives about the range of work they are doing on gender pay transparency and the key barriers or opportunities they face in engaging in this work. However, we also recognise that some employers will have relatively little experience in dealing with the issues, and we also want to hear from them which approach they would find the most effective.

4.3 We would like to hear about examples of good practice in tackling the causes of the gender pay gap as well as in the collection of data and the measurement of the gender pay gap and any experience organisations may have of carrying out job evaluation or an equal pay review. We would also like to hear about other initiatives, such as leadership programmes or opening up senior posts to flexible working that have had a demonstrable impact on the gender pay gap, and whether organisations consider that the impact of these is such as to necessitate the adoption of a range of indicators.

A call for evidence:

Please tell us about the work you are doing in your organisation to promote gender pay transparency. This may include: work you have done to collect gender pay and employment data; work you have done to measure the gender pay gap in your organisation; any experience you may have of carrying out an equal pay review and undertaking a job evaluation scheme; the role of leadership; the linkage between the achievement of equal pay and the pursuit of business objectives.

We particularly want to know what works when measuring progress towards closing the gender pay gap, and what does not, so please describe any barriers or opportunities you have faced or overcome in engaging in this work.

We also want to know if there is anything special about the nature of your business – characteristics of business size, for example, or features specific to your business sector – which you think we should be aware of.

4.4 The Commission's aim is to generate a culture of high expectations and a high level commitment to introducing pay transparency. We believe it is in everyone's interest to find ways of measuring and reporting on gender pay differences which avoid creating additional burdens on business and point the way towards possible solutions, and we are therefore very keen to receive suggestions additional to those which we have set out below. It is our view that the factors to be reported on are the overall average pay gap between male and female employees; or by reference to grade, or by reference to job description, but this need not exclude the

possibility of such matters being accompanied by a commentary or narrative to set the results in their proper context, nor does it rule out consideration of allowing for a range of options.

The role of narrative

4.5 We know that employers are keen to be able to set whatever quantitative measures are developed in the broader context of their overall approach to equalities, and possibly also to take an overview of what is going on in their specific industrial sector. While using a narrative element could potentially make it difficult to achieve consistency in terms of reading across between organisations and over time, providing for some narrative content would enable employers to describe the situation behind the headline figures and outline what progress they were making in tackling any unjustifiable gender pay gaps in their organisation. A narrative element might also be capable of being adapted to include the views of union or workforce representatives, allow for the development of the narrative over time and provide the opportunity to share good practice.

Question 1

What are your views on the role of narrative in measuring and reporting on the gender pay gap?

Using a single figure

(Note: by single figure we mean a gender pay gap that compares all women's pay (that is, full-time and part-time) with all men's pay)

4.6 Using a single figure representing the overall pay gap in an organisation could serve to highlight a significant gap warranting further investigation by the employer. The use of the single figure would ensure that the measure properly represented the valuable contribution that women make to the work force, for even when both full-time and part-time gender pay gaps are published people tend to concentrate solely on the full-time figure. Part-time employees make up one quarter of the UK labour force and more than 40 percent of women workers (five million women) and there is no reason why part-time workers should be worth less per hour than full-time workers.

4.7 The single figure is easy to understand making it practical and useable. It also has the advantage that it would avoid the somewhat arbitrary distinction between full-time and part-time jobs. The ONS defines part-time work as jobs where the employee works for 30 or fewer hours a week, but other economies use different definitions, for example in the United States the definition is 35 or fewer hours a week. Also, the increasing availability and popularity of flexible working is blurring the distinction between full-time and part-time. Using it would also align the measurement with what is proposed for the public sector.

4.8 The downside of using a single figure is that it would not provide nuanced information. For example, more information would be needed to look behind a single figure to find out whether the reason for a pay gap is under-representation of women in senior positions or low pay rates for part-time workers.

Question 2

We would welcome your views on using a single figure.

How do you think the figure should be calculated?

If you have any experience of using a single figure to capture the overall pay gap in an organisation – we would welcome hearing about it.

Using both full-time and part-time figures

(Note: this could also include the overall pay gap figure, as calculating the additional gap would be simple once the other gaps had been calculated)

4.9 Another suggestion that has been made is to use the figures for both the full-time and part-time gender pay gaps based on hourly earnings, excluding overtime.¹² The part-time gender pay gap would be based on a comparison of female part-time hourly earnings with male full-time hourly earnings. The part-time figure is seen as significant because many more women than men work part-time and national statistics show that the pay gap is much wider for part-time workers than for full-time workers (36.6 percent as compared to

17.1 percent respectively).¹³ But, this suggestion would not provide information about the way in which a pay gap in an organisation operates in terms of pay grade and type of job.

Question 3

We would welcome your views on using both full-time and part-time figures.

How do you think the figures should be calculated?

Have you any experience of using figures for both the full-time and part-time pay gaps?

Using a breakdown by pay grade and data on employment by grade and type of work

4.10 A more nuanced approach to the analysis of the gender pay gap in an organisation would be to provide a breakdown of the gender pay gap by pay grade alongside overall figures. This would provide more detailed information about where the organisation is most at risk of unequal pay and would also provide information about the incidence of occupational segregation – the concentrations of men and women working at particular levels or in particular types of work.

Job segregation accounts for much of the gap between men’s pay and women’s pay, because almost all of the highest-paying occupations (both within organisations and within the economy as a whole) are dominated by men, while the lowest-paying jobs tend to be done by women. Providing a breakdown of the gender pay gap by pay grade alongside overall figures would result in more meaningful information, but it would also be a more demanding exercise. It could also involve a greater risk of litigation.

Question 4

We would welcome your views on providing more detailed breakdown.

What do you see as the advantages and disadvantages of this as a means of measuring and reporting on the gender pay gap?

Using the findings of non-discriminatory analytical job evaluation

4.11 Non-discriminatory analytical job evaluation, while not universal, is fairly widespread, especially in larger establishments. Non-discriminatory job evaluation is the only sure way of establishing equal work, and as such,

is recognised in the equal pay legislation as providing employers with a defence against equal pay claims. Non-discriminatory job evaluation is also referred to in the Code of Practice on Equal Pay and is recommended in Commission good practice guidance on equal pay.

4.12 For all of these reasons, while job evaluation may not be considered appropriate for all organisations, it would seem sensible, where employers are already engaged in job evaluation, to enable them to build upon this. While experience from the public sector might suggest that, unless accompanied by some safeguards for employers, this route would be the most likely to lay them open to the risk of equal pay claims being taken against them. Broadly speaking the differences between pay determination, in the public and private sectors, make it is less likely that the widespread multiple equal pay claims now prevalent in the public sector would be repeated in the private sector.

Question 5

We would welcome your views on using the findings of non-discriminatory analytical job evaluation.

What do you see as the advantages and disadvantages of this as a means of measuring and reporting on the gender pay gap?

If you have carried out a non-discriminatory analytical job evaluation exercise did you find that it exposed you to equal pay claims?

Have you any experience of using a non-discriminatory analytical job evaluation exercise to tackle the gender pay gap?

Using the findings of an equal pay audit

4.13 An equal pay audit involves comparing the pay of men and women doing equal work, investigating the causes of those pay gaps and planning to close any pay gaps that cannot be objectively justified. An equal pay audit is concerned with a specific but important aspect of the gender pay gap – unequal pay for equal work.

It does not directly address other aspects, such as the lack of women in higher paying posts, but the audit may well help to surface them. Equal pay audits are recommended in the Code of Practice on Equal Pay as the best means of ensuring that pay systems are free from sex bias.

4.14 As we know from research carried out for the Commission that 17 percent of non-public sector employers have already completed an equal pay audit, it would seem sensible to explore whether they should be enabled to report on this.¹⁴ While this route would arguably provide the greatest degree of transparency it too might lay employers open to the risk of equal pay claims being taken against them. There is also the risk of inconsistency in the quality of audits carried out for example some determine equal work by using non-discriminatory job evaluation, while others are based only on job title or role.

Question 6

We would welcome your views on using the findings of an equal pay audit.

What do you see as the advantages and disadvantages of this as a means of measuring and reporting on the gender pay gap?

Have you any experience of using an equal pay audit to tackle the gender pay gap?

If you have carried out an equal pay audit did you find that it exposed you to equal pay claims?

Using a range of measures

4.15 As it may not be possible to come up with a 'one size fits all' means of measuring and reporting on the gender pay gap we would also like views on the possibility of providing employers with a range of reporting options. This includes any or all of those outlined above, plus any others that are deemed to be helpful, so that they could choose to report on the ones that were most helpful to them. You may want to think broadly and include measures such as the rate of return from maternity leave. If comparisons were to be made then there would be a need to ensure some consistency in the range of measures adopted.

Question 7

Please give us details of the range of measures you currently use and of your experience of what does and does not work.

Do you think providing for a choice of measures would be helpful or not?

Please explain why you think this.

Question 8

Have you any experience of reporting on the gender pay gap, or on equalities generally through your existing forms of annual reporting such as your annual company report?

If so, please tell us what you do, who the information is shared with and how satisfied you are with the process.

Making the information public

4.16 Transparency of reporting means that at some point information obtained about the gender pay gap, both qualitative and quantitative, will be made public. While doing so is a demonstration of the organisation's commitment to equality, it can also be an exercise that provokes a number of concerns.

Question 9

How would you prefer to report on your measurement of the gender pay gap?

Please explain why that would be your preference.

Annex 1

Response form

A call for evidence:

Please tell us about the work you are doing in your organisation to promote gender pay transparency. This may include: work you have done to collect gender pay and employment data; work you have done to measure the gender pay gap in your organisation; any experience you may have of carrying out an equal pay review and undertaking a job evaluation scheme; the role of leadership; the linkage between the achievement of equal pay and the pursuit of business objectives.

We particularly want to know what works when measuring progress towards closing the gender pay gap, and what does not, so please describe any barriers or opportunities you have faced or overcome in engaging in this work.

We also want to know if there is anything special about the nature of your business – characteristics of business size, for example, or features specific to your business sector – which you think we should be aware of.

Question 1

What are your views on the role of narrative in measuring and reporting on the gender pay gap?

Question 2

We would welcome your views on using a single figure.

How do you think the figure should be calculated?

If you have any experience of using a single figure to capture the overall pay gap in an organisation we would welcome hearing about it.

Question 3

We would welcome your views on using both full-time and part-time figures.

How do you think the figures should be calculated?

Have you any experience of using figures for both the full-time and part-time pay gaps?

Question 4

We would welcome your views on providing more detailed breakdown.

What do you see as the advantages and disadvantages of this as a means of measuring and reporting on the gender pay gap?

Question 5

We would welcome your views on using the findings of non-discriminatory analytical job evaluation.

What do you see as the advantages and disadvantages of this as a means of measuring and reporting on the gender pay gap?

If you have carried out a non-discriminatory analytical job evaluation exercise did you find that it exposed you to equal pay claims?

Have you any experience of using a non-discriminatory analytical job evaluation exercise to tackle the gender pay gap?

Question 6

We would welcome your views on using the findings of an equal pay audit.

What do you see as the advantages and disadvantages of this as a means of measuring and reporting on the gender pay gap?

Have you any experience of using an equal pay audit to tackle the gender pay gap?

If you have carried out an equal pay audit did you find that it exposed you to equal pay claims?

Question 7

Please give us details of the range of measures you currently use and of your experience of what does and does not work.

Do you think providing for a choice of measures would be helpful or not?

Please explain why you think this.

Question 8

Have you any experience of reporting on the gender pay gap, or on equalities generally through your existing forms of annual reporting such as your annual company report?

If so, please tell us what you do, who the information is shared with and how satisfied you are with the process.

Question 9

How would you prefer to report on your measurement of the gender pay gap?

Please explain why that would be your preference.

Appendix 1

Terms of reference of high level stakeholder group

Gender pay transparency

The Commission has been invited by the Government to bring together a group of representatives of employers and employees to help the Commission produce guidance on gender pay gap reporting, and assisting employers to give appropriate context and meaning to any numerical measures. The high level group will also consider and advise on wider contextual and other measures that will help to provide a more comprehensive understanding of gender inequality in the private sector.

The group will focus on:

- a** Advising on the applicability of gender equality indicators and metrics for employers;
- b** Steering the development and testing of a range of pay gap metrics and other gender equality indicators;
- c** Providing guidance to employers on using gender equality indicators including pay gap metrics and formats for narrative reporting;
- d** Providing examples of good practice on gender equality initiatives in the workplace.

Appendix 2

Equality Bill Clause 75 and explanatory notes

75 Gender pay gap information

1 A Minister of the Crown may by regulations 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.

2 This section does not apply to -

a an employer who has fewer than 250 employees;

b a person specified in Schedule 19;

c a government department or part of the armed forces not specified in that Schedule.

3 The regulations may prescribe -

a descriptions of employer;

b descriptions of employee;

c how to calculate the number of employees that an employer has;

d descriptions of information;

e the time at which information is to be published;

f the form and manner in which it is to be published.

4 Regulations under subsection (3) (e) may not require an employer, after the first publication of information, to publish information more frequently than at intervals of 12 months.

5 The regulations may make provision for a failure to comply with the regulations -

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 is prescribed.

c The reference to a failure to comply with the regulations includes a reference to a failure by a person acting on behalf of an employer.

Clause 75: Gender pay gap information

Effect

This clause enables a Minister of the Crown to make regulations requiring private sector employers with at least 250 employees in Great Britain to publish information about the differences in pay between their male and female employees. The regulations may specify, among other things, the form and timing of the publication, which will be no more frequently than annually. The regulations may also specify penalties for non-compliance. Employers who do not comply with the publication requirements could face civil enforcement procedures or be liable for a criminal offence, punishable by a fine of up to £5,000.

Background

This is a new provision. The Government wants large private sector employers in Great Britain to publish information on what they pay their male and female employees, so that their gender pay gap (the size of the difference between men and women's pay expressed as a percentage) is in the public domain.

The Government's aim is for employers regularly to publish such information on a voluntary basis. To give voluntary arrangements time to work, the Government does not intend to make regulations under this power before April 2013. The power would then be used only if sufficient progress on reporting had not been made by that time.

Appendix 3

Extract from Government Equalities Office Consultation on the approach being proposed for the public sector

Extract on the reporting requirements for all public bodies from The Equality Bill: Making it work (Policy proposals for specific duties – a consultation)

C – Reporting important equality data in the workforce

We propose a specific duty requiring all public bodies with 150 or more employees to report annually on their gender pay gap, their ethnic minority employment rate and their disability employment rate.

5.17 We think it is essential, in demonstrating due regard to the requirements of the general Equality Duty, for public bodies to publish certain equality data on an annual basis. This will help public bodies to

identify problem areas, track their own progress and to ask themselves questions about whether their objectives are really delivering outcomes. It will also mean that service users, stakeholders and employees can benchmark public bodies against each other and hold those who are performing poorly to account.

5.18 The gender pay gap and the employment gaps for ethnic minority and for disabled people are stubborn and longstanding inequalities. By shining a light on them we can focus attention on these areas: we can encourage greater progress and empower local people to challenge poor performance. We therefore propose a specific duty requiring public authorities with 150 or more employees to publish the gender pay

gap in their organisation and the percentage of ethnic minority and disabled people they employ. We think that 150 employees is the right number: organisations with fewer employees than this may experience more of a burden in gathering the information; and the smaller the pool of individuals the less meaningful the data. 150 employees is also the threshold currently used for race equality reporting, so those organisations affected will already be accustomed to publishing equality data.

5.19 We would anticipate public authorities understanding and being able to tell the story behind the headline figures; for example whether black and minority ethnic and disabled people are represented at all levels in the organisation; and if not what plans they have to address any under-representation.

5.20 We do not think the time is right to require public bodies to report employment rates for all characteristics protected under the Equality Duty, although some may well decide to do so voluntarily as a matter of good practice. Some organisations may not yet have achieved a culture in which employees are ready to be asked to provide personal information about matters such as their sexual

orientation or religion or belief, although it is encouraging that it is becoming more common for public sector employees to agree to their employers seeking this information. And for some characteristics, employment rates may not be the most useful indicator of progress – for instance, the number of transsexual employees is less helpful in understanding progress on transgender equality than other factors, such as specific initiatives to meet different needs.

5.21 There is a number of ways in which the gender pay gap can be calculated. We propose to use a single figure – the overall median gender pay gap – which is the percentage difference between women’s median hourly pay (excluding overtime) and men’s median hourly pay (excluding overtime). To calculate this figure, all permanent employees (including part-time workers) should be included, and there should be no weighting of employees related to the number of hours they work.

5.22 We consider the overall gender pay gap is suitable for use as a standard measure which employers can calculate to measure the relative position and pay of men and women in the organisation and compare it against other employers.

It should be straightforward to calculate, and also includes part-time workers. This is especially significant as statistics suggest that more than 40 percent of women work part time, often in order to balance work and family commitments. Women make up 77 percent of the part-time workforce.

5.23 Public bodies may, as a matter of good practice, want to supplement these three headline figures with more information that helps put the figures into context – such as the gender pay gap broken down by grade or employment status, or the ethnic minority employment rate compared to the local ethnic minority population.

Question 10

Do you agree that public bodies with 150 or more employees should be required to publish their gender pay gap, their ethnic minority employment rate and their disability employment rate? We would welcome views on the benefits of these proposals in encouraging public authorities to be more transparent.

Question 11

Do you agree with the proposal to use the overall median gender pay gap figure? Please give your reasons. If not, what other method would you suggest and why?¹⁵

Question 12

Do you have any evidence of how much it would cost to produce and publish this information, and of what the benefits of producing and publishing this information might be?

Question 13

Do you agree with the proposal not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty? If not, what other data do you think should be reported on?

Endnotes

¹ Equality Bill: Making it Work – Policy proposals for specific duties, 11 June 2009, Government Equality Office.

² Employment and earnings in the finance sector: A gender analysis, Hilary Metcalf and Heather Rolfe, National Institute of Economic and Social Research, Equality and Human Rights Commission Research Report 17, 2009.

³ ASHE is based on a sample of jobs taken from HM Revenue and Customs pay-as-you-earn records.

⁴ Source for statistics: Equality and Human Rights Commission analysis of ONS (2008) Annual Survey of Hours and Earnings 2008, Table 1.6a. The full-time gender pay gap compares full-time women's and men's earnings whilst the part-time gender pay gap compares part-time women's with full-time men's earnings.

⁵ ASHE 2008, Table 13.6a - hourly earnings excluding overtime for full-time employees in the UK.

⁶ Equal Pay Reviews Survey 2008, Lorna Adams, Peter Hall and Stefan Schafer, Equality and Human Rights Commission Research Report: 2, Table 3.5.

⁷ Overtime is generally excluded from the calculation because, as men generally work more overtime than women, it can distort results.

⁸ See the United Kingdom Statistical Authority's Monitoring and Assessment notes M&A Note 4/2009 11 June 2009 on the Gender Pay Gap, for a more full consideration of the issue.

⁹ Based on 2008 ASHE and Labour Force Survey data. The Labour Force Survey is based on a random sample throughout the United Kingdom. The survey is conducted every three months using around 53,000 households and collects information about the personal circumstances and work of everyone living in these households.

¹⁰ Shaping a Fairer Future – a review of the recommendations of the Women and Work Commission three years on, July 2009.

¹¹ Better Regulation Task Force principles, 2003.

¹² There is no fixed legal definition of what a part-time worker is. Under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, it may be said that an employer can define full-time and part-time work as they wish but must be consistent about how they do so.

¹³ ASHE 2009.

¹⁴ Equal Pay Reviews Survey 2008, Lorna Adams, Peter Hall and Stefan Schafer, Equality and Human Rights Commission Research Report: 2.

¹⁵ The median is the figure in the middle of a set of data. For example, in a set of 100 values, the median would be higher than 50 of the values, and lower than the other 50. The median is the preferred earnings measure of the ONS, as it is less affected by a relatively small number of very high earners.

Contact us

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