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Consultation on introducing mandatory ethnicity and disability pay gap reporting for large employers

Consultation response from Lewis Silkin LLP, 10 June 2025

Extending mandatory pay gap reporting to ethnicity and disability

1. *Do you agree or disagree that large employers should have to report their ethnicity pay gaps?*
    a. Strongly agree
    b. Somewhat agree
    c. Neither agree nor disagree
    d. Somewhat disagree
    e. Strongly disagree
    f. Don't know or unsure

2. *Do you agree or disagree that large employers should have to report their disability pay gaps?*
    a. Strongly agree
    b. Somewhat agree
    c. Neither agree nor disagree
    d. Somewhat disagree
    e. Strongly disagree
    f. Don't know or unsure

Please add any comments you have about the proposal to extend pay gap reporting

We agree in principle that some form of ethnicity and disability pay gap analysis is one way of enabling employers to identify and tackle barriers to inclusion at work. However, we are concerned about the proposed 250 employee threshold and propose that this be raised.

We understand the desire for consistency with the gender pay gap reporting regime, but ethnicity and disability are fundamentally different. Gender is split relatively evenly in the UK population and does not vary by geography. Organisations with 250 employees can therefore expect to be employing over 100 women, wherever they are based in the UK. Disabled people and people from minority ethnic groups are a much smaller proportion of the working population and (in the case of ethnicity) this proportion varies by location. In our view, a threshold that is higher than 250 employees is needed to trigger these new pay gap reporting obligations, or the results will not be meaningful.

In giving us their feedback on these proposals, the clear majority of our clients have agreed that 250 employees is not the right threshold for these new reporting obligations.

Geographical scope

3. *Do you agree or disagree that ethnicity pay gap reporting should have the same geographical scope as gender pay gap reporting?*
    a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

f. Don't know or unsure

4. *Do you agree or disagree that disability pay gap reporting should have the same geographical scope as gender pay gap reporting?*

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

f. Don't know or unsure

Please add any comments you have about the proposed geographical scope

For large employers operating across the whole of Great Britain, a fragmented approach is unhelpful. We therefore think that the same approach should be adopted across England, Wales and Scotland.

However, the government should take the opportunity to clarify that all reporting obligations should apply only to employees based in Great Britain. Currently, the gender pay gap reporting regulations are silent on their territorial scope and it is therefore a matter of interpretation as to whether or not overseas employees working for the relevant GB employing entity are included in the calculations. Our interpretation is overseas employees are potentially included in gender pay gap reporting if they have a strong enough connection to UK employment law such that they would have employment rights under the Equality Act. This potential inclusion of employees located overseas will also apply to ethnicity and disability pay gap reporting unless the government explicitly legislates otherwise. However, the inclusion of employees based overseas is especially problematic where, for example, they are based in countries where the collection of ethnicity data is unlawful. There is no policy reason to include employees located overseas and in our view the government should legislate to clarify that only GB-based employees should be included – and this should also apply to gender pay gap reporting.

Pay gap calculations

5. *Do you agree or disagree that employers should report the same 6 measures for ethnicity pay gap reporting as for gender pay gap reporting?*

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree
d. Somewhat disagree
e. Strongly disagree
f. Don't know or unsure

6. *Do you agree or disagree that employers should report the same 6 measures for disability pay gap reporting as for gender pay gap reporting?*

a. Strongly agree
b. Somewhat agree
c. Neither agree nor disagree
d. Somewhat disagree
e. Strongly disagree
f. Don't know or unsure

7. *Do you agree or disagree that large employers should have to report on the ethnic breakdown of their workforce?*

a. Strongly agree
b. Somewhat agree
c. Neither agree nor disagree
d. Somewhat disagree
e. Strongly disagree
f. Don't know or unsure

8. *Do you agree or disagree that large employers should have to report on the breakdown of their workforce by disability status?*

a. Strongly agree
b. Somewhat agree
c. Neither agree nor disagree
d. Somewhat disagree
e. Strongly disagree
f. Don't know or unsure

9. *Do you agree or disagree that large employers should have to submit data on the percentage of employees who did not state their ethnicity?*

a. Strongly agree
b. Somewhat agree
c. Neither agree nor disagree
d. Somewhat disagree

e. Strongly disagree

f. Don't know or unsure

10. *Do you agree or disagree that large employers should have to submit data on the percentage of employees who did not state their disability status?*

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

f. Don't know or unsure

Please add any comments you have about the proposals for calculating pay gaps.

We agree in principle that the ethnicity, disability and gender pay gap reporting regimes should be consistent as far as possible.

However:

- This is a chance to revisit some of the calculation approaches in the gender pay gap regime and improve them to make them more workable. This should be done alongside the introduction of new regimes.
- If the 250 threshold is not raised then a scaled approach would be preferable whereby, for example, employers with 250 or more employers are required to report on pay quartiles only, with full reporting of all 6 measures only applying to much larger employers. If the government sticks with the 250-employee threshold, then meaningful reporting against all 6 measures is unlikely to be workable or sensible for ethnicity and disability pay gap reporting. This is especially the case for employers in certain parts of the UK. For example, according to the 2021 census, only 6.9% of the local population in the North East identified as having an ethnicity different from white British/White other. A company employing 250 people would therefore expect to employ just 17 people in this category. We do not think that the mean and median differences in hourly pay and bonus will be statistically meaningful with such a small dataset. The figures will be prone to significant variation each year if just one non-white employee joins or leaves. With average UK turnover at 34% (according to latest CIPD research), this is a likely occurrence. Adopting such a low threshold risks undermining the regime. If the figures vary so much each year, it begs the question of why anyone should pay attention to them. The aims behind the new reporting regimes will not be helped if the message ends up being that the data is not meaningful.
- We agree that reporting on the breakdown of the workforce by ethnicity/disability will help to contextualise the pay gap data and enable employers to benchmark against local populations. We would expect employers to voluntarily disclose this information even if not required to report it.
- We agree that reporting the percentage of employees who did not state ethnicity or disability status will be important to qualify the meaningfulness of the pay gap statistics. We also expect this percentage to become a point of comparison between employers (regardless of size or geography). In our experience, incomplete data is the biggest challenge for employers. The

government could help to address this by legislating to confirm that employers can mandate that employees participate in the data collection exercise (e.g. fill in the form) even if they tick the "prefer not to say" option. This is likely already a reasonable management instruction but an explicit legislative basis would be helpful for data protection compliance and employee relations purposes. It would be especially helpful for employers impacted by anti-DEI measures coming from the US.

- The percentage of employees not willing to disclose their disability status could also give employers some useful insight into whether their culture and environment makes employees feel safe enough to share their health conditions.

Action plans

11. *Do you agree or disagree that employers should have to produce an action plan about what they are doing to improve workplace equality for ethnic minority employees?*

    a. Strongly agree

    b. Somewhat agree

    c. Neither agree nor disagree

    d. Somewhat disagree

    e. Strongly disagree

    f. Don't know or unsure

    Please add any comments you have on this proposal

    With equality action plans becoming mandatory for large employers under the Employment Rights Bill, it makes sense that there is consistency. Mandating the provision of an action plan would be especially helpful for employers impacted by anti-DEI measures coming from the US, who may need to rely on a legislative requirement to justify taking such steps.

    We suggest that the government allows an initial reporting period (e.g. two years) for employers to collect and report on their disability and ethnicity pay gaps, without the immediate obligation to produce action plans. While employers have been collecting, analysing and reporting on their gender pay gaps for over eight years, they will need more time to familiarise themselves and understand their ethnicity and disability pay data before developing narratives and action plans. We also suggest that, following the initial reporting period, the requirement to produce action plans is phased in, starting with the largest employers. A staggered approach would allow the development of best practice examples and provide smaller employers with practical guidance on the types of measures that could be included.

12. *Do you agree or disagree that employers should have to produce an action plan about what they are doing to improve workplace equality for disabled employees?*

    a. Strongly agree

    b. Somewhat agree

    c. Neither agree nor disagree

    d. Somewhat disagree

    e. Strongly disagree

f. Don't know or unsure

Please add any comments you have on this proposal

See above.

Dates and deadlines

19. *Do you agree or disagree that ethnicity pay gap reporting should have the same reporting dates as gender pay gap reporting?*

    a. Strongly agree
    b. *Somewhat agree*
    c. Neither agree nor disagree
    d. Somewhat disagree
    e. Strongly disagree
    f. Don't know or unsure

20. *Do you agree or disagree that disability pay gap reporting should have the same reporting dates as gender pay gap reporting?*

    a. Strongly agree
    b. Somewhat agree
    c. Neither agree nor disagree
    d. Somewhat disagree
    e. Strongly disagree
    f. Don't know or unsure

21. *Do you agree or disagree that ethnicity pay gap data should be reported online in a similar way to the gender pay gap service?*

    a. Strongly agree
    b. Somewhat agree
    c. Neither agree nor disagree
    d. Somewhat disagree
    e. Strongly disagree
    f. Don't know or unsure

22. *Do you agree or disagree that disability pay gap data should be reported online in a similar way to the gender pay gap service?*

    a. Strongly agree
    b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

f. Don't know or unsure

Please add any comments you have about the proposals for dates and deadlines and online reporting.

We agree that aligning reporting dates is sensible. Gender, ethnicity and disability pay gaps will all be calculated from the same dataset so it is sensible for the calculations to be performed at the same time. There may also be arguments for shifting away from the April snapshot approach towards a 12-month average approach, which would align the GB requirements with those in other jurisdictions (e.g. Ireland) and with the requirements of the EU Pay Transparency Directive.

Enforcement

23. *Do you agree or disagree that ethnicity pay gap reporting should have the same enforcement policy as gender pay gap reporting?*

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

f. Don't know or unsure

24. *Do you agree or disagree that disability pay gap reporting should have the same enforcement policy as gender pay gap reporting?*

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

f. Don't know or unsure

Please add any comments you have about the proposals for enforcement

Ethnicity: data collection and calculations

Data collection

25. *Do you agree or disagree that large employers (250 or more employees) should collect ethnicity data using the GSS harmonised standards for ethnicity?*

a. Strongly agree

b. Somewhat agree

c. Neither agree nor disagree

d. Somewhat disagree

e. Strongly disagree

f. Don't know or unsure

Please add any comments you have about the proposals for ethnicity data collection.

We agree in principle that employers should collect ethnicity data using the detailed ethnicity classifications in the GSS harmonised standards for ethnicity based on the 2021 census, subject to the four points made below.

1. Employers operating internationally are likely to be using a different approach to ethnicity classification. For example, US-headquartered employers may be using different ethnic categories (which might include "Latino/ Latina" or "Native American") which do not easily translate to the GSS harmonised standards. Such companies might already be reporting on their UK ethnicity breakdown or pay gaps on a voluntary basis. It is essential that multinational companies should not be penalised for having adopted a different granular ethnicity classification system and that enough time is allowed for them to transition to the new UK approach in a way which does not jeopardise employee participation.

2. It is unclear to us whether the government intends to mandate the granular approach of using the GSS detailed categories, or merely recommend it as best practice. This needs to be clarified (see answer to question 28 below).

3. It is also unclear whether the question will vary between England, Scotland and Wales. The consultation document refers to using "the harmonised country-specific" approach. This is contradictory – either the questions are harmonised or they are country specific, but they cannot be both? Using different questions across Great Britain would cause several problems, including:

- whether employers' existing HR information systems can be customised to display a different set of options for different employees (and how much this will cost),
- ensuring that the correct country-specific options are served to the correct people – would this be determined by the employee's home address or place of work?
- how will the output be aggregated across the UK (especially given the differences in the Scottish classifications where there are 19 categories rather than 18)?

In our view there should be a single system across the whole of Great Britain.

4. Providers of HR information systems will need time to ensure that their standard settings are compliant. The feedback from our clients is that only a minority are confident that their current system is customisable to the 18/19 categories proposed.

Calculating and reporting ethnicity pay gaps

26. *Do you agree or disagree that all large employers should report ethnicity pay gap measures using one of the binary classifications as a minimum?*

a. Strongly agree
b. Somewhat agree
c. Neither agree nor disagree
d. Somewhat disagree
e. Strongly disagree
f. Don't know or unsure

27. *Do you agree or disagree that there should be at least 10 employees in each ethnic group being reported on? This would avoid disclosing information about individual employees.*

a. Strongly agree
b. Somewhat agree
c. Neither agree nor disagree
d. Somewhat disagree
e. Strongly disagree
f. Don't know or unsure

28. *Do you agree or disagree that employers should use the ONS guidance on ethnicity data to aggregate ethnic groups? This would help protect their employees' confidentiality.*

a. Strongly agree
b. Somewhat agree
c. Neither agree nor disagree
d. Somewhat disagree
e. Strongly disagree
f. Don't know or unsure

Please add any comments you have about the proposals for calculating and reporting ethnicity pay gaps

Feedback from our clients is mixed on the question of whether binary reporting should be the minimum requirement. On the one hand, it is the simplest calculation to perform. On the other hand, it is the least meaningful. It is well documented that different minority ethnic groups have different experiences in the UK workforce. These will be masked by a simple averaging out. A binary approach is also inconsistent with the ONS guidance referred to in the consultation document, which specifically states: "*[a]ggregating all ethnic minority groups together into a catch-all group (e.g. White vs all ethnic minorities combined) is not recommended because of the heterogeneity of the groups*." The ONS guidance is clear that a 5-category approach is the most aggregated option that would be statistically meaningful.

If a binary comparison is required as a minimum, then more clarity is required on when employers would use "White British" as the comparison group and when "White" should be used. The government seems to prefer "White British" unless employers "*do not collect that data*" or there are fewer than 10 employees in this category. If this is the preference, then we strongly disagree for the following reasons:

- The reference to employers "not collecting the data" only makes sense if the government's intention is to encourage, but not legally require, employers to collect data using the GSS harmonised standards for ethnicity. In our view, it makes little sense to leave this to employer discretion.
- If the comparison is "white British v other" then – for example - white North Americans and European employees would fall in "other" which is highly likely to skew the data in many companies.
- This approach does not appear to be consistent with the ONS guidance, which is much more prescriptive about how to collapse ethnic groups upwards. The guidance suggests that "White" (NOT white British) becomes the default comparison once the 5-category aggregation is used.

  Although "White v other" would be a "least worst" binary option, we would emphasise the point that there is a significant risk that a binary comparison will be meaningless.

  We disagree that the minimum threshold for reporting on any ethnic group should be 10 employees. The average pay of such a small dataset of 10 employees is unlikely to be informative and will be prone to significant fluctuations each year as employees at different levels join or leave. The suggested threshold is at odds with the current government guidance which suggests that a minimum group size of 50 is needed before pay gaps for that category should be published externally. We think that a minimum threshold of 50 would be preferable. Feedback from our clients also reflects this view.

  Raising the overall threshold for pay gap reporting to a much higher number than 250 would make the regime more workable and increase the chances of the employer having at least 50 employees in at least two of the 5-category aggregations, allowing for more meaningful comparisons.

29. *Is there anything else you want to tell us about ethnicity pay gap reporting?*

    The consultation proposes that employees "self ID" their ethnicity and disability status, which is clearly sensible. In contrast, however, the position for gender pay gap reporting is now less clear cut.

    S78 Equality Act 2010 requires that employers report differences in gaps between "male" and "female" employees. The regulations requiring gender pay gap reporting are made under that section, so must presumably now be interpreted in line with the Supreme Court ruling in For Women Scotland (in other words as a biological matter). The current government guidance (last updated January 2024) says that employers should be sensitive to how an employee identifies their gender (which we think is the preferable approach) but it is unclear if that guidance will remain in place following the ruling.

    Our view is that the existing government guidance on gender pay gap reporting should not change. However, if there is any plan to update it then the government should be alive to the sensitivity of doing so while simultaneously introducing a self-ID approach for ethnicity and disability status.

Disability: data collection and calculations

Comparing pay across employee groups

30. *Do you agree or disagree with using the 'binary' approach (comparing the pay of disabled and non-disabled employees) to report disability pay gap data?*

a. Strongly agree
b. Somewhat agree
c. Neither agree nor disagree
d. Somewhat disagree
e. Strongly disagree
f. Don't know or unsure

31. *Do you have any feedback on our proposal to use the Equality Act 2010 definition of 'disability' for pay gap reporting?*

The government's general intention seems to be that employees should decide for themselves if they meet the threshold test and if they want to disclose this, which is sensible. However, there are specific challenges of asking employees to self-identify if they are disabled. Employees who would meet the definition of disabled for Equality Act purposes will not necessarily regard themselves as disabled. Some may receive a new diagnosis meaning that they would not be disabled in one year but may be in the next. Others may be reluctant to share details of their health conditions.

Employees will need guidance on what is meant by disability. To avoid the burden falling on employers, and the risks associated with employers taking different approaches, we suggest that the government produces a harmonised explainer which could be presented to employees as a clickable link or pop-up within self-identification forms.

We suggest the government also directs the wording of the question(s) which employers should use.

We also strongly suggest that the government provides employers with sufficient advance notice of the question(s) and explanatory materials. Many employers already collect disability data, but there may be a mismatch between existing practices and the new regime. Some employers will be looking ahead to, for example, compliance with various EU reporting requirements, and wanting to explore the scope for a consistent approach. Employers will be keen to do dry runs and ensure employees are properly informed and engaged.

We also suggest that the government adds an additional follow-up question capturing more granular "categories" of disability, similar to (for example) the categories used by the ONS in the UK Annual Population surveys. This might address the problem of under-reporting of disability in addition to providing a possible basis for more granular comparison where datasets are large enough.

32. *Do you agree or disagree that there should be at least 10 employees in each group being compared (for example, disabled and non-disabled employees)? This would avoid disclosing information about individual employees.*

a. Strongly agree
b. Somewhat agree
c. Neither agree nor disagree
d. Somewhat disagree
e. Strongly disagree
f. Don't know or unsure

Please add any comments you have about the proposals for disability data collection and calculations

The problem with combining all types of disability together is that it overlooks the fact that different impairments will impact people differently. As with ethnicity pay gap reporting, the risk is that a binary comparison is meaningless and that employers would need to decide whether to invest additional time in explaining the data and potentially sharing other more meaningful measures of diversity and inclusion. As with ethnicity pay gap reporting, the average pay of a dataset of 10 employees is unlikely to be informative and will be prone to significant fluctuations each year as employees at different levels join or leave.

33. *Is there anything else you want to tell us about disability pay gap reporting?*

Employers will be concerned about the relationship between disability pay gap reporting and the duty to make reasonable adjustments. Currently, employers are not under a duty to make reasonable adjustments for a disabled worker if they do not know, and could not reasonably be expected to know, that a worker is disabled and is placed at a substantial disadvantage. If a worker discloses their disability status as part of a data collection exercise for disability pay gap reporting, employers will want to understand the circumstances in which this would trigger a duty to make reasonable adjustments.

34. *Which of the following are you responding as?*

    a. An employer or business

    b. An organisation or network that represents either employers, employees or both

    c. Another organisation

    d. An individual

35. *Please provide your organisations or network's name*

Lewis Silkin LLP

36. *Please tell us about your interest in this consultation*

Lewis Silkin LLP is a law firm based in London, Oxford, Manchester, Leeds, Cardiff, Dublin, Belfast and Hong Kong. We have over 50 partners and 200 other lawyers specialising in employment, immigration, data privacy and reward. We are consistently ranked as a top tier practice by the leading industry directories. Our response is based on our experience of advising predominantly large and multinational employers across the private sector, including some of the UK's largest employers and household names. In framing our response we have taken input from our community of specialist in-house employment lawyers and other clients.

37. *How many people does your response represent?*

1 to 24

25 to 249

250 to 999

1,000 or more

38. *Where does your organisation operate?*

International (UK and other countries)

39. *What sector is your organisation based in?*

Public sector

Private sector

Voluntary sector

Other

40. *What type of organisation are you?*

Disabled people led organisation

Disability charity or organisation

Disabled staff network

Ethnic minority organisation

Ethnicity staff network

Trade union

Other, please specify:

Law firm

41 *What industry is your organisation based in?*

Legal

42 *What is your role in the organisation*

Other, please specify:

Submitted on behalf of the partners