

YOUR RESPONSES

Q1: Publication of gender pay information will encourage employers to take actions that will help close the pay gap. Do you:

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Do you want to provide any further comment in relation to your answer above (Q1)?

Publication of the gender pay gap will not of itself encourage employers to take action. In order for it to do so, the requirement needs to be accompanied by an explicit set of expectations, namely that employers will:

- *Monitor the gap over time;*
- *Ask themselves why they have a gender pay gap, and if it is consistent across the whole of the organization, or (more likely) if it varies from one group of workers to another;*
- *Explore the likely causes of the gap with a view to finding out whether these lie within or without the workplace (or, more likely, a mixture of the two);*
- *Take action to address those causes which arise within the workplace.*

It would be good to have an assurance that such expectations will be set, both by ministers, and by bodies responsible for producing whatever advice accompanies the implementation of the regulations.

The fact that the focus of the measure is solely on gender will reduce its effectiveness in getting employers to take action. While research has shown that in respect of labour market disadvantage, gender 'trumps' other protected characteristics [EHRC, 2009], it is nonetheless still the case that the gender pay gap cannot be addressed fully without also taking into account ethnicity and, as this present consultation partially recognizes, age. A measure focused solely on gender may result in some important aspects of the gap being overlooked.

While the consultation document does refer to flexible working and other practices known to help to narrow the gender pay gap, it is disappointing that this initiative is being introduced without reference to the body of good practice in the management of pay systems developed

over the past decade or so by bodies as diverse as Acas, the CIPD, BITC, IES, Xpert HR, the EHRC and others. Such practice includes, but is not confined to, good equal pay practice, and seeks to promote excellence in the management of pay systems. It seems odd to require employers to introduce a measurement that can only be calculated on the basis of information drawn from a pay system, without making any mention of that system. The requirement to measure and report on the gender pay gap will be more effective if it is embedded in existing good practice mechanisms.

Also absent from this consultation document is any indication of how the requirement to measure and report on the gender pay gap will fit with existing requirements on informing and consulting employees. It would be helpful to know how publication is intended to work out in practice and where this will fit with existing good practice in relation to employer/employee communication.

Finally, and most importantly, there is a disconnect between this proposal and the equality of terms provisions of the Equality Act 2010. There is ample evidence to show that the prompt employers are most likely to respond to is the possibility of legal action being taken against them [EHRC 2009, IFF Research 2015], and this initiative would be much more likely to encourage employers to take action to address the gender pay gap if there were also formal mechanisms (a) to alert the employment tribunal to any failure to report a gender pay gap, and (b) to enable women to question their employer about the reasons for the gender pay gap, whether it affects them as individual employees, and what their employer is doing to address the problem. I consider this again in response to question 2 below.

Q2: Transparency on gender pay will have an impact on (tick as appropriate)

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	Don't know
Encouraging girls and women to consider working in a wider variety of occupations and sectors	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Encouraging employers to develop their female talent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Encouraging employees to take up flexible working or shared parental leave	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Encouraging employers to support flexible working or shared parental leave	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Encouraging employers to adopt good practice on how to manage/support a multigenerational workforce	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Helping those who have a stake in the organisation such as investors, shareholders and clients	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Helping employers to address equal pay in their organisation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Encouraging employees to take up flexible working or shared parental leave

As this initiative is not aimed at employees it is hard to see how it could encourage them to adopt flexible working patterns – a decision which, in any event, requires their employer's consent.

Encouraging employers to adopt good practice on how to manage/support a multigenerational workforce:

There is nothing in the measurement of the gender pay gap that will encourage employers to support a multigenerational workforce. This could only happen if the metric being introduced were sophisticated enough to capture the intersection of age with gender and with hours and patterns of work (and, indeed, ethnicity – different age groups manifest different working and earning patterns according to their ethnic group). There is a considerable body of research evidence to show that both the earnings and working patterns of older people vary by gender, but we do not know how these variations are going to play out in the future. The management of a multi-generational workforce is an important matter in its own right, and not one that can be easily rolled up into an already over-simplistic approach to getting employers to close the gender pay gap.

Helping employers to address equal pay in their organisation

The way to get employers to address equal pay in their organization is to encourage them to carry out regular equal pay audits, a recommendation endorsed by parliament as long ago as 1997, when the first code of practice on equal pay came into effect. Both the 2003 and 2011 equal pay codes have also made plain that an equal pay audit or review is the best way for an employer to address equal pay.

To be clear: an equal pay audit is a diagnostic tool which enables employers to ensure that their pay system is free of sex bias; it is part and parcel of an effective reward strategy, and the stages of an equal pay audit (as set out in the EHRC guidance (originally developed by the EOC)) reflect those for formulating and implementing an overarching reward strategy: collect and review the data; analyse the data and formulate a strategy; develop and refine the approach (i.e. through consultation with the workforce); agree and implement any necessary changes over a defined timescale. In other words, an equal pay audit is not an 'equality add-on' but a core part of the business remuneration toolkit.

Measuring the gender pay gap is a blunt instrument which quite simply will not provide an employer with enough information to know whether the gap is a workplace gap, or one which derives from factors external to the workplace. While this initiative is not aimed at getting

employers to address equal pay, the overlap between unequal pay and the gender pay gap is such that an explicit link needs to be made with the equality of terms provisions in the Equality Act 2010.

I urge ministers to:

- Remind employers of the recommendation in successive codes of practice to the effect that an equal pay audit or review is the best way for an employer to address equal pay;*
- Provide guidance for employment tribunals on the weight to attach to an employer's failure/refusal to measure and report on their gender pay gap;*
- Re-introduce the equal pay questionnaire so as to enable women to ask their employer questions about any gender pay gap, whether it applies to them, and what action the employer is taking to redress the gap.*

Q3: Employees or other interested parties (e.g. shareholders) may want to gauge how an employer's gender pay gap compares with similar organisations. How important do you think comparability is (tick one)?

- Not at all important
- Very unimportant
- Somewhat unimportant
- Somewhat important
- Very important
- Extremely important
- Don't know

Do you want to provide any further comment in relation to your answer above (Q3)?

Comparability is particularly important at a sectoral level as it will encourage employers in similar industries to benchmark against each other and share experiences of what helps to narrow the gender pay gap. Intra-sectoral benchmarking will be more meaningful to most employers than benchmarking against the national headline figure for the gender pay gap, particularly as the structure of the labour market and the distribution of men and women within it is such that the gender pay gap in the private sector is wider than the national headline gap.

Q4: Do you think the regulations should specify where the employer publishes their gender pay gap information - for example, a prominent place on their public website?

Yes

No

Don't know

*Rather than stipulating 'where', the regulations should stipulate **who** should have access to the data, **when**, and **how**. This would fulfil the objective of making the gender pay gap transparent, while at the same time giving employers the flexibility to use their own preferred methods of communication – which may well change with advances in technology and as the organisation itself changes.*

Q5: Which of the following measures showing the difference in the pay of male and female employees are you currently able to calculate from existing data and systems?

	Tick all that apply
An overall gender pay gap figure	<input type="checkbox"/>
Gender pay gap figures broken down by full-time and part-time employees	<input type="checkbox"/>
Gender pay gap broken down by grade or job type	<input type="checkbox"/>
None of the above	<input type="checkbox"/>

From 2013 onwards almost all employers (with very few exceptions) have been required by law to run their payrolls on computer, so that they can transmit up-to-date information to HMRC about who their employees are and what they have paid them. This means that employers affected by the requirement to report on the gender pay gap will already be using payroll software, and most payroll software gives users sufficient control over the payroll system to be able to analyse all of the measures listed above (and also to carry out an equal pay audit). A first step for employers is to contact their software supplier's helpdesk to discuss their needs and ensure the capacity is there.

The measures are not mutually exclusive. I would like to see organisations required to publish information on at least one of measures, plus a narrative, immediately, and required to use all three indicators within a three to five year period.

Q6: Do you think that any additional narrative information published by employers should be:

	Tick one
Voluntary and not set out within the regulations or non-statutory guidance	
Voluntary, not set out within the regulations, but set out in the non-statutory guidance	
Set out within the regulations	<input checked="" type="checkbox"/>
Other, please specify	

Many of the target group of employers will already be accustomed to reporting on directors' pay, and it would seem sensible to align the content of a narrative to accompany publication of the gender pay gap with the type of reports already being made. This suggests that the gender pay gap report should comprise:

- *The measure of the gender pay gap adopted by way of implementation of Section 147 of the Small Business and Enterprise and Employment Act 2015, and,*
- *A narrative, which includes:*
 - *An explanation of the types of remuneration taken into account in the calculation of the measure adopted, and how these types of remuneration are distributed as between male and female employees;*
 - *The basis on which the types of remuneration are made e.g. base pay, service related, performance related, and how these are distributed as between male and female employees;*
 - *Information about the direction of travel over time, and any mitigating factors (such as a merger) associated with a widening of the gap. The narrative should include a line graph that plots male/female salaries over time;*
 - *A policy statement as to where the gender pay gap sits within the organisation's overall reward and people management strategies*

Organisations that produce an annual report should include the gender pay gap report in this; other organisations should, as a matter of good practice, be encouraged to make public their narrative on the gender pay gap.

Q7: How often do you think employers should report gender pay gap information?

	Tick one
Every year	<input type="radio"/>
Every 2 years	<input checked="" type="radio"/>
Every 3 years	<input type="radio"/>
Other	<input type="radio"/>

If you responded 'other' to Q7, please specify how often employers should report gender pay gap information below:

The information needs to be produced with sufficient frequency to ensure its visibility, but at an interval sufficient to allow an employer to take meaningful and measureable action.

Q8: What is your assessment of the costs of conducting gender pay analysis and publishing results?

	Actual Costs (£)	Estimated Costs (£)
Infrastructure (e.g. software)	<i>The target group of employers will already have the software in place.</i>	
Training requirements	<i>Minimal</i>	
Publication	<i>Not possible to say until the actual form that publication will take has been decided</i>	
Other, please specify		
Total		

Q9: What is actual / estimated time taken by the lead person assigned to the activity of analysing and publishing a gender pay gap estimate?

	Actual Costs (£)	Estimated Costs (£)
Number of hours		

The time taken will be dependent upon the organisation's preparedness in terms of data collection, and in particular, whether the data is 'clean', i.e. up to date and accurate. With a

clean data set a single figure measure can be calculated in 3-4 hours; with an incomplete dataset the task will take 3-4 days.

Q10: Private and voluntary sector employers in Great Britain with at least 250 employees may fall within the scope of the proposed regulations. Do you think this threshold is appropriate?

Yes

No

Don't know

It is unclear why this question is being asked. Both Section 78 of the Equality Act 2010 and Section 147 of the Small Business and Enterprise and Employment Act 2015 stipulate a threshold of at least 250 employees.

If you said 'no' to Q10, do you wish to provide any further comment below?

Q11: The cut off period for any calculation of the gender pay gap will need to be specified in the regulations. Which of the following do you consider preferable (tick one)?

1 January

6 April

1 October

The year-end date for each organisation

No preference

Other

If you said 'other' to Q11, please specify which date you would prefer and why below:

Whatever date is adopted needs to be consistent across all organisations, and especially those operating in the same sector. If comparability/benchmarking are to be encouraged, then consistency of reporting date is essential.

Q12: The Government is considering a number of actions to help support employers implement the proposed regulations. How helpful do you think the following measures would be?

	Very unhelpful	Not very helpful	Neither helpful or unhelpful	Somewhat helpful	Very helpful	Don't know
Helping employers to understand the new regulations e.g. through workshops and seminars	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Helping employers to calculate their organisation's gender pay gap e.g. through access to software	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Helping employers with other types of supporting analysis e.g. analysis of representation of women at different levels within the workforce	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Helping employers to address he issues identified by a pay gap analysis	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other, please specify	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The advice is already out there: see EHRC, Acas, CIPD, Xpert HR and many other specialist sources of HR and payroll expertise. The challenge is to get employers to take it up.

Q13: Do you think there are alternative ways to increase transparency on gender pay that would limit the cost for employers, for example reporting to the Government via the existing PAYE system?

- Yes
- No
- Don't know

If you said 'yes' to Q13, what alternative(s) would you suggest?

Cost is not an issue. It should cost an employer no more than £200 to come up with a figure for the gender pay gap.

Consistency with other forms of transparency would be helpful e.g. The Local Government Transparency Code, 2015; the remuneration report provisions of the Companies Act 2006.

Q14: Do you think that introducing civil enforcement procedures would help ensure compliance with the proposed regulations?

- Yes
- No
- Don't know

Please see the answers to questions 1 and 2. A link needs to be made with the equality of terms provisions of the Equality Act 2010.

Q15: What, if any, do you consider to be the risks or unintended consequences of implementing section 78?

(i) Distraction from the pursuit of good practice in managing pay systems, which is of itself the single most useful tool in promoting equal pay and closing the gender pay gap at workplace level. See also my response to Question 1.

(ii) Hostile or lazy journalists attacking unfavourable gender pay gap figures. This may pose a greater risk for high profile or household name companies, especially those e.g. in the financial services sector, whose remuneration practices have already been called into question. Employers would be well advised to develop a communications plan alongside their plan for measuring the gender pay gap.

Q16: Do you consider there are any risks or unintended consequences that warrant dropping or modifying the implementation of section 78?

- Yes
 No

If you said 'yes' to Q16, please explain why you think this is:

Q17: How do you think the Government can most effectively encourage young girls to consider the broadest range of careers?

Q18: How do you think the Government can work with business to support women to return to work and progress in their career after having children?

Focus on their male partners, and encourage employers to do the same. Get men to take up parental leave and flexible working and enable them to do so without the kinds of detriment to their career trajectory that women suffer. Set expectations that employers should and will offer flexible working to all, and at all levels.

Q19: How do you think the Government can make sure that older women are able to fulfill their career potential?

While discrimination on grounds of gender and age is a persistent problem for older women, older women have also lost out on the opportunities made available to younger women through the equalities legislation. Furthermore, many older women carry a 'double burden' of caring for parents and grandchildren, which can substantially limit the type and hours of work they can undertake. However, older women have made substantial gains in employment over the past twenty years and it is important to recognise the progress that has been made, in order that this can be built upon.

Research has shown that where older women's caring responsibilities and health problems had been taken into account by their employer they remained in work. Redeployment, flexible working and retraining all make a positive contribution to the positioning of older women in the workplace. Measures which would be useful include:

- *Government funded employment and training programmes demonstrating that they support older women. This could include active targeting and tailored support for older women, with better careers service support for older workers of both sexes.*
- *Awareness raising amongst employers of the barriers facing older women, and of the need to tackle these in the light of the raising of the state pension age – older women are in future going to be far less likely to exit the labour market, and more likely to want to seek opportunities for quality employment.*
- *Encouragement to employers to provide full access to training opportunities to older women, and where appropriate, changes to job design and working hours to accommodate caring responsibilities.*
- *For large employers, the creation of an internal careers advisory service, with a special emphasis on dealing with older workers/ workers with caring responsibilities.*
- *Ensuring that older women's voices are heard, both within and without the workplace.*

Thank you for your time in completing this consultation.

You may email or post your completed response as follows:

By email: GenderPayGapConsultation@geo.gov.uk

By post:

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