Equal Pay Consultation: DLA Draft Response

Pay Transparency in Recruitment

Question 1

Do you agree or disagree with the proposal to require employers to publish pay information either in job adverts, or in writing to the candidate before the interview (if there is no job advert)?

Answer: Agree.

Question 2

Please explain your answer.

Pay transparency reduces information asymmetry during recruitment, enables applicants to benchmark roles against the wider market, and helps identify and challenge potential inequalities at an earlier stage. It also complements existing gender pay gap reporting requirements by providing individuals with meaningful information at the point of recruitment.

Publishing pay information benefits both prospective recruits and existing employees. Existing workers are better able to assess whether there may be unjustified disparities in pay, while employers benefit from greater consistency and transparency in remuneration practices.

Evidence suggests that greater transparency can contribute to reducing pay inequalities. The Government should also consider restricting or prohibiting questions about previous salary, as such practices risk perpetuating historical inequalities and importing them into new employment relationships.

Question 3

What pay information or conditions would be proportionate for this requirement?

Employers should provide:

- A salary range.
- Information on pay progression arrangements.
- Collective bargaining coverage where applicable.
- Pension arrangements.
- Annual leave entitlement.
- Bonus or commission arrangements.
- Flexible and hybrid working arrangements.
- Family-related entitlements, including maternity, paternity and parental leave.
- Other significant benefits such as health insurance or travel schemes.

The requirement should be sufficiently informative to enable meaningful comparison while not becoming so detailed as to create disproportionate burdens.

Question 4

What level of pay information should employers be required to publish in job adverts or disclose before an interview? For example, should a pay range, specific salary or benchmark rate be required?

A meaningful pay range should normally be required rather than a single salary figure.

Ranges should not be so broad as to be meaningless. Benchmark rates may be appropriate where remuneration is genuinely variable. In the longer term, larger employers should be encouraged or required to publish transparent pay and grading structures supported by non-discriminatory job evaluation schemes.

Job Evaluations and Pay Audits

Question 5

Do you agree or disagree with the proposal to reduce the list of current exceptions of when an Employment Tribunal must order an equal pay audit after finding an equal pay breach?

Answer: Agree, in principle.

Question 6

Please explain your answer

The existing exception regime appears to have significantly limited the use of equal pay audits. However, the Government's objective of prevention is unlikely to be achieved solely through post-litigation audits.

A more effective approach would be to require larger employers to implement job evaluation schemes, publish pay structures, and conduct periodic equal pay audits as preventative measures. Retaining some discretion and proportionality safeguards remains important, particularly where an audit would serve little practical purpose.

Question 7

Do you agree or disagree with the proposal that an Employment Tribunal must also order the implementation of a non-discriminatory job evaluation scheme alongside an equal pay audit, where it has found an equal pay breach?

Answer: Agree.

Question 8

Please explain your answer

Job evaluation provides the foundation for identifying and preventing discriminatory pay practices. However, the greatest benefit would come from requiring larger employers to implement such schemes proactively rather than waiting until discrimination has been proven at tribunal.

The proposed enforcement framework should focus principally on prevention through job evaluation, transparent pay structures, and periodic auditing.

Standard Questionnaire in Pay Discrimination Disputes

Question 9

Do you agree or disagree with introducing a new statutory questionnaire procedure for pay discrimination claims?

Answer: Agree.

Question 10

Please explain your answer

Questionnaires assist both claimants and employers by clarifying the factual position and narrowing disputes at an early stage.

The Government should consider extending the procedure across discrimination claims more generally rather than limiting it solely to pay claims. Clarification is needed regarding whether the proposal applies only to sex-based equal pay claims or also to race and disability pay discrimination claims.

Question 11

What questions do you think should be included in a statutory questionnaire to facilitate the early resolution of cases?

Questions should cover:

- Comparator roles and responsibilities.
- Pay rates and contractual terms.
- Grading structures.
- Job evaluation outcomes.
- Material factor explanations.
- Pay progression arrangements.
- Relevant equality and pay-gap data.

The previous statutory questionnaire forms provide a useful starting point.

Question 12

What steps would you recommend taking to ensure the questionnaire procedure is as efficient as possible?

The procedure should include:

- Standardised forms.
- Clear guidance from ACAS.
- Accessible advice and support.
- Fixed response periods.
- Proportionate disclosure obligations.
- Tribunal discretion regarding adverse inferences.

The process should facilitate resolution rather than generate additional procedural disputes.

Pay Transparency: Impacts and Scope

Question 13

If the proposals set out in this chapter were implemented, how might employers change how they operate? For example, regarding recruitment practices or pay and conditions

Employers are likely to:

- Formalise pay structures.
- Publish salary ranges.
- Increase reliance on objective pay criteria.
- Review recruitment practices.
- Reduce dependence on salary negotiation and salary-history information.

Question 14

If the proposals set out in this chapter were implemented, what costs do you think employers would face, if any? For example, wage, administrative or legal costs.

Costs will include:

- Administrative costs.
- Advisory and legal support.
- Development of pay structures.
- Job evaluation work.
- Record keeping.

However, these costs should be weighed against:

- Reduced litigation.
- Reduced discrimination.
- Improved workforce morale.
- Increased labour market efficiency.
- Reduced long-term pension inequalities.

Question 15

Are there any proposals set out in this chapter that may take employers more than a year to implement?

Answer: Yes.

Question 16

Please explain your answer, including how long you think any proposal may take to implement?

Implementing robust job evaluation and pay-banding systems across large organisations may require 12–24 months.

Question 17

Are there other changes to pay transparency that you would recommend the government considers?

The Government should also consider:

- Restricting salary-history questions.
- Requiring larger employers to undertake periodic equal pay audits.
- Requiring larger employers to maintain non-discriminatory job evaluation schemes.
- Aligning reforms with gender pay gap reporting obligations.

Pay Discrimination Enforcement

Question 18

What specific steps or guidance should be taken to improve clarity about when an employer can lawfully pay people differently for equal work, particularly regarding the application of the material factor defence?

Greater clarity should primarily come through guidance rather than legislative amendment.

Question 19

Please explain your answer, including any specific elements, examples or guidance you think the government should consider.

Guidance should address:

- The material factor defence.
- Market forces arguments.
- Red-circling.
- Length of service.
- Occupational segregation.
- Historic undervaluation of female-dominated and minority-dominated occupations.

The objective should be to improve certainty without destabilising established case law.

Equal Pay Regulatory and Enforcement Unit

Question 20

Where do you think the Equal Pay Regulatory and Enforcement Unit should be based?

Answer: Fair Work Agency.

Question 21

Please explain your answer

The decisive considerations are:

- Independence.
- Adequate powers.
- Sufficient funding.
- Confidence of employers and workers.

The Fair Work Agency appears best placed to undertake the role, provided it receives appropriate resourcing. The Government should avoid diminishing the EHRC's ability to undertake broader strategic equality and human rights work.

The Unit's primary purpose should be preventative compliance and promotion of good practice, not solely reactive enforcement.

Question 22

Do you agree or disagree that the Unit should have the ability to require the disclosure of evidence before triggering a formal investigation process? For example, verbal evidence, pay data and information

Answer: Agree.

Question 23

Please explain your answer

The Unit should have powers to require evidence before commencing a formal investigation where reasonable grounds exist for concern.

Safeguards are needed to prevent fishing expeditions.

Question 24

Do you agree or disagree that the existing investigation powers should be strengthened to enable the Unit to require that a job evaluation scheme and/or equal pay audit be undertaken as part of the investigation process, where this would help to establish whether pay discrimination has occurred?

Answer: Agree.

Question 25

Please explain your answer

Job evaluation schemes and equal pay audits are highly useful investigative tools. However, for larger employers they should ideally exist as part of normal governance rather than arising only after concerns are identified.

Question 26

Do you agree or disagree that the Unit should have the ability to require those subject to inquiry recommendations to respond to them and provide updates on implementation?

Answer: Agree.

Question 27

Please explain your answer

Responding to recommendations and providing updates would strengthen accountability and encourage meaningful implementation.

Any obligations should be proportionate and should not duplicate tribunal powers.

Question 28

Do you think the Unit should have additional new powers or capabilities to help secure remedies for workers beyond our proposal?

Answer: Yes.

Question 29

Please explain your answer

Additional powers could include:

- Approving job evaluation methodologies.
- Approving equal pay audit models.
- Facilitating binding undertakings.
- Supporting voluntary compliance and dispute resolution.

Pay Discrimination Enforcement: Impacts

Question 30

If the proposals set out in this chapter were implemented, how might employers change how they operate? For example, regarding recruitment practices or pay and conditions

Employers are likely to:

- Increase proactive audits.
- Improve pay governance.
- Strengthen record-keeping.
- Formalise decision-making.

Question 31

If the proposals set out in this chapter were implemented, what costs do you think employers would face, if any? For example, wage, administrative or legal costs

Costs will include:

- Advisory costs.
- Data analysis.
- Auditing costs.
- Compliance administration.

Benefits are likely to include fewer disputes and better compliance.

Question 32

Are there any proposals set out in this chapter that may take employers more than a year to implement?

Answer: Yes.

Question 33

Please explain your answer, including how long you think any proposal may take to implement

Embedding compliance systems and establishing the Unit's functions could take 12–24 months.

Question 34

Are there other changes to improve the enforcement of pay discrimination that the government should consider?

The Government should ensure:

- Effective coordination between regulators.
- Proportionate treatment of smaller employers.
- Clear guidance.
- Protection for commercially sensitive information.

Making Equal Pay Effective for Ethnic Minority and Disabled People

Question 35

Do you agree or disagree that the Equality Act 2010's protections against pay discrimination on the basis of race and disability, and those it provides under the equal pay scheme against pay discrimination on the basis of sex, should be broadly levelled up to provide equal protection as far as possible?

Answer: Agree in principle.

Question 36

Please explain your answer

Race and disability pay protections should be strengthened to achieve greater parity with sex-based equal pay rights.

The Government should also explain why similar reforms are not being considered for other protected characteristics, particularly religion or belief.

Modification of Contractual Terms

Question 37

Do you agree or disagree that Employment Tribunals should be able to require the modification of the terms of a claimant's contract in successful discrimination claims relating to pay on the grounds of race or disability?

Answer: Agree.

Question 38

Please explain your answer

Current remedies for race and disability claims are primarily compensatory. Allowing tribunals to modify contractual terms would provide a more direct route to addressing ongoing inequality.

Question 39

What limitations or safeguards should be considered for this power, if any?

Safeguards should include:

- Preservation of justification defences.
- Proportionality.
- Prospective operation wherever possible.
- Avoidance of creating new inequalities elsewhere.
- Limits on retrospective exposure.

Equal Pay Audits

Question 40

Do you agree or disagree that existing requirements should be widened so that employers found to have discriminated in terms of pay on the basis of race or disability can be required to undertake an equal pay audit and job evaluation scheme?

Answer: Agree.

Question 41

Please explain your answer

Audit and job evaluation requirements should apply to race and disability pay discrimination.

Preventative obligations for larger employers would likely have greater impact than post-litigation remedies.

Question 42

To support employers with pay audits covering sex, race and/or disability, what main areas should the guidance cover?

Guidance should address:

- Data protection.
- Confidentiality.
- Comparator groups.
- Equal-value methodology.
- Sector-specific models.
- Audit methodologies approved by the enforcement unit.

Equivalence of Work

Question 43

Do you agree or disagree with the proposal to allow claims for race and disability pay discrimination where the work is not materially similar but is of equal value?

Answer: Agree.

Question 44

Please explain your answer

Occupational segregation often prevents claimants from identifying suitable comparators. Allowing equal-value claims is therefore necessary, particularly regarding race discrimination.

The argument may be less straightforward in disability cases given the highly individual nature of disability.

Employer and Business Questions

Questions 45–52

Do disabled employees in your organisation mostly work in specific roles? (For example do they work in specific roles within technology and IT)

Not applicable. These questions are directed to employers and businesses responding regarding their own workforce composition and practices.

Hypothetical Comparators

Question 53

Do you agree or disagree with the proposal to allow hypothetical comparators in equal pay claims in the 2 prescribed, limited scenarios described above (successor comparisons and improvement in terms)?

Answer: Agree, limited to the proposed scenarios.

Question 54

Please explain your answer

The proposed successor-comparison and improvement-in-terms scenarios represent a sensible and proportionate extension.

Wider use risks excessively speculative litigation.

The Government should also address the existing gap whereby a claimant may be unable to bring an equal pay claim despite being paid less than a more junior comparator.

Question 55

Are there any other scenarios where the use of a hypothetical comparator should be considered?

No further scenarios are currently recommended.

Question 56

If yes, what are those scenarios?

Not applicable.

Time Limits

Question 57

Do you agree or disagree with providing discretion to the judiciary to extend time limits for bringing equal pay claims 'on a just and equitable basis'?

Answer: Agree.

Question 58

Please explain your answer

Judicial discretion would assist where relevant information emerges only later, particularly in successor comparator situations.

However, certainty remains important and some form of long-stop limitation period should remain.

Impacts of Levelling-Up Proposals

Question 59

If the proposals set out in this chapter were implemented, how might employers change how they operate? For example, regarding recruitment practices or pay and conditions

Employers are likely to:

- Improve pay governance.
- Extend audits.
- Strengthen record retention.
- Document pay decisions more carefully.

Question 60

If the proposals set out in this chapter were implemented, what costs do you think employers would face, if any? For example, wage, administrative or legal costs

Costs may include:

- Compliance costs.
- Advisory costs.
- Data collection.
- Potential back-pay exposure.

Question 61

Are there any proposals set out in this chapter that may take employers more than a year to implement?

Answer: Yes.

Question 62

Please explain your answer, including how long you think any proposal may take to implement

Implementing race and disability pay audit frameworks could require 12–24 months.

Question 63

Are there other changes that you think the government should consider?

The Government should consider:

- Religion or belief protections.
- A clear UK GDPR-compliant framework.
- Addressing remaining gaps in comparator rules.

Promoting Pay Equality in Contractual Arrangements

Question 64

Do you agree or disagree with the proposal to introduce a new duty on contracting parties to take all reasonable steps to uphold pay equality in contractual arrangements?

Answer: Disagree.

Question 65

Please explain your answer

Equal pay rights currently depend on a single source capable of correcting the disparity.

The proposed duty risks creating obligations for organisations that do not control pay-setting and may generate uncertainty and unintended consequences.

Question 66

Do you agree or disagree that the Equal Pay Regulatory and Enforcement Unit should be able to enforce this duty?

Answer: Disagree.

Question 67

Please explain your answer

Enforcement should not precede clear definition of a workable duty.

Without greater clarity, enforcement powers risk creating disputes rather than preventing inequality.

Question 68

Do you agree or disagree that the duty to take all reasonable steps should apply to all parties involved in the outsourcing arrangement? This would mean that the principal(s), outsourced service provider(s) and intermediaries in more complex chains could be liable for a breach.

Answer: Disagree.

Question 69

Please explain your answer

Liability should follow control over pay-setting.

Extending liability throughout complex contractual chains risks disproportionate obligations for intermediaries.

Question 70

What specific steps do you think would be reasonable and proportionate for either a small, medium or large employer to take to fulfill this duty?

If introduced:

- Large employers: supplier due diligence, contractual clauses, audit rights.
- Medium employers: contractual assurances and monitoring.
- Small employers: reasonable reliance on supplier compliance.

Question 71

Do you agree or disagree that contracting parties should not be required to pay compensation but should be required to take reasonable steps to ensure ongoing pay equality in their contractual arrangements?

Answer: Agree.

Question 72

What remedies do you believe should be available to a claimant when a contracting party is found to be in breach of this duty? Please provide details on the types of remedies or corrective actions you would like to see implemented.

Appropriate remedies would include:

- Compliance orders.
- Action plans.
- Recommendations.
- Undertakings.

Compensation should remain primarily the responsibility of the employing entity.

Employer and Business Questions

Questions 73–76

Does your business act as an external service provider that supplies labour or services to another organisation?

Not applicable. These questions are directed to businesses responding about their own contractual arrangements.

Promoting pay equality in contractual arrangements: impacts

Question 77

If the proposals set out in this chapter were implemented, how might employers change how they operate? For example, regarding recruitment practices or pay and conditions

Employers are likely to:

- Increase supplier due diligence.
- Introduce contractual equality clauses.
- Expand audit provisions.

Question 78

If the proposals set out in this chapter were implemented, what costs do you think businesses would face, if any? For example, wage, administrative or legal costs

Costs include:

- Procurement costs.
- Compliance costs.
- Contract management.
- External advice.

Question 79

Are there any proposals set out in this chapter that may take businesses more than a year to implement?

Answer: Yes.

Question 80

Please explain your answer including how long you think any proposal may take to implement?

Supply-chain reviews and implementation of monitoring systems could require 12–24 months or longer.

Question 81

Are there other changes aimed at promoting pay equality in contractual arrangements that you think the government should consider?

The Government should:

- Clarify interaction with the single-source principle.
- Avoid duplication with procurement law and TUPE obligations.
- Publish detailed guidance.

Geographical Scope

Question 82

Do you agree or disagree that the proposed measures should retain the same geographical scope as the discrimination and equal pay provisions of the Equality Act 2010 (applying to England, Wales, and Scotland)?

Answer: Agree.

Retaining the existing Equality Act 2010 territorial scope for Great Britain is appropriate. Northern Ireland has a distinct equality law framework and should continue to be treated separately.