



The government has this week issued a [consultation](#) seeking views on how to introduce mandatory ethnicity and disability pay gap reporting for large employers.

The responses to the consultation (which closes on 10 June) will help inform the government's approach to the new Equality (Race and Disability) Bill, due to be published later this year. It will be launching a separate call for evidence on making the right to equal pay effective for ethnic minority and disabled people, as well as other areas of equality law.

This is not a wholly new idea. As per our [blog](#), the previous government issued official guidance for voluntary ethnicity pay reporting in April 2023, but that left a great deal more to the discretion of the employer than is now proposed and did not include any reference to disability.

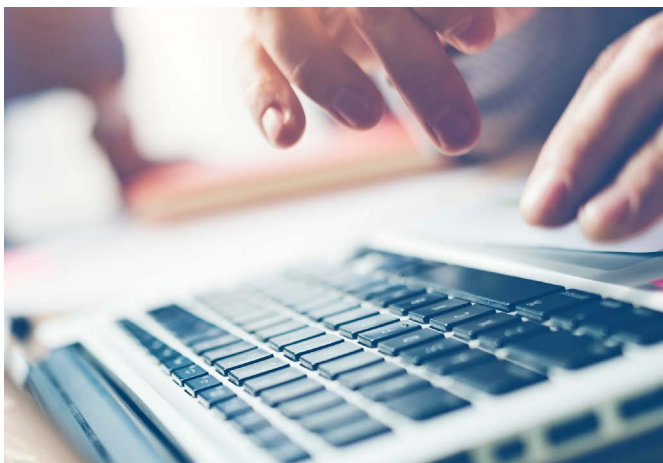
Key points to note on this latest consultation document are:

- The reporting framework will be broadly the same as for gender pay gap reporting, which is clearly good news because affected employers are familiar with this and have set up their systems accordingly. Only employers in Great Britain with 250 or more employees will be caught, and they will be obliged to report on the same set of six pay gap measures as for gender pay (mean and median differences in average hourly pay, pay quartiles, mean and median differences in bonus pay and the percentage of employees receiving bonus pay for the relevant protected characteristic). Furthermore, the key dates and deadlines will be the same as for gender pay gap reporting, namely (for private sector employers) a "snapshot date" of 5 April, and a reporting date of 4 April the following year. All data will have to be reported online, and it proposes that the Equality and Human Rights Commission (EHRC) will be responsible for enforcement.
- The government is also proposing to make it mandatory for affected employers to report on the overall breakdown of their workforce by ethnicity and disability, and to provide the percentage of employees who did not disclose their ethnicity and disability. The government believes this additional data would give context to employers' ethnicity and disability pay gap figures and would allow them to explain if their data has been affected by low self-declaration rates from staff with these characteristics. Indeed, low self-reporting/declaration is likely to be a key issue for many employers. Not all employers currently collect this data and those that do inevitably do not have complete data. Concerted efforts will need to be made by employers to obtain such information to enable any reliable analysis to take place.
- The government is seeking views on whether employers should be required to explain the reasons behind any pay gaps, as well as the steps they are taking to improve equality in their workplace. As has been the case with gender pay gap reporting, we anticipate that many employers will provide this information voluntarily, but they would want it to be their choice to do so. It must also be borne in mind that, as with gender, the existence of a pay gap is in no sense indicative of unlawful discrimination.
- There will, however, understandably be some important differences to gender pay gap reporting, especially when it comes to data collection and analysis. The government proposes that employers ask employees to report their own ethnicity using the classifications in the [Government Statistical Service ethnicity harmonised standard](#), as used in the 2021 census. This reflects the approach currently recommended in the government's guidance for employers on voluntary ethnicity pay reporting. It then proposes that employers report their ethnicity pay gap data using a binary comparison and it sets out three possible options for this: (i) the pay of white British employees compared with all other ethnic minority groups combined (i.e. including non-British white staff); (ii) the pay of white employees of whatever nationality compared with employees in the other groups combined; or (iii) the pay of the largest ethnic group in the organisation compared with that of all other groups combined. The government's preference would be (i). Employers will also be encouraged (i.e. it will not be mandatory) to show pay gap measures for as many ethnic groups as they can, but there should be at least 10 employees in each ethnic group being reported on in order to protect the privacy of employees and to help produce statistically robust data. Employers may aggregate groups for these purposes. While a binary comparison will not offer the level of granularity required to explain pay differences at an employer, to make it mandatory for employers to produce pay gaps for different ethnic groups would place a significant burden on many employers. A single pay gap figure is also consistent with the approach adopted under the gender pay gap reporting regime, though it must obviously be conceded that the number of possible permutations where gender is concerned is very much smaller.

- For disability pay gap reporting, the government is also proposing to take a binary approach and require employers to compare the pay of disabled employees with non-disabled employees, and to use the definition of disability in the Equality Act 2010 as the basis for identifying disabled employees. The consultation confirms that the issue of disability will also be determined on a self-declaration basis (leaving it up to employers to make that judgment would be disastrous), but it is possible to wonder if that has been fully thought through as an idea. After all, if you invite employees to say they are disabled then those at the margins or with unresolved or latent grievances may be tempted to tick that box. That puts the employer on notice of that status, though not of the impairment alleged, and so triggers immediately a full set of duties to explore reasonable adjustments for issues of which it had no prior awareness, as well as to consider in every case of misconduct or poor performance whether it arose from a condition of which it was aware, but simultaneously knew nothing. Any subsequent redundancy or disciplinary process, or other detriment of any description thereafter could be alleged to be a product of that disclosure. It is also possible to query whether the reporting would tell the reader anything useful given that in contrast to issues of race or sex, less favourable treatment (including as to pay) on grounds of disability is entirely lawful if it can be justified. That is a question to be decided per individual and so not something which could properly be dealt with in an employer's report.

Although we do not yet have an indication of when these provisions will be introduced, affected employers should add "preparation for mandatory ethnicity and disability pay gap reporting" to their ever-growing "to do" list, as collecting and analysing this data is likely to be time-consuming.

If you would like to discuss these latest proposals and what changes are likely to be necessary in your business, please speak to one of the following or your usual contact in the Labour & Employment team.



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