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10/06/2024

**Rt. Hon Sir Stephen Timms MP and Seema Malhotra MP**

Race Equality Unit

Cabinet Office

1 Horse Guards Road

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## **IoD response to Equality (Race and Disability) Bill: mandatory ethnicity and disability pay gap reporting Government consultation**

### **About the IoD**

*The IoD is an independent, non-party political organisation representing 20,000 company directors, senior business leaders, and entrepreneurs. It is the UK's longest-running organisation for professional leaders, having been founded in 1903 and incorporated by Royal Charter in 1906. Its aim is to promote good governance and ensure high levels of skills and integrity among directors of organisations. It campaigns on issues of importance to its members and to the wider business community with the aim of fostering a climate favourable to entrepreneurial activity in the UK.*

The IoD welcomes the opportunity to respond to this consultation on ethnicity and disability pay gap reporting. Building inclusive workplaces is of considerable interest to the IoD and its membership, and we are therefore pleased to present our views.

### **Extending mandatory pay gap reporting to ethnicity and disability**

*Question 1. Do you agree or disagree that large employers should have to report their ethnicity pay gaps?*

Strongly agree. The IoD has called for the introduction of mandatory ethnicity pay gap reporting for employers with more than 250 staff since 2022<sup>1</sup>.

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<sup>1</sup> Hall-Chen, A. 2022. *The Future of business: harnessing diverse talent for success. Recommendations to government*. London: Institute of Directors.

A recurring theme in interviews and focus groups conducted with business leaders as part of the IoD's *Future of business: harnessing diverse talent for success* Commission was the importance of data as a starting point to taking effective action. Ethnicity pay gap reporting therefore has the potential to focus board and management attention on the topic of ethnicity and the measures that organisations can take to further embed racial inclusion in the workplace.

A survey of 609 IoD members in December 2021 found that, while around a third (31%) of business leaders reported that they would view ethnicity pay gap reporting for large companies as not serving a useful purpose, a significant proportion (28%) would welcome such a change (Appendix: Figure 1). Most of the remaining respondents raised concerns around employee anonymity (18%) and the burden that reporting would place on business (only 15%), rather than the principle of mandatory reporting itself.

The qualitative responses to the question included concerns that difficulties in defining ethnicity would undermine the validity of any statistical insights, scepticism around the efficacy of pay gap reporting in effecting change in business behaviour, that data collected by employers operating in regions of the UK with relatively low levels of ethnic diversity would not be insightful, and frustration at the increasing number of reporting requirements being placed on employers. However, other responses highlighted the potential of such a policy to emulate the success of gender pay gap reporting in focusing business attention on the issue of ethnicity pay gaps.

“I doubt whether it is possible to get statistically significant data from employers with 250 staff. Only the largest employers will be able to track a pay gap by different ethnicities from one year to the next with statistical confidence.” – IoD member

“In broad terms, I would welcome it but I think attention would need to be given to how detailed such reports would need to be, to avoid regulatory overburden.” – IoD member

It is therefore essential that ethnicity pay gap reporting requirements are carefully designed and implemented, to ensure that the compliance burden for business is minimised while engendering real change in inclusion in the workplace.

*Question 2. Do you agree or disagree that large employers should have to report their disability pay gaps?*

Strongly agree. The IoD has called for the introduction of disability workforce reporting for employers with more than 250 staff since 2022<sup>2</sup>.

A recurring theme in interviews and focus groups conducted with business leaders as part of the IoD's *Future of business: harnessing diverse talent for success* Commission was the importance of data as a starting point to taking effective action. Disability pay gap reporting therefore has the potential to focus board and management attention on the topic of disability employment and the measures that organisations can take to better embed disability inclusion in the workplace.

A poll of IoD members in January 2022 found that, while 55% of members from large companies were most likely to agree that large employers should be required to report on the proportion of employees

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<sup>2</sup> Hall-Chen, A. 2022. *The Future of business: harnessing diverse talent for success. Recommendations to government*. London: Institute of Directors.

identifying as having disabilities, across the business population as a whole, leaders were divided on the topic: 42% of members agreed, 45% disagreed, and 13% were unsure (Appendix: Figure 2). The qualitative responses to the question varied, but included concerns around the additional bureaucratic burden that such a reporting requirement would represent, a belief that such a requirement could constitute a tick-box exercise rather than serve as an agent of meaningful change, confusion around how disability could be identified in a way that produced data of a high enough quality to enable valid comparisons between companies, and a view that the role of government in this space should be to encourage and support the employment of disabled persons rather than to regulate it.

“Businesses could report on numbers of workers but only if there is a strict definition and aligned to welfare benefits/NHS definitions.” – IoD member

“As a 'small' large company, e.g. just over the 250 threshold I find it a painful divide with much additional reporting which requires effort and resource we can barely spare. There is too much reporting and a need to change the definition of SMEs” – IoD member

However, other respondents expressed the view that such a reporting requirement could help to initiate dialogue between employees and employers about reasonable adjustments in the workplace, and that the resulting data could enable useful comparisons between companies and provide a baseline against which progress could be measured.

“This would help employers understand who is disabled, how and what might be able to assist them in their work.” – IoD member

It is therefore essential that disability pay gap reporting requirements are carefully designed and implemented, to ensure that the compliance burden for business is minimised while engendering real change in disability inclusion in the workplace.

### **Geographical scope**

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

Strongly agree. Where possible, reporting requirements should be consistent across Great Britain.

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

Strongly agree. Where possible, reporting requirements should be consistent across Great Britain.

### **Pay gap calculations**

*Question 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?*

Strongly agree. As above, consistency with gender pay gap reporting would make for a simpler overall reporting system for employers. Reporting against the same measures would also facilitate comparisons of pay gaps between different protected characteristic groups. Furthermore, given that the intent and justification for the policy is the same as for gender pay gap reporting, there is no clear case for reporting against different measures.

*Question 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?*

Strongly agree. As above, consistency with gender pay gap reporting would make for a simpler overall reporting system for employers. Reporting against the same measures would also facilitate comparisons of pay gaps between different protected characteristic groups. Furthermore, given that the intent and justification for the policy is the same as for gender pay gap reporting, there is no clear case for reporting against different measures.

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

Strongly agree. Ethnicity employment reporting would provide useful contextual information for both employers and third parties analysing pay gap data. Most importantly, employment reporting would reduce the risk of pay gap reporting creating perverse incentives; pay gap reporting alone disincentivising employers from recruiting ethnically diverse staff at the more junior levels with a view to supporting their progression through the organisation at a later stage.

Furthermore, given that employers will be required to collect said data in order to calculate their ethnicity pay gaps in the first place, employment reporting would not add significant additional bureaucratic burdens on employers.

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

Strongly agree. As described in the joint IoD/Disability@Work *Progress Through Transparency* report<sup>3</sup>, there is a strong case for mandatory disability employment reporting alongside disability pay gap reporting.

First, employment reporting provides critical context for employers' pay gap figures, which, on their own, might lead to some potentially misleading conclusions. For example, if employers report very small disability pay gaps, this may seem positive. However, if this is because they employ proportionately very few disabled employees, and these disabled employees happen to be in relatively senior positions, this should not be seen as a clear indicator of success. Conversely, employers might have a relatively large disability pay gap due to noteworthy efforts to hire large numbers of disabled employees into entry-level roles, with a view to promoting them later. Disability employment reporting would help identify such instances, allowing for a more nuanced understanding of employers' pay gap data. This is particularly important given concerns that disability pay gap reporting alone might deter employers from hiring disabled people into entry-level roles due to the negative impact this would have on their pay gap figures. Requiring employers to also report their disability employment figures helps to counter this concern.

Disability employment reporting would also provide employers with consistent baseline data to track the effectiveness of their efforts to hire and retain disabled people in greater numbers over time. Additionally, if disability employment data is collected in a systematic and comparable manner across

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<sup>3</sup> Institute of Directors and Disability@Work, (2025). *Progress Through Transparency*. London: Institute of Directors.

employers (as we recommend), this will enable employers to benchmark their disability employment figures against national, regional and sectoral averages.

Furthermore, disability employment reporting would enable employer representative bodies and government to identify organisations with the highest disability employment prevalence and investigate the causes of this high prevalence. If this is found to result from the adoption of certain disability employment policies and practices, employer representative bodies and the government can then disseminate these policies and practices more widely across the economy, thus further helping improve disability employment outcomes.

Given that employers will be required to collect said data in order to calculate their disability pay gaps in the first place, employment reporting would not add significant additional bureaucratic burdens on employers.

*Question 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?*

Strongly agree. The percentage of employees reporting their ethnicity is a signal of data quality, which should inform the use and interpretation of the employment and pay metrics.

*Question 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?*

Strongly agree. The percentage of employees reporting disability status is a signal of data quality, which should inform the use and interpretation of the employment and pay metrics.

### **Action plans**

*Question 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?*

Strongly disagree. Employers should have the option to produce and publish an action plan, but mandating its production would represent a disproportionate reporting burden.

While the case for mandating employment and pay reporting is clear, the case for mandating action plans is weaker. Many employers will choose to publish action plans, particularly where they feel that a narrative would be helpful in explaining successes and challenges relating to their ethnicity pay gap results. Employers should be given the choice as to whether an action plan makes sense in their specific circumstances. It is also unclear why even an employer which reports no ethnicity pay gap would be required to produce an action plan.

*Question 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?*

Strongly disagree. Employers should have the option to produce and publish an action plan, but mandating its production would represent a disproportionate reporting burden.

While the case for mandating employment and pay reporting is clear, the case for mandating action plans is weaker. Many employers will choose to publish action plans, particularly where they feel that a narrative would be helpful in explaining successes and challenges relating to their disability pay gap

results. Employers should be given the choice as to whether an action plan makes sense in their specific circumstances. It is also unclear why even an employer which reports no disability pay gap would be required to produce an action plan.

### **Dates and deadlines**

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

Strongly agree. There are advantages for employers in maintaining consistency in processes and information across reporting requirements relating to various equality characteristics.

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

Strongly agree. There are advantages for employers in maintaining consistency in processes and information across reporting requirements relating to various equality characteristics.

*Question 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?*

Strongly agree. There are advantages for employers in maintaining consistency in processes and information across reporting requirements relating to various equality characteristics. Such consistency should also facilitate better benchmarking and comparisons.

*Question 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?*

Strongly agree. There are advantages for employers in maintaining consistency in processes and information across reporting requirements relating to various equality characteristics. Such consistency should also facilitate better benchmarking and comparisons.

### **Enforcement**

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

Somewhat agree. The principle that enforcement mechanisms should be consistent across different types of pay gap reporting is strong, as doing so would simplify the reporting landscape for employers.

However, changes to enforcement policies and mechanisms being brought in via the Employment Rights Bill are a cause of grave concern and should be rectified before they are applied to ethnicity pay gap reporting.

The Employment Rights Bill gives unprecedented and wide-ranging powers to the new Fair Work Agency (FWA). For instance, the Gangmasters and Labour Abuse Authority (GLAA) currently has exceptionally powerful legal rights – similar to the police – to enter premises and obtain documents relating to the potential for and desire to outlaw modern slavery, but only in that area. In its current form, the Employment Rights Bill replicates these GLAA rights in such a way that the FWA could use them to, for example, enter premises due to a failure to provide gender pay gap information.

Such exceptionally powerful legal rights are inappropriate for employment issues such as ethnicity pay gap reporting. Government should therefore clarify through amendments to the Employment Rights Bill that the FWA's powers to enter business premises and obtain documents will not be extended beyond the function of outlawing modern slavery.

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

Somewhat agree. The principle that enforcement mechanisms should be consistent across different types of pay gap reporting is strong, as doing so would simplify the reporting landscape for employers.

However, changes to enforcement policies and mechanisms being brought in via the Employment Rights Bill are a cause of grave concern and should be rectified before they are applied to disability pay gap reporting.

The Employment Rights Bill gives unprecedented and wide-ranging powers to the new Fair Work Agency (FWA). For instance, the Gangmasters and Labour Abuse Authority (GLAA) currently has exceptionally powerful legal rights – similar to the police – to enter premises and obtain documents relating to the potential for and desire to outlaw modern slavery, but only in that area. In its current form, the Employment Rights Bill replicates these GLAA rights in such a way that the FWA could use them to, for example, enter premises due to a failure to provide gender pay gap information.

Such exceptionally powerful legal rights are inappropriate for employment issues such as disability pay gap reporting. Government should therefore clarify through amendments to the Employment Rights Bill that the FWA's powers to enter business premises and obtain documents will not be extended beyond the function of outlawing modern slavery.

#### **Ethnicity: data collection and calculations**

*Question 25. Do you agree or disagree that large employers should collect ethnicity data using the GSS harmonised standards for ethnicity?*

Strongly agree. The GSS harmonised standards constitute a widely recognised and tested approach to collecting ethnicity data.

It is crucial that all large employers are required to use this question when collecting ethnicity data, to ensure that employer data is comparable.

#### **Calculating and reporting ethnicity pay gaps**

*Question 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?*

Strongly agree. Requiring large employers to report ethnicity pay gap measures using one of the three proposed binary classifications will meet the aims of the policy while giving them the flexibility to decide whether, and at what stage, to report against additional ethnic classifications.

*Question 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.*

Somewhat disagree. We welcome the principle that there should be a minimum number of employees in each ethnic group being reported on, but it is unclear why the suggested threshold has been set at 10. Indeed, a threshold of 10 is likely too low to properly protect employee anonymity. The fact that one of the six pay gap measures against which employers are likely to be required to report – quartile pay bands – would create a real risk of some individuals being identifiable.

Furthermore, pay gaps calculated from only ten data points are highly sensitive to outliers and as such are likely to yield low quality and unreliable statistical insights. The risk of individuals being identifiable is therefore not outweighed by the potential benefits of a low threshold. A threshold of at least 20 would represent a better balance.

*Question 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.*

Strongly agree. In addition to helping to protect employees' confidentiality, consistency in the employer approach to collecting and processing data will be essential to the production of data which can be compared at the sector and regional level.

#### **Disability: data collection and calculations**

*Question 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?*

Strongly agree. While having more detailed information, such as by impairment type, is valuable, it is not feasible at an organisational level given sample size considerations. Using a binary measure has the advantage of being easier to collect and interpret. It is also directly comparable to national indicators of disability inequality.

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

We strongly agree with the Cabinet Office's proposal to use the Equality Act 2010 definition. It is essential that all employers are required to use this question in asking employees about their disability status, given that small differences in question wording can yield large differences in reported disability figures. In the absence of such consistency across employers, the full potential of mandatory reporting would not be realised, as it would not be possible to compare the data across organisations, use the figures to underpin reform of other schemes (e.g., Disability Confident and social value in public procurement), or develop national, regional, or sector averages for benchmarking purposes.

The questions employers should be required to use when asking employees about their disability status should mirror the questions used in the Labour Force Survey (LFS). The LFS is the government's main source of national disability statistics and is used to monitor progress towards meeting national disability employment commitments. The LFS asks respondents: "Do you have any physical or mental health conditions or illnesses lasting or expecting to last 12 months or more?". If respondents answer in the affirmative, they are asked the follow-up question: "Does your condition or illness reduce your ability to carry out day-to-day activities?" (Yes, a lot; Yes, a little; Not at all). Respondents answering "Yes, a little" or "Yes, a lot" are defined as disabled.



This question has several advantages. First, it has already been piloted and validity tested by the ONS. Second, it is consistent with the Equality Act 2010 definition of disability. Third, the question asks employees whether their condition or illness reduces their ability to carry out day-to-day activities, rather than asking whether it affects their ability to carry out their job role. This reduces the likelihood that employees will not identify as disabled because their employer has put extensive reasonable adjustments into place that have minimised the impact of the employees' condition or illness at work. Fourth, by not using the term 'disabled' in the question, it does not require that employees self-identify as disabled, thereby reducing the potential impact of stigmatisation on reporting.

*Question 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.*

Somewhat disagree. We welcome the principle that there should be a minimum number of employees in each group being compared, but it is unclear why the suggested threshold has been set at 10. Indeed, a threshold of 10 is likely too low to properly protect employee anonymity. The fact that one of the six pay gap measures against which employers are likely to be required to report – quartile pay bands – would create a real risk of some individuals being identifiable.

Furthermore, pay gaps calculated from only ten data points are highly sensitive to outliers and as such are likely to yield low quality and unreliable statistical insights. The risk of individuals being identifiable is therefore not outweighed by the potential benefits of a low threshold. A threshold of at least 20 would represent a better balance.

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

One important consideration is the frequency of data collection. We argue data on employees' disability status should be collected annually. This is essential given that disability is dynamic, with people moving into and out from disability.

A further important consideration is that in addition to using a standardised question, the reporting process should also use a standardised data collection method, requiring all employers to collect the data in the same manner. There are several potential methods by which employers might collect data on their employees' disability status, including anonymous staff surveys, information collected during recruitment, and invitations to declare disability to the employer's HR records. A standardised data collection method is important, given that these different methods can produce substantial variation in the reported figures. Hence, if employers were to use different data collection methods, it would not be possible to compare the data across employers in a meaningful way.

Our recommended approach is for employers to collect data on an annual basis by distributing to all their employees a standard government form that cannot be altered or changed. Employers might choose to distribute this form either electronically or using a paper-based form for employees who do not have access to electronic communication in their day-to-day job roles.



I hope you have found our comments helpful. If you require further information about our views, please do not hesitate to contact us.

With kind regards,

A handwritten signature in black ink that reads 'A. Hall-Chen'. The signature is written in a cursive style with a horizontal line underneath the name.

Alex Hall-Chen

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## Appendix

**Figure 1: IoD Policy Voice results: December 2021, 609 responses**

**Currently, all employers with more than 250 staff must report their gender pay gap. How would you view a requirement for these firms to also report their ethnicity pay gap?**

I would welcome it	28%
I would have concerns around employee anonymity and ethnicity data	18%
It would represent an excessive burden on business	15%
It would not serve a useful purpose	31%
Don't know	8%

**Figure 2: IoD Policy Voice results: January 2022, 671 responses**

**Do you think that large employers (250+ employees) should be required to report on the proportion of employees identifying as disabled?**

Yes	42%
No	45%
Don't know	13%