Department for
Business, Energy
& Industrial Strategy

ETHNICITY PAY REPORTING

Government Consultation

Closing date: 11 January 2019

October 2018

INDUSTRIAL
STRATEGY

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Ministerial Foreword

As a government, we are committed to ensuring that people from all walks of life have the opportunity to realise their potential. Our Industrial Strategy sets out our vision for a transformed economy. This includes ensuring that the UK is positioned to provide good jobs and greater earning power for all.

This is not just about the economy; tackling inequality of opportunity in the workplace is also about social justice. This is why – in launching the Race Disparity Audit and *Ethnicity Facts and Figures* website in October 2017 - the Prime Minister was clear: if disparities between the treatment of ethnic groups, whether in the case of health, education, employment, housing, criminal justice or work, cannot be explained, then they must be changed.

Our working population is increasingly diverse with more individuals from different cultural and ethnic backgrounds entering the workforce. This is good news for individual employers who have access to a wider range of talent; good news for the economy if we tap into this potential and ensure that individuals are able to find jobs that match their talent, experience and qualifications irrespective of their background or personal characteristics; and good news for individuals' wellbeing as they enjoy greater job satisfaction and are better rewarded for their contribution to the workplace.

There is no reason why the workforce in all organisations should not reflect the diversity of the communities in which their employer operates. The government is committed to working closely with businesses on all aspects of diversity and inclusion to ensure that employers can make full use of the talents and hard work of the people that they employ. This is our ambition and it requires a concerted effort on the part of the government and employers to overcome structural, procedural and attitudinal barriers within society and individual organisations.

That is why we asked Baroness McGregor-Smith to investigate the issues affecting people from ethnic minorities in the workplace and why we asked Business in the Community to conduct a one-year-on review of progress made since Baroness McGregor-Smith reported. The one-year-on review points to progress in some areas but there is still much more we must do to remove barriers to entering the labour market and ensure progression for all ethnic groups in the workplace.

Transparency is a vital first step towards harnessing the power of a diverse workforce. We have seen the power of transparency in gender pay gap reporting. I applaud those organisations who already publish ethnicity pay information. The Civil Service is one of those; it is today committing to going further by publishing departmental breakdowns once the methodology has been agreed in line with the findings of this consultation.

Sometimes stronger action is needed to drive change. That is why we are consulting on a mandatory approach to ethnicity pay reporting.

Reporting ethnicity pay information enables employers to identify – and then tackle – barriers to creating a truly diverse workforce. If there is a consistent approach to reporting, they can also benchmark and measure their progress by comparing themselves to other employers and learn from them. We know that these are complex and sensitive issues. This consultation asks

for your views on how we can take forward our manifesto commitment to ask large employers to publish ethnicity pay data so we can establish the best and most meaningful approach to drive change, while ensuring proposals are proportionate and do not cause undue additional burdens on business.

By understanding and taking action to overcome the barriers faced by all ethnic groups in the workplace, we can put diversity at the heart of how we do business and do right by all working people.

Kelly Tolhurst MP

Minister for Small Business, Consumers & Corporate Responsibility

Contents

General information

Why we are consulting

This consultation seeks views on ethnicity pay reporting by employers. It sets out options and asks questions on what ethnicity pay information should be reported by employers to allow for meaningful action, who should be expected to report and next steps. The objective of the consultation is to enable government and employers to move forward in a consistent and transparent way. Consultation responses will inform future government policy on ethnicity pay reporting.

Consultation details

Issued: 11 October 2018

Respond by: 11 January 2019 at 11:45pm.

Enquiries to:

Ethnicity Pay Reporting team
Department for Business, Energy & Industrial Strategy,
Spur 1, 1st Floor,
1 Victoria Street,
London, SW1H OET

Tel: 020 7215 5000
Email: ethnicitypayreporting@beis.gov.uk

Consultation reference: Ethnicity Pay Reporting

Audiences:

This consultation is for the general public and in particular employers and organisations with expertise in tackling ethnic disparities.

Territorial extent:

The consultation applies to England, Wales and Scotland. Employment and Equality Law is devolved to Northern Ireland. Any responses received in relation to businesses operating in Northern Ireland will be passed on to the Northern Ireland Executive Office in the interim.

How to respond

Respond online at: https://beisgovuk.citizenspace.com/lm/ethnicity-pay-reporting

or

Email to: ethnicitypayreporting@beis.gov.uk

Write to:

Ethnicity Pay Reporting team
Department for Business, Energy & Industrial Strategy,
Spur 1, 1st Floor,
1 Victoria Street,
London, SW1H OET

A response form is available on the GOV.UK consultation page:
www.gov.uk/government/consultations/ethnicity-pay-reporting

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will most useful if framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable UK and EU data protection laws. See our privacy policy.

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's consultation principles.

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Introduction

The government is committed to a cohesive society where everyone – no matter what their ethnicity or background – has the opportunity to enter into work, progress and achieve their potential based on merit. An inclusive economic policy is vital to the success of our Industrial Strategy, which sets out the government's long term plan to boost the productivity and earning power of everyone throughout the UK.

The Race Disparity Audit's *Ethnicity Facts and Figures*[1] website brings together ethnicity information published by government in one place. Launching the website in October 2017, the Prime Minister said "the message is very simple: if these disparities cannot be explained then they must be changed". The British labour market is thriving, with more people in work than ever before. Whilst the employment rate for people from ethnic minorities is improving, it continues to be lower than that for white people. And once in work, evidence shows that people from ethnic minorities progress less far and earn less money than their white counterparts.

Barriers that prevent under-represented groups from realising their full potential need to be broken down. This is not just about social justice. We know that companies with diverse workforces perform better and are more profitable.[2]

In 2016 the government asked Baroness McGregor-Smith to examine the barriers faced by people from ethnic minorities in the workplace and consider what could be done to address them. Her 2017 report *Race in the Workplace*[3] sets out a range of actions for business and the government to take forward to help improve employment and career prospects for those from ethnic minority backgrounds. According to the report, equal participation and progression across ethnicities could be worth an additional £24bn to the UK's economy per year.

One of Baroness McGregor-Smith's recommendations was that the government should legislate for mandatory reporting of ethnicity pay data by £20,000 pay band. In the government's response to the report, we said that we were persuaded that the case had been made for ethnicity pay reporting and expected business to lead in taking this forward voluntarily. The government also committed to monitor progress and stand ready to act if needed.

In order to monitor progress, the Minister for Small Business, Consumers and Corporate Responsibility commissioned a One Year On Review of the McGregor-Smith Report in February 2018. The findings published today[4] show that limited progress has been made across the McGregor-Smith recommendations. On ethnicity pay reporting, just 11% of employees reported that their organisations collect data on ethnicity pay. In particular those in small organisations are much less likely (8%) to report that their organisation collects data on ethnicity pay.

In response to these findings, the Department for Business, Energy and Industrial Strategy (BEIS) is consulting on a mandatory approach to ethnicity pay reporting. We recognise that this

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[1] www.ethnicity-facts-figures.service.gov.uk
[2] McKinsey (2018) "Delivering through diversity": https://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity
[3] https://www.gov.uk/government/publications/race-in-the-workplace-the-mcgregor-smith-review
[4] https://www.gov.uk/government/publications/race-at-work-2018-mcgregor-smith-review-one-year-on

is a complex and sensitive issue. Discussions with business and public sector representatives have highlighted challenges around collecting data and ethnicity classifications, as well as a lack of clarity around what information should be reported. Despite this, employers have expressed a determination to ensure that reporting ethnicity pay information leads to meaningful and targeted action.

This consultation invites views on a number of questions, including what information should be published to allow for meaningful and proportionate action to be taken without adding undue costs to business. This should enable the government and business to move forward in a consistent and transparent way, to the benefit of both employers and employees.

A number of different names and descriptions are commonly used when talking about ethnicity and ethnic groups. Unless stated otherwise and for the purposes of this consultation, the term 'people from ethnic minorities' refers to all ethnic minority groups excluding people from white ethnic minorities.

Whilst the Industrial Strategy is UK wide, this consultation is limited to Great Britain (GB). Employment and equality law and policy are devolved to Northern Ireland.

Chapter 1: Understanding the pay context

Our Industrial Strategy[5] sets out a long-term plan to boost the productivity and earning power of people throughout the UK. To build a Britain fit for the future, we are helping businesses create better, higher-paying jobs in every part of the United Kingdom with investment in the skills, industries and infrastructure of the future. For our Industrial Strategy to be successful, we need to make more of the opportunities provided by labour market diversity, by removing the barriers faced by under-represented groups in entering the labour market and reaching their potential.

We are becoming increasingly ethnically diverse; the proportion of individuals who identified themselves as White British in England and Wales decreased from 87.4% in 2001 to 80.5% in 2011[6] and in Scotland the number of people who identified themselves as being from an ethnic minority group doubled from 2% in 2001 to 4% in 2011.[7]

The British labour market is thriving, with more people in work than ever before. Since 2004, employment rates have increased across all ethnic groups.[8] However, differences in labour market participation remain; in 2016, around 1 in 10 adults from a Black, Pakistani, Bangladeshi or Mixed background were unemployed compared to 1 in 25 White British people.[9] Outcomes vary substantially between different ethnicities (and by gender within ethnic groups).

There are also wide variations in gross earnings from employment between ethnic groups. Whilst the data we hold on hourly pay broken down by ethnicity is limited, information collected through the Labour Force Survey[10] indicates that, generally speaking, ethnic minority groups earn less per hour than white employees. The finding is not uniform across all ethnic minority groups, with some outperforming white employees in hourly pay. Findings from the Equality and Human Rights Commission (EHRC) suggest that factors such as occupation, progression, age and education can help to explain some of these differences in pay. [11]

The government is determined to break down the barriers that hold back under-represented ethnic groups. This is not just about fairness and access to opportunity. A wide body of literature suggests that organisations with a diverse range of employees can better understand the needs of a wider range of customers, foster greater creativity and innovation and build a more resilient workforce.[12]

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[5] https://www.gov.uk/government/topical-events/the-uks-industrial-strategy

[6] www.ethnicity-facts-figures.service.gov.uk. The category 'White British' was not used in the census prior to 2001, and so earlier comparisons are not possible. A census of the population of the United Kingdom is taken every ten years, therefore more up to date data is not available.

[7] http://www.gov.scot/Topics/People/Equality/Equalities/DataGrid/Ethnicity/EthPopMig

[8] https://www.gov.uk/government/news/bme-employment-reaches-record-high

[9] Race Disparity Audit (2017): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/686071/Revised_RDA_report_March_2018.pdf

[10] The Labour Force Survey (LFS) is a study of the employment circumstances of the UK population. It is the largest household study in the UK and provides the official measures of employment and unemployment.

[11] https://www.equalityhumanrights.com/en/publication-download/research-report-108-ethnicity-pay-gap

[12] https://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity

It also makes economic sense: analysis done as part of the McGregor-Smith Review[13] indicated that full representation of ethnic minority groups across the labour market, through improved participation and progression, would result in increased output of around £24 billion a year (around 1.3% of GDP).[14]

Case Study: Diversity and Business Performance

McKinsey have been examining diversity in the workplace for several years. Their latest report, *Delivering through Diversity,*[15] examines over 1,000 companies covering 12 countries and measures the impact of inclusion and diversity on growth and business performance.

The findings were clear:

The relationship between diversity and business performance persists. There is a statistically significant correlation between a more diverse leadership team and financial outperformance.

Leadership roles matter. Companies in the top-quartile for ethnic/cultural diversity on executive teams were 33% more likely to have industry-leading profitability.

There is a penalty for opting out. The penalties for bottom-quartile performance on diversity persists. Overall, companies in the bottom quartile for both gender and ethnic/cultural diversity were 29% less likely to achieve profitability. In short, not only were they not leading, they were lagging.

Lessons learned from 17 leading companies highlighted that more diverse companies are better able to attract top talent and improve their customer orientation, employee satisfaction, and decision making.

The drivers of ethnic pay disparities

Ethnic pay disparities are not primarily about those from a white background and other ethnic groups being paid differently for the same job. The Equality Act 2010 makes it unlawful to discriminate (both directly and indirectly) against employees (and people seeking work) because of their race. Therefore, unless there is a failure to comply with existing law, pay disparities between ethnic groups are likely to be due to other factors that impose a disadvantage on people from ethnic minorities without being explicitly discriminatory.

Occupations

Broadly, people from ethnic minorities are more likely to work in low-skilled, low-paid jobs. This is particularly true for people from Pakistani and Bangladeshi backgrounds, with more than 2 in 5 workers in the three lowest-skilled occupation groups. Black workers are also more likely to work in caring, leisure and other service occupations (where median hourly pay is up to 25%

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[13] https://www.gov.uk/government/publications/race-in-the-workplace-the-mcgregor-smith-review
[14] GDP is a monetary measure of economic output produced by a country.
[15] https://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity

lower than average median hourly pay across all occupations) than any other ethnic group.[16] However this is not true for all ethnic groups. Those from an Indian ethnic group are most likely to work in the highest-skilled occupations; over 1 in 10 were in Manager, Director and Senior Official roles and over 3 in 10 were in Professional occupations.[17]

Figure 1: Workers in different types of occupation by ethnicity (2016)
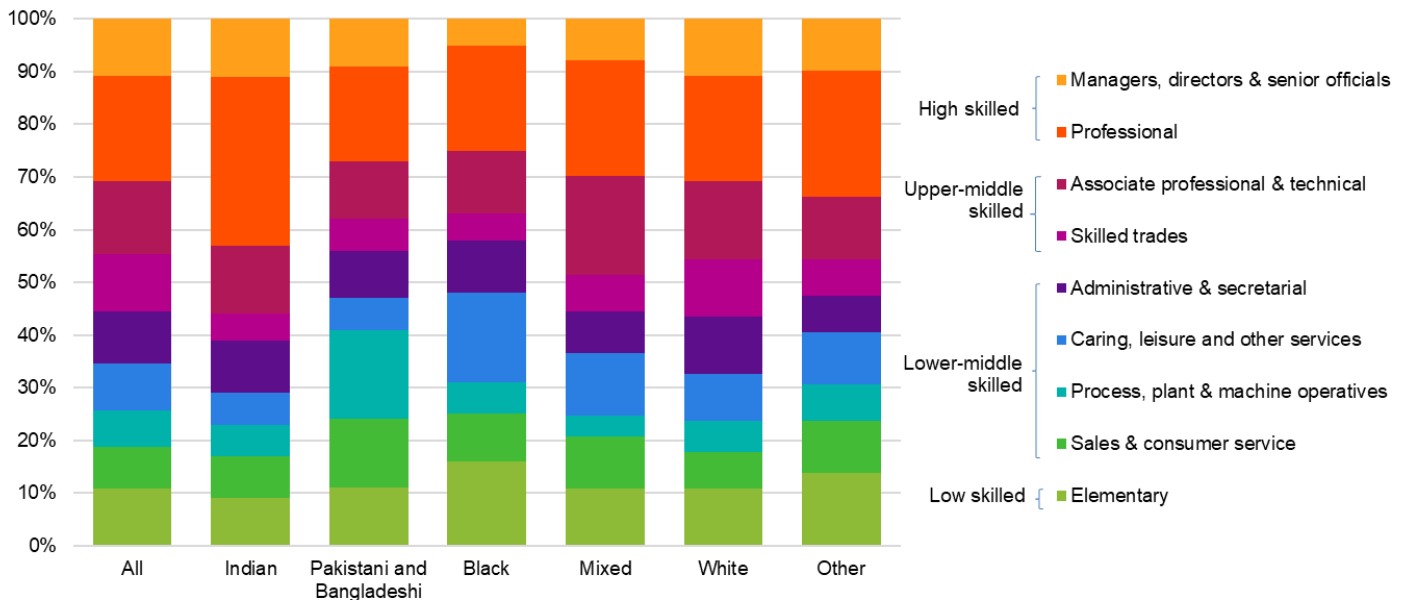
Source: Annual Population Survey (2016)

Progression

Once in work, evidence shows that people from ethnic minorities progress less far and earn less money than their white counterparts. Baroness McGregor-Smith led an independent review of the issues faced by businesses in developing ethnic minority talent from recruitment through to executive level. *Race in the Workplace* reported a number of areas of concern at the time:

- Over 12% of the working age population were from ethnic minority backgrounds, but made up only 10% of the workforce and held only 6% of top management positions.

- More people from an ethnic minority background would like to work more hours than they currently do, compared to white workers (people from other ethnic groups have an 'underemployment rate' of 15.3% compared with 11.5% for white workers).

- Ethnic minorities were more likely to be overqualified than white ethnic groups but white employees were more likely to be promoted than all other ethnic groups.

Business in the Community's 2018 report on the progress made by employers against the recommendations of the Ruby McGregor-Smith review found that over half of employees

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[16] Annual Survey of Hours and Earnings (2017 provisional), data by occupation (2 digit SOC), Table 2: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsur veyofhoursandearnings/2017provisionaland2016revisedresults
[17] https://www.ethnicity-facts-figures.service.gov.uk/british-population

(52%) from ethnic minority groups (including white ethnic minorities) believe they will have to leave their current organisation to progress their career compared to 38% of White British employees.[18]

Age

Research carried out by EHRC found that there are clear differences in age across ethnic groups. They found that most people from ethnic minorities, with the exception of Black Caribbean immigrants and Chinese immigrants, are on average younger than White British people. Since pay tends to increase with age, we might therefore expect people from an ethnic minority background to be paid less on average because of their younger age.[19] This is just one factor which could be explored further by employers.

Education

Another important factor which determines pay is level of education. However, EHRC found that most people from ethnic minorities have higher qualifications than White British people.[20] BEIS research has shown that the representation of ethnic minorities in senior management positions is below the level expected given the levels of educational attainment,[21] suggesting an under-used pool of talent.

Gender

Ethnic pay disparities vary by gender and ethnic group and many of the characteristics of ethnic pay disparities described above are relevant for both genders. There is some evidence to suggest a "double disadvantage" may exist for some groups of ethnic minority women, but not for others. Collecting and analysing the data in this way could provide an opportunity to explore this in more detail for different ethnic groups.

Discrimination and Bias

The government is proud of its domestic anti-discrimination legislation, which provides one of the strongest legal frameworks in the world in this field. Given that discriminatory practices are unlawful, it is difficult to quantify their effect when considering pay disparities.

The McGregor-Smith report noted that "even when overt discrimination is not present, there remains a lingering bias within the system which continues to disadvantage certain groups". The effect of bias is also difficult to measure, and the McGregor-Smith report sets out how businesses can identify and address bias, unconscious or otherwise, in their procedures.

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[18] https://www.gov.uk/government/publications/race-in-the-workplace-the-mcgregor-smith-review
[19] EHRC (2017) "The Ethnicity Pay Gap": https://www.equalityhumanrights.com/sites/default/files/research-report-108-the-ethnicity-pay-gap.pdf
[20] Ibid.
[21] https://www.gov.uk/government/statistics/bme-individuals-in-the-labour-market-analysis-of-full-representation

Chapter 2: Ethnicity Pay Reporting

The benefits of gathering, monitoring and publishing ethnicity data

In order to report ethnicity pay information, employers must first collect and analyse information relating to different ethnic groups in their workforce. To encourage and promote transparency, the Prime Minister ordered the Race Disparity Audit to publish information on ethnicity across the public sector. The Prime Minister said this would "shine a light on how people from different ethnicities are treated across public services" and "provide the definitive evidence of how far we must still go in order to truly build a country that works for everyone".

In her 2017 review, Baroness McGregor-Smith stressed the importance of employers having robust data to both establish a baseline and measure the impact of positive action. The Parker Review (2017)[22] also highlighted the importance of transparency and disclosure to ensure that progress gets appropriately monitored.

Race in the Workplace Review

"No employer can honestly say they are improving the ethnic diversity of their workforce unless they know their starting point and can monitor their success over time. Simply stating a commitment to diversity or establishing a race network is not sufficient to drive lasting change. We have seen with the gender pay reporting requirements that where employers are required to collect and publish key data, they will take action. For that reason, I believe it is essential that as well as collecting this data, all large employers must publish their workforce ethnicity data annually." Baroness McGregor-Smith

We know that a small number of employers have chosen to publish ethnicity pay data voluntarily, including the big accountancy firms, some universities and the Civil Service. Those employers who have already reported pay data have used different methodologies which limits comparability. It also makes it more difficult for employers and employees to understand what the data is showing and what action should be taken as a result. Therefore, this consultation aims to agree a consistent methodological approach which drives meaningful action, while remaining proportionate and without adding undue burdens on business.

Voluntary ethnicity pay reporting – what employers say

"While progress has been made, many barriers still exist in today's businesses which means people aren't able to reach their full potential. The more we understand what these barriers are and why they exist, the quicker we'll be able to work towards creating truly inclusive organisations." Kevin Ellis, Chairman and Senior Partner at PwC

 "We have to get real about inclusion and diversity and we cannot achieve this without introspection and transparent data. It is critical KPMG becomes a magnet for talent – and that is talent in the broadest sense – different perspectives, different ideas, different

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[22] http://www.ey.com/uk/en/newsroom/news-releases/17-10-12-final-recommendations-of-the-parker-review-published

thoughts and backgrounds. Diversity of thought is a commercial imperative." Philip Davidson, Managing Partner at KPMG

"Being open about – and facing up to – our gender and ethnicity pay gaps is an important step in us taking informed, positive action that fosters a culture in which our staff flourish and their unique perspective, experiences and skills are valued." University College London

"Increasing the diversity of our company isn't just the right thing to do, it is a major business priority. We must reflect the face of modern Britain if we are to remain both relevant and distinctive to our audiences. Part of that is being transparent about where we are now, and this starts with taking the decision to be one of the first media organisations to publish its BAME pay gap." John Hardie, Chief Executive at ITN

Consultation question 1

1.   What are the main benefits for employers in reporting their ethnicity pay information?

Please state the reasons for your answer.

What ethnicity pay information should be reported?

Defining the overall approach to ethnicity pay reporting is an important step to encourage consistency and improve reporting rates. Ethnicity pay information could be reported in different ways, which have implications for how nuanced the consideration of data can be – for example:

- One pay gap figure comparing average hourly earnings of ethnic minority employees as a percentage of white employees;
- Several pay gap figures comparing average hourly earnings of different groups of ethnic minority employees as a percentage of white employees;
- Ethnicity pay information by pay band or quartile, showing the proportion of employees from different ethnic groups by £20,000 pay bands or by pay quartiles.

In exploring these options, the government is mindful of the existing requirements in place for gender pay gap reporting. We welcome views on the extent to which employers would find it helpful to mirror parts of the gender pay gap methodology. The government will take account of these views when considering the most relevant and appropriate approach for ethnicity pay reporting.

Given the complexity of ethnicity data, there are also a number of contextual factors, e.g. gender, geographical and age variations, that could form part of the information that is provided or available.

One pay gap figure

Some employers have chosen to publish one pay gap figure comparing average hourly earnings of ethnic minority employees as a percentage of white employees. This has the benefit of mirroring the gender pay gap methodology (with which large employers are already familiar). It also provides one headline figure which is, arguably, easier to communicate. On the

other hand, it means rolling all classifications of ethnic minority groups into one – losing the differentiation in outcomes for different ethnic groups. A headline pay gap figure alone does not reflect overall representation figures. So, an organisation with lower than average ethnic minority representation could still show a positive pay gap figure if those ethnic minority individuals it employs are in more senior positions.

Several pay gap figures by ethnicity group

An alternative approach is to publish pay gap figures for different ethnic groups. This would compare average hourly earnings of employees of ethnic minority groups as a percentage of white employees. For example, in addition to the headline white/ethnic minority figure, the NHS published an ethnicity pay gap figure for Asian; Black; Mixed; White; Other and Unknown Ethnic Groups.[23]

This approach tries to balance the risks of rolling different ethnicity classifications together against the need for simplicity. However, it still combines ethnic minority groups, meaning that variations in outcomes within those groupings will not be highlighted. Conversely, a more granular level of detail could result in figures not being reported due to risks of disclosure of individual, personal information, especially for smaller organisations.

By pay band or quartile

Breaking down ethnicity pay information by pay bands or quartiles helps to identify the numbers of employees from ethnic minority groups and white employees in each pay band or quartile (or other groupings such as quintiles). This allows employers to consider where ethnic minorities are concentrated in terms of pay and identify any apparent barriers to progression. We recognise that breaking down the data in such a way may cause issues in some cases where data cannot be published to protect anonymity.

Baroness McGregor-Smith recommended publishing ethnicity data by £20,000 pay band. Her argument was that this provided an at-a-glance view of an organisation's ethnic minority representation in its hierarchy. The government recognises that pay bands are not always structured and fixed. One way of addressing this could be to publish ethnicity data by pay quartiles, which would also mirror the gender pay gap methodology.

This approach is helpful in highlighting representation of ethnic minorities across an organisation. Several employers have told us it could encourage clearer, targeted action. The same issue (discussed above) of the most appropriate way to group different ethnic minority groups to reflect variations in pay distributions would need to be considered here.

What contextual information should be reported or available?

There are also a number of contextual factors that could form part of the information that is provided. The government recognises the need to keep the approach to reporting as simple as possible to minimise the burden on employers. However, in some cases additional information could help employers understand more about the drivers of disparities or provide important context to employees about the data reported.

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[23] https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/public-sector-pay/nhs-basic-pay/latest

Geographic variations

The geographical distribution of ethnic minority groups is categorised by concentrations in London and in certain regions, towns and cities, and there are also regional variations in pay. The government understands that ethnicity pay reporting may need to acknowledge the effects of local variations and regional allowances on their pay data. For example, a significant proportion of people from ethnic minorities are concentrated in London, where pay is comparatively higher for all jobs.

Age variations

Pay gap reporting works best where demographics are static (for example there has always been an equal number of men and women). However, people from ethnic minorities are generally younger than the white population, and we know that pay generally increases with age. Employers could look at the age profile of those from ethnic minority groups compared with those from a white background to see whether age, which can be a proxy for labour market experience can explain some of the differences in pay and progression.

Gender variations

Research by the Resolution Foundation found differences in average pay gaps between ethnic minority men and women.[24] Introducing mandatory ethnicity pay reporting alongside the existing requirements on gender pay reporting provides an opportunity to examine the potential intersectional effects of pay differences. For example, employers can consider whether women from an ethnic minority background are likely to experience greater pay differentials to men and women from a white background. Employers could also look at the pay differences between ethnic minority men and women separately. This type of comparison would exclude any effect of a gender pay gap and can give a richer picture of how ethnicity influences men and women's pay differently.

Consultation questions 2 - 3

2.   **What type of ethnicity pay information should be reported that would not place undue burdens on business but allow for meaningful action to be taken?**

Please indicate from the list below and state the reasons for your answers.

   a) One pay gap figure comparing average hourly earnings of ethnic minority employees as a percentage of white employees

   b) Several pay gap figures for different ethnic groups, using standardised ethnicity classifications

   c) Ethnicity pay information by £20,000 pay band

   d) Ethnicity pay information by pay quartile

   e) All of the above

   f) Other

   g) Don't know

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[24] https://www.resolutionfoundation.org/publications/opportunities-knocked-exploring-pay-penalties-among-the-uks-ethnic-minorities/

Please state the reasons for your answers.

3. **What supporting or contextual data (if any) should be disclosed to help ensure ethnicity reporting provides a true and fair picture?**

Please state the reasons for your answer.

Narrative and action plans

Under gender pay gap reporting, it is not a mandatory obligation for employers to publish a narrative or action plan alongside their data. Employers were strongly encouraged to publish a narrative to explain the reasons for the results. Some go further and give details about actions that are being taken to reduce or eliminate the gender pay gap. A narrative with an action plan helps anyone reading the statement to understand the organisation's view of why a gender pay gap is present and what the organisation intends to do to close it. It can also be used where measures to reduce the gender pay gap have already been taken that need time to take effect before an impact is made. Around 50% of employers published a narrative with some form of action plan in the first year of gender pay gap reporting. There is an expectation that employers will initiate an action plan that aims to reduce the gender pay gap in their workplace – but no obligation.

For ethnicity pay reporting, narrative plans could be useful to report on the 'quality' of pay reporting, particularly declaration rates, since improvements will affect interpretation of the findings that companies report. Ethnicity pay reporting should drive meaningful action and build on the lessons from gender pay reporting. Although many employers have Diversity and Inclusion strategies in place, some argue that it should be mandatory to publish action plans alongside any ethnicity pay reporting. This could make clear to current and potential employees that employers are committed to taking action to address disparities.

Consultation question 4

4. **Should an employer that identifies disparities in their ethnicity pay in their workforce be required to publish an action plan for addressing these disparities?**

Please state the reasons for your answer.

Chapter 3: Ethnicity data and classifications

Challenges in collecting, analysing and reporting ethnicity pay information

There are a number of challenges around collecting, analysing and reporting ethnicity pay information in a meaningful way, not least that there is no legal obligation for individuals to disclose which ethnic group they identify themselves with or on employers to collect ethnicity information. Research carried out by EHRC found that 60% of larger employers (250+ employees) collect data on ethnicity.[25]

Where employers do collect ethnicity data, some report declaration rates of below 50% and many report that their workforce expressed concerns about how the data would be used. There are many factors behind this. EHRC found that in terms of collecting data on employees' ethnicity, just under a third (32%) of employers stated that collecting the data is too intrusive; 27% report that employees do not want to share the information; and 20% state that collecting it is too onerous.[26]

Analysing ethnicity data once obtained can be complex because identifying as a member of a particular ethnic group is self-defined by the individual themselves and is therefore subjective. Some individuals report that they have difficulty completing questionnaires which ask for their ethnic identity because they do not associate themselves with any of the categories or because they associate themselves with more than one category.

McGregor-Smith Review

Self-reporting rates (all employers):

Baroness McGregor-Smith asked employers of all sizes whether they collected data on the ethnicity of their workforce. All but one of the employer respondents said their organisation did collect data on employee ethnicity. However, many raised the issue of non-disclosure and were struggling to persuade individuals to provide that information.

FTSE 100 Companies:

As part of the call for evidence for her review, Baroness McGregor-Smith wrote to the CEOs of FTSE 100 companies in February 2016 to ask them to provide an anonymised version of their employee ethnicity data to the review team. 74 of the FTSE 100 companies responded and just over half of those were able to provide data. For the companies that responded, there were wide variations in the type of data that companies collected and the number of people who had completed the ethnicity category.

Consultation question 5

5.   Do you currently collect data on ethnicity at your workplace?

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[25] https://www.equalityhumanrights.com/en/publication-download/measuring-and-reporting-disability-and-ethnicity-pay-gaps
[26] Ibid.

a) Yes

b) No

c) Don't know

If yes, do you use standard ethnicity classifications for reporting? If so, which ones?

Please choose from the list below and state the reasons for your answer (see Annex A for more information).

a) 2011 census: 5 standardised ONS ethnic classifications

b) 2011 census: 18 standardised ONS ethnic classifications

c) 2001 census: 5 standardised ONS ethnic classifications

d) 2001 census: 16 standardised ONS ethnic classifications

e) Other (please state what classifications you use)

f) Don't know

Improving ethnicity reporting rates by individuals

In order for ethnicity pay reporting to lead to beneficial outcomes, where companies are able to take meaningful action based on the findings, ethnicity reporting rates by individuals need to be improved. Employers with the most success in improving declaration rates have put significant effort into understanding what works (while avoiding perverse consequences) and encouraging employees to provide information on ethnicity. Examples of types of action taken are:

- explaining to employees clearly how the data will be used (EHRC research found this was the most significant factor in overcoming barriers);

- building the collection of information into the recruitment process, so that new joiners are asked to provide the information as part of their "on-boarding" process;

- making the data easy to collect e.g. through online forms;

- regular reminders to existing staff;

- allowing 'prefer not to say' to help avoid people giving false declarations.

Case study: Increasing Diversity Declaration Rates at Nationwide Building Society

At the beginning of 2015 Nationwide Building Society's diversity declaration rate across all monitored protected characteristics was just over 26%. Previous attempts to encourage declaration, via online self-service upload to their HR data management system, had not resulted in any significant uplift.

In May 2015 ethnicity classifications were amended and brought into line with the census categories and a 'Prefer not to say' option was added to the online system. HR then launched a Diversity Declaration Rate Campaign between May and October 2015, with a stretching target of 90% declaration rate (across all categories).

By the end of October 2015, diversity declarations rates had increased to 90%. Improved collection was sustained, and in December 2016 they hit an all-time high of 97% (averaged across all classifications), with ethnicity the highest collection rate at above 97%.

Throughout the campaign, Nationwide's three key messages were to:

1. Tell people why the data was wanted, clearly explaining the benefits to the individuals as employees and to the organisation as an employer.

2. Remind employees that declarations are confidential, setting out what would be done with the data and how it would be used and protected.

3. Reassure employees that they did not have to declare a personal characteristic if they did not wish to, as there was now a 'prefer not to say' option.

Consultation questions 6 and 7

6.   **What do you think are the most effective approaches for employers to improve employee self-reporting or declaration rates?** Please state reasons for your answer.

7.   **How should self-reporting or non-disclosure rates be reflected in the information reported by employers?** Please state reasons for your answer.

Classification issues

Employers who collect ethnicity data often use different classifications from each other and may also use different ethnicity classifications for different aspects of the employer's business. Ethnicity classifications are likely to be built into an organisation's HR and IT infrastructure and systems. Taking a more standardised approach to classifying ethnicity across organisations is likely to result in additional costs to employers where changes to systems are required. The government welcomes views on the estimated cost of changing HR systems to allow for new classifications.

The 2011 Office of National Statistics Census groups individuals into 18 detailed ethnic groups, which comprise five broad ethnic groups: White, Asian, Black, Mixed and Other (see Annex A). However even within these groups there are unique cultural differences which need to be clearly defined. For example, the white category groups together White British with individuals from other white backgrounds who may face different levels of disadvantage as a result of their ethnicity.

Consultation question 8

8.   **For a consistent approach to ethnicity pay reporting across companies, should a standardised approach to classifications of ethnicity be used? What would be the costs to your organisation?** Please state reasons for your answer.

Data handling and anonymity

Any information relating to an individual's racial or ethnic origin is classified as a special category of personal data (previously classified as "sensitive personal data"). Data Protection legislation protects the data about living individuals ("personal data") and any information that would identify a living individual would need to be compliant with that legislation.[27]

Organisations who collect ethnicity data need to take care to ensure the anonymity of those who provide it. For example, the Civil Service workforce statistics supress values based on five or fewer responses. Suppression means these figures have not been included in the data, to protect confidentiality and because the numbers involved are too small to draw any reliable conclusions. The government welcomes views on what the equivalent approach could be for employers in the private sector.

Consultation question 9

9.   **Please outline steps that should be taken to preserve confidentiality of individuals.**

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[27] The relevant legislation is the General Data Protection Regulation (Regulation (EU) 2016/679), the Data Protection Act 2018, the Human Rights Act 1998 and the Freedom of Information Act 2000

Chapter 4: Next steps and government support for employers

In her February 2017 report, *Race in the Workplace*, Baroness McGregor-Smith recommended that the government should legislate to introduce mandatory reporting of ethnicity data by £20,000 pay band. At the time, the government said that the case had been made for ethnicity reporting and expressed a preference for a voluntary, business-led approach.

A year later, we know that a small number of employers have chosen to publish ethnicity pay data voluntarily. We have heard reports from business and public sector representatives of a lack of clarity around what information should be reported, as well as concerns about the use of classifications and levels of data collection and self-reporting rates within organisations. The information and questions set out in chapters two and three seek to address these issues.

The Industrial Strategy is a partnership with businesses, workers, universities and colleges, local government and the devolved administrations where we work together to achieve our goals. The government supports business-led approaches to improving diversity and inclusion. However, in some cases, where significant change is needed, stronger action is required. The coalition government initially launched a voluntary scheme for gender pay gap reporting. Even though 280 businesses signed up to "Think, act, report", a campaign to show a company's commitment to gender equality in the workplace, only 5 businesses went on to publish their data. Following the introduction of mandatory reporting, over 10,000 employers reported their gender pay gap.

The government believes it is time to move to mandatory ethnicity pay reporting.

Mandatory reporting

Introducing a mandatory requirement for businesses to report ethnicity pay data would require primary legislation. Introducing a mandatory requirement for the public sector (including government departments, the armed forces, local authorities, National Health Service bodies, and most schools) could be done through secondary regulations. If the government were to create a mandatory requirement for either or both the public and private sector, further testing would be required to determine the detail of the regulations.

Which employers should report ethnicity pay information?

The government believes that employers of fewer than 250 people should not be expected to publish ethnicity pay data. Although Baroness McGregor-Smith originally recommended a threshold of 50 employees, our judgement is that this risks imposing too great a burden on business. A threshold of over 250 employees would mirror the gender pay gap reporting methodology. This would include around 10,000 employers in Great Britain.[28] Some employers have argued that increasing the threshold for ethnicity pay reporting would be beneficial as it would lower the chance of employers not being able to publish ethnicity pay data to protect their employees' anonymity.

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[28]https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/datasets/ukbusinessactivitysizeandlocation

Consultation question 10

10. **What size of employer (or employee threshold) should be within scope for mandatory ethnicity pay reporting?**

- All employers

- Employers with 50+ employees (as recommended by the McGregor-Smith Review)

- Employers with 250+ employees (as for gender pay gap reporting)

- Employers with 500+ employees

- Other threshold

Please state the reasons for your answer.

Support for employers

The government recognises that some businesses will need to do a lot of groundwork to be in a position to publish ethnicity data. Some will be starting from scratch in collecting this data from employees; they and others will need to take concerted action to drive up declaration rates, including explaining clearly to employees what the information will be used for.

In the case of gender pay gap reporting, the government provided a package of support to help employers calculate and address their gender pay gap, including guidance and factsheets developed by the Government Equalities Office (GEO) and the Advisory, Conciliation and Arbitration Service (Acas). GEO held regional employer events, visited trade fairs and used employer case studies to raise awareness. Acas also offered:

- Guidance on identifying gender pay issues and improving them

- Training courses and events on calculating organisations' gender pay gap

- Tools and support for communication with employees on gender pay issues

For ethnicity pay reporting, support could include similar tools, and the sharing of best practice and guidance on measures to improve ethnic minority representation and remove barriers to progression in the workplace.

A trial or phased approach

The government could work with 'early adopters' across the public and private sector to test approaches before mandatory reporting is required. The Civil Service already publishes information on ethnicity and pay; in October 2018 it is committing to lead by example and publish departmental breakdowns once a methodology has been agreed in line with the findings of this consultation. The NHS England has released information on its ethnicity pay gap on the government's ethnicity facts and figures website.[29] The government is aware that

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[29] https://www.ethnicity-facts-figures.service.gov.uk/

some businesses are developing their work in this area, following the example of those that have already published.

Consultation question 11

11.   What support measures do you think would be useful for employers?

Please state the reasons for your answer.

Consultation questions

Please state the reasons for your answers.

Chapter 2: Ethnicity pay reporting

1. **What are the main benefits for employers in reporting their ethnicity pay information?**

2. **What type of ethnicity pay information should be reported that would not place undue burdens on business but allow for meaningful action to be taken?**

3. **What supporting or contextual data (if any) should be disclosed to help ensure ethnicity reporting provides a true and fair picture?**

4. **Should an employer that identifies disparities in their ethnicity pay in their workforce be required to publish an action plan for addressing these disparities?**

Chapter 3: Ethnicity data and classifications

5. **Do you currently collect data on ethnicity at your workplace? If yes, do you use standard ethnicity classifications for reporting? If so, which ones?**

6. **What do you think are the most effective approaches for employers to improve employee self-reporting or declaration rates?**

7. **How should self-reporting or non-disclosure rates be reflected in the information reported by employers?**

8. **For a consistent approach to ethnicity pay reporting across companies, should a standardised approach to classifications of ethnicity be used? What would be the costs to your organisation?**

9. **Please outline steps that should be taken to preserve confidentiality of individuals.**

Chapter 4: Next steps and government support for employers

10. **What size of employer (or employee threshold) should be within scope for mandatory ethnicity pay reporting?**

11. **What support measures do you think would be useful for employers?**

Annex A

2011 Census classification

The 2011 Census collected information about a person's ethnicity via a batch of questions on country of birth, nationality, language spoken at home, country of birth, skin colour, national/geographical origin, racial group and religion, as it recognised that a person's ethnicity is multifaceted. Each of these different characteristics may impact upon how people are treated by public services and may also help to explain some of the reasons why disparities in key outcomes exist. For example, an ethnic minority person who is born in the UK may have very different outcomes to those who have recently migrated to the UK.

The ethnic group question in the 2011 Census in England and Wales has 5 broad categories commonly referred to as ONS 5+1 (2011) (bold text shows 'short' titles): **White**; **Mixed**/Multiple; **Asian**/Asian British; **Black** African/Caribbean/Black British and **other** ethnic groups. The '+1' refers to Unknown ethnicity.

There are 18 specific groups under these 5 broad categories which are commonly referred to as ONS 18+1 (2011)

2011 Ethnic group classification: What is your ethnic group?

White	English/Welsh/Scottish/Northern Irish/British
	Irish
	Gypsy or Irish Traveller
	Any other white background
Mixed/multiple ethnic background	White and Black Caribbean
	White and Black African
	White and Asian
	Any other Mixed/multiple ethnic background
Asian/Asian British	Indian
	Pakistani
	Bangladeshi

	Chinese
	Any other Asian/Asian British
Black African/Caribbean/Black British	African
	Caribbean
	Any other Black African/Caribbean/Black British
Any other ethnic group	Arab
	Any other ethnic group

2001 Census classification

The 2001 Census classifications (below) – though broadly the same are less detailed, having 16 ethnic group categories (known as 16+1). Therefore the 2001 Census classification, when grouped at the level of 5+1, does not map to the 5+1 groupings from the 2011 classification:

- the 2001 Census categorised Chinese people within 'Other ethnic group'
- the 2001 Census did not list Gypsy and Irish Travellers or Arab people

2001 Ethnic group classification: What is your ethnic group?

White	English/Welsh/Scottish/Northern Irish/British
	Irish
	Any other White background
Mixed/multiple ethnic background	White and Black Caribbean
	White and Black African
	White and Asian
	Any other Mixed/multiple ethnic background

Asian/Asian British	Indian
	Pakistani
	Bangladeshi
	Any Other Asian background
Black African/Caribbean/Black British	African
	Caribbean
	Any Other Black African/Caribbean background
Other ethnic group	Chinese
	Any Other ethnic group

This consultation is available from: https://www.gov.uk/government/consultations/ethnicity-pay-reporting

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.