



Government
Equalities Office

Putting equality at the heart of government

Modern Workplaces

Government Response

Consultation on: Equal Pay

June 2012

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Foreword

This Government is committed to promoting equality of opportunity and building a fairer society for all. People doing the same work should receive the same pay regardless of their gender; this is a basic principle of a fair workplace. Yet despite Equal Pay legislation being in place for decades, the pay gap between men and women stubbornly persists.

In 'The Coalition: our programme for government', we gave an undertaking to promote equal pay and to implement a range of measures to end discrimination in the workplace. At the heart of this approach is the firm belief that it's best to work with businesses, not against them. By helping companies see the business benefits, we have been encouraging firms to make good use of women's talents and to reward them appropriately. From encouraging women to set up their own businesses to helping them secure a place on the board, our light-touch, non-legislative approach to workplace equality marks a stark contrast to the past. This approach is already bearing fruit. For example, an ever-growing number of our leading businesses and charities are participating in 'Think, Act, Report' – a voluntary initiative dedicated to supporting women in the workplace and encouraging greater pay transparency. We strongly believe that light-touch approaches of this kind are the best way to encourage most employers to deal with the complex causes of unequal pay.

But it is also right to take strong action in the few cases where employers have been shown to have breached the law. So in the Modern Workplaces Consultation, we set out the Government's proposal to give Employment Tribunals the power to impose pay audits on employers who are found to have discriminated because of gender in pay matters. We are grateful to everyone who contributed their view and suggestions.

In this response to that consultation, we set out our findings and conclusions. We have decided to go ahead with our proposal to allow Tribunals to impose pay audits on those who have broken the law. This change will have no impact on the overwhelming majority of businesses. But in those rare cases where a breach is shown, it will ensure that those employers look at their pay structures in detail to avoid breaking the law again.

In the light of the responses we received to the consultation, we have developed our proposals further. For example, we have decided that, initially, audits should not apply to micro businesses. We also recognise that the practical details need to be developed with care and in collaboration with business. So we will seek further views when we consult - as planned - on the content of the pay audit and publication requirements. We will also work closely with all interested parties as we prepare the underpinning primary legislation.

We are determined to put an end to unfair differences in the way women and men are paid. We believe this proposal is a valuable addition to the mainly-voluntary path we are taking by providing strong sanctions for those very few employers who do not see that pay discrimination has no place in British business.



A handwritten signature in black ink, appearing to read "T. May".

Rt Hon Theresa May MP
Secretary of State for Home Office and
Minister for Women and Equalities



A handwritten signature in black ink, appearing to read "Lynne Featherstone".

Lynne Featherstone MP
Minister for Equalities

Executive summary

Why tackle the gender pay gap?

- The gender pay gap is the difference between male and female earnings. More than 35 years after the introduction of the Equal Pay Act 1970 which contained provisions aimed at ensuring equal treatment between men and women in terms of pay and conditions of employment, UK employees are still experiencing significant disparity in men's and women's remuneration for performing work of equal value.
- The causes of the gender pay gap are complex and generally a consequence of a variety of factors such as fair access to jobs; pay differentials between low and medium-skilled occupations; levels of full-time work/part-time work in certain occupations; occupational segmentation (i.e. certain occupations are dominated either by men or women); local, national or geographical location of occupations; and opportunities for progression.
- The majority of employers do their utmost to pay their employees fairly. Not all, however, have a systematic approach, and there is still an unacceptable gender pay gap. The proposal to give Tribunals power to impose pay audits in certain relatively rare cases is clearly a step in the right direction in our commitment to promote equal pay between men and women workers in the UK.
- To help develop the proposals to use pay audits to tackle the gender pay gap, the Government commissioned Incomes Data Services (IDS) to examine a sample of equal pay claims brought to the Tribunals to identify any indications from those cases that a pay audit order might have been useful. This research report suggests that there is evidence that in some cases an audit requirement placed on the employer would be useful to ensure pay inequality does not continue in that employment. The report will be published on the Home Office Website <http://homeoffice.gov.uk/equalities/>.
- Alongside the consultation responses, this research has helped the Government to identify some key issues relating to pay audit requirements.

Modern Workplaces – Government Response

- The Modern Workplaces consultation was published on the 16 May 2011, and ran for 12 weeks. The consultation included questions on Flexible Parental Leave; Flexible Working; Working Time and Equal Pay. This response focuses on the Equal Pay aspect of the consultation. The response to the Flexible Working and Flexible Parental Leave elements of the Modern Workplaces consultation will be published by the Department for Business, Innovation and Skills in due course.
- The Equal Pay section of the Modern Workplaces consultation received 116 responses – 36 (31%) from individuals, 15 (12.9%) from business representative organisations and trade bodies, 11 (9.4%) from Trade Unions and Staff Associations, 11 (9.4%) from Charitable and Social Enterprise organisations, and the remainder from local government, central government, legal representatives and others.
- Generally, respondents agreed that there were problems within both public and private sectors in relation to transparency of gender pay gaps. In spite of this agreement, respondents had differing opinions about the effectiveness of using 'pay audits' to address gender pay gaps, the exact nature of pay audit requirements and the likely effectiveness of the proposal.

- A summary of the feedback to the proposals set out in the consultation, which included some acute suggestions and raised some practical issues in relation to effective enforcement of pay audits, is set out in the ensuing pages.

Summary of Policy Intention

- Following analysis of the feedback, the Government has decided to proceed with the proposal to give Employment Tribunals power to impose pay audits on employers who are found to have discriminated because of sex in contractual or non-contractual pay matters.
- These proposals will mean an Employment Tribunal which finds that an employer has discriminated on grounds of sex in contractual or non-contractual pay will be obliged to order the employer to conduct a pay audit where it considers there may be continuing or likely discrimination, unless an audit has been completed in the last three years, the employer has transparent pay practices or the employer can show a good reason why it would not be useful. Micro businesses will initially be exempt from the proposals. Whilst the number of cases expected per year is very low this is an important power and will contribute to the Government's commitment to promote equal pay and to act against discrimination in the workplace.
- As suggested in the consultation document, the Government intends to carry out a second consultation to seek views on the exact contents of pay audits and publication requirements, and to consider other issues raised by the consultation, before legislation is brought into force.

Non legislative measures

- The Government will continue to engage in collaborative action with local government, private companies, charities and other organisations on the factors that contribute to gender pay gaps in order to help build a fairer society.
- The 'Think, Act, Report' Framework is a voluntary initiative that was launched in September 2011 to encourage private and voluntary sector organisations with 150 or more employees to be more open about how they are helping women overcome barriers in the workplace. The framework was developed with leading business organisations, HR practitioners, employee representatives and others. Many leading companies such as Tesco, Unilever, Eversheds and BT have already signed up. It encourages companies to report on a range of indicators including:
 - Measures related to representation, composition and structure of the workforce by gender; and
 - Measures that directly capture the pay differences between men and women, including measures capturing wider pay, reward and benefits differentials.

The Government is intending to review the process annually with the first progress report to be published in September 2012. Details can be found at www.homeoffice.gov.uk/publications/equalities/womens-equality/gender-equality-reporting/think-act-report-framework.

Background

- Equal Pay provisions were originally introduced in the Equal Pay Act 1970 (EqPA), which together with the Sex Discrimination Act 1975, prohibited less favourable treatment between men and women in terms of pay and conditions of employment. The EqPA came into force on 29 December 1975.
- The effect of these provisions was broadly replicated under a new heading – Equality of Terms in Part 5 Chapter 3 of the Equality Act 2010 (the Act) which is intended to achieve pay equality between men and women. This section includes provisions relating specifically to equal pay between men and women doing equal work; like work; work rated the same; or work of equal value, where both sexes work for the same employer. This Chapter of the Act can be found at (www.legislation.gov.uk/ukpga/2010/15/part/5/chapter/3).
- Despite the equal pay legislation there is still a significant gender pay gap and more needs to be done to ensure that the equal pay legislation is as effective as possible.
- The Government made a commitment in the 'Coalition Programme for Government' to promote equal pay and to take a range of measures to end pay discrimination in the workplace. The Home Office, together with the Department for Business Innovation and Skills (BIS) consulted on a range of proposals, including the proposal to impose pay audits as outlined in the Modern Workplaces Consultation. The Government intends to introduce legislation relating specifically to equal pay audits when the Parliamentary timetable allows.

Consultation process

- The Department for Business Innovation and Skills published the Modern Workplaces consultation document and accompanying Impact Assessments on 16 May 2011. The consultation set out the Government's proposals to implement the Coalition Agreement commitments to extend flexible working rights to all employees; develop a system of flexible parental leave; and promote equal pay. The consultation also included proposals to amend the Working Time Regulations affecting the interaction of annual leave with sick leave and family-friendly leave in the light of recent EU court judgments.
- The consultation document was sent to a range of relevant stakeholders and posted on the BIS website. The consultation period ran for 12 weeks and closed on 8 August 2011. This document sets out the Government's formal responses to the comments received in the consultation on proposals to give Employment Tribunals the power to impose pay audits on employers who are found to have discriminated because of sex on pay. The Government is grateful to all respondents for their contributions during the consultation process.
- Responses were received through the online survey at Survey Monkey or via the Modern Workplaces consultation mailbox. Electronic copies of the consultation papers were made available via the BIS website, and during the consultation period the consultation webpage received 4,193 unique visits.

Engagement with stakeholders

- As part of the consultation process officials from the Home Office have engaged in a range of consultation meetings with key stakeholders. This was to canvass views around a wide range of issues relating to the Modern Workplace agenda, particularly equal pay audits and to help inform policy development. Some of the organisations involved in key engagement activities include representative organisations such as the British Chambers of Commerce, the CBI, the Engineering Employers Federation, and a number of Trades Unions.
- Electronic copies of the original responses, where the respondent is willing to be identified, are available on request. Please contact David Ware or Evelyne Doh at the Home Office via public.enquiries@homeoffice.gsi.gov.uk for further information.
- The Department is grateful to all the respondents for their time and has considered all of the comments and suggestions received. There were 116 responses to the consultation from a broad spectrum of interested parties.

The table below provides a comprehensive break down of written responses by type of responding organisation:

Table I: Break down of responses by type of organisation

Business representative Organisation / Trade body	15	12.9%
Legal representative	6	5.1%
Trade union or staff association	11	9.4%
Micro business (up to 9 staff)	2	1.7%
Small business (10-49 staff)	3	2.5%
Large business (over 250 staff)	12	10.3%
Individual	36	31%
Local Government	8	6.8%
Charity or social enterprise	11	9.4%
Central Government (Public Sector)	4	3.4%
Professional Body	3	2.5%
Other	5	4.3%
TOTAL	116	

A list of respondents is attached at Annex C. This excludes individual respondents and those who specifically asked to be excluded.

Analysis of responses and government response

- The consultation document sought the views of stakeholders on proposals to give Employment Tribunals power to impose pay audits on employers who are found to have discriminated on pay. This section sets out the analysis of the responses received to each of the issues raised in the consultation document, and how the Government intends to respond in line with its commitment to promote equal pay between men and women.

The principle of transparency in pay audits (Qs 46-47):

Summary of responses

1. Respondents generally supported the principle that greater transparency is required where an employer has been found to have breached the law. They suggested that transparency is better as a preventative rather than a reactive lever, and that government efforts would be better directed at improving compliance and good practice with a view to preventing cases rather than reacting to them. However, some who supported transparency made clear that the proposal appeared disproportionate and unlikely to be effective, while others suggested that audits should be conducted as a matter of course by all or larger employers to help identify the extent of any unjustifiable discrimination in the pay system, and to take action to put matters right.
2. Opponents of the principle, including some legal representatives, suggested that the fact that a single case has been lost is not necessarily indicative of systemic discrimination, a lack of transparency in pay structure, or that the pay system across an entire workforce is unequal. The main argument put forward by supporters of transparency was that while there is no robust evidence of serial offenders, it is more than likely that in an organisation where there has been a successful case, there are likely to be others, and requiring employers to audit the pay of all other employees seems a reasonable remedy and may prevent further action in the future.

Government response

3. Following the consultation, the Government is convinced that greater transparency is required where employers have been found to have breached the law. The Government is committed to supporting voluntary action by employers on gender pay, and the Home Secretary launched a business-led voluntary approach to equality reporting, 'Think, Act, Report' on 14th September 2011. The Government believes that employers who give the necessary thought to their own position through this voluntary approach are not likely to lose equal pay cases. But our research, and the consultation responses suggest that in those rare cases in which employers do not give sufficient thought to their own pay structures, and so lose cases at tribunal, intervention to require them to give thorough consideration to their pay systems is justified. The Government has taken account of the likely impact of the proposal on the number of employers settling cases, and noted the practical issues around the imposition of audits. The Government will cover this issue in a further consultation, as was proposed in the Modern Workplaces document. This will give the industry and key stakeholders the opportunity to further consider and comment on a range of measures on how to achieve transparency and how to work out the issues of details.

Should the requirement apply to all employers? (Qs 48-52)

Summary of responses

4. Respondents made a range of comments about the circumstances which would warrant non-application. Some thought it unacceptable for the Government to use the Tribunal system (a legal route for individual claimants) to force firms to take action other than individual redress. They suggested it would be preferable to allow the Tribunal discretion to apply an audit requirement where the Tribunal thought it would be appropriate. Others suggested that an audit requirement would impact disproportionately on small employers, while some argued that there should be no exceptions at all.
5. On the question about whether audits should not be ordered if one has been conducted in the last three years, the responses were evenly divided and tended to focus on what inference could be drawn about audits or other transparency work already carried out. In particular, comments suggested that some audits conducted by employers would not be sufficient to ensure no pay discrimination was taking place. Some respondents doubted that there was any realistic alternative way of eliminating pay discrimination.
6. Opinion was more or less evenly divided between those who thought the size of a company should be a factor that the Tribunal should bear in mind when deciding whether it would be productive to order an audit. Those who thought it was not relevant to do so were of the opinion that the law should apply equally to all on principle; this view was also associated with another that the burden of conducting a pay audit would be smaller for smaller companies, and so proportionate. Those who thought it was relevant thought so out of concern for burdens of business, and because they thought an audit unlikely to be helpful or necessary in some or all smaller businesses. A greater number of respondents (59 to 24) were opposed to a specific exemption for micro-employers and/or small employers from the requirement to conduct an audit. They suggested that Tribunals should have discretion to make this decision. Some of those who supported the exception suggested that it should be limited to micro businesses.
7. Respondents came up with a range of factors the Tribunal should bear in mind before deciding it would not be productive to order an employer to conduct an audit. These focused on: the facts of the case before the Tribunal; factual evidence of the employer's practices, particularly with reference to efforts to avoid discrimination; factual evidence of the employer's resources, business and financial position; whether there is evidence of a wider discriminatory practice; and the proportionality of making an order in a particular case. Some respondents felt that it should be left to the Tribunal to determine what facts were relevant to consider.

Government response

8. The Government recognises that there is a range of ways of approaching pay audits and that there are legitimate concerns about whether the imposition of a pay audit is an appropriate method of ensuring compliance for a very small employer. There is no question that the law of equal pay applies equally to micro or small employers as it does to large ones, but it is less certain that a full pay audit is a useful tool for a very small employer. It is important to get the balance right to ensure that all employers who have already tried their best to get non-discriminatory pay systems in place are not made to do pointless work. The Government will ensure that pay audits are only imposed where they may help to expose the need for change.
9. The Government has already announced a moratorium on the application of new regulation to micro employers and start-ups, and it is our intention not to apply the pay audit requirement to such businesses at first. The Government proposes to review the position once there has been an opportunity to see how these proposals work in practice.

Which unlawful actions should give rise to the pay audit obligation? (Q 53)

Summary of responses

10. A significant majority of respondents (59) supported the idea that audits should be ordered following claims relating to equality of terms, and claims relating to non-contractual pay discrimination. Supporters felt that pay discrimination frequently occurred in discretionary, rather than contractual matters and could equally be indicative of systemic unfairness. Opponents drew attention to Tribunals' existing recommendations power which applies in non-contractual pay cases, and felt that including non-contractual claims would lead to increase in the number of those claims made as 'fishing trips'.

Government response

11. The Government intends to impose pay audits in both kinds of case, as either may be indicative of the presence of discriminatory pay practices more generally. The duty not to make an order where it is not productive to do so will allow tribunals to carefully consider whether non-contractual pay cases may be indicative of systemic discrimination before ordering pay audits.

Publication of audits (Qs 54-55)

Summary of responses

12. The majority of respondents (63) thought that audits should be published. Amongst these, many qualified that statement saying the concept of 'publication' needed further refinement. Trade Unions who responded suggested the emphasis should be on disclosure to those who have an interest, such as employees and workforce representatives. Opponents focused often on the need for individual privacy of employees and the risks of generating fresh cases by publication of too

much detail. The consultation document made clear that this element of the consultation would be subject to further consideration and a second consultation process.

13. Respondents focused on the fact that a pay audit necessarily involves co-operative engagement between employer and employees, and that the employees and their representatives are the key audience of publication. For many respondents, since the concept of an audit also includes an action plan to put right what is wrong, making publication available to employees is an essential part of reaching agreement on the plan and a way forward. Respondents generally agreed it was legitimate to seek to allow reasonable space to ensure that actions needed to correct faults shown up in the audit can be taken before any wide publication.

Government response

14. The Government intends to consider thoroughly the distinction between publication of pay audits and disclosure of pay audits to staff and staff associations during the development of the second stage of the consultation process. The involvement of Trade Unions and staff is an important part of the pay audit process, and some level of disclosure during the process is more or less inevitable. We will consider whether any wider publication is necessary and how that should sit alongside the audit process.

Sanctions for failing to comply with the requirement to complete and publish an audit (Q 56)

Summary of responses

15. The consultation document made no firm proposal as to how a failure to conduct an audit when ordered should be treated, but did flag several options. Although each option had its supporters, the majority of those who expressed an opinion supported civil or criminal financial penalties, set at a sufficient level to be an appropriate deterrent, or financial penalties in combination with other options.
16. Some business groups preferred to allow a tribunal to take the failure into account in a future case. Trade Unions tended to prefer making the failure an act of unlawful discrimination, and this was sometimes accompanied by suggestion that there should be a ‘protective award’ made, similar to those that can be made in minimum wage cases. Other suggestions included disqualification of directors, barring from public contracts, and a jail term (in extreme cases).

Government response

17. The Government intends to impose a civil financial penalty for non-compliance with a Tribunal order to conduct a pay audit: this would be a variation on the scheme that has already been proposed in the Government’s response to Resolving Workplace Disputes consultation, which has been introduced to Parliament in the Enterprise and Regulatory Reform Bill. It is important that

the sanctions for non-compliance with a tribunal order are persuasive. Therefore, subject to the passage of that Bill, we propose that in relation to equal pay cases the civil penalties regime would be varied so that where a tribunal makes an audit order, it should not also be able to apply a civil penalty unless the order is not complied with.

Content of the audit (Qs 57-59)

Summary of responses

18. The majority of respondents thought setting out the detailed content of audit requirements in secondary legislation was appropriate. There was also a wide range of views (amongst both those who agreed and those who did not) on what this might mean, and a clear view from some respondents that no primary legislation should be passed until an impact assessment could be prepared in the light of these detailed proposals. Those opposed tended to take the view that the need to apply the audit requirement differently in each individual case argued against setting out a detailed requirement.
19. A number of respondents made detailed and helpful suggestions as to what should be included in the proposed audit, which will help us as we take forward these proposals. Others drew attention to existing Equality and Human Rights Commission (EHRC) guidance on equal pay. Some respondents took the opportunity to suggest that audits should be designed so as to take into account differences related to other matters than sex (e.g. disability, race), while others felt the content should not be specified in detail or should be left to employers.
20. Many individual respondents disagreed that the requirement needed to be 'appropriate to the circumstances of the employer', or thought it should equally be appropriate to the needs of employees. Some respondents suggested a general approach to the requirements, supplemented with guidance. Other respondents again drew attention to the EHRC guidance and toolkits, or suggested that the Tribunal consider specific issues in each case on the basis of discussions with employers. Some respondents suggested that defining the scope of the audit narrowly was a crucial factor.

Government response

21. We note the view of some respondents that there is already sufficient clarity on the content of an audit issued by the Equality and Human Rights Commission (www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/tools-equal-pay/). However, there is a difference between guidance produced for use of voluntary measures and what should be the specific content of an order made by a Tribunal.
22. The Government therefore intends, as already proposed, to consult further on the content of the pay audit and to prepare an impact assessment which will be issued alongside it.

23. Although the Government recognises that there are pay gaps associated with characteristics other than sex, we believe it is right to focus these proposals on sex alone, as it is only here that there is a specific legal right to equal pay. We will be considering other suggestions as we develop the proposals for further consultation.
24. We recognise that questions of what work toward equal pay has already been done by an employer, and what their overall employment and financial position is, are relevant. The Government will seek to ensure as we take these proposals forward that all these relevant circumstances can be taken into account by Tribunals.

Unintended consequences (Qs 60-61)

Summary of responses

25. Employers, employers groups and legal advisers showed a very high degree of agreement that the audits proposal would increase settlements, and would generate additional cases as a result (because perception of high settlement rates encourages claimants to bring weaker cases). No respondents doubted this effect, though a few agreed with the suggestion in the consultation document that the effect would be slight. Equally, some directly said that the effect would be more than slight.
26. Union representatives suggested that settlement effects could work in both directions, as some claimants might be less likely to settle in order to see audits take place. Other potential consequences identified included increased activity by ‘no-win no-fee lawyers’ canvassing for cases, companies creating bogus data in order to complete audit requirements and negative impacts on business growth.
27. A number of respondents commented widely on the proposals. A number suggested imposing pay audits only after a finding at Tribunal was highly unlikely to be effective in combating equal pay. Others suggested the approach was contrary to the Government’s deregulatory agenda. Some respondents feared that pay audits would become associated in the minds of employers with punishment, rather than what they should be seen as – basic good practice. A number of comments were made relevant to the Impact Assessment and these have been taken into account.

Government response

28. A range of comments was made on the pay audit proposals for which we are grateful. There was general recognition by respondents that the proposal would increase the likelihood of employers settling cases. The assumptions made about this in the Impact Assessment have therefore been changed to reflect this view, and we will consider what can be done in structuring the proposals to minimize this effect.

30. Although we recognise that to some extent the proposal appears at odds with the de-regulatory agenda, it is not inconsistent to apply pressure at the point where the law has been shown to have been broken. Encouragement and help for employers before an Employment Tribunal case is raised is available by means of our voluntary approach (Think, Act, Report Framework – www.homeoffice.gov.uk/publications/equalities/womens-equality/gender-equality-reporting/think-act-report-framework). We also recognise that the impact of the proposal will be limited precisely because it applies only to those who have breached the law – but where it does apply, it will be of real value to other employees.

Enquiries

Enquiries can be addressed to:

David Ware / Evelyne Doh
Government Equalities Office
Home Office
Fry, 3rd Floor (North East Quarter)
2 Marsham Street
London SW1P 4DF

Email: public.enquiries@homeoffice.gsi.gov.uk

Annex A:

Summary of consultation questions

46. Do you agree with the principle that greater transparency is required where an employer has been found to have breached the law? Please explain your response.
47. Do you agree that where employers have breached the law, requiring employers to conduct equal pay audits is an effective way to increase transparency? Please explain your response.
48. Do you agree the obligation to conduct an audit should apply to all employers found to have breached an equality clause except in specified circumstances? If you do not agree, to which employers should it apply? Please explain your response.
49. Do you agree that audits should not be ordered if one has been conducted in the last three years; there is another means in place of ensuring the pay structure is non-discriminatory; or the tribunal does not consider it would be productive? Please explain your response.
50. Do you think that the size of an employer is a factor that the tribunal should bear in mind when deciding whether it would be productive to order an audit? Please explain your response.
51. Do you think there should be an exemption from the requirement to conduct an audit for micro-employers (fewer than 10 employees) and/or small employers (fewer than 50 employees)? Please explain your response.
52. What factors do you think that the tribunal should bear in mind before deciding it would not be productive to order an employer to conduct an audit?
53. Do you agree with our proposal to impose pay audits following findings in claims relating to equality of terms and claims relating to non-contractual pay discrimination? If not, to which claims do you think the obligation should attach? Please explain your response.
54. Do you agree with our proposal that these pay audits should be published? Please explain your response.
55. Should publication requirements include a period of grace, within which pay changes could be agreed, before publication takes place? Please explain your response.
56. What do you think would be the most appropriate sanction for failure to comply with an audit requirement?
57. Do you agree with the proposal that the detailed content of the proposed audit should be set out in secondary legislation following a further consultation? Please explain your response.
58. Do you have any suggestions as to what should be included in the proposed audit?
59. Do you have any suggestions as to the best way of ensuring the requirement is appropriate to the circumstances of the employer?

60. Do you consider there to be a risk of unintended consequences? If so, what do you think these could be and how do you think they could be mitigated?
61. Do you have any further comments or suggestions relating to our proposals or impact assessment on equal pay?

Annex B:

Schedule of questions

Details of the responses to the questions posed under the ‘equal pay’ section of the consultation paper are set out below. 116 consultees responded to the questions raised under the equal pay section of the consultation.

QUESTIONS 46 – 52: Pay audit requirement to apply to all employers

46. Do you agree with the principle that greater transparency is required where an employer has been found to have breached the law? Please explain your response?

- The total number of responses to this question was 101. 89 consultees (76%) were in favour of greater transparency; 12 (10.3%) were opposed to it. Individual respondents were particularly supportive of this principle. Although business groups were generally supportive of the principle of transparency, they resisted the particular proposal because it appeared to them disproportionate and unlikely to be effective.

47. Do you agree that where employers have breached the law, requiring employers to conduct equal pay audits is an effective way to increase transparency? Please explain your response.

- The total number of responses to this question was 98. 76 (65.5%) thought the proposal would be effective; 22 (18.9%) did not agree. Individual employers, large businesses, public sector and trade unions were supportive. A range of concerns were raised including the worry that the number of pay audits ordered would be too small to be of any use.

48. Do you agree the obligation to conduct an audit should apply to all employers found to have reached an equality clause except in specified circumstances? If you do not agree, to which employers should it apply? Please explain your response.

- The total number of responses to this question was 85. 63 (54.3%) consultees endorsed the principle that the law should apply equally to all employers; 22 (18.9%) were opposed. Charities were evenly split on this issue while trade unions, large business, individual employers and local government were supportive. A range of comments were put forward about the circumstances which would warrant non-application – for example, allowing the tribunal discretion to apply an audit requirement where appropriate; no exceptions for any employer; an audit requirement would impact disproportionately on small employers.

49. Do you agree that audits should not be ordered if one has been conducted in the last three years; there is another means in place of ensuring the pay structure is non-discriminatory; or the tribunal does not consider it would be productive? Please explain your response.

- The total number of responses to this question was 84. 49 (42.2%) were in favour, 35 (30.1%) opposed. Local government and large businesses were supportive. Individual employers, public sector, charities and business representatives were relatively divided. Comments made suggested some audits conducted by employers were not comprehensive enough and have not resulted in reducing the gender pay gap.

50. Do you think that the size of an employer is a factor that the tribunal should bear in mind when deciding whether it would be productive to order an audit? Please explain your response.

- The total number of responses to this question was 87. 40 (34.4%) consultees thought the size of an employer was relevant; 47 (40.5%) did not think it mattered. Individual employers were almost split. Trade unions and charities were opposed.

51. Do you think there should be an exemption from the requirement to conduct an audit for micro-employers (fewer than 10 employees) and/or small employers (fewer than 50 employees)? Please explain your response.

- The total number of responses to this question was 83. 24 (20.6%) consultees were supportive of the specific requirement of exemption for micro and/or small employers; 59 (50.8%) consultees were opposed. Individual employers, trade unions and large businesses were largely opposed and were of the opinion that there should be no exemption for any business irrelevant of the size.

52. What factors do you think that the Tribunal should bear in mind before deciding it would not be productive to order an employer to conduct an audit?

- 58 (50%) consultees commented on this open question. They provided a range of factors which they thought the Tribunal should consider – for example, the facts of the case; factual evidence of employer's practices; and proportionality in making an order. Other respondents commented that Tribunals should have the power to determine the facts relevant to each particular case.

53. Do you agree with our proposal to impose pay audits following findings in claims relating to equality of terms and claims relating to non-contractual pay discrimination? If not, to which claims do you think the obligation should attach? Please explain your response.

- The total number of responses to this question was 74. 59 (50.8%) consultees supported the idea that audits should be ordered following claims relating to equality of terms and non-contractual pay; 15 (12.9%) were opposed. Some legal representatives were supportive of imposing pay audits for both kinds of claims but others opposed mandatory pay audits regardless of the type of discrimination because they thought Tribunals already have wide powers to make recommendations in relation to non-contractual discrimination in the work place.

54. Do you agree with our proposal that these pay audits should be published? Please explain your response.

- The total number of responses to this question was 79. 63 (54.3%) consultees were supportive of this proposal; 16 (13.7%) were opposed. Individual employers, Trade Unions, Charities and Local Government were strongly in favour. Employer representatives and legal representatives were evenly split.

55. Should publication requirements include a period of grace, within which pay changes could be agreed, before publication takes place? Please explain your response.

- The total number of responses to this question was 71. 49 (42.2%) consultees were supportive; 22 (18.9%) were opposed. Employer representatives, large businesses, and local government were supportive because they think it is necessary to have some reasonable time to implement corrective action identified in the audit before publication. Individual employers were evenly divided.

56. What do you think would be the most appropriate sanction for failure to comply with an audit requirement?

- 65 (56%) consultees commented on the options set out in the consultation. 35 (30.1%) were supportive of financial penalties; 11 (9.4%) were supportive of future claims, 4 (3.4%) were supportive of unlawful discrimination, and 7 (6%) would prefer other forms of sanctions.

57. Do you agree with the proposal that the detailed content of the proposed audit should be set out in secondary legislation following a further consultation? Please explain your response.

- The total number of responses to this question was 70. 55 (47.4%) consultees were in favour; 15 (12.9%) were against. Large businesses, trade unions and individual employers were in favour while employer representatives were almost evenly divided.

58. Do you have any suggestions as to what should be included in the proposed audit?

- 44 (37.9%) consultees made detailed and helpful suggestions in answer to this question. Respondents included among others, the Employment Lawyers Association, the Engineering Employers Federation, the Trade Union Congress, Scottish Trades Union Congress and BT.

59. Do you have any suggestions as to the best way of ensuring the requirement is appropriate to the circumstances of the employer?

- 41 (35.3%) consultees made suggestions in answer to this particular question. Majority of respondents did not agree that the requirement should be appropriate to the circumstances of the employer, or appropriate to the needs of employees as they were of the view that any employer who breaks the law should be held accountable, irrespective of any issues.

60. Do you consider there to be a risk of unintended consequences? If so, what do you think these could be and how do you think they could be mitigated?

- The total number of responses to this question was 67. 53 (45.6%) consultees agreed there was a risk of unintended consequences; 14 (12%) did not think there were any risks. Individual employers, employer representatives, large businesses, legal representatives, local government and trade unions showed a very high degree of agreement that the audits proposal would increase settlements and could generate additional cases as a result.

61. Do you have any further comments or suggestions relating to our proposals or impact assessment on equal pay?

- 46 (39.6%) consultees made comments or suggestions in response to this specific question. These included suggestions that the proposals would be ineffective in tackling equal pay.

Annex C:

Respondents to the consultation on modern workplaces (equal pay) included:

My Working Life Ltd	Redcar and Cleveland Borough Council
DCC	Association of Women Solicitors (The Law Society)
Generate Ltd	UK Council for Access and Equality (UKCAE)
Essex County Council	Police Federation
South Lanarkshire Council	British Chamber of Commerce
Plymouth City Council	Forum of Private Business
Business West	Royal College of Nursing
Employment Lawyers Association	The National Council of Women of Great Britain
Unite the Union	Hogan Lovells International LLP
University and College Union	North East Chamber of Commerce
Zurich Employment Services Ltd	TUC
APPP Consulting	Berwin Leighton Paisner LLP
USDAW	Lyons Davidson LLP
Leicester University	Chartered Management Institute
CFS Management Services Limited	Scottish Women's Convention
Fawcett Society	National Union of Teachers
British Psychological Society	West Yorkshire Police
UNISON	The Chartered Institute of Payroll Professionals
South East Employers	EEF
New Support Solutions	Mothers Union
Lewis Silkin LLP	CIFAS – The UK's Fraud Prevention Service
Road Haulage Association	Public and Commercial Services Union
Diverse Cymru	The Law Society of Scotland
Universities and Colleges Employees Association	Merseyside Fire and Rescue Service

Derbyshire County Council	John Lewis Partnership
Citizens Advice	STUC
Tesco Stores Ltd	Federation of Small Businesses
BT	Recruitment and Employment Confederation
Hampshire Chamber of Commerce	CBI
PricewaterhouseCoopers LLP	Scope
Transport for London	Institute of Directors
Prospect	Equality and Human Rights Commission
Legal & General Group Plc	Marks and Spencer Plc
Local Government Group	Employment Tribunals
The Convention of Scottish Local Authorities (COSLA)	British Retail Consortium
Chwarae Teg	Beachcroft LLP

Government Equalities Office,
Home Office
3rd Floor Fry Building,
2 Marsham Street,
London
SW1P 4DF

Email: enquiries@geo.gsi.gov.uk

Tel: 020 7035 4848

Email: enquiries@geo.gsi.gov.uk
**[www.homeoffice.gov.uk/
equalities/](http://www.homeoffice.gov.uk/equalities/)**

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