Equal Pay: Government launches consultation on equal pay and pay discrimination

On 14 July 2026, the Government opened a consultation aimed at informing a "*comprehensive reform of the current equal pay framework*", seeking views on gaps in the existing system and how equality of pay can be better ensured for disabled workers, those from ethnic minority groups and outsourced workers.

This latest consultation is intended to build on the call for evidence run in April 2025 and seeks views on the most effective ways in which the identified objectives can be achieved, namely: (i) making pay discrimination less likely to happen; (ii) providing effective protection against pay discrimination for women, disabled workers, those from minority ethnic groups and outsourced workers; and (iii) making disputes over pay discrimination easier to resolve, with reduced time and expense required.

The consultation proposes a split into two 'phases' of reform, the first phase focusing on improving the current system by streamlining procedures and strengthening both transparency and enforcement, and the second phase looking at closing gaps in the law with broader protections. Under the new system, employers will need to grapple with a greater emphasis on transparency, proactive compliance, regulatory oversight and scrutiny of pay practices.

The consultation is due to close on 27 October 2026, and with the implementation period set to be "*extended*", we do not expect any resulting changes to legislation to come into force any time soon. Nevertheless, employers should be aware of the options being considered and start to consider how far away their existing practices are from the potential requirements.

Phase 1

The Government considers that there are "*systemic failures*" in the current equal pay regime, both in terms of preventing pay discrimination from occurring and the significant burden on individuals, employers and the system when it comes to effective enforcement. Phase 1 of the proposed reforms would therefore look to resolve these concerns in a "*holistic and comprehensive way*".

<u>Pay Transparency</u>

- The primary proposal in relation to pay transparency is a **new statutory requirement for employers to publish information on pay and conditions in job adverts**.
    - The aim of this is to encourage evaluation of job roles by the employer for consistency in pay, and reduce disparities in the information held by the candidate compared to the employer at the recruitment stage.
    - The Government also considers that this will allow candidates to make informed decisions, leading to a fairer and more efficient recruitment process, as well as increasing transparency for the

existing workforce. If there is no job advertisement, the information would need to be provided directly to the candidate. At a minimum, the requirement is likely to be to publish basic salary (and potentially only a salary range), however views are also being sought on whether it should also include matters such as collective bargaining rights or other financial benefits.

- In addition, the powers of Employment Tribunals to **order an equal pay audit after a successful claim** are proposed to be strengthened, with exceptions to this requirement significantly reduced and Tribunals being required to make such an order in the event of a successful pay discrimination claim based on race or disability. The same applies to **job evaluation schemes**, which Tribunals would newly be required to order if one does not already exist. This may impact the way in which employers determine pay for their roles, as greater scrutiny will be applied to outdated or informal grading structures and record-keeping.

- The consultation also proposes **reintroducing a statutory questionnaire process** for pay discrimination claims, whereby claimants will be able to request relevant pay information prior to litigation. This process, which was previously required by the Equality Act 2010, was

repealed in 2014 (although ACAS still recommends asking an employer questions prior to pursuing a claim). Reintroducing this option makes pre-claim information requests much more likely and will lend them more strength, as failure to answer (or attempting evasive answers) is likely to be taken into account in any subsequent claim even if the questionnaire is technically optional. At the very least, this will be an administrative burden for employers to deal with, albeit that it will be limited to pay discrimination claims and not other types of dispute.

Overall, these proposals would mean that **employers must be prepared to evidence and justify the rationale behind their remuneration decision**s in a way that they have not been required to do to date. For some employers, the requirement to publish pay information as part of recruitment may be of no concern or reflect their existing practice, and they may already have clear objective methods of making internal pay decisions. For others, particularly those in sectors which tend to have wide salary ranges per role, highly negotiated hiring processes or those who discourage discussion of pay levels between colleagues, these proposals are likely to be unwelcome. This may feel particularly onerous for those who are already grappling with the potential for parallel requirements under the EU Pay Transparency Directive, which was due to be incorporated into local law by EU member states by 7 June 2026 (but which has not yet been widely implemented).

<u>Enforcement</u>

- The consultation proposes **formal reviews of the rules of procedure for pay discrimination claims and the operation of the independent panel of experts** who advise the Employment Tribunal on what constitutes work of equal value. These reviews would reflect the fact that litigation is complex, costly and time-consuming, leading to a lack of justice for claimants and commercial uncertainty for employers, and that informed reform is needed to create more efficiency.

- Additionally, a new **Equal Pay Regulatory and Enforcement Unit** (the **Unit**) would be established to enforce pay discrimination, with a focus on a preventative approach. This would build on the existing powers of the Equality and Human Rights Commission (**EHRC**), which have been historically rarely used, and may sit either within the EHRC itself or as part of the Fair Work Agency (find out more about this in our Guide to the ERA).
    - Notably, the remit of the Unit is proposed to include pay discrimination matters brought under wider discrimination law (including direct and indirect discrimination where they relate to sex, disability or race, discrimination arising from disability and failures to make reasonable adjustment obligations), and not just to equal pay claims.

    - The Unit would also offer **guidance on the 'material factor defence'** (which allows an employer to defend a difference in pay by proving it is due to a material factor which is neither

directly nor indirectly discriminatory), which tends to be a highly complex element of any equal pay dispute.

- In addition, the Unit will have **specific powers to support enforcement activities** including the ability to request evidence prior to formal investigation, aligning it with the powers of other regulators such as the Fair Work Agency. They would also be able to require equal pay audits and/or job evaluation schemes to be conducted, and require employers to give updates or responses about how recommendations have been implemented following any inquiry.

The establishment of a specific Unit with targeted enforcement powers, and the potential for new procedural rules governing pay disputes, indicate that a **higher level of scrutiny outside of traditional litigation** can be expected when it comes to pay equality. If implemented, employers' obligations in relation to ensuring and documenting pay levels within their workforce would expand significantly beyond their existing, such as the publication of pay gap reports and the proposal for action plans (see more about this in our Guide to the ERA).

Phase 2

Following Phase 1, the Government proposes to address gaps in the legislative framework that mean groups which are protected

by the Equality Act 2010 do not all benefit equally from rights to equal pay. The proposals therefore look to extend protection to those experiencing discrimination on the basis of race or disability, and those who are supplied as 'outsourced' workers to avoid equal pay rights.

Extending Protections for Race and Disability

- The consultation proposes keeping the existing equal pay regime limited to claims based on sex, and continuing to permit pay discrimination claims under the Equality Act 2010 based on race or disability (either as direct, indirect, reasonable adjustment or discrimination arising for disability claims), but **"*levelling-up*" the protections to equalise the advantages currently available to each group**.

- These changes would require an extended implementation period with comprehensive guidance, and apply solely to discrimination occurring after any new legislation is in force (unless it is continuing).

- It is unclear how these protections could be truly equalised if the regimes remain so distinct, as the legal tests will continue to differ and therefore protection will consequently apply differently depending

on the protected characteristic in question.

- A key proposal is to **change the test which applies in direct or indirect pay discrimination claims based on race or disability** to compare the claimant's pay to that for work which is "*rated as equivalent*" or "*of equal value*", rather than the standard requirement for a comparator to have "*no material difference*" in circumstances.

- Additionally, the **use of hypothetical comparators would be allowed in equal pay claims based on sex**, and the test for extending time limits would be changed to mirror the 'just and equitable' test for most discrimination claims.

- Aside from this, the consultation's focus appears to be on **equalising potential remedies**, such as modifying discriminatory contract terms, ordering equal pay audits and/or ordering job evaluation schemes.

If these proposals are taken forward in law, employers will need to grapple with the significant challenge of **attempting to ensure pay parity on the basis of protected characteristics about which they may have limited insight or data**. Currently, employers do not have a right to demand race or disability information from candidates or employees as, unlike legal sex, this information is not required for payroll, pension or other checks such as their right to work. Whilst many employers ask for this information on a voluntary and/or anonymous basis for equal opportunities monitoring, the lack of obligation to

respond to such questions (or ability to verify responses) means that any data obtained will not be truly representative or useful. This means that an employer's ability to identify potential pay inequality across their workforce will be severely hindered, even if they wish to take proactive steps to resolve it. Equally, employers are likely to be on the backfoot when defending claims if they do not have any reliable data to evidence how employees of all races and disability statuses are paid.

Outsourced Workers

- At present, there is nothing to prevent employers outsourcing services to avoid the equal pay obligations that would apply if the work was done in-house. The consultation also proposes a significant **new duty on contracting parties to take "*all reasonable steps*" to uphold pay equality in their contractual arrangements**.

- The new duty will apply to "*all companies involved in direct or indirect contractual relationships through which the labour of an outsourced worker*" – this means that **all principals, intermediaries and service providers who are involved in the arrangement will be caught**. Some short-term contracts (e.g. catering services for a specific event) will be excluded from the duty.

- What constitutes ‘reasonable steps’ will vary depending on the size and resources of the employer. The consultation gives the example of a company with 100 employees being expected to request pay and demographic data from other parties in the supply chain. It is clear that companies will not be required to equalise wages across different employers.

- Failure to comply will **not give rise to any right to compensation**, but may lead to the Employment Tribunal setting out required reasonable steps for each party to ensure pay equality going forwards. Enforcement is planned to be by way of the Unit (as described above), rather than individual employees bringing claims.

For employers, the most significant impact of this duty is likely to be the increased level of oversight and supervision expected within outsourcing and supply-chain relationships. Businesses may need to undertake greater due diligence on the employment and pay practices of contractors and suppliers. In practice, this may mean that pay equality becomes a wider compliance consideration for the whole organisation.

With thanks to Jonah Gold for his contribution to this article.

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