

# Government confirms ethnicity pay reporting will remain voluntary but announces new measures to tackle race inequality

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**On 17 March 2022 the Government published its response to the report by the Commission on Race and Ethnic Disparities (the Sewell Report), which examined racial and ethnic disparities that persist in education, employment and enterprise, crime and policing and health. The Government’s response paper, entitled “Inclusive Britain”, responds to the recommendations made in the Sewell Report and sets out a 74-point action plan towards a “more inclusive and integrated society”. In this briefing we consider the proposals of most interest to employers.**

The action points in Inclusive Britain are extremely wide-ranging but the following will be of most interest to employers.

### **Voluntary ethnicity pay reporting**

A consultation on introducing mandatory ethnicity pay reporting for large employers was launched in October 2018. Over three years later, the Government has not responded to that consultation, but has announced that mandatory reporting will not be introduced “at this stage”. The rationale for this is that the Government does not wish to impose new reporting burdens on businesses as they recover from the pandemic

Instead, the plan is to support employers to report voluntarily on ethnicity pay within their organisation. The Department for Business, Energy and Industrial Strategy will

publish guidance this summer to support employers to do this. The new guidance will:

- encourage employers to use specific ethnic groups rather than broader categories (e.g. white vs non-white) when publishing their data. It is acknowledged that this means ethnicity pay reporting will be a more resource-intensive activity for employers than gender pay gap reporting;
- support reporting across demographically different areas, in particular to assist employers in parts of the country with very small ethnic minority populations to report in a meaningful way;
- include case studies from employers who have already chosen to report on their ethnicity pay to set the benchmark for other employers to meet; and
- help employers identify the causes of pay disparities and take steps to address them.

It is not clear whether the Government will collate and publish reported ethnicity pay gaps on a central Government website, in the same way as is done for gender pay gap reporting. A centralised website would enable readers to access all the reported data in one place and compare how employers are performing. However, the response paper is silent on this issue.

### **Strengthening the Equality and Human Rights Commission**

The Government says it wishes to strengthen the ability of the Equality and Human Rights Commission (**EHRC**) to enforce the Equality Act 2010. The response paper says the Cabinet Office will invest in EHRC enforcement activity to challenge race discrimination through investigations and supporting individual cases.

In order to improve good practice in equality law across Britain it is said the EHRC will also support a wider range of

organisations to comply with the law and develop policies and processes that support equality of opportunity for all. However, no details are given as to which organisations will receive this support or when it will be provided.

### **New resources for employers to promote inclusion at work**

The Government says it wishes to build a stronger evidence base showing how we can make workplaces more inclusive and fairer for everybody. To that end, it proposes to establish an “Inclusion at Work Panel” by Spring 2023. The Panel will be made up of academics and practitioners in business and will develop and disseminate resources for employers to drive fairness within their organisations. This will go beyond race and ethnicity and identify actions to promote fairness for all in the workplace.

The UK Civil Service and public sector employers will lead by example by adopting evidence-based approaches, rooting out poor quality training and trialling new approaches.

### **Improved guidance on the use of positive action measures**

The Government recognises that employers wish to introduce measures designed to improve representation and provide opportunities to certain protected groups. However, it is important that such measures amount to lawful positive action, rather than straying into unlawful positive discrimination.

The Government believes it can help smaller organisations be more confident in using positive action measures by refreshing the guidance in this area. Therefore, updated guidance on positive action is to be published by the Government Equalities Office by December 2022.

### **Improve standards by launching an “Inclusion Confident” scheme**

While the Sewell Report found that the ethnicity pay gap is improving and ethnic minorities have made significant strides

in occupational representation, underrepresentation persists at senior levels and ethnic minorities are more likely to experience discrimination at work.

The Government notes that the Disability Confident Employer Scheme helps organisations take action to improve how they recruit, retain and develop disabled people within the workplace. The plan is to put in place a similar scheme that includes, but is not exclusive to, ethnicity and race. The new scheme will be live by Autumn 2023 and employers will be able to sign up to the scheme on a voluntary basis.

### **Regulation of artificial intelligence technology**

The Sewell Report had recommended that the Government do more to improve the transparency and use of artificial intelligence (AI) technology by publishing guidance on applying the Equality Act 2010 to algorithmic decision-making. In response, the Government has said that later this year the Office for AI will publish a white paper setting out the national position on governing and regulating AI. This will include how to address potential racial bias in algorithmic decision-making.

In addition, the EHRC will issue guidance explaining how the Equality Act 2010 applies to algorithmic decision-making. An algorithmic transparency standard will also be piloted in the public sector.

### **What are the next steps and what should employers do now?**

The Government says the Inclusive Britain action plan will serve as a template for the public sector, businesses, charities and individuals. It plans to report back to Parliament in 12 months' time on the progress made in delivering these actions.

Despite the wide-ranging nature and ambitious tone of the Government's response, there is, in fact, no new legislation

for employers to get grips with. Rather, the workplace initiatives are all voluntary in nature and it remains to be seen how many employers will choose to take them forward. However, it would be sensible for employers with an interest in these issues to diarise the following dates and give some thought to which, if any, initiatives they wish to pursue.

- **Summer 2022** – review new guidance on voluntary ethnicity pay reporting and work towards reporting.
- **December 2022** – review new guidance on positive action and implement appropriate measures
- **Spring 2023 onwards** – review new materials on inclusion in the workplace and implement a strategy.
- **Autumn 2023** – sign up for the Inclusion Confident scheme.

### [Inclusive Britain: Government Response to the Commission on Race and Ethnic Disparities](#)

**If you would like further information, or to discuss how your organisation can approach these initiatives, please contact Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.**

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