

Response ID ANON-AME6-KW19-N

Submitted to **Ethnicity pay reporting**

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About you

What is your name?

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What is your organisation?

Organisation:

Coalition for Racial Equality and Rights

Are you responding on behalf of the organisation?

Yes

0-49 employees

Scotland

Are you happy for your response to be published?

Yes

Would you like to be contacted when the consultation response is published?

Yes

(optional) How did you hear about this consultation?

Where did you hear of this consultation?:

Other (please specify):

Ethnicity Pay Reporting

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

Please state the reasons for your answer.:

CRER's support of the proposal to require employers to report their ethnicity pay information is centred on fairness, beyond the purported economic benefits. Requiring employers to report their ethnicity pay information is another step towards developing employers which "proportionately reflect the diversity of the communities in which they operate, at every level" in response to the "structural, historical bias" which favours white groups in the UK (Race in the workplace – The McGregor-Smith Review). We know that Black and minority ethnic (BME) individuals experience discrimination at every stage of employment, and that there is a significant discrepancy in employment and pay for BME and white groups.

However, it should be noted that there will be a gap in information if the ethnicity pay gap is published but workforce ethnicity composition is not. Both staff figures and pay gap figures are needed to obtain a full understanding of race and employment in the UK. For example, if an organisation has very few BME staff, but BME employees are concentrated at a high level within the organisation, this could cloud this disparity and skew data. To truly achieve race equality in employment, there needs to be an adequate percentage of BME employees in organisations, as well as pay equality.

In Scotland specifically, the employment rate is considerably higher for white groups (73.7%) than for BME groups (57.6%) (Annual Population Survey 2016). Analysis from the Family Resource Survey found that BME groups were twice as likely to be in poverty as their white British counterparts, with 36% of BME groups in poverty after housing costs (Scottish Government). Scottish Government analysis (utilising data from the Annual Population Survey) found the ethnicity pay gap from January 2014 to December 2016 to be 6.3% (£11.40 per hour). The sample size used, however, limits the robustness of the data, with the pay gap varying from 10.6% in 2015 to 1.6% in 2014. Clearly, there is a problem – one which requires more data to fully understand and address.

By identifying the discrepancies in pay which exist and persist for BME groups in Scotland and the UK as a whole, and by requiring actions to be taken to address these, progress can be made towards race equality. By decreasing the pay gap and improving workforce composition to be in line with the population, strides will be made towards community cohesion and poverty reduction.

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?

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, d) Ethnicity pay information by pay quartile

Please state what type of ethnicity pay information should be reported:

CRER believes that multiple options from the list given should be utilised:

- One pay gap figure comparing average hourly earnings of ethnic minority employees as a percentage of white employees
- Several pay gap figures for different ethnic groups, using standardized ethnicity classifications
- Ethnicity pay information by pay quartile

This would provide as holistic a picture as is reasonable of the ethnicity pay gap in the UK. The overall figure provides an easily comparable headline figure across sectors and organisations. Where smaller companies may not be able to produce pay gap figures for different ethnic groups, this would ensure some usable information is published. In 2017, CRER was commissioned by the Equality and Human Rights Commission (EHRC) Scotland to research the impact of the Scottish-Specific Public Sector Equality Duties. Our analysis of workforce composition found that few employers were able to provide employee data beyond white/BME/unknown, often owing to an misunderstanding of data protection which prohibited publication of further ethnicity breakdowns. By requiring one pay gap figure to be produced, it would be more certain that usable data would be given, unhindered by data protection matters.

However, we also know there are disparities within BME groups themselves, with some faring better economically than others. In Scotland, for instance, a higher proportion of Asian groups are self-employed, with a higher proportion of African groups employed part-time or unemployed, and Caribbean or Black groups employed full-time. Knowing the differences which exist among BME groups will help to better understand and address the inequalities which exist.

Having ethnicity pay gap information by quartile will also help to track progression of BME groups in the workplace, and identify representation in senior levels within organisations. Publishing this data in quartiles rather than pay band aligns well with the gender pay gap reporting requirements, and may more easily allow for intersectional analysis.

While we do support the publication of multiple figures, we also understand that employers with a smaller workforce may only be able to publish an overall pay gap figure, which we would find understandable and acceptable.

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.:

CRER would be supportive of requiring contextual information on gender variation, but not age or geographic variations.

Regarding geographic variation, it would be difficult to properly separate regions/localities, given that many people do not work in the area in which they live. Larger companies may also have several branches across the UK, further complicating this area. We believe there are too many complexities involved to arrive at an agreeable standard for contextual information which is useful.

Regarding age variation, we see this as a potential way for employers to provide spurious justifications for having BME groups in lower paid positions, explaining it simply as BME groups are younger. We believe this would compromise robust analysis and would not contribute useful information to the understanding of the pay gap.

Regarding gender variation, we believe that as employers are already required to gather and publish information about the gender pay gap, offering gender context alongside the ethnicity pay gap would be useful. In future, this may allow for intersectional analysis to demonstrate the double barrier faced by BME women in employment and pay.

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.:

Yes. CRER has seen with Public Sector Equality Duty reporting that even though bodies are required to 'gather and use' data on disparities in their workforce, this seldom occurs in a way which imparts real, effective change. A Scotland-wide review of the effectiveness of the Scottish-Specific Public Sector Equality Duties, which CRER undertook for the Equality and Human Rights Commission (EHRC) Scotland, found a need for requirements for action to be as prescriptive as possible to be effective. Without this, authorities are likely to publish data without taking bespoke action to address it. The report further found that information on how authorities used pay gap data was rarely described in their pay gap reports. In the 2017 reporting round, only 14 of the 80 Scottish public bodies examined (all those bodies deemed suitable for analysis) described equality outcomes which related to pay gap information, with 12 of the 16 outcomes having actions associated with them, 9 being expressed in a manner which allowed for measurement of progress, and none describing a measurable performance target.

Without a requirement to take action on disparities identified, the disparities will persist. There is not much to be gained by simply publishing information and not taking action on it.

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?

e) No

If other, please state what classifications you use:

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:

It is key that employers looking to improve self-reporting/declaration rates are transparent with employees about the potential uses for the data and data protection measures that are in place. If staff are resistant to declare their ethnicity, it may be indicative of a non-inclusive and discriminatory work environment, which should be addressed with urgency.

Clarification may also be needed regarding the categories used which, ideally, would align with the Census to allow for population comparisons.

Employers should also endeavour to build reporting into an existing annual procedure, such as updating contact information. This will foster an expectation that data will be collected and ensure it is updated regularly. The Teacher's Census in Scotland, for example, is an annual census of publicly funded schools in Scotland, which takes place on the same day across the country. This provides a uniform snapshot which can be measured and tracked overtime. Were companies to adopt a similar procedure, it is likely that the quality of data gathered would further improve.

It is also important that employees know what becomes of the data they provide; reports made which use this data should be brought to the attention of the employees and actions being taken forward to address discrepancies should be made known.

CRER research found that in Scottish public bodies, the rate of those declaring 'prefer not to say' increased from the 2013 to 2017 Public Sector Equality Duty reporting rounds, as did the rate of 'unknown' ethnic backgrounds. This appears to be a consistent, perpetual issue which requires concerted effort from employers to address. Clarity of use, consistent collection mechanisms, and feedback on analysis will all help to improve reporting levels.

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

Please state reasons for your answer.:

It is critical that employers make a distinction between 'unknown' ethnicity figures, and the number of employees who chose to select 'prefer not to say'. The prior reflects the failure of an organisation to collect information about their workforce, while the latter is a conscious choice made by employees.

Reporting for ethnic categories which are known should be done as closely in line with the Census as possible, whether by broad categories (e.g. White, Asian) or individual ethnic groups (e.g. Indian, Caribbean).

Where organisations are found to have a high rate of unknown figures or 'prefer not to say' responses, employers should be required to publish a specific action plan to address this.

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.:

(i.e. 18 individual ethnic groups in five broad categories – White, Mixed / Multiple Ethnic Groups, Asian / Asian British, Black /African / Caribbean / Black British, and Other Ethnic Group). Data should be disaggregated meaningfully and as broadly as possible, ensuring that useful data is provided and not redacted unnecessarily. Where the data is available and publishable, the pay gap should be published for each non-white ethnic group as compared to the white ethnic group. In cases where this is not possible due to the size of the workforce, the five broad categories should be used.

Guidance should be provided to all employers, preferably in the form of a data template. CRER conducted research into the ethnicity of teachers in Scotland by issuing Freedom of Information requests to each education authority in Scotland. The data we received back was difficult to compare, as it was published in a variety of formats, with some authorities only providing 'white', 'BME', and 'not known' figures, others disaggregating the data into individual ethnic groups which was then redacted citing data protection, and others not specifying which groups were included in a 'white' and 'non-white' categorisations. It will be important to be as prescriptive as possible when providing guidance to how classification should occur.

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

Please outline the reasons for your answer:

To preserve the confidentiality of individuals while ensuring usable data can be published, clear guidance on Data Protection should be provided to employers. Often we find that equalities data is redacted in public bodies' publications, even where identification of individuals would not be possible. Clarity is needed to ensure that confidentiality is preserved, but data is also functional. Redactions should not be used to cover-up inconvenient realities. Indeed, data should only be suppressed if its publication could identify particular individuals. A redaction of 5% or less within a large organisation – such as the civil service – does not serve to protect individual identities, but instead hides often inconvenient information.

Furthermore, ethnicity pay reporting is not reporting one individual's pay, but rather the overall pay gap in the organisation. Therefore, we believe that the confidentiality of individuals should not be a significant issue in bringing about this proposal.

Next steps and government support for employers

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

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

Please state the reasons for your answer:

While there is value in requiring organisations with 250+ employees publish ethnicity pay gap information as it is in line with reporting requirements for the gender pay gap, CRER believes organisations with 50+ employees should be required to report. In Scotland, over 97% of companies are small- and medium-sized enterprises (SMEs). A requirement of 50+ compared to 250+ would ensure that a majority of Scottish companies are engaged in this process and organisations such as ours are able to analyse information published to better understand the ethnicity pay gap in Scotland.

It is worth noting that in Scotland, public sector bodies with over 20 staff are required to publish gender pay gap information and a statement on equality pay, as part of the Scottish-Specific Public Sector Equality Duties. Institutions with 150 or more staff are required to publish gender pay gap information and a statement on equality pay for gender, race, and disability. In Scotland, this has been deemed possible for the public sector, and we imagine would be possible for the private sector as well.

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

Please state the reasons for your answer:

A variety of support measures could be provided to employers, including explicit guidance (as referenced previously), online training, and regional training events.

Providing a template for publication may also help guarantee that the data is published in a uniform way, the data is properly analysed, and narratives and action plans accompany the data analysis.