1. EEF, the manufacturers’ organisation, is the voice of manufacturing in the UK, representing all aspects of the manufacturing sector. Representing some 20,000 members employing almost one million workers, EEF members operate in the UK, Europe and throughout the world in a dynamic and highly competitive environment. EEF is also an independent training provider. We have two apprenticeship training centres in the Midlands which on average trains 400 engineering apprentices each year. We are committed to training the generation.

2. EEF is a specialist supplier of employment law and HR services to tens of thousands of UK based employers. It has rich data on the issues which employers commonly face and encounters on a daily basis the problems of advising employers on the issues raised in this inquiry. We worked closely with our manufacturing members on complying with the gender pay gap regulations this included running two sets of seminars on complying with the gender pay reporting requirements, to ensure that our members are fully informed about what compliance involves.

3. Manufacturers support the Government's commitment to increasing transparency around this issue. Indeed ahead of the Regulations, an EEF survey revealed that almost half (47%) of employers saw gender pay gap reporting as an opportunity to benchmark their companies against similar companies and other industries. In addition, four in ten (38%) said that the work they would need to undertake to provide the data well be helpful in terms of getting to grips with their companies pay structure. You can see then how manufacturers see the benefits of gender pay gap reporting and are in every way attempting to get their reports accurate ahead of publishing

What is the extent of compliance? Is the information accurate?

4. Companies in scope of the gender pay gap regulations have been given a year to crunch their numbers and publish their reports. This has been a significant and complex challenge for many of them. With both the Regulations and the accompany Acas guidance there still remained a number of “grey” areas with the Government Equalities Office suggesting employers take a common sense approach.

5. We had some concerns that this may then lead to different interpretations of the Regulations and therefore data published. Despite this, we were delighted that so many firms, in particular manufacturers, published within the deadline. Firms are already beginning the next stage of reporting by taking this month’s pay snapshot data to then begin reports to be published by April 2019. This will, if anything, be even more important as it will start to give us an indication of whether companies are closing their gender pay gaps. It is important then that as much attention is given to the narrative as well as the headline figures.

6. It is not yet known yet the extent to which there are inaccuracies. We understand that employers that uploaded their figures which were deemed to be statistically impossible received an automated response prompting them to look again at the figures. Our
concerns with enforcement on inaccuracies is that some companies may have interpreted the Regulations differently due to the areas within the Regulations which are less clear. A few examples include:

- It is unclear whether, to be included in ordinary pay, payments should be both paid in and also attributable to the relevant pay period. And while the Guidance sets out how employers should approach additional ordinary pay paid in the relevant pay period to remedy previous accidental underpayments, there is no indication of how they should deal with deductions from ordinary pay in the relevant pay period to remedy previous accidental overpayments.

- The Regulations require employers to exclude from ordinary pay and bonus pay any payments that are “referable to” overtime. Most employers are likely to be able to exclude pay that is specifically labelled as “overtime pay” without too much trouble, but there may be difficulties in respect of other payments, e.g. shift premiums that are earned for shifts worked as overtime, performance bonuses that take into account work done during overtime hours, holiday pay that is calculated to include overtime pay in accordance with recent case law in this area, etc. Given that employers may be constrained by the capacity of their payroll software to identify and separate out such payments, it is far from apparent how “accuracy” should be judged here.

- The method of calculating hourly pay set out in the Regulations is likely to produce an unrepresentative result for employees with variable hours and, while the Guidance suggests an alternative method of calculation, it does not explicitly acknowledge the issue with the statutory method, with the result that some employers may be unsure of when it is acceptable for them to use the alternative method. In addition, the alternative method of calculation suggested in the Guidance is still more complicated than it needs to be.

How effective are the sanctions for non-compliance with reporting requirements?

7. Initially there were to be no legal sanctions for non-compliance within reporting requirements but instead the reputational damage of non-compliance. When Regulations were in drafting stage, the Government considered including civil enforcement procedures for failure to comply, but ultimately decided against it. Despite this, the Explanatory Notes to the Regulations indicate the EHRC’s enforcement powers in relation to “unlawful acts” under the Equality Act 2010 (the EQA) apply to a failure to comply with the Regulations. Since then, the EHRC has consulted on its policy to enforce the Gender Pay Gap Regulations, to which EEF has responded. Within our submission we proposed that an alternative form of enforcement in the first year should be taken, in particular around “inaccurate” data as within the first year this is when inaccuracies would most likely occur. In addition we had concerns around what the EHRC would determine to be “inaccurate” and what approach the EHRC would take to identify inaccuracies e.g. a random sample or companies that have for example reporting zero gender pay gaps but then differences in pay quartiles.

8. We agree with and fully endorse the EHRC’s emphasis on awareness-raising and education. In particular, we consider that – if the accuracy of reported figures is an area
that the EHRC will be focusing on as part of its enforcement agenda – such education might helpfully extend to clarification of some of the problems with the Regulations and Guidance. Education could also include showcasing best practice and identifying role models to help improve compliance. EEF itself will be undertaking its own benchmarking of the manufacturing industry and showcasing best practice companies that are actively addressing the gender pay gap.

What requirements, if any, should there be on companies to address the gender pay gaps?

9. Our sector has historically been male-dominated. Therefore in industries such as manufacturing the gender pay gap is inevitably going to be higher than average. ONS figures show that the current gender pay gap across the economy is 18.4%, but this increases to over 20% for manufacturing industry.¹ Shining the light on the fact there is occupational segregation is one of the key principles of gender pay gap reporting, which employers understand, however some were concerned that publishing higher gender pay gap figures may, in the first instance, deter prospective employees – in particular women – from entering the industry. It is for that reason that employers focused as much on their accompanying narratives as they did on their actual reporting requirements.

10. For manufacturers the narrative is crucial both for communicating internally and externally. As an industry we struggle to attract female talent in, resulting in just 7% of engineering apprentices and 15% of engineering graduates being female. This then create a very shallow pool of talent from which manufacturing employers can recruit, retain and promote.

11. We are pleased to report that there are a range of initiatives that employers are participating in to overcome this challenge. There are for example over 300 STEM (science, technology, engineering and maths) initiatives that companies are involved in, some focusing solely on encouraging more women into our industry. EEF as an organisation celebrates the brilliant women working in our industry with a webpage dedicated to promoting women in manufacturing. ²

12. But this will take time. In fact, a drive to encourage more girls to become engineering apprentices and graduates could actually increase the gender pay gap in the short-term. Manufacturers are not just focusing on the pipeline but also continue to encourage women to stay in the industry. Examples of this include highly competitive maternity packages, back to work bonuses and flexible working arrangements that go above and beyond statutory requirements. All of these methods are used in order to retain the talented women that work in the industry as well as attracting new talent. The current approach of publishing companies’ gender pay gaps and holding information on the employer’s website for at least 3 years will drive further action in this space.

6 April 2018