Is the annual information related to pay required under the Equality Act 2010 is sufficient? Should any further information be required?

1. The TUC would like to see more data included in the reporting requirements. In the TUC’s response to the government’s consultation on the regulations, the TUC called for data on the part time pay gap and pay gaps by ethnicity and disability to be included in the reporting scheme.

2. Including part-time pay gaps (where women’s average part-time hourly pay is compared to men’s full time hourly pay rates) is important as part-time work is less well paid than full-time work and part-time work accounts for a large proportion of women the labour market. Nearly two-fifths of women in employment are part-time and four times as many women as men work part-time.

3. The TUC has called for the regulations to be extended to employers with more than 150 employees. Research commissioned by the Government Equalities Office (Company Reporting: Gender Pay Data, IFF, 2015) shows that there is little difference between companies with 150-249 employees and those with 250 or more in their attitudes towards gender pay gap reporting (for example, 47 per cent of large companies and 42 per cent of those with 150-249 employees were open to the idea of reporting pay gaps internally).

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

4. At the time of writing this submission, the number of employers who have published data on the government portal stands at 10,320. The government’s initial estimate of the number of employers who fell within the scope of these regulations was 9,000. This would indicate that the level of compliance has been good.

5. It is impossible to assess whether all of the data submitted is accurate at this stage. Press reports have suggested that many companies have submitted mathematically impossible data. A Guardian report (Gender pay gap: multiple firms submit questionable data, Alexandra Topping, 29th March 2018) uncovered several companies that "stated they had no mean or median gender pay gap and an equal split of male and female workers in every quartile."

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

6. The TUC welcomes the EHRC’s statements in relation to its role in ensuring compliance and we look forward to seeing the EHRC implement the enforcement plan that it has so clearly set out. The EHRC has unique powers under the Equality Act to carry out inquiries and investigations to assess whether organisations are complying with equality
law and it has powers to issue notices requiring employers to comply that can be enforced in civil courts.

7. However, in our response to the EHRC’s consultation on its enforcement strategy, the TUC did express concern that the process was overly long and complex. If an employer fails to comply with the Regulations then the minimum duration the enforcement process could be completed in, is 260 days. The TUC is concerned that in some cases the full enforcement process could take longer than a year, which would mean the non-compliant employer has then entered the next yearly reporting cycle.

8. The EHRC must be adequately resourced to carry out this role. The EHRC has faced substantial cuts since 2010. Its budget is more than 70% lower and staffing more than 60% lower than when it was established in 2007. It has rarely used its unique powers to enforce the existing duties on public authorities to publish equality information under the Public Sector Equality Duty. The EHRC will therefore need additional core funding if it is to take action against private sector employers not complying with gender pay reporting. The TUC also recommends that it is given additional programme funding to carry out research to assess compliance and the impact of the new regulations on employer practice a year after the first deadline for publishing information.

9. In addition, the TUC suggests that a failure to properly comply with the regulations should help shift the burden of proof in any subsequent tribunal claim and that the government should make compliance key to becoming a preferred bidder for public sector contracts.

10. The TUC would like to see the EHRC go one step further and publicly name and shame non-compliant employers. Similar enforcement action is undertaken by the HMRC National Minimum Wage Enforcement team and is considered to be effective and acts as a deterrent for non-compliant employers.

11. In order for the Gender Pay Gap reporting regulations to achieve any real change, the TUC believes that there should not only be a well-resourced enforcement regime with tough penalties for non-compliance, but there should also be a duty on employers to publish an action plan setting out the steps that they will take to close any gaps that they report.

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

12. The TUC believes that placing a duty on employer to take action to close pay gaps is crucial. Without it, the reporting requirements are unlikely to lead to any meaningful change. Publishing data on gender pay gaps is an important first step in shining a light on the problem, but without concerted action by employers, it will not close the gaps.

13. In our response to the government consultation on the gender pay gap reporting regulations, the TUC called for action plans to be included in the regulations.
14. The action that employers take will depend on the drivers of their pay gaps. This is why it is important that employers also publish narratives setting out the causes of their pay gaps.

15. While narratives are not required by the regulations, they are recommended as best practice by the TUC, ACAS and the CIPD. While many employers have published narrative reports alongside their pay data, the quality of these narratives varies significantly. In some cases where the pay gaps are particularly wide, the narrative exposes misconceptions on the part of the employer about the causes of the pay gaps, the difference between equal pay and the gender pay gap, and therefore what the solutions to the problem might be. For instance, in many cases occupational segregation is presented as a defence (eg. The narrative contends that it is not the employer’s fault that women happen to be concentrated in the lowest paid occupations within the organisation and that men happen to be concentrated in senior management) rather than as an explanation of an underlying problem which requires action.

16. There is a role for the Government Equalities Office, BEIS and organisations such as the CIPD and the CBI to improve understanding of the gender pay gap, its causes, and the action required to close it, amongst the business community. There is also a role for government, as well as employers, in tackling some of the underlying causes. Government policy interventions such as increasing the National Minimum Wage, investing in social infrastructure such as childcare, investing in education (including apprenticeships and adult education) and careers advice, providing better paid family leave entitlements and ensuring that all workers, including agency workers and those on zero hours contracts, have access to the full range family leave entitlements and flexible working rights, would all have a beneficial impact on the gender pay gap.

17. There are a range of measures that employers could include in action plans to close their gender pay gaps, depending on the drivers of the gaps in their organisation. For instance, where occupational segregation is the key driver, employers could do more to recruit more women into male dominated sectors, including targeted recruitment and outreach programmes for apprenticeship schemes. Employers who offer attractive flexible working and family and carers leave policies are likely to see positive outcomes in terms of women’s representation in male dominated sectors and in the occupations in the upper quartile of the pay scale.

The TUC has long called for mandatory equal pay audits in order to expose and to eliminate pay discrimination. Employers should consider making changes to pay structures if unequal pay is driving their pay gap. The EHRC’s guidance on high risk pay structures sets out the dangers in many pay practices, such as performance related pay, bonuses, and lengthy pay scales. This guidance should provide a useful starting point to employers formulating action plans to eradicate unequal pay within their organisation.

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