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Equality (Race and Disability) Bill: Mandatory Ethnicity and Disability pay gap reporting Consultation Response

The Black Equity Organisation (BEO) welcomes the opportunity to respond to the government's consultation on the Equality (Race and Disability) Bill. Since its inception in 2021, BEO has sought to dismantle systemic racism, drive generational change, and advocate for the better lived experiences of Black people across the country. Over the past few years, we have made significant strides towards these goals through strategic programmes addressing key challenges facing Black communities.

In 2024, against the backdrop of the first political transition in nearly 15 years, BEO launched Black Britain's Mandate, a set of policy demands designed to ensure better lived experiences for Black communities across the UK. Developed with Black voices and communities at its core – including through a poll of 886 Black British people, community workshops across the UK, and cutting edge research from our partners - the Mandate reflects the diverse experiences of Black communities. Two of the Mandate's most pressing policy demands were for a comprehensive Equality (Race and Disability) Bill to tackle racial inequality at source and mandatory reporting on the ethnicity and disability pay gaps.

Thus, BEO welcomes the progress the government has made to bring forward this vital legislation and the proposals set out in this consultation. Black workers are consistently paid less than their white counterparts across nearly all sectors, and there is evidence of structural racism in recruitment, promotion, pay and retention practices which further embeds the sustained disadvantage of Black employees. Voluntary reporting has failed to yield widespread participation or meaningful change.

In order to ensure that the government's proposed framework is able to meaningfully bring about significant and lasting changes, BEO calls for the following:

1. Reporting must be legally mandated for all organisations, and **the scope of mandatory reporting should be expanded** to include entities with 50 or more employees across the public and private sectors. As Black workers are overrepresented in lower-paid roles within SMEs, expanding the scope of mandatory reporting would ensure that pay gaps are identified.

2. The government should introduce mandatory actions plans with a supportive narrative to explain and contextualise the pay figures. Employers should be required not only to report gaps but to also publish evidence-based action plans to address them backed by timelines, targets and accountability measures to reduce and remove all pay gaps over time.

3. Fully disaggregated data will drive meaningful change, not only by race and disability but also the important differences in experience and outcomes between Black African, Black Caribbean and Mixed-race groups. Our communities face distinct forms of systemic discrimination which must be visible through data. Black disabled individuals and especially Black disabled women experience compounded inequalities that are rarely captured in standard reporting. In addition to these overarching principles, we would welcome further clarity from the government on how it plans to join the framework for ethnicity and disability pay gap reporting and action plans with the existing gender pay gap reporting framework, as well as with Equality Action Plans for gender that are expected through the Employment Rights Bill. In addition to streamlining employers' provision of data, a joined up approach will allow for intersectional analysis to tackle double and/or triple discrimination. The considerations set out in this consultation regarding pay gap calculations, geographical scope, dates and deadlines are a welcome first step, and we look forward to further detail on how the government plans to coordinate these frameworks.

We also propose that current work on ethnicity data collection could provide an opportunity to enhance data collection around wider workforce issues - such as pension participation or uptake of training - where they contribute to inequality of opportunity for Black and minority ethnic workers.

Finally, we recognise that ethnicity pay gap reporting will not, in itself reduce racial inequality in the workplace. However the opportunity for published ethnicity pay gap reports and some level of enforcement will be a vital step in identifying and measuring the scale of racial disparities and tackling institutional racism in organisations.

Questions:

Extending mandatory pay gap reporting to ethnicity and disability

Question 1. Do you agree or disagree that large employers should have to report their ethnicity pay gaps? **Strongly agree**

Question 2. Do you agree or disagree that large employers should have to report their disability pay gaps? **Strongly agree**

Any comments:

Our Black Britain's Mandate – launched in October 2024 – calls for mandating ethnicity and disability pay gap report with comprehensive data monitoring. This data is essential for addressing disparities and ensuring accountability in pay equity across all sectors, racial equality in the workplace increases company performance and diversity of thought, whilst ensuring the growth of the whole UK economy.

While we welcome the introduction of mandatory ethnicity and disability pay gap reporting, it is BEO's view that in order to be effective in meeting the government's ambition of creating a "more equal society in which people can thrive whatever their background", the threshold for reporting must be expanded to include public and private sector entities with 50 employees or more. While BEO recognises the potential burden posed to small businesses by additional reporting requirements, as well as the practical difficulties of implementing mandatory pay gap reporting within small organisations, an expansion of the reporting requirement is necessary to meet the government's ambitions. Trades Union Congress report that Black workers are over-represented in insecure and lower paid jobs, our own research and engagement with those with lived experience also suggests that Black employees are overrepresented at within SMEs. Expanding the measure's scope will ensure that the workers most vulnerable to pay discrimination can benefit, while maintaining proportionality for the smallest businesses.

Geographical scope

Question 3. Do you agree or disagree that ethnicity pay gap reporting should have the same geographical scope as gender pay gap reporting? **Strongly agree**

Question 4. Do you agree or disagree that disability pay gap reporting should have the same geographical scope as gender pay gap reporting? **Strongly agree**

Any comments:

Yes, we agree that ethnicity and disability pay gap reporting should have the same geographical reach as gender pay gap reporting. Consistent geographical scale will improve comparability and analysis.

Pay gap calculations

Question 5. Do you agree or disagree that employers should report the same 6 measures for ethnicity pay gap reporting as for gender pay gap reporting? **Somewhat agree**

Question 6. Do you agree or disagree that employers should report the same 6 measures for disability pay gap reporting as for gender pay gap reporting? **Somewhat agree**

Question 7. Do you agree or disagree that large employers should have to report on the ethnic breakdown of their workforce? **Strongly agree**

Question 8. Do you agree or disagree that large employers should have to report on the breakdown of their workforce by disability status? **Strongly agree**

Question 9. Do you agree or disagree that large employers should have to submit data on the percentage of employees who did not state their ethnicity? **Strongly agree**

Question 10. Do you agree or disagree that large employers should have to submit data on the percentage of employees who did not state their disability status? **Strongly agree**

Action plans

Question 11. Do you agree or disagree that employers should have to produce an action plan about what they are doing to improve workplace equality for ethnic minority employees? **Strongly agree**

Any comments:

We agree that employers should have to produce an action plan about what they are doing to improve workplace equality for ethnic minority employees. Establishing a requirement for Equality Action Plans for ethnic minority employees – in line with the requirement for gender being brought into effect through the Employment Rights Bill – is critical to ensure the effectiveness of pay gap reporting. As the government set out in its own October 2024 impact assessment on requiring large employers to publish Equality Action Plans, the

production of action plans is necessary to ensure that Black and minority ethnic employees are supported in the workplace, and that employers are pursuing the most effective interventions to close their ethnicity pay gaps.

The bill should introduce provisions in line with those in the Employment Rights Bill's Equality Action Plan provisions. At minimum, employers should be required to publish action plans outlining:

- The perceived causes of pay differentials and any contextual information
- Actions that they plan to take to improve workplace equality and reduce disparities.

Additionally, the government should publish guidance for in-scope organisations outlining its expectations for how these plans are developed, taking into account how approaches may vary across sectors and organisation type/size. The government should also share templates for these action plans, as well as case studies of best practice.

Question 12. Do you agree or disagree that employers should have to produce an action plan about what they are doing to improve workplace equality for disabled employees? **Strongly agree**

Additional reporting requirements for public bodies

Question 13. Do you agree or disagree that public bodies should also have to report on pay differences between ethnic groups by grade and/or salary bands? **Strongly agree**

Question 14. Do you agree or disagree that public bodies should also have to report on recruitment, retention and progression by ethnicity? **Strongly agree**

Question 15. If public bodies have to report on recruitment, retention and progression by ethnicity, what data do you think they should have to report?

Any comments:

Public bodies have a critical role to play in setting an example for workplace equality. We expect public bodies to lead by example and commit to full and transparent reporting. Due to existing disparities not only related to pay, public bodies should share additional information about recruitment, retention, pay, and progression disaggregated by ethnicity so patterns can be identified.

Regarding recruitment, BEO proposes that public bodies should report data on the ethnicity of applicants, shortlisted candidates, successful candidates and

the grades at which they were hired. It may also be beneficial for public bodies to report data on interview practices, such as the composition of hiring panels, in light of evidence suggesting that diversity on interview panels reduces bias.

For retention, BEO proposes that public bodies report ethnicity data for turnover rates, average length of service and reasons for leaving as described by the employees.

Regarding progression, BEO proposes that public bodies report data on promotion rates, length of time to promote, number of internal applications and success rates, uptake of development opportunities and representation at different grades.

We would also expect for public bodies to publish action plans, providing context for the data and actions for improvement. Additionally, when public bodies engage in procurement and tendering processes, where possible, they should commit to partnering with organisations who provide full reporting transparency.

Question 16. Do you agree or disagree that public bodies should have to report on pay differences between disabled and non-disabled employees, by grade and/or salary bands? **Strongly agree**

Question 17. Do you agree or disagree that public bodies should have to report on recruitment, retention and progression by disability? **Strongly agree**

Question 18. If public bodies have to report on recruitment, retention and progression by disability, what data do you think they should have to report?

Dates and deadlines

Question 19. Do you agree or disagree that ethnicity pay gap reporting should have the same reporting dates as gender pay gap reporting? **Strongly agree**

Question 20. Do you agree or disagree that disability pay gap reporting should have the same reporting dates as gender pay gap reporting? **Strongly agree**

Question 21. Do you agree or disagree that ethnicity pay gap data should be reported online in a similar way to the gender pay gap service? **Strongly agree**

Question 22. Do you agree or disagree that disability pay gap data should be reported online in a similar way to the gender pay gap service? **Strongly agree**

Any comments:

We recommend aligning reporting dates and the system of reporting online with the gender pay gap service. This will enable efficiency, support

consistency in reporting cycles and provide a holistic analysis of the landscape of an organisation's workforce equity.

Aligning reporting dates can also support an intersectional analysis which is vital as there is evidence to suggest double and/or triple discrimination perpetrated against those with intersecting identities. The Trades Union Congress found that 31% of BME women report being unfairly denied a promotion at work, which rose to 45% for disabled BME women. This deeper look at overlapping inequalities will allow for action plans to be more targeted and specific, as gender, ethnicity and disability cannot be treated as unrelated categories.

Enforcement

Question 23. Do you agree or disagree that ethnicity pay gap reporting should have the same enforcement policy as gender pay gap reporting? **Somewhat agree**

Question 24. Do you agree or disagree that disability pay gap reporting should have the same enforcement policy as gender pay gap reporting? **Somewhat agree**

Any comments:

We agree that enforcement is essential for accountability and accurate reporting practices. While we welcome the principle of standardising the enforcement policy for ethnicity and disability pay gap reporting with the EHRC's enforcement policy for gender pay gap reporting, we maintain reservations of the EHRC's capacity and independence to effectively serve as the enforcement body for ethnicity pay gap reporting.

There are long standing concerns around the EHRC's capacity and independence amongst Black communities and grass root organisations. We would therefore recommend for the Commission to work in transparent partnership with Black and ethnic minorities rooted civil society organisations to ensure accountability mechanisms are grounded in the realities of those most affected. Alternatively, the government may wish to consider establishing a new independent office for Ethnicity Pay Gap which could operate at an arm's length from the government and centre the voices of Black and minority groups. Any final enforcement regime should include the ability to issue public notices, making public the names of companies who fail to submit their ethnicity pay gap reports. Support for whistleblowers is also essential, and a final enforcement regime should ensure that there is a confidential channel for

employees who report concerns to ensure that they are not penalised for raising concerns.

Ethnicity: data collection and calculations

Question 25. Do you agree or disagree that large employers should collect ethnicity data using the GSS harmonised standards for ethnicity? **Somewhat agree**

Calculating and reporting ethnicity pay gaps

Question 26. Do you agree or disagree that all large employers should report ethnicity pay gap measures using one of the binary classifications as a minimum? **Disagree**

Question 27. Do you agree or disagree that there should be at least 10 employees in each ethnic group being reported on? This would avoid disclosing information about individual employees. **Strongly disagree**

Question 28. Do you agree or disagree that employers should use the ONS guidance on ethnicity data to aggregate ethnic groups? This would help protect their employees' confidentiality. **Disagree**

Question 29. Is there anything else you want to tell us about ethnicity pay gap reporting?

Although binary reporting can be starting point – particularly for smaller organisations or lower disclosure rates – it simplifies the complexity of ethnicity and masks inequities and can not be the minimum standard. This will limit the usefulness of the data and consequently the usefulness of targeted recommendations and interventions for sustainable change.

Nevertheless, binary reporting is only acceptable for smaller organisations or as a transitional measure, with the understanding that a move to disaggregated reporting is necessary over time. Contextual narratives should also be in place if binary reporting is used, along with disaggregated data of the ethnic breakdown of the workforce. The category "White" should not be split into "White British" and "White other". We strongly recommend and require disaggregated data aligned with the ONS 18 – category classification.

Whilst individual privacy should be respected, a threshold of 10 employees for reporting can limit the usefulness of impacting, and further marginalise Black and other ethnic groups. Instead, guidance and tools should be used to minimise the risk of identifiability and only in severe cases should aggregation be used to protect anonymity. Employees should also be made aware of how their data will be used prior to disclosing. Employers should be encouraged to

report the most detailed breakdown possible, to avoid erasing the very disparities reporting is intended to reveal.

Disability: data collection and calculations

Question 30. Do you agree or disagree with using the 'binary' approach (comparing the pay of disabled and non-disabled employees) to report disability pay gap data? **Strongly agree**

Question 31. Do you have any feedback on our proposal to use the Equality Act 2010 definition of 'disability' for pay gap reporting?

We support the use of the Equality Act definition of disability as the legal foundation for disability pay gap reporting. However we must also highlight that the application of the definition can under represent the true scale of disability in the workforce especially among Black and minority groups. We recommend where possible to collect both legal and self identified disability data and to encourage voluntary self reporting.

Question 32. Do you agree or disagree that there should be at least 10 employees in each group being compared (for example, disabled and non-disabled employees)? This would avoid disclosing information about individual employees. **Somewhat disagree**

Question 33. Is there anything else you want to tell us about disability pay gap reporting?