

## EQUAL PAY AUDITS - QUESTIONNAIRE

- Q1. Should the regulations cover anything else? If so, what is this and please explain why the regulations should cover this. (Maximum word limit – 250 words)**

It is difficult to see whether any extension of the matters covered by the regulations will assist in the aim of narrowing or eliminating the gender pay gap. Nor will such an extension enable the determination of whether or not a particular pay system is discriminatory.

However, it is not at all clear as to who may be appointed to carry out an equal pay audit, or what qualifications or experience the auditor should have.

- Q2. In order to ensure basic clarity and understanding of what is required, we believe that regulations should set out minimum requirements for the content and form of an equal pay audit while allowing employment tribunals to specify detail such as timing and employee coverage, on a case by case basis. Do you agree with this proposal? If not, please explain your answer? (Maximum word limit – 250 words)**

It would seem preferable for the regulations to allow flexibility for matters to be decided having taken into account the merits and extent of a particular case.

- Q3. When completed, who do you think should sign-off equal pay audits - independent auditors or employment tribunal judges? Why do you think these individuals should be responsible for signing off equal pay audits? If neither of them, what process do you think should be put in place to ensure compliance with the regulations?**

Is not the question of who confirms an audit as complying with the requirements of the regulations is secondary to the question of who carries out the audit. In circumstances where an employer has commissioned an audit from an independent organisation it would seem unnecessary for that to be examined any further than checking that it has reached the standard set out in the regulations. It would be possible for an employer that commissions an independent audit from an outside organisation to have it signed off by the employment judge who heard the case, while employers who wished to carry out the audit in-house to be referred to an approved independent auditor from the outset.

**Q4. Do you agree that limited disclosure rather than publication of equal pay audit results is the right approach? If not, why? (Maximum word limit – 250 words)**

Yes

**Q5. Do you foresee any difficulties with the disclosure of the results of an equal pay audit from a Data Protection Act point of view? If you do, what are these? (Maximum word limit – 250 words)**

Should the tribunal ordering the audit have also the power to require disclosure and the terms and limits of that disclosure would protect the employer against suggestion that the processing of information may be unlawful.

The danger mentioned in paragraph 26 of the consultation is one that has been obvious from the first. Once an audit has been carried out and disclosed the knowledge of the individual employees will be increased, but is not that a consequence of transparency?

**Q6. Does the EHRC guidance on voluntary pay audits provide a suitable basis for guidance to employers who have been ordered to undertake an equal pay audit by an employment tribunal? Is additional guidance needed? If so what more should it cover? (Maximum word limit – 250 words)**

Small and some medium sized enterprises are likely to find the guidance too general, and may have great difficulty in identifying what needs to be done for the audit to be regarded by the verifier as meeting the standard.

**Q7. Are you aware of any relevant research on settlement behaviour in equal pay cases? If so, could you please provide a reference. (Maximum word limit – 250 words)**

No.

**In the future, if you lose an equal pay claim brought against you, an Employment Tribunal will make an order for an equal pay audit to be undertaken (unless one or more of the exceptions applies). Taking this into account, as an employer:**

**Q8. How likely are you currently to settle an equal pay claim brought against you before it reaches a full Employment Tribunal hearing?**

- Very likely
- To some extent
- Not at all

Enterprises that are advised by members of the Birmingham Law Society are very likely to be advised of the advantages of settling an equal pay claim before a hearing before an employment tribuna. It is our expectation that this will continue to be the advice give. Therefore most will try to settle to avoid the necessity for a full hearing and the possibility of reference to an expert.

**Q9. How likely would you be, under the new law, to settle an equal pay claim brought against you before it reaches a full Employment Tribunal hearing?**

- Very likely
- To some extent
- Not at all

Our estimate is that once the new law is operative more employers will actively attempt settlement in an attempt to avoid the possibility of an equal pay audit being ordered, unless it is thought that they may fall within oner of the exceptions.

**Q10. How likely are you currently to carry out a voluntary equal pay audit?**

- **Very likely**
- **To some extent**
- **Not at all**

Since equal pay audits are not common it is unlikely that employers will currently think of carrying out an audit voluntarily.

**Q11. How likely would you be, under the new law, to carry out a voluntary equal pay audit?**

- **Very likely**
- **To some extent**
- **Not at all**

It is not possible to accurately estimate what may occur.

If an employer feels that there may be some inequalities it is more likely that a job evaluation exercise would be undertaken rather than a voluntary equal pay audit.

## **CONFIDENTIALITY**

It may be useful for us to share your response with other people, are you happy for us to do so.

Please tick the appropriate box if you would like your response to be confidential.

Yes

No

Thank you for taking an interest in the Equal Pay Audits consultation paper. To help us understand who is responding to this consultation, we would like to know a little about you.

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<b>Are you responding as an:</b>	<input type="checkbox"/> <input checked="" type="checkbox"/> On behalf of an organisation
<b>Size of Organisation:</b> (large, medium or small)	
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