

Questionnaire:  
**Consultation on a draft  
Code of Practice  
on equal pay**

Thank you for taking part in this formal consultation on our draft Code of Practice on equal pay.

In line with our statutory powers, the Equality and Human Rights Commission is producing statutory codes to cover all aspects of the new Equality Act. The purpose of the draft Code of Practice on equal pay is to explain the new statutory provisions on equal pay to ensure that the law is applied consistently by lower courts and tribunals, and to make the law accessible to a wider audience, such as those who have obligations and those who have rights (or their representatives).

Please use this questionnaire to identify any sections where you think we have not accurately explained the new obligations and rights under the law. Once the consultation period has concluded we will use the completed questionnaires to inform the final drafting of the codes before they are laid before Parliament. We would be most grateful if you could complete this questionnaire. Please answer each question by ticking the relevant box and writing any comments in the boxes provided. We welcome both positive and negative comments. Please send written responses to:

Draft codes of practice consultation  
Equality and Human Rights Commission  
FREEPOST RRLG-GHUX-CTR  
Arndale House, Arndale Centre,  
Manchester M4 3AQ

Responses can also be sent electronically to:  
**[COPConsult@equalityhumanrights.com](mailto:COPConsult@equalityhumanrights.com)**

For further copies or copies in accessible formats, please see the back page. You can access the online questionnaire from our website at:  
[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

The closing date for this consultation is 2 April 2010.  
We must receive your comments on or before that date.

**Please fill in the name and address (or that of your organisation if relevant).**

Name

Shubha Banerjee
-----------------

Name of organisation and position held (where relevant)

Unite the Union, Solicitor
----------------------------

Address

35 King Street London
--------------------------

Postcode

WC2R 8JG
----------

Responses will remain confidential unless respondents indicate by ticking this box  that they may be made available to the public on request. Please note that responses will not be attributed to individuals in any circumstances.

## Section one – You and your organisation

The answers you give in this section will enable us to have a better understanding of who has responded to this consultation.

### Q1 Please indicate where you are based.

Please tick one box only

- |          |                                     |
|----------|-------------------------------------|
| England  | <input checked="" type="checkbox"/> |
| Scotland | <input checked="" type="checkbox"/> |
| Wales    | <input checked="" type="checkbox"/> |

### Q2 In which capacity are you responding to this questionnaire?

Please tick all boxes that apply

- |   |                                     |
|---|-------------------------------------|
| a) For a central, devolved or local government body | <input type="checkbox"/>            |
| b) For a representative organisation                | <input type="checkbox"/>            |
| i. Voluntary Organisation                           | <input type="checkbox"/>            |
| ii. Trade Union or Professional Association         | <input checked="" type="checkbox"/> |
| iii. Other – please tick box and describe below     | <input type="checkbox"/>            |

We are a trade union representing nearly 2 million members in a wide variety of sectors.

- c) As an employer
- d) As an employee
- e) As a service provider
- f) As a service user
- g) As an adviser
- h) As an individual

**Q3 If you are responding on behalf of an organisation, how many people does it employ?**

- Up to 50
- 51 to 100
- 101 to 500
- 501 to 1,000
- 1,001 to 5,000
- 5,001 and over
- Don't know

## Section two

- Introduction

### Clauses

- Equal pay for equal work
- Like work
- Work rated as equivalent
- Work of equal value
- Comparators
- Choice of comparators
- Sex Equality clause
- Non-contractual rights
- Material factor defence
- Equal pay and maternity leave
- Employment Tribunals
- Obtaining and disclosing pay information – protected pay discussions
- Equal pay questionnaires
- Confidentiality
- Occupational pension schemes / Sex Equality Rule

- Maternity equality in pension schemes
- Enforcement
- Time limits for equal pay claims
- Equal pay awards and remedies
- Protection against victimisation

## Part 2 – Equal pay: good practice

### Clauses

This section of the questionnaire covers the individual clauses in the Equality Act relating to equal pay.

## Introduction

**Q1. To what extent do you agree or disagree that this section explains the code in relation to equal pay?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input checked="" type="checkbox"/> |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that the section in the introduction entitled "Purpose of the Code" does provide some explanation of the Code. However, and with respect, we consider that some of the purposes listed in this section may in fact be somewhat aspirational. We consider that it is likely that parts of the Code, primarily sections in Part 1, are likely to become outdated fairly rapidly as a result of the evolving case-law in this area. As a result, we consider that practitioners and tribunals in particular may not find the Code as useful as it becomes more

outdated. We consider that it would therefore be appropriate for there to be fairly regular reviews of the Code so that it can be amended to ensure that as far as possible it accurately reflects the current status of the law. We do consider that the Code has the potential to be an extremely useful introduction to those not familiar with equal pay law. We would also point out at this stage that we welcome the inclusion of Part 2 of the Code in this document, as we consider that this provides very useful information for employers in particular about why and how to conduct an equal pay audit.

**Q3. To what extent do you agree or disagree that this section explains the status of the code in relation to equal pay?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input checked="" type="checkbox"/> |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

**Q5. To what extent do you agree or disagree that this section explains the application of the code in relation to equal pay?**

Please tick one box only

- |                            |                          |
|----------------------------|--------------------------|
| Strongly agree             | <input type="checkbox"/> |
| Tend to agree              | <input type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/> |

Tend to disagree   
Strongly disagree   
Don't know

**Q6. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We do not consider that responding to this question adds anything to the comments that we have made in our responses to questions 1 -3 above, save to say that the application of the Code appears to us to be explained to some extent by the sections explaining the purpose and the status of the Code.

**Q7. To what extent do you agree or disagree that this section explains how to use the code?**

Please tick one box only

Strongly agree   
Tend to agree   
Neither agree nor disagree   
Tend to disagree   
Strongly disagree   
Don't know

**Q9. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

There is no explanation of how to use the Code in this section, and we consider that at least in general terms some explanation would be useful.  
In order to make the document more user-friendly, we consider that it would be sensible to do the following:  
1) include an index and/or contents section, for ease of reference;  
2) include a glossary of terms, so that specific terminologies etc could be explained concisely in one section, to avoid duplication of definitions (or in fact to avoid the confusing situation of differing explanations being provided at different parts of the Code) and also to reduce the length of the Code;

3) increased use of examples, perhaps distinguishable from the balance of the text by being put in separate boxes. We also consider that more use of examples of issues arising amongst private sector employers would be beneficial, not least because it would demonstrate recognition of the fact that equal pay concerns arise in both the public and private sector, notwithstanding that much of the recent case-law has focused on the public sector;

4) we consider that any cases cited in the Code must be referenced in footnotes or in some other convenient format. This is extremely important, not just to provide the reader with a further source of information, but also to address to some extent the concerns mentioned above about the Code becoming outdated - at least if cases were referenced, then a reader could check whether the point being illustrated by that case in the Code was still good law, or whether, for example, it had been overturned on appeal. We understand that there was some discussion about this issue within the Commission, and that the decision was specifically taken not to include such references, on the basis that if a case was overturned on a particular point, but the point being illustrated by the case in the Code remained good law, then it might become confusing as the reader might think that the whole case had been overturned, including the point that remained good law. However, we do not consider this an appropriate reason for not referencing cases. There is a significant chance that the point being illustrated in the Code is the point that is overturned, and the reader unfamiliar with equal pay law will, without references, not be aware of this. If the point being overturned is not the one illustrated by the Code, then including references allows the reader the opportunity to find out what part has been overturned, whereas non-inclusion of such references keeps them completely in the dark, in our view. The Union's suggestion of inclusion of case references is one that the Union considers to be particularly valid and would strongly recommend that the Commission reconsider its decision on this point;

5) We consider that the section in the Introduction headed "Scope of this Code" needs some reconsideration. Whilst it begins well, it proceeds to discuss the different types of equal pay claims and the remit of the equal pay provisions of the Equality Bill. We consider that these parts of the section should be contained in a separate section headed, for example, "What equal pay law covers".

**Q9. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

1. We consider that the introduction to the draft Code is unnecessarily lengthy. Given that the document runs to some 63 pages, and is therefore already significantly longer than its predecessor, the Equal Opportunities Commission's Code (24 pages), we consider that it would be appropriate to reduce the length of the introduction. There are a number of paragraphs/sections within the introduction that do not appear to sit comfortably in the introduction and could therefore easily be removed. We consider that paragraphs 2 and 3 on page 5, and the first main paragraph on page 6, are not particularly relevant for this Code and could therefore be removed. Further suggested paragraphs for removal are set out below, at points 6, 10 and 11.

2. We consider that the reference to a sex equality clause in the final line of the final paragraph on page 6 requires further explanation in this part of the document as it is a technical term. It may be appropriate for this term, along with others, to be included in a glossary of terms at the end of the Code, as suggested above.

3. On page 7 of the draft Code, the reference in paragraph 3 to the situation where women are paid less than men because they work in different sectors and are not carrying out equal work is strangely worded and does not make clear that such a situation would not fall within the remit of the equal pay sections of the Equality Bill either. We would suggest that the words "is not covered in this Code" are removed and replaced with "does not fall within the scope of this part of the Equality Act." We also consider that the balance of this paragraph needs to be reworded as it confuses rather than compares and contrasts (as was presumably intended) equal pay issues and other types of sex discrimination. The reference to sex discrimination, harassment and victimisation being the main cause of the gender pay gap appears to us to be slightly misleading. The

paragraph should make clear that there are a number of reasons for the gender pay gap, including job segregation and the fact that caring responsibilities are traditionally undertaken by women leading to more women taking career breaks and/or working part-time. The situation cited of there being sex discrimination, harassment or victimisation when women apply for jobs within traditionally male jobs or sectors, or vice versa, should be set out at the end of paragraph 3, as an illustration of sex discrimination per se rather than an issue of equal pay. It might also be useful to cite here examples of what would constitute sex discrimination, eg a woman not getting a particular job that is considered to be “man’s work”, eg construction work, or a requirement for all staff to work night shifts, which would be likely to have a more negative impact on female staff who are likely to bear the main responsibility for childcare/other caring responsibilities.

4. We note that the section on page 7 entitled “Scope of this Code” sets out the three types of equal pay claim. If in the final draft of the Code, this section continues to set out this information (which we consider may not be the most appropriate place for it - see question 9 above), then we consider it should go on to mention in very broad terms the other stages in an equal pay claim, including the means by which an employer may defend such a claim.

5. Whilst the first paragraph on page 8 is accurate, we consider that it could be more simply explained by stating that the terms and conditions of full time workers and part-time workers should be compared on a similar basis, eg by calculating what the part-time worker’s pay and benefits would be if they worked full-time, and ensuring that these equate to the full-time worker’s pay and benefits.

6. We consider that the word “covered” in paragraph 2 of page 8 should be replaced with the word “protected”, in the sentence that states “...to the work of a part-time or full-time man, her situation will not be covered by the equal pay provisions of the Act and will not be covered by this Code.” Again, we consider that it would be more comprehensible for the Code to set out examples of situations that would be covered by the equal pay provisions, and examples of situations that would instead be covered by the sex

discrimination provisions, and separate these out. The manner in which the current wording seems to move rapidly from one to the other is not, we consider, a helpful way of explaining the distinction between an equal pay claim and a claim that sits more easily within the other sex discrimination provisions of the Equality Bill. It also seems to be unnecessarily lengthy. We also note that paragraph 2 would benefit from some specific examples of unjustified and potentially unlawful provisions, criteria and practices which militate against part time working.

7. The reference to positive action in this Code (paragraph 2 on page 9) does not appear to be appropriately included in this Code. Again, given our views on the length of the introduction, we consider that this reference should be removed from this Code.

8. We consider that the word “moving” needs to be inserted twice into the penultimate sentence on page 9 , before the words “into traditionally male sectors...” and “... into traditionally female sectors”.

9. We consider that the words “show how” need to be inserted in place of the word “apply” in the first sentence of the penultimate paragraph on page 10. In addition, the words “will be applied” need to be inserted before the words “to everyday work-related situations” in the same sentence.

10. We consider that the words “based on” should be inserted after the words “It also explains the circumstances under which an employer may have a “material factor” defence, which is not “ in the final paragraph on page 10. The word “gender” needs to be removed from the first sentence of the second paragraph on page 11 as it is superfluous.

11. In terms of length of the introduction, we would suggest that the section on page 12 relating to the role of the Equality and Human Rights Commission be removed and that only the paragraphs on page 13 relating to the Commission be retained, with perhaps one introductory sentence being added to explain what the Commission’s overall role is.

12. We consider that the section on human rights at pages

13 and 14 should be removed as it does not appear to be of specific relevance to the Code.

13. In the section on large and small employers at page 15, we consider that the reference to financial resources should be removed, on the basis that cost alone will not usually be regarded as sufficient to constitute objective justification of a discriminatory act.

## Equal pay for equal work

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input checked="" type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

Unite's comments on the first 9 paragraphs of the Code are as follows:

1. In point 2, paragraph 3 on page 18 (that begins “In considering equal pay claims...”), it needs to be made clear that UK courts will also take account of the Equality Act and UK case law.

2. We consider that the word “So” should be inserted at the beginning of the second sentence on page 19, to make clear that this sentence illustrates the point made in the first sentence. In addition, we consider that it would be appropriate for there to be some mention in this paragraph of the fact that if the claim is successful, the equality clause will be implied, and that the claimant’s pay will then be increased etc.

3. We consider that both the reference to article 157 and the definition of pay in point 5 on page 19 are confusing. We would suggest that this be removed and instead that a list of the sorts of things that constitute pay is included, making it clear that this is a non-exhaustive list, and perhaps also making it clear that items such as discretionary bonuses are not included.

4. We consider that the example at paragraph 6 is misleading as there are some situations where different types of pay are combined into a single term and compared in that way in equal pay claims, for example some regularly-paid bonuses. Using bonuses as an example here is not particularly clear, we would suggest, and it might be better to use examples of terms in a man's contract that are not in the woman's, eg provision of a company car.

5. We do not consider that point 7 on page 20, relating to remedies and compensation, should be included in the section that it has been, which relates to what constitutes pay.

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

Strongly agree

Tend to agree

- Neither agree nor disagree   
Tend to disagree   
Strongly disagree   
Don't know

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We refer to our comments at question 2 above and to our general comment above about the use of a glossary.

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only

- Too many examples   
Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

- Yes   
No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

## Like work

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input checked="" type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- Strongly agree
- Tend to agree
- Neither agree nor disagree
- Tend to disagree
- Strongly disagree
- Don't know

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We refer to our earlier comments about a glossary.

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only

- Too many examples
- Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

- Yes
- No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

We consider that the number of examples given in this section on like work is appropriate.

We refer to the point that we make above in relation to the inclusion of case references, perhaps as footnotes, in the Code. Paragraph 11 of the Code, citing examples of like work, is one such section which would benefit, in our opinion, from such references being included. Not only would this have the benefit mentioned above, of enabling the reader to ensure that the examples were still good law, but also it would enable them to look at the way in which courts and tribunals assess like work. It would also enable them to ascertain

from the judgment some additional information about the particular circumstances of the work being done by the claimants and their comparators.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

# Work rated as equivalent

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- Strongly agree
- Tend to agree
- Neither agree nor disagree
- Tend to disagree
- Strongly disagree
- Don't know

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

1. We consider that the words “gender-specific system” as referred to in paragraph 12, should be defined, either in the paragraph or in a glossary of terms, as mentioned above.

2. We consider that the words “and their job evaluation scores remained very similar/they continued to fall in the same job evaluation grade” should be added to the end of the fourth paragraph under paragraph 12. We also note that there are two small typographical errors in paragraphs 5 and 6 under paragraph 12, in that there are unnecessary hyphens between the words “job” and “evaluation”.

3. We consider that the words “However, they cannot claim better terms than their colleague” should be added to the end of paragraph 13.

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input checked="" type="checkbox"/> |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We refer to our earlier comments about a glossary and those detailed above at question 2.

**Q5.**

**Where examples illustrate the text, please tick the relevant box.**

Please tick one box only

Too many examples   
Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

Yes   
No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

Again, we consider that the second example under paragraph 14 is incorrect as if the JES was flawed, as suggested, the result would not be that the equality clause would automatically operate, but instead, the JES would have been disapplied. We would suggest that this example does not assist in illustrating the point being made and should therefore be replaced with an alternative example.

We consider that the number of examples cited is appropriate.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

# Work of equal value

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input checked="" type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that paragraph 15 needs to be reworded to make clear that a woman cannot bring an equal value claim where a JES does not rate the jobs as equal - if it rates her job as higher, then she should bring a work rated as equivalent claim, but if it rates her job as lower, then she can only bring an equal value claim if she can show that the JES is not analytical, is sex discriminatory or otherwise unsuitable.

Paragraph 16 gives the (incorrect) impression that the factors for comparison are limited and needs to be amended, in our view.

We consider that the reference to “same employment” in paragraph 17 should be removed as there is no similar reference in the sections on like work and work rated as equivalent, which might give a user the impression that the “same employment” requirement only applies to equal value claims. In addition, we note that there is already a separate section dealing specifically with comparators and comparators across employers, at paragraphs 26 to 28. Any additional comments about “same employment” would be more usefully contained in this section.

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input checked="" type="checkbox"/> |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

See comment above about the use of a glossary.

**Q5. Where examples illustrate the text, please tick the relevant box.**

Please tick one box only

- |                   |                          |
|-------------------|--------------------------|
| Too many examples | <input type="checkbox"/> |
| Too few examples  | <input type="checkbox"/> |

**Q6. Overall do you find the use of examples helpful / appropriate?**

- |     |                                     |
|-----|-------------------------------------|
| Yes | <input checked="" type="checkbox"/> |
| No  | <input type="checkbox"/>            |

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

We consider that the number of examples is appropriate. We also repeat our comment above about the inclusion of case citations in the Code.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

## Comparators

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input checked="" type="checkbox"/> |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

Paragraph 20 - We consider that this paragraph should make clear that the comparator must be an actual person and cannot be hypothetical. This also gives some context to the comment at paragraph 34 regarding the lack of an actual comparator. We note that there is no reference in this section to the provisions of EU law which allow "single source" comparators. Given that this is another basis upon which comparators may be chosen, we consider that there should be some reference to these provisions in this paragraph.

Paragraph 21 – We consider that this might be more simply set out if the words "by the same employer or an associated employer" were inserted at the beginning of each of the first 2 bullet points. The third bullet point, which is confusingly worded, could then simply be deleted.

Paragraph 23 - We consider that the reference to "such as the woman and her comparator" should be amended to refer to "including the woman and her comparator", since the common terms must still apply to the woman bringing the claim and her comparator.

Paragraph 23 - We consider that the example of a situation where terms emanate from one source should be given later in the explanation (for example after the first paragraph in Paragraph 24). We also recommend changing the reference to "same source" to "terms and conditions which are derived from a common agreement or arrangement, such as a collective bargaining agreement or other equivalent arrangement", to avoid confusion with the concept of "single source".

Paragraphs 22-24 - We recommend including a separate section in relation to common terms and conditions under a separate sub heading (or making these paragraphs sub-points under the second point at paragraph 21), to make clear that the requirement for common terms and conditions only applies where the woman and her comparator are at different establishments.

Paragraph 24 - We consider that the focus on collective agreements in this paragraph suggests that the "common

terms" argument only applies in collective agreement situations. We recommend amending the final sentence of this paragraph to refer to "common terms and conditions" and not collective agreements, as a comparison can still be made if there are common terms and conditions (i.e. they do not have to be contained in a collective agreement).

We are concerned about the reference to the case of *Dumfries & Galloway Council v North & others* [2009] IRLR 915 in paragraph 24. Given that this decision is seen as controversial and is being appealed, we do not consider that it is appropriate for it to be included in the Code without qualification. Including the reference to this decision is likely, therefore, to cause the Code to become out of date very rapidly, if, as expected by many, the decision is overturned on appeal.

Paragraphs 26-28 (and paragraphs 23-25). These paragraphs need to make clear the difference between the UK and EU law positions on "common terms" and "single source". At present, no clear distinction is drawn between the two and these paragraphs are confusing and muddled. A much clearer explanation must be given so that the reader is aware that there are two possible avenues in which comparators may be identified as a result of these concepts.

Paragraph 26 - We consider that this paragraph should make it clear that the single source should be both responsible for the pay and capable of remedying any inequality, for example "attributable to a single source and that single source is capable of remedying...". An example could usefully be cited here (for example where pay is set and managed by one authority for a number of employers). The example at the end of the paragraph is confusing (and possibly incorrect) and, we consider, is not an example of a "single source", but rather an example of where differences may arise.

Paragraph 27 - We consider that this paragraph is superfluous and should be removed. It also has the potential to mislead as there is no case law on the need for an "overarching link."

Paragraph 29 - We consider that this paragraph should cross

refer to the fact that there can be no hypothetical comparator in equal pay claims.

Paragraph 31 - We consider that the words “ and is on the same or less pay than the woman, and” should be inserted after the words “who is not the chosen comparator”. We also suggest replacing the wording "like work, equivalent work or equal work" and “work of equal value” with "equal work", to make the paragraph easier to read.

Paragraph 32 - We consider that the words "as a claimant may have difficulty in identifying the most appropriate comparator for them" should be inserted after the words “and this may be prudent”. We consider that the last sentence should be deleted, as it is often necessary for a claimant to cite a number of comparators in the early stages of a claim, and we consider that the final sentence may have the effect of making claimants overly cautious in doing so.

Paragraph 33 - This paragraph refers to an employee comparing herself to a "predecessor when he left employment". We consider that this wording could be misleading, in that an employee can also include a predecessor in the role, who has not left employment (for example someone who was promoted).As a result, we consider that the words “when he left employment” need to be removed. We also consider that it needs to be made clear that the claimant and the comparator must have worked at the same time, for the same employer, at some point, except where the comparison is with the claimant's immediate predecessor in the same job.

Paragraph 34 – As noted above at the comment regarding paragraph 20, the first sentence of paragraph 34 only makes sense if the lack of hypothetical comparator is previously explained.

Paragraph 35 – We consider that the wording "undertaking work that is equal to his in the same employment" should be added after "a woman". Also, "another" should be amended to “a”, as the male claimant is not a comparator.

Paragraph 38 – We consider that the final part of the final

sentence of this paragraph ("and for a good reason") should be deleted as the tone of this sentence appears to be, with respect, somewhat condescending.

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input checked="" type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that the following terms need defining, as mentioned earlier, perhaps in a glossary:

- 1) associated employer;
- 2) establishment;
- 3) single source (and the use of the term "same source" should be entirely removed as this has the potential to cause immense confusion with "single source").

**Q5. Where examples illustrate the text, please tick the relevant box.**

Please tick one box only

- |                   |                                     |
|-------------------|-------------------------------------|
| Too many examples | <input type="checkbox"/>            |
| Too few examples  | <input checked="" type="checkbox"/> |

**Q6. Overall do you find the use of examples helpful/appropriate?**

- |     |                                     |
|-----|-------------------------------------|
| Yes | <input checked="" type="checkbox"/> |
| No  | <input type="checkbox"/>            |

**Q7. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

Please see our response to question 2 above, where we have suggested points in the text of this section where it would be useful to have examples.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

## **Sex Equality Clause**

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

Strongly agree   
Tend to agree   
Neither agree nor disagree

Tend to disagree

Strongly disagree

Don't know

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

Paragraphs 39 to 42 should be moved to the very early sections of the Code, since they set out the mechanism in which equal pay is brought into force. It is therefore much more logical for this section to be included earlier on in the Code.

Paragraph 39 – We consider that the wording “justify the different term by reference to material factors” should be amended to read “show that the difference is due to a material factor which is not tainted by sex discrimination”.”, as this appears to be a more correct explanation of the law in this area.

Paragraph 40 – We consider that the words “where the term is only in the man’s contract,” be inserted before the words “by incorporating the male comparator’s term into the woman’s contract.”

Paragraph 42 – We do not consider that the statement in this paragraph that “...the equality clause operates to give the woman the benefit of all the male comparator's contract terms...” is entirely accurate - to be precise, it will only operate so as to allow the woman to benefit from terms which fall within the jurisdiction of an equal pay claim.

**Q3. Are the definitions you need to understand this section included?**  
Please tick one box only

Strongly agree

Tend to agree

Neither agree nor disagree

Tend to disagree

Strongly disagree

Don't know

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

Please see comments at question 2 above that effectively relate to the definition of the equality clause.

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only

Too many examples   
Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

Yes   
No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

## Non-contractual rights

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input checked="" type="checkbox"/> |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

Paragraphs 43 - 46 – For similar reasons as those set out in relation to the paragraphs on the sex equality clause, we consider that these paragraphs should be included in the early sections of the Code.

Paragraph 43 – We consider that including the words "overtime/shift allowance" in a bracket after the words "performance related pay" give the (incorrect) impression that overtime and shift allowance are examples of performance related pay. We therefore consider that the bracket should be removed.

The second paragraph of paragraph 43 is confusing. We appreciate that it attempts to explain that the sex discrimination provisions do not allow an individual a "second bite of the cherry" in the event of an unsuccessful equal pay claim. However, it may be useful if this explanation were clearer and simpler. We would suggest that the words "This means that where a woman has a complaint about the level of her contractual pay, her claim must be made under the equal pay provisions of the Equality Act. She cannot bring a claim of sex discrimination in this situation, even if her equal pay claim is unsuccessful. Equally, where her complaint relates to something other than her contractual terms, pay and benefits, this must be brought as a claim for sex discrimination, and may not be brought as an equal pay claim."

Sometimes it will be difficult for an individual to identify whether their claim should be for equal pay or sex discrimination. As a result, we consider that the Code should make reference to the fact that where an individual is unclear as to whether a particular term or benefit is contractual she may lodge both a claim for equal pay and one for sex discrimination, but, if the basis of her complaint has merit, only one of these claims will be successful.

Paragraph 45 – We would suggest that the example be qualified by making it clear that the woman was not receiving the bonus for a reason related to her sex. A similar qualification could be useful in paragraph 46.

Paragraph 46 – We consider that the words "advised and is" need to be inserted after the words "opportunity in which the same male sales manager is".

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input checked="" type="checkbox"/> |
| Tend to disagree           | <input type="checkbox"/>            |

Strongly disagree

Don't know

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

**Q5. Where examples illustrate the text, please tick the relevant box.**

Please tick one box only

Too many examples

Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

Yes

No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

## Material factor defence

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input checked="" type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that this section needs to be considered in the light of the Court of Appeal's decision in the case of Gibson v Sheffield County Council [2010] EWCA 63.

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- |                            |                          |
|----------------------------|--------------------------|
| Strongly agree             | <input type="checkbox"/> |
| Tend to agree              | <input type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/> |

Tend to disagree   
Strongly disagree   
Don't know

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that a definition of direct discrimination needs to be included (referred to at paragraph 54), perhaps in a glossary, as mentioned above.

**Q5. Where examples illustrate the text, please tick the relevant box. Please tick one box only**

Too many examples   
Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

Yes   
No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

We consider that the example given at the end of paragraph 51 does not relate to the comment made immediately before it and that the comment and/or the example need to be rewritten.

The first example cited at paragraph 61 is slightly unclear. We would suggest that it would be more comprehensible (as the first and second sentence could be read as contradicting each other as currently drafted) if it referred to a pay protection scheme that protected the pay of the "losers" in a JE scheme for an unduly long period of time when significantly more men than women were "losing" as a result of the JE. If in this situation the women were doing work that the employer knew was rated as equivalent to the men's work or was of equal value to the men's work, but excluded

those women from getting pay protection in order to save money, then this would probably not be viewed as a reasonable means of achieving a legitimate aim.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments.

Please write in the box below.

There is a small drafting error in paragraph 57, in that the word "criteria" after the words "The assessment of that information is likely to vary depending on whether a provision," needs to be replaced with "criterion".

## Equal pay and maternity leave

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input checked="" type="checkbox"/> |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

This section is extremely confusing and we consider that it needs to be substantially recast. We make the following general comments:  
1) we consider that it would be useful to define compulsory maternity leave, again perhaps in a glossary;  
2) we consider that it might be more comprehensible to divide up the paragraphs into sections, with appropriate sub-headings, according to the three areas of pay identified at paragraph 63. Its current layout is extremely difficult to follow and we do not consider that it will be of benefit to readers as currently set out;  
3) we consider that paragraphs 74 to 76 should be given a sub-heading such as "Scope" or "Remit", to assist in making this section slightly clearer.

**Q3. Are the definitions you need to understand this section included?**  
Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input checked="" type="checkbox"/> |
| Don't know                 | <input type="checkbox"/>            |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that it would be useful to define the different types of maternity leave, again perhaps in a glossary. It might also be useful to provide a definition of "bonus", given that the issue of bonuses has been one that has arisen in much of the current equal pay litigation and it might be a source of confusion in this context.

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only

Too many examples   
Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

Yes   
No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved.**  
**Please write in the box below.**

Given the way in which this section has currently been drafted, we consider that additional examples may be useful. Examples should be included at appropriate points in the text, in accordance with the suggested sub-sections and headings mentioned above.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

# Burden of proof

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input checked="" type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that paragraphs 78 & 79 need to be amended to take account of the decision of the Court of Appeal in the case of Gibson v Sheffield County Council, [2010] EWCA 63. We would suggest that the final sentence of paragraph 78 be removed (as it does not follow sequentially where it is) and replaced with "Once a woman demonstrates that she is paid less than the man, it is then for the employer to show that any difference is due to a genuine and material factor that is not the difference of sex."

We also consider that the words "or shows that, for example, the result is that many more men are in a higher paid group and many more women are in a lower paid group" should be inserted after the words "the material factor is indirectly discriminatory" in paragraph 79. It might also be more user-friendly for paragraph 79 to be divided into bullet points, so that each stage of the burden of proof process is set out separately.

**Q3. Are the definitions you need to understand this section included?**  
Please tick one box only

- Strongly agree
- Tend to agree
- Neither agree nor disagree
- Tend to disagree
- Strongly disagree
- Don't know

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only

- Too many examples
- Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

- Yes
- No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

We consider that it would be appropriate for a flowchart to be set out here, explaining each step in simple terms. Given that the Court of Appeal decision in the Gibson case mentioned above has altered the way in which the burden of proof is to be applied to some extent, we consider that there is a particular need for more explanation, whether that be done by examples, bullet points, or a flow chart, to make this clearer for readers.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

## Employment Tribunals

**Q1. Do you agree or disagree that this section explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input checked="" type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/>            |

Don't know

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that two additional bullet points need to be included under paragraph 80, in the list of factors that a tribunal has to consider. These are:

- Whether the reasons given by the employer mean that the reason for the different pay or contract terms is based on sex
- any arguments raised by the employer to objectively justify the material factor it relies on.

In addition, we consider that paragraphs 81 to 87 relate specifically to equal value claims and it would be more appropriate to include them under a separate section or at least within a separate sub-section within the section on employment tribunals. This section or sub-section should also refer readers to schedule 6 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2004.

Paragraph 84 should be amended to reflect the fact that a tribunal may withdraw the requirement for an independent expert either of its own motion or at the request of one or both parties to the claim.

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

Strongly agree

Tend to agree

Neither agree nor disagree

Tend to disagree

Strongly disagree

Don't know

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only

Too many examples   
Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

Yes   
No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

Examples of the types of issues that an independent expert would consider would be useful.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

# Obtaining and disclosing pay information – protected pay discussions

**Q1. To what extent do you agree or disagree that this section clearly explains the new provisions?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input checked="" type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We have three suggested amendments to this section:

- 1) We consider that paragraph 93 should include the words "or between a colleague and an ex-colleague" after the words "between colleagues or ex-colleagues";
- 2) The second example in paragraph 94 needs to be changed or at the very least qualified, as the discussion might still be a relevant pay discussion in relation to the protected characteristic of race, for example.
- 3) It would be appropriate and assist with comprehension if an explanation was provided at the end of paragraph 98 as to why that scenario would not fall within the remit of the protection of the Act, ie explaining that the employee in this scenario is not speaking to an appropriate person about the issue and is not about discriminatory pay or pay structures.

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input checked="" type="checkbox"/> |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

**Q5. Where examples illustrate the text, please tick the relevant box.**

Please tick one box only

- |                   |                          |
|-------------------|--------------------------|
| Too many examples | <input type="checkbox"/> |
| Too few examples  | <input type="checkbox"/> |

**Q6. Overall do you find the use of examples helpful / appropriate?**

- |     |                          |
|-----|--------------------------|
| Yes | <input type="checkbox"/> |
| No  | <input type="checkbox"/> |

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

## Equal Pay questionnaires

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input checked="" type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input checked="" type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only

- |                   |                          |
|-------------------|--------------------------|
| Too many examples | <input type="checkbox"/> |
| Too few examples  | <input type="checkbox"/> |

**Q6. Overall do you find the use of examples helpful / appropriate?**

- |     |                          |
|-----|--------------------------|
| Yes | <input type="checkbox"/> |
| No  | <input type="checkbox"/> |

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

We consider that the potential benefits of using the questionnaire procedure should be highlighted in this section to a much greater extent. Given that one of the main difficulties facing claimants wanting to pursue equal pay claims is the lack of information/opacity of structures, equal pay questionnaires can be an extremely important part of the process. The use of equal pay questionnaires benefits both employers and individuals, as if the information disclosed demonstrates that there is no inequality, the individual is much less likely to pursue a claim and this benefits all parties. As a result, we consider that the language used in this section should be much more positive and actually encourage the use of equal pay questionnaires by individuals.

**C  
o  
n  
f  
i  
d  
e  
n  
t  
i  
a  
l  
i  
t  
y**

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input checked="" type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We note that paragraph 105 refers to the "FOIA" which is not defined until paragraph 109. This needs to be re-ordered. Given that paragraph 106 discusses the Data Protection Act, we consider that it might be appropriate for the Freedom of Information Act information to follow this and all to be contained in paragraph 109.

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input checked="" type="checkbox"/> |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

**Q5. Where examples illustrate the text, please tick the relevant box.**

Please tick one box only

- |                   |                          |
|-------------------|--------------------------|
| Too many examples | <input type="checkbox"/> |
| Too few examples  | <input type="checkbox"/> |

**Q6. Overall do you find the use of examples helpful / appropriate?**

- |     |                                     |
|-----|-------------------------------------|
| Yes | <input checked="" type="checkbox"/> |
| No  | <input type="checkbox"/>            |

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved.**

**Please write in the box below.**

We consider that this area in particular would benefit from the inclusion of some examples explaining, for instance, what types of information would be discloseable in accordance with the relevant legislation in this area.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

We consider that the heading to paragraph 112 is misleading. A better approach, we would suggest, would be to head this whole section (beginning from paragraph 103) "Confidentiality and disclosure of information", and then to change the heading of paragraph 112 to "Obtaining information".

## **Occupational pension schemes / Sex Equality Rule (including sex equality and maternity equality rule)**

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

Strongly agree

Tend to agree

Neither agree nor disagree

Tend to disagree   
Strongly disagree   
Don't know

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that this section needs much more explanation and many more examples given how complex the law in this area is. Many of the terms used (eg occupational pension scheme, employer contributions, prescribed benefits, actuarial factors, life cover) need clear explanation, and we refer to our earlier comments about a glossary.

We also have concerns about the accuracy of paragraph 118, and we consider that the example at paragraph 121 needs to be made much more clear, perhaps giving names etc to the individuals that it is referring to and explaining their status before proceeding to explain who would be an appropriate comparator.

**Q3. Are the definitions you need to understand this section included?**  
Please tick one box only

Strongly agree   
Tend to agree   
Neither agree nor disagree   
Tend to disagree   
Strongly disagree   
Don't know

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

See comments at question 2 above.

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only

Too many examples   
Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

Yes   
No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved.**  
**Please write in the box below.**

Please see comments at question 2 above.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

# Maternity equality in pension schemes

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input checked="" type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that, if paragraph 122 is correct, then paragraph 123 needs to be amended to specify that the woman's benefits etc will continue during ordinary maternity leave, but not additional maternity leave, and these terms will need to be defined.

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input checked="" type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

Please see comment at question 2 above.

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only  
Too many examples   
Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**  
Yes   
No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

Some examples including perhaps timelines to show the woman's differing entitlements at different times before, during and after her period of maternity leave, would be useful.

**Q8. Are there any other comments that you would like to make about this section?**  
Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

# Enforcement

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input checked="" type="checkbox"/> |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that the information about grievances needs to be contained in a separate section or sub-section within enforcement. The paragraphs containing information about grievances also need to be substantially recast. In the first instance, the order in which the paragraphs in this section have been placed needs to be reconsidered, as it is, with respect, not particularly logical or well thought through. The requirement in the ACAS Code of Practice to lodge a grievance needs to be given much more emphasis and in our view, paragraph 126 is misleading about the importance of this.

We also consider that the role played by trade union representatives and officers deserves much more recognition in the Code than is currently given, and employees should be positively encouraged to seek guidance or assistance from their trade union representatives or officers.

The word "the" has been omitted from the first line of the first bullet

point in paragraph 131, before the words "woman and her comparator".

**Q3. Are the definitions you need to understand this section included?**  
Please tick one box only

- |                            |                          |
|----------------------------|--------------------------|
| Strongly agree             | <input type="checkbox"/> |
| Tend to agree              | <input type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/> |
| Tend to disagree           | <input type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/> |
| Don't know                 | <input type="checkbox"/> |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only

- |                   |                                     |
|-------------------|-------------------------------------|
| Too many examples | <input type="checkbox"/>            |
| Too few examples  | <input checked="" type="checkbox"/> |

**Q6. Overall do you find the use of examples helpful / appropriate?**

- |     |                                     |
|-----|-------------------------------------|
| Yes | <input checked="" type="checkbox"/> |
| No  | <input type="checkbox"/>            |

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

An example of what an individual might include in a grievance letter would be useful.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

## Time limits for Equal Pay claims

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input checked="" type="checkbox"/> |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that this section needs to be fairly substantially recast. Paragraph 134 appears to be completely out of sequence and needs to be moved. Paragraph 133 should provide much more detail about the different scenarios in which employment is to be treated as having ended for the purposes of equal pay time limits. In addition, the definitive statement stipulating that time will not begin to run when an individual leaves her particular post provided that she remains in the same employment needs to be caveated to some extent, as there may be situations in which this may constitute leaving employment. In addition, paragraph 133 does not appear to be accurate as it appears to ignore the points made in recent litigation in relation to employers issuing new contracts (the Slack case) about considering whether there is a stable employment relationship.

In addition, we consider that the explanation of time limits in relation to TUPE situations needs to be expanded further, as it should explain the differentiation between claims against the transferor and those against the transferee and explain how the time limit differs in relation to each of these.

The final part of paragraph 139 needs further explanation about why time limits might influence the choice of comparator as it is confusing and unhelpful as currently drafted.

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input checked="" type="checkbox"/> |
| Don't know                 | <input type="checkbox"/>            |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that the words "concealed" and "incapacitated" need to be defined.

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only

Too many examples

Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

Yes

No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

We consider that examples, using timelines where appropriate, would be extremely useful in relation to this section.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

# Equal Pay awards and remedies

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input checked="" type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/>            |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that paragraph 142 needs to be recast. It in essence needs to make clear that a woman will not recover separately in each claim, even if she brings claims for like work, work rated as equivalent and equal value. It also needs to make clear that even if she brings claims citing more than one comparator, she will only recover her losses once in any particular claim, and not in relation to each comparator.

We consider that the words "or both" need to be removed from the sentence just before the first bullet point in paragraph 144 as these are unnecessary (given the use of "and/or" at the end of the first bullet point) and confusing.

**Q3. Are the definitions you need to understand this section included?**  
Please tick one box only

- Strongly agree
- Tend to agree
- Neither agree nor disagree
- Tend to disagree
- Strongly disagree
- Don't know

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that the terms "declaration", "recommendation" and "award for injury to feelings" need to be defined.

**Q5. Where examples illustrate the text, please tick the relevant box.**  
Please tick one box only

- Too many examples
- Too few examples

**Q6. Overall do you find the use of examples helpful / appropriate?**

- Yes
- No

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

We are concerned by the complete absence of examples in this section, despite the fact that examples of the points made in this section would illustrate the points being made very neatly and clearly, in our view. We suggest that appropriate examples including scenarios where the reader can see and understand the calculations applied would be extremely useful.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

## Protection against victimisation

**Q1. Do you agree or disagree that this section clearly explains the relevant law?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input checked="" type="checkbox"/> |
| Don't know                 | <input type="checkbox"/>            |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

We consider that victimisation itself is not properly explained in this section, and needs to be. The interchanging use of the words "complaint" and "claim" is confusing and consistent use of one of these would be preferable.

**Q3. Are the definitions you need to understand this section included?**

Please tick one box only

- |                            |                                     |
|----------------------------|-------------------------------------|
| Strongly agree             | <input type="checkbox"/>            |
| Tend to agree              | <input type="checkbox"/>            |
| Neither agree nor disagree | <input type="checkbox"/>            |
| Tend to disagree           | <input type="checkbox"/>            |
| Strongly disagree          | <input checked="" type="checkbox"/> |
| Don't know                 | <input type="checkbox"/>            |

**Q4. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

Please see comment at question 2 above.

**Q5. Where examples illustrate the text, please tick the relevant box.**

Please tick one box only

- |                   |                                     |
|-------------------|-------------------------------------|
| Too many examples | <input type="checkbox"/>            |
| Too few examples  | <input checked="" type="checkbox"/> |

**Q6. Overall do you find the use of examples helpful / appropriate?**

- |     |                                     |
|-----|-------------------------------------|
| Yes | <input checked="" type="checkbox"/> |
| No  | <input type="checkbox"/>            |

**Q7. If your answer to Q6 was 'No' please state which examples you found unhelpful and how they could be improved. Please write in the box below.**

We consider that examples of victimisation would assist in explaining the concept and we would therefore recommend that at least a few examples are included here.

**Q8. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

## Part 2 – Equal Pay: good practice

**Q1. To what extent do you agree or disagree that this section is useful?**

Please tick one box only

- |                            |                          |
|----------------------------|--------------------------|
| Strongly agree             | <input type="checkbox"/> |
| Tend to agree              | <input type="checkbox"/> |
| Neither agree nor disagree | <input type="checkbox"/> |
| Tend to disagree           | <input type="checkbox"/> |
| Strongly disagree          | <input type="checkbox"/> |
| Don't know                 | <input type="checkbox"/> |

**Q2. If you disagree, please tell us where it is unclear and / or how it could be improved. Please write in the box below.**

In the first instance, we welcome the inclusion of Part 2 in the Code and as we consider that including a section on good equal pay practice is essential. We further consider that the Code is the most relevant place in which to include such a section as we are concerned that including it in the non-statutory guidance would give it insufficient weight and might well result in it becoming "buried" in what we envisage will be a larger document that many employers may well not decide to focus on.

We also consider that there needs to be a much stronger reference to the role of trade unions in assisting to obtain fair and transparent pay structures. Consulting with unions and gaining their approval of proposals is a crucial part of the process and we consider that this should be emphasised much more strongly.

We consider that the reference in the second paragraph of paragraph 7 should remove the words "medium to large sized" and replace them with "many" as there are often equal pay concerns in smaller organisations as well as larger ones.

**Q3. Are there any other comments that you would like to make about this section?**

Where relevant please mention paragraph numbers. We welcome both positive and negative comments. Please write in the box below.

Thank you for completing the questionnaire.

# Contacts

<b>England</b>	<b>Scotland</b>	<b>Wales</b>
Arndale House Arndale Centre Manchester M4 3AQ	The Optima Building 58 Robertson Street Glasgow G2 8DU	3rd Floor 3 Callaghan Square Cardiff CF10 5BT
Freepost RRLG-GHUX-CTRX	Freepost RRLG-GYLB-UJTA	Freepost RRLR-UEYB-UYZL
<b>Helpline:</b> Main number 0845 604 6610	<b>Helpline:</b> Main number 0845 604 5510	<b>Helpline:</b> Main number 0845 604 8810
<b>Textphone</b> 0845 604 6620	<b>Textphone</b> 0845 604 5520	<b>Textphone</b> 0845 604 8820
<b>Fax</b> 0845 604 6630	<b>Fax</b> 0845 604 5530	<b>Fax</b> 0845 604 8830

Helpline opening times:  
Monday to Friday: 9am-5pm

If you require this publication in an alternative format please contact the relevant helpline to discuss your needs. All publications are also available to download and order in a variety of formats from our website:

**[www.equalityhumanrights.com](http://www.equalityhumanrights.com)**

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

