



Department for
Business, Energy
& Industrial Strategy

PREGNANCY AND MATERNITY DISCRIMINATION

Consultation on extending redundancy
protection for women and new parents

Closing date: 5 April 2019



OGL

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Introduction

Through the Industrial Strategy¹ the Government is working to transform our economy. Ensuring that everyone, no matter what their background, can enter into and progress at work lies at its heart.

Matthew Taylor's review of modern working practices² outlined an ambition for all work in the UK economy to be fair and decent - and for employers to offer opportunities that give individuals realistic scope to develop and progress. The Government shares that vision in the "Good Work Plan".

Pregnancy and maternity discrimination has absolutely no place in that vision. It is unlawful - but the research that the Department for Business, Energy and Industrial Strategy and the Equality and Human Rights Commission published in 2016³ demonstrates that it is still far too prevalent. As the Women and Equalities Select Committee made clear in its report on pregnancy and maternity discrimination⁴, pregnant women and new mothers continue to feel forced out of work.

That is why Government has undertaken this review and is considering how it might extend redundancy protection for pregnant women and new parents once they have returned to work.

¹ <https://www.gov.uk/government/publications/industrial-strategy-building-a-britain-fit-for-the-future>

² <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>

³ <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>

⁴ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/pregnancy-and-maternity-discrimination-15-16/>

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General information

Why we are consulting

This review and consultation document takes its lead from the key issues raised in the Women and Equalities Select Committee 2016 report and, more recently, the Taylor Review of modern working practices. It therefore:

- sets out the current **legal protections for pregnancy and maternity**;
- asks how an **extension of redundancy protection** into a period of “return to work” might best work;
- asks whether similar protection should be afforded to **other groups**;
- sets out the steps that the Government is taking to increase business and employer **awareness of their rights and obligations**, and invites comments on how they might be improved, to tackle pregnancy discrimination more effectively in general;
- considers the existing approach to the **enforcement** of employment and equalities legislation in the context of recommendations from WESC and the Taylor Review; and
- discusses the **tribunal time limit**

Consultation details

Issued: 25 January 2019

Respond by: 5 April 2019

Enquiries to:

Labour Market Directorate
Department for Business, Energy & Industrial Strategy,
1st Floor Spur,
1 Victoria Street, London,
SW1H 0ET

Tel: 020 7215 5000

Email: increasingtransparency.consultation@beis.gov.uk

Consultation reference: Pregnancy and Maternity Discrimination: Extending Redundancy Protection for Women and New Mothers

Territorial extent:

This applies across Great Britain.

How to respond

Respond online at: <https://beisgovuk.citizenspace.com/lm/redundancy-protection-for-women-new-mothers>

Email to: increasingtransparency.consultation@beis.gov.uk

Write to:

Labour Market Directorate
Department for Business, Energy & Industrial Strategy,
1st Floor Spur,
1 Victoria Street, London,
SW1H 0ET

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable UK and EU data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

1. Legal Protections for Pregnancy and Maternity

There are two main pieces of legislation which offer particular legal protections for pregnancy and maternity:

- *The Equality Act 2010*
- *The Employment Rights Act 1996 and regulations made under it (the Maternity and Parental Leave etc. Regulations 1999)*

Equality Act 2010 – sex discrimination

1. In the employment context, the Equality Act 2010 prohibits certain conduct including direct discrimination because of, and indirect discrimination in relation to, sex. Sex is a protected characteristic and refers to a male or female of any age. In relation to a group of people it refers to either men and/or boys, or women and/or girls.

2. The Equality Act 2010 says you must not be discriminated against because:

- you are (or are not) a particular sex
- someone thinks you are the opposite sex (this is known as discrimination by perception)
- you are connected to someone of a particular sex (this is known as discrimination by association)

Equality Act 2010 – pregnancy and maternity discrimination

3. The Equality Act sets out a 'protected period' during which women who are pregnant or have recently given birth are explicitly protected from discrimination. The 'protected period' runs from the start of a person's pregnancy until:

- she returns to work from ordinary or additional maternity leave (if she is entitled to either form of leave); or
- two weeks after the end of her pregnancy, if she is not entitled to maternity leave.

4. During the 'protected period' a woman is protected against discrimination that arises as a result of:

- her pregnancy;
- any illness related to her pregnancy, or absence because of that illness;
- being on compulsory maternity leave; or
- seeking to take, taking or having taken ordinary or additional maternity leave

5. Once the protected period ends, it is still unlawful to treat a woman less favourably because of her pregnancy, maternity or breastfeeding. This might be because the less favourable treatment stems from a decision taken during the protected period, or because it may amount to sex discrimination.

Maternity and Parental Leave Etc Regulations 1999

6. Under Regulation 10 of the Maternity and Parental Leave etc. Regulations (1999) ("MAPLE"), before making an employee on maternity leave redundant, employers have an obligation to offer them (not just invite them to apply for) a suitable alternative vacancy, where one is available with the employer (or an associated employer). This gives the woman priority over other employees who are also at risk of redundancy thereby challenging the "default setting" of automatically offering redundancy to the women on maternity leave first.

7. An alternative vacancy must be both suitable and appropriate for the woman to do in the circumstances, and the terms and conditions must not be "substantially less favourable" than her previous role.

8. This protection applies while the woman is on ordinary or additional maternity leave.

2. Extension of Redundancy Protection

In its report on pregnancy and maternity discrimination the Women and Equalities Select Committee concluded:

“We are persuaded that additional protection for new and expectant mothers is required throughout pregnancy and maternity leave and for six months afterwards”

A key purpose of the existing enhanced protection against redundancy for women on maternity leave is to help tackle discrimination and to change the culture which can exist around mothers and the workplace.

9. In 2016 BEIS / EHRC research⁵ found a quarter of employers felt it was reasonable during recruitment to ask women about their future plans to have children. In 2017 an EHRC survey⁶ of over 1,000 decision makers in business found around a third of private sector employers agreed that it was reasonable to ask women about their plans to have children in the future during recruitment – showing that business attitudes can be slow to change and the potential for discrimination persists at all stages of a mother’s employment journey.

10. Given this, and further evidence (including that assembled by the Women and Equalities Select Committee) that new mothers are being forced out of work when they seek to return, the Government is seeking views on whether an extended period of additional protection against redundancy, might be the best way to address this issue.

11. Additionally, the Taylor Review concluded that the legislation in this area is complex. The current absence of a consolidated or uniform position across pregnancy, maternity and a return to work period may drive unproductive costs as businesses struggle to understand their obligations and the extent to which these change. Greater consolidation or uniformity might make it easier for individuals to understand and then seek to exercise their rights. The Government’s Good Work Plan sets out how the government will implement the recommendations arising from the Taylor Review of Modern Working Practices.

12. The Government also therefore believes there is a clear case, for both businesses and for individuals, to create a more consistent approach throughout pregnancy, maternity leave and for a period of return.

13. It is proposed that the simplest way of achieving additional protection and creating a more consistent approach is to extend the scope of the current protection against redundancy provided under MAPLE for those on maternity leave. This would mean that pregnant women and new mothers who had recently returned to work had the same protection as that enjoyed by those on maternity leave.

⁵ <https://www.gov.uk/government/collections/pregnancy-and-maternity-related-discrimination-and-disadvantage>

⁶ <https://www.equalityhumanrights.com/en/our-work/news/employers-dark-ages-over-recruitment-pregnant-women-and-new-mothers>

Extending Redundancy Protection for Women and New Parents

Question 1: To what extent do you agree that protections against redundancy for a period following return to work should be aligned with those already in place during maternity leave?

Strongly agree / agree / neither agree or disagree / disagree / strongly disagree / don't know

Question 2: Please give reasons for your answer

Question 3: What costs do you believe the extension would bring

- a) For individuals
- b) For businesses

Question 4: What benefits do you believe the extension would bring

- a) For individuals
- b) For businesses

14. Extending MAPLE protections beyond statutory maternity leave generates some practical questions.

15. The first is how long the additional protection afforded by MAPLE should apply once a new mother has returned to work.

16. The Women and Equalities Select Committee suggested that this should be 6 months.

17. The Government's provisional view is that 6 months would be an appropriate length of time, on the basis that it is a long enough period to allow a new mother to re-establish herself in the workplace.

Question 5: Do you agree that 6 months would be an adequate period of "return to work" for redundancy protection purposes?

Yes / No / Don't Know

Question 6: Please give reasons for your answers

Question 7: If you think a different period of "return to work" would work better, please say what that should be and explain why

18. The second is how to define when in a pregnancy additional protection against redundancy should begin.

Extending Redundancy Protection for Women and New Parents

19. In terms of clarity, transparency and consolidation the Government believes that this can best be defined as the point a woman informs her employer that she is pregnant in writing.

Question 8: Should pregnancy for redundancy protection purposes be defined as starting at the point a woman informs her employer that she is pregnant in writing?

Strongly agree / agree / neither agree or disagree / disagree / strongly disagree / don't know

Question 9: Do you think a different reference point should be used?

Yes/No

Question 10: If yes, please say what that should be and explain why

3. Other Groups

We also need to consider the impact of extending the redundancy protection afforded under MAPLE into the “return to work” period for mothers to other groups who are taking extended periods of leave for similar purposes – i.e. that are akin to maternity leave.

20. These groups may experience unfair treatment in the return to work period in the same way that some new mothers do. It is likewise important that they are not-disadvantaged.

21. It is important to note that extending MAPLE into a “return to work” period can create challenges in terms of the interactions of different forms of leave. For instance, when would the “return to work” period start (i.e. when would the 6-month period of additional redundancy protection begin) where a period of maternity leave is followed immediately by a period of annual leave, special leave or a career break? There is also the question of how any extended redundancy protection would work with shared parental leave, where parents chose to take that in multiple blocks (i.e. a period of shared parental leave, followed by a period at work, followed by a further period of shared parental leave). These are challenging questions and the Government intends to form a technical task group to work them through.

Question 11: Do you agree that the most direct equivalents to return to work from statutory maternity leave (on the basis that they are forms of leave that can potentially be taken by parent of either gender for longer periods) are:

- a) adoption leave (yes / no)
- b) shared parental leave (yes / no)
- c) longer periods of parental leave* (yes / no)
- d) Other

Question 12: If other, please explain your reasons.

Question 13: Supposing that the additional redundancy protection afforded by MAPLE is extended to mothers returning to work after maternity leave, to what extent do you agree that the same protection should be extended to those groups?

Strongly agree / agree / neither agree or disagree / disagree / strongly disagree / don't know

Question 14: Please explain the reasons for your answer.

Question 15: Are there other forms of leave which should be considered for additional redundancy protection on return to work?

Question 16: Please give your reasons.

* Parental leave is unpaid. You are entitled to 18 weeks' leave for each child and adopted child, up to their 18th birthday. The limit on how much parental leave each parent can take in a year is 4 weeks for each child (unless the employer agrees otherwise).

4. Awareness of rights and obligations

The Government is committed to helping women fulfil their potential in the workplace and helping businesses get the full economic benefit of women's skills.

22. The BEIS / EHRC research into pregnancy and maternity discrimination⁷ published in 2016 was clear that the vast majority of employers recognise the importance of supporting pregnant women and new mothers in the workplace - and the benefits to their business that flow from that.

23. The Government has worked with bodies such as Acas and EHRC to ensure that pregnant employees and new mothers have the information and tools they need to challenge unacceptable or bad practice. The Government has also worked to ensure that employers not only know what the law says, but are aware of what best practice looks like and the benefits it brings.

Promoting awareness of maternity rights from the early stages

24. The Government has updated the MAT B1 form (the form which enables a pregnant woman to claim Statutory Maternity Pay from her employer or Maternity Allowance from Jobcentre Plus) to include a link to advice and guidance on employment rights for pregnant women and new mothers.

25. The NHS's Start4life campaign (an information service for expectant and new parents) now provides the same link in its emails. It also provides a link to the Acas guidance published in November 2017, as outlined below.

Acas Guidance

26. In November 2017 Acas published comprehensive [guidance on pregnancy and maternity discrimination](#) for both women and for businesses. The guidance offers employers advice on how to comply with the Equality Act 2010.

27. The guidance includes reminders of the following points:

- Employees on maternity leave should be made aware of opportunities for promotion and training;
- Pregnancy related absences must not be included in an employee's absence record;
- Employees must not be dismissed or made redundant for any issue related to pregnancy or maternity leave or maternity pay.

⁷ <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>

Extending Redundancy Protection for Women and New Parents

28. The [guidance](#) says that employers should:

- develop a policy so that all employees understand their rights and responsibilities in relation to pregnancy and maternity discrimination
- provide a suitable place for pregnant employees to rest, in line with the law, and
- identify and deal with risks to health and safety of a pregnant employee and her unborn child.

Health and Safety considerations

29. The Health and Safety Executive has refreshed its webpage on [protecting new and expectant mothers](#), which provides a wide range of guidance on pregnancy related issues in the workplace. There is also clear guidance for employees to report concerns if they believe health and safety law is being broken.

Business Leadership

30. The Government continues to work with the Equalities & Human Rights Commission and its [Working Forward campaign](#). This nationwide campaign, backed by some of the UK's leading businesses and industry bodies, aims to make workplaces the best they can be for pregnant women and new parents.

31. Participating organisations are required to sign a “pledge” to take action in four particular areas: leadership; employee confidence; supporting line managers; and flexible working. Businesses decide which action areas would work best for them. Leadership is a mandatory action area for all members, because workplaces that have senior support are the most successful in embracing the other three pledge areas.

32. Over [300 organisations have signed up so far](#).

GOV.UK website

33. We have updated and consolidated the pregnancy and maternity discrimination pages on GOV.UK. This ensures that both employers and employees know where to look for information and that this information is consistent, clear and accessible.

Question 17: How effective have these steps been in achieving their objective of informing pregnant women and new mothers of their employment rights?

Very effective / fairly effective / not very effective / not at all effective / don't know

Question 18: Please give your reasons.

Question 19: How effective have these steps been in achieving their objective of informing employers of their rights and obligations in relation to pregnant women and new mothers?

Very effective / fairly effective / not very effective / not at all effective / don't know

Question 20: Please give your reasons.

Question 21: How do you think these steps might be improved?

Question 22: Please outline any further steps which should be taken to provide advice and guidance to employees and employers about the employment rights of pregnant women and new mothers and employers' obligations towards them.

Question 23: If further steps should be taken, who is best placed to take that action?

5. Enforcement

In its report on pregnancy and maternity discrimination the Women and Equalities Select Committee concluded:

“We are persuaded that additional protection from redundancy for new and expectant mothers is required. The Government should implement a system similar to that used in Germany under which such women can be made redundant only in specified circumstances”

The German system

34. In Germany, pregnant women and new mothers enjoy special protection against redundancy.

35. An employer is not allowed to dismiss a woman during pregnancy without first securing consent from the competent public authorities. This protection continues until four months after the birth. Only in very exceptional cases will the authority grant consent to the dismissal. A dismissal without consent is automatically invalid.

The British system

36. In the UK new mothers also enjoy special protection against redundancy, as set out in Part 1 of the consultation.

37. Rather than making it automatically unlawful for a new mother to be made redundant without express permission, the UK approach provides special protection by putting her in a preferential position compared to colleagues.

38. Regulation 10 of the Maternity & Paternity Leave etc Regulations 1999 (“MAPLE”) provides redundancy protection whilst a woman is on maternity leave. This means a new mother is entitled to be given first refusal on any suitable alternative vacancy. Failure to comply with this regulation will give rise to an automatically unfair dismissal.

39. The period of maternity leave taken may, of course, be less than the 4 months provided under the German system, if the mother chooses to end her maternity leave after a shorter period. But it can be three times longer under UK law – up to 12 months.

Approach to enforcement

40. The enforcement of individual employment rights or equalities legislation needs to be considered across the labour market as a whole. The Government believes it would not be

Extending Redundancy Protection for Women and New Parents

appropriate to apply an approach to enforcement in the case of redundancy protection for pregnant women and new mothers that is fundamentally different from that for the rest of employment law.

41. To adopt a German approach to enforcement and require an employer to apply to a state body for permission to make a new mother redundant would run counter to the current UK system of enforcement of individual employment rights and the role of Employment Tribunals. Even if a 'dismissal ban' were enforced by a tribunal rather than by application for permission from an administrative authority, such a proposition would be out of kilter with the UK's approach to enforcement of equalities and wider labour rights.

42. The Taylor review considered the question of enforcement and did not challenge the approach to state involvement in employment rights more generally, in ways that adopting the German approach would do.

43. The Government has published the Good Work Plan, which sets out the vision for the future of the labour market and an ambitious plan for implementing the recommendations arising from the Taylor review.

44. Through the Good Work Plan we will bring forward proposals for consultation on creating a new, single labour market enforcement agency to better ensure that vulnerable workers are more aware of and can exercise their rights, and that businesses are more supported to comply with the law.

6. Tribunal Time Limit

The Women and Equalities Select Committee suggested that the three month time limit for bringing a claim in pregnancy and maternity discrimination cases should be extended to six months.

45. In its response to the Select Committee the Government said that employment tribunals can already allow the time limit to be extended in discrimination cases if it is considered “just and equitable” given all the circumstances of the individual case.

46. Following the Committee’s report, the HM Courts and Tribunal Service (HMCTS) collected data on out of time applications to the employment tribunal, for which pregnancy / maternity discrimination was cited as a reason. This showed that in the period from January to June 2018, 25 cases were accepted for late submission, and none were rejected.

47. We hope that as a result of increased awareness that tribunals have this discretionary power more people will consider whether to take a case to tribunal if they have a valid reason for having missed the three-month window. The Government is also considering whether further guidance might be appropriate and helpful.

48. Furthermore the Government has committed to consult to explore the evidence for changing Employment Tribunal time limits for claims relating to discrimination, harassment and victimisation, including on grounds of pregnancy and maternity. The consultation will build on the explorative work we have undertaken to gather data on the success rate of ‘out of time’ tribunal claims for pregnancy and maternity discrimination cases, as set out above.

Consultation questions

- 1. To what extent do you agree that protections against redundancy for a period following return to work should be aligned with those already in place during maternity leave.**

Strongly agree / agree / neither agree or disagree / disagree / strongly disagree / don't know

- 2. Please give reasons for your answer.**

- 3. What costs do you believe the extension would bring:**

a) For individuals

b) For businesses

- 4. What benefits do you believe the extension would bring:**

a) For individuals

b) For businesses

- 5. Do you agree that 6 months would be an adequate period of "return to work" for redundancy protection purposes?**

- 6. Please give reasons for your answers**

- 7. If you think a different period of "return to work" would work better, please say what that should be and explain why**

- 8. Should pregnancy for redundancy protection purposes be defined as starting at the point a women informs her employer that she is pregnant in writing?**

Strongly agree / agree / neither agree or disagree / disagree / strongly disagree / don't know

- 9. Do you think an earlier reference point should be used?**

Yes / No

- 10. If yes, please say what that should be and explain why.**

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11. Do you agree that the most direct equivalents to return to work from statutory maternity leave (on the basis that they are forms of leave that can potentially be taken by parent of either gender for longer periods) are:

- a) adoption leave (yes / no)
- b) shared parental leave (yes / no)
- c) longer periods of parental leave⁸ (yes / no)
- d) Other

12. If other, please explain your reasons.

13. Supposing that the additional redundancy protection afforded by MAPLE is extended to mothers returning to work after maternity leave, to what extent do you agree that the same protection should be extended to those groups?

Strongly agree / agree / neither agree or disagree / disagree / strongly disagree / don't know

14. Please explain the reasons for your answer.

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16. Please give your reasons.

17. How effective have these steps been in achieving their objective of informing pregnant women and new mothers of their employment rights?

Very effective / fairly effective / not very effective / not at all effective / don't know

18. Please give your reasons.

19. How effective have these steps been in achieving their objective of informing employers of their rights and obligations in relation to pregnant women and new mothers?

Very effective / fairly effective / not very effective / not at all effective / don't know

20. Please give your reasons.

21. How do you think these steps might be improved?

22. Please outline any further steps which should be taken to provide advice and guidance to employees and employers about the employment rights of pregnant women and new mothers and employers' obligations towards them.

23. If further steps should be taken, who is best placed to take that action?

⁸ Parental leave is unpaid. You're entitled to 18 weeks' leave for each child and adopted child, up to their 18th birthday. The limit on how much parental leave each parent can take in a year is 4 weeks for each child (unless the employer agrees otherwise)

This consultation is available from: www.gov.uk/government/consultations/pregnancy-and-maternity-discrimination-extending-redundancy-protection-for-women-and-new-parents

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.