

# Final stage impact assessment

Title: Protections against dismissal for pregnant workers

Type of measure: Primary Legislation

Department or agency: Department for Business and Trade

IA number: DBT-040-24-CMRR

RPC reference number: ...

Contact for enquiries: ERDAnalysisEnquiries@businessandtrade.gov.uk

Date: 21/10/2024

## 1. Summary of proposal

1. The Government's 2024 'Plan to Make Work Pay' (MWP) stated that "Labour is committed to strengthening protections for pregnant women by making it unlawful to dismiss a woman who is pregnant for six months after her return, except in specific circumstances."
2. In order to tackle maternity and pregnancy discrimination and to avoid women leaving the workforce, the Government intends to make it unlawful for an employer to dismiss the following categories of women except in specific circumstances: pregnant women, mothers on Maternity Leave (ML), and mothers who return to work (for a six-month period after return).
3. The Employment Rights Bill will be used to extend existing powers in the Employment Rights Act 1996 for protections from dismissal, to extend protection to the period of pregnancy prior to the start of ML and for a period after the employee has returned to work. Consultation with stakeholders will be carried out on options for delivering the enhanced dismissal protection before finalising the approach, which will then be set out in the secondary legislation.
4. Individuals returning from Adoption Leave (AL) and Shared Parental Leave (SPL) can also take extended periods of time out from work for the purposes of childcare. The Bill includes powers to bring those taking AL and SPL in scope for the extended dismissal protection through regulations. However, a decision will be taken following the consultation on whether and/or how these powers should be exercised.

## 2. Strategic case for proposed regulation

5. There is a clear consensus between economists, business and trade unions, that fair and decent conditions of work improve productivity, economic opportunity, health and wellbeing. Low pay, poor terms & conditions, and insecure employment lead to recruitment challenges and high levels of staff turnover which constrain productivity and result in lost potential output.
6. The Government intervenes in the labour market to extend individual employment rights for efficiency and to address inequity. A well-functioning labour market, which provides necessary rights and protections, provides employees with high quality jobs while also empowering business to operate competitively.
7. Evidence shows that between 7-11% of pregnant women and mothers respectively report they were either dismissed, made compulsorily redundant where others in their workplace were not, treated so poorly they felt they had to leave their job, or felt forced to leave due to a flexible working request being declined or due to health and safety issues.<sup>1</sup> This is equivalent to between 42,000 and 54,000 women a year. The 2016 BIS and EHRC<sup>2</sup> research found that 1% specifically were dismissed. In addition, the gender pay gap is shown to be relatively small on entry into the labour market but widens when the first child arrives; by the time this child is 13 years old there is a 30% difference in average hourly wages between men and women.<sup>3</sup> The policy is designed to strengthen the existing protections for pregnant women/new mothers, protecting women and helping them maintain labour market attachment at this vulnerable time in their family life.
8. The change in regulation will benefit both workers and employers. Workers will benefit from extra job security and fair treatment, improving wellbeing and career prospects. Employers will benefit from a more engaged workforce that could lead to productivity gains. Government intervention is needed to maximise the economic and social benefits.

## 3. SMART objectives for intervention

9. The key policy objective is to improve dismissal protection afforded to pregnant women and mothers returning from ML. In addition, the policy also aims to:
  - Reduce the number of dismissals of pregnant women and mothers returning from ML.
  - Improve employment rates and outcomes for pregnant women and mothers.
  - Improve businesses awareness of their obligations, and of their employees' rights around dismissal.
10. The expected outcomes of the policy are:
  - Improved wellbeing for mothers and pregnant women at work.
  - Improved participation of women in the workforce.
  - Reduction in the gender pay gap.

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<sup>1</sup> Department for Business, Innovation & Skills and Equality and Human Rights Commission (2016): '[Pregnancy and maternity-related discrimination and disadvantage](#)' (viewed on 09 October 2024) & Pregnant then Screwed (2023): '[1 in 61 pregnant women say their boss insinuated they should have an abortion](#)' (viewed on 09 October 2024)

<sup>2</sup> Department for Business, Innovation & Skills and Equality and Human Rights Commission (2016): '[Pregnancy and maternity-related discrimination and disadvantage](#)' (viewed on 09 October 2024)

<sup>3</sup> House of Commons Library (2024): '[The Gender Pay Gap](#)' (viewed on 09 October 2024)

## 4. Description of proposed intervention options and explanation of the logical change process whereby this achieves SMART objectives

11. Primary legislation will be required to enact amendments that achieve the Government's policy aims. The provisions will create a power for the Secretary of State to make regulations regarding dismissal during the period of pregnancy prior to the start of ML, and to extend existing powers so that regulations can be made regarding dismissal after return from relevant statutory leave entitlements.
12. Once the required amendments to primary legislation are in place, secondary legislation will later be required to set out much of the detail of the extended dismissal protection that will be decided following consultation. Other options are not suitable to achieve the intended policy aims. The intended outcomes of the reforms include a decrease in the number of dismissals, incidents of pregnancy and maternity discrimination and improved employment rates among pregnant women and mothers. This can be measured via data from the Annual Population Survey and Labour Force Survey but also data on the number of Employment Tribunal cases by jurisdiction.
13. **Option 1 'Do nothing'**: "Status Quo" or "no change" option from the current system, meaning women could still be dismissed during pregnancy unless covered by existing protections, i.e. pregnancy and maternity as protected characteristics in the Equality Act 2010; unfair dismissal protections as available to all employees; and the extra redundancy protections for pregnant women and returning mothers.
14. **Option 2**: Introduce legislation to strengthen dismissal protections for pregnant women and new mothers in the Employment Rights Bill and define the detail and any specific exceptional criteria in secondary legislation.

## 5. Summary of long-list and alternatives

15. The policy was a manifesto pledge set out by the Government's 2024 'Plan to Make Work Pay' (MWP). It stated that "Labour is committed to strengthening protections for pregnant women by making it unlawful to dismiss a woman who is pregnant for six months after her return, except in specific circumstances." Given that there is further policy development and consultation to come, our IA at this stage provides high-level analysis of the impacts that could follow from primary powers and are not assessments of a specific implementation approach. Nevertheless, consideration was still given to non-regulatory options and the inclusion of small and micro businesses.
16. The five reasons an employee can be fairly dismissed are set out in the Employment Rights Act 1996, therefore, non-legislative reforms would be unlikely to meet the intended objective of the policy to enhance the employment rights for pregnant women/new mothers by providing extra protection against dismissal. For illustrative purposes, approaches that could be considered include retaining certain reasons for dismissal (e.g. conduct), and/or setting a certain standard within those reasons (e.g. gross misconduct), and/or considering when and how dismissals are defended.
17. The policy is expected to be applied to businesses of all sizes, including small and micro businesses, in line with the principle that all pregnant women/new mothers deserve

enhanced protection from dismissal, irrespective of the size of the organisation they work for. While it is recognised that smaller businesses may face disproportionate challenges due to their limited resources, the broader societal benefits of increased worker security and fairness in the labour market justify the policy's scope.

## 6. Description of shortlisted policy options carried forward

18. Two broad options have been carried forward for the purpose of the analysis:
19. **Option 1 'Do nothing'**: "Status Quo" or "no change" option from the current system, meaning women could still be dismissed during pregnancy unless covered by existing protections (as outlined in section 4).
20. **Option 2**: Introduce legislation to strengthen dismissal protections for pregnant women and new mothers in the Employment Rights Bill and define the detail and any specific exceptional criteria in secondary legislation.
21. The detail of the extended dismissal protection and the specific circumstances under which dismissal will still be permitted are subject to consultation and will be set out in secondary legislation in due course.
22. The policy is expected to be applied to businesses of all sizes, including small and micro businesses, in line with the principle that all pregnant women/new mothers deserve enhanced protection from dismissal, irrespective of the size of the organisation they work for. While it is recognised that smaller businesses may face disproportionate challenges due to their limited resources, the broader societal benefits of increased worker security and fairness in the labour market justify the policy's scope. Additionally, this policy change aims to prevent potential abuses that may disproportionately affect employees in smaller businesses, where employment practices may be less formal. The 2016 BIS and EHRC<sup>4</sup> research indicated that mothers who worked for small employers were more likely to say they felt forced to leave their jobs (which includes dismissal).
23. Recognising that smaller businesses may have limited resources compared to larger businesses, ways of mitigating impacts on smaller businesses will be tested via consultation. This could include providing clear guidance on dismissal procedures

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<sup>4</sup> Department for Business, Innovation & Skills and Equality and Human Rights Commission (2016): ['Pregnancy and maternity-related discrimination and disadvantage'](#) (viewed on 09 October 2024)

## 7. Regulatory scorecard for preferred option

### Part A: Overall and stakeholder impacts

(1) Overall impacts on total welfare		Directional rating
<b>Description of overall expected impact</b>	The overall expected impact on total welfare is uncertain. This is because it has not been possible to reliably quantify all benefits and costs for both businesses and households. In addition, it is unclear whether the policy will have a net benefit or cost to total welfare.	<b>Uncertain</b> <b>Based on all impacts (incl. non-monetised)</b>
<b>Monetised impacts</b>	<p>Business Costs:</p> <ul style="list-style-type: none"> <li>• One-off illustrative familiarisation costs (£46.9m)</li> <li>• Employer contribution to Statutory Maternity Pay (SMP) costs (£1.9m)</li> </ul> <p>Household Benefits:</p> <ul style="list-style-type: none"> <li>• Additional statutory payments per year (£5.8m)</li> </ul>	<b>Uncertain</b> <b>Based on likely £NPSV</b>
<b>Non-monetised impacts</b>	<p>Business Costs:</p> <ul style="list-style-type: none"> <li>• Wage costs: Individuals continue in employment and receive wages (not possible to reliably quantify as relies on several uncertain assumptions)</li> </ul> <p>Business Benefits:</p> <ul style="list-style-type: none"> <li>• Non-monetisable benefits (e.g. retaining knowledge and skills)</li> </ul> <p>Household Benefits:</p> <ul style="list-style-type: none"> <li>• Wages: Individuals continue in employment and receive wages (not possible to reliably quantify as relies on several uncertain assumptions)</li> <li>• Non-monetisable benefits (e.g. mental health and wellbeing impacts by remaining in employment retaining knowledge and skills)</li> </ul>	<b>Uncertain</b>

<p><b>Any significant or adverse distributional impacts?</b></p>	<p>We expect this proposal may benefit particular employees.</p> <p>The policy is targeted at pregnant women and returning mothers who are likely to fall into certain age bands (but will benefit other age bands over time). The majority of pregnant women/new mothers fall in the 25–29 and 30–34 age groups.</p> <p>This policy has gender implications as it is primarily concerned with providing a sense of security to women before and after their pregnancy in the form of more robust employment protections. As stated previously, the policy aims to reduce the risk of unfair treatment and dismissal towards pregnant women and mothers in the workplace.</p>	<p><b>Positive</b></p>
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## (2) Expected impacts on businesses

<p><b>Description of overall business impact</b></p>	<p>Businesses will be impacted in four main ways:</p> <ul style="list-style-type: none"> <li>• One-off familiarisation costs</li> <li>• Employer contribution to Statutory Maternity Pay (SMP) costs</li> <li>• Wage costs: Individuals continue in employment and receive wages (not possible to reliably quantify as relies on a number of uncertain assumptions)</li> <li>• Non-monetisable benefits (e.g. retaining knowledge and skills)</li> </ul>	<p><b>Negative</b></p>
<p><b>Monetised impacts</b></p>	<p>Assuming the firm acts economically rationally, the benefits of dismissing the pregnant woman must outweigh the costs in order for them to make that decision. This means that a policy preventing business from making this decision must have a negative impact on business.</p> <ul style="list-style-type: none"> <li>• One-off illustrative familiarisation costs (£46.9m)</li> <li>• Employer contribution to Statutory Maternity Pay (SMP) costs (£1.9m)</li> </ul>	<p><b>Negative</b> <b>Based on likely business £NPV</b></p>
<p><b>Non-monetised impacts</b></p>	<p>Assuming the firm acts economically rationally, the benefits of dismissing the pregnant woman must outweigh the costs in order for them to make that decision. This means that a policy preventing business</p>	<p><b>Negative</b></p>

	<p>from making this decision must have a negative impact on business.</p> <ul style="list-style-type: none"> <li>• Wage costs: Individuals continue in employment and receive wages (not possible to reliably quantify as relies on a number of uncertain assumptions)</li> <li>• Non-monetisable benefits (e.g. retaining knowledge and skills)</li> </ul>	
<b>Any significant or adverse distributional impacts?</b>	<p>Smaller businesses may face disproportionate challenges due to their limited resources. Additionally, this policy change aims to prevent potential abuses that may disproportionately affect employees in smaller businesses, where employment practices may be less formal. The 2016 BIS and EHRC research indicated that mothers who worked for small employers were more likely to say they felt forced to leave their jobs (which includes dismissal).</p>	<b>Negative</b>

### (3) Expected impacts on households

<b>Description of overall household impact</b>	<p>Pregnant women/new mothers will benefit from this policy:</p> <ul style="list-style-type: none"> <li>• Additional statutory payments (Statutory Maternity Pay less Maternity Allowance payment)</li> <li>• Wages: Individuals continue in employment and receive wages (not possible to reliably quantify as relies on a number of uncertain assumptions)</li> </ul>	<b>Positive</b>
<b>Monetised impacts</b>	<ul style="list-style-type: none"> <li>• Additional statutory payments per year (£5.8m)</li> </ul>	<b>Positive</b> Based on likely household £NPV
<b>Non-monetised impacts</b>	<ul style="list-style-type: none"> <li>• Wages: Individuals continue in employment and receive wages (not possible to reliably quantify as relies on a number of uncertain assumptions)</li> <li>• Non-monetisable benefits (e.g. mental health and wellbeing impacts by remaining in employment retaining knowledge and skills)</li> </ul>	<b>Positive</b>

<p><b>Any significant or adverse distributional impacts?</b></p>	<p>We expect this proposal may benefit particular employees.</p> <p>The policy is targeted at pregnant women and returning mothers who are likely to fall into certain age bands (but will benefit other age bands over time). The majority of pregnant women/new mothers fall in the 25–29 and 30–34 age groups.</p> <p>This policy has gender implications as it is primarily concerned with providing a sense of security to women before and after their pregnancy in the form of more robust employment protections. As stated previously, the policy aims to reduce the risk of unfair treatment and dismissal towards pregnant women and mothers in the workplace.</p> <p>These distributional impacts are deemed to be necessary in order to provide special protective measures. These measures are being extended to one specific group, but this group is uniquely at risk of losing their jobs. The policy is not expected to, in turn, have a negative impact on other groups, and we will review this pending a decision on whether to exercise the powers for Adoption Leave and Shared Parental Leave (as outlined in section 1).</p>	<p><b>Positive</b></p>
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**Part B: Impacts on wider Government priorities**

Category	Description of impact	Directional rating
<p><b>Business environment:</b></p> <p>Does the measure impact on the ease of doing business in the UK?</p>	<p>This policy is unlikely to have a significant effect on the business environment. The changes would apply to all sectors of the economy and given the small number of cases of pregnancy/maternity dismissal; the likelihood any given employer is affected is expected to be low.</p>	<p><b>Neutral</b></p>
<p><b>International Considerations:</b></p> <p>Does the measure support international trade and investment?</p>	<p>From a legal standpoint, the policy does not impact international trade as it is compliant with international obligations and does not have any implications for trade partners or foreign businesses operating in the UK.</p> <p>In addition, the impact is on total labour costs and therefore comparative advantage will be small. Furthermore, the preferred option will not introduce requirements on foreign-owned companies that go above and beyond those which are UK-owned.</p>	<p><b>Neutral</b></p>



<b>Natural capital and Decarbonisation:</b>  <b>Does the measure support commitments to improve the environment and decarbonise?</b>	We expect that there is no or negligible impact on the environment, natural capital, and decarbonisation as a result of the policy. The regulation does not directly relate to environmental or decarbonisation goals.	<b>Neutral</b>

## 8. Monitoring and evaluation of preferred option

24. The Government intends to undertake proportionate monitoring and evaluation of this policy. However, since policy design detail and implementation will be subject to consultation and determined through subsequent secondary legislation, it is not possible to lay out the timings and basis for this review at this stage. Ahead of secondary legislation, the Government will determine the nature of the post-implementation review and develop more detailed plans for data collection and evaluation. This will include monitoring the impact of the change to assess whether the preferred option is meeting the objective(s) laid out in section 4.
25. The intended outcomes of the reforms include a decrease in the number of dismissals, a decrease in incidence of pregnancy and maternity discrimination and improved employment rates among pregnant women and mothers. This can be measured via data from the Annual Population Survey and Labour Force Survey but also data on the number of Employment Tribunal cases by jurisdiction.
26. Further indicators of success can be captured through feedback from stakeholders (primarily representatives of employer and parent groups) on questions assessing satisfaction with the reforms, awareness and level of understanding, how these have been communicated, whether it has improved clarity, whether they are any unintended consequences and if fewer pregnant women/mothers are reporting dismissal and discrimination.
27. We will commit to the timing of policy evaluation when secondary legislation is laid. The expectation is this will be the first five years from when the legislation comes into force, as we deem this to be a sufficient period to observe the effectiveness of the policy and collect adequate data for an evaluation study.
28. The Government will continue to monitor evidence of pregnancy and maternity-related discrimination and disadvantage among mothers in Great Britain using quarterly Employment Tribunal (ET) statistics which estimate the number of ET complaints and disposals received under the 'Sex Discrimination' and 'Suffer a detriment and/or dismissal on grounds of pregnancy, childbirth or maternity' jurisdictions, over time. This data provides a high-level picture of complaints that result in Employment Tribunal claims but does not capture all instances of pregnancy and maternity discrimination.
29. We have explored the potential of using HMRC administrative PAYE data to identify employees in receipt of Statutory Maternity Pay and the rate in which they change jobs or

leave the labour market to monitor if this is happening at a faster rate – an indicator of potential discrimination or unfair treatment.

30. We recently undertook a large parental rights survey in 2018/19 (part of a series dating back to the 1970s) and some of the evidence on unfair treatment at work has informed the policy development. We do not currently have a confirmed timetable to repeat this survey, however it typically operates in 5–10-year cycles. A future parents survey will take the opportunity to collect new data on whether individuals experienced unfair treatment, discrimination, dismissal or a redundancy situation.
31. Finally, the Government will continue to engage stakeholders to understand the impact of this legislation. Employers and groups representing parents can provide a valuable source of information in relation to awareness, complexity, attitudes and impact.

## **9. Minimising administrative and compliance costs for preferred option**

32. Ways of mitigating the administrative burdens on businesses will be tested via consultation, including ensuring that businesses have access to guidance and advice to navigate the changes and prevent disputes from escalating to tribunal. Recognising that smaller businesses may have limited resources compared to larger businesses, ways of mitigating impacts on smaller businesses will be tested via consultation. This could include providing clear guidance on dismissal procedures.

## Summary: Analysis and evidence

*\*It is not possible to reliably monetise the impacts of the policy at this stage. There are no estimates of the Equivalised Annual Net Direct Costs to Business (EANDCB), the Equivalised Annual Net Direct Costs to Households (EANDCH), and the Net Present Social Value (NPSV) of the policy. Illustrative impacts have been captured in this IA. Further policy detail will be undertaken which will allow a more reliable estimate of impacts to be completed at consultation stage.*

Price base year:

N/A\*

PV base year:

N/A\*

	<b>1. Business as usual (baseline)</b>	<b>2. Preferred way forward (if not do-minimum)</b>
<b>Net present social value</b> (with brief description, including ranges, of individual costs and benefits)	...	N/A*
<b>Public sector financial costs</b> (with brief description, including ranges)	...	Although illustrative, the public sector is estimated to face very minor costs as a result of this policy. This is driven by the women who before the policy would only be eligible for Maternity Allowance, now being eligible for the more generous Statutory Maternity Pay.
<b>Significant un-quantified benefits and costs</b> (description, with scale where possible)	...	Business Costs: <ul style="list-style-type: none"> <li>Wage costs: Individuals continue in employment and receive wages (not possible to reliably quantify as relies on a number of uncertain assumptions)</li> </ul>

		<p>Business Benefits:</p> <ul style="list-style-type: none"> <li>• Non-monetisable benefits (e.g. retaining knowledge and skills)</li> </ul> <p>Household Benefits:</p> <ul style="list-style-type: none"> <li>• Wages: Individuals continue in employment and receive wages (not possible to reliably quantify as relies on a number of uncertain assumptions)</li> <li>• Non-monetisable benefits (e.g. mental health and wellbeing impacts by remaining in employment retaining knowledge and skills)</li> </ul>
<p><b>Key risks</b> (and risk costs, and optimism bias, where relevant)</p>	...	<p>Due to a lack of available evidence, the analysis does not estimate the impacts on Employment Tribunals nor Universal Credit (UC). UC may be affected as employees who are dismissed may become eligible for UC and by extending dismissal protection, this potentially positively reduces the impact on out of work benefits.</p> <p>It is possible that some employers concerned that they will be in a position of retaining pregnant women they otherwise would dismiss will instead opt to avoid or reduce the number of female employees they hire entirely. This will undermine both the protection and wider attempts to increase female and maternal labour market participation in particular. However, employment protection for pregnant women and returning mothers is already well-established (recent extensions to redundancy protections etc) therefore this proposal is unlikely to fundamentally change employer behaviour</p>
<p><b>Results of sensitivity analysis</b></p>	...	<p>Sensitivity analysis is presented alongside the analysis. These are also illustrative.</p>

# Evidence base

## Problem under consideration, with business as usual, and rationale for intervention

33. Employment law relating to pregnancy and maternity and dismissal is covered by the Equality Act 2010 and the Employment Rights Act 1996 (ERA). The Equality Act sets out a 'protected period' during which women who are pregnant or have recently given birth are explicitly protected from discrimination. During the 'protected period' a woman is protected against unfavourable treatment that arises due to her pregnancy; being on compulsory ML; or seeking to take, taking or having taken ordinary or additional ML.
34. Relying on powers in the ERA, regulation 10 of the Maternity and Parental Leave Regulations 1999 (MAPLE) took this protection a stage further for the period of ML. It stated that if it was not practicable by reason of redundancy for an employer to continue to employ a woman on ML, the employee was entitled to be offered (not just invited to apply for) a suitable available vacancy with her employer (or an associated employer). This gave the woman priority over other employees who were at risk of redundancy, even if the other employees were better qualified for the job. This protection only applied whilst the woman was on ML.
35. Despite those protections, a BIS/EHRC report from 2016 found that 77% of mothers surveyed had experienced at least one discriminatory or possibly discriminatory experience at work, and 69% had experienced two or more such experiences. 11% of mothers surveyed felt forced to leave their job, either by being dismissed, made compulsorily redundant or because they were treated so poorly that they felt they had to leave. If we scale up this research to the general population this could mean up to 54,000 women a year.<sup>5</sup> Discrimination against pregnant women and mothers was found to have increased by 32 percentage points since 2005, when similar research was conducted by the Equal Opportunities Commission.<sup>6</sup>
36. The BIS/EHRC research highlighted inconsistencies between employers' awareness of legal rights, their responsibilities and women's experiences in the workplace. 70% of employers reported high levels of awareness of female employees' rights, but when questioned further, possible bias against pregnant women emerged. 70% of employers believed that women should declare their pregnancy during the recruitment stage, and 25% of employers thought it was acceptable to ask a woman about their plans to have children during the recruitment process. Furthermore, half of mothers surveyed felt their pregnancy/maternity had negatively impacted their career. These findings raise the question of whether employers' awareness of rights is sufficient to ensure non-discriminatory behaviour. It is unlawful for an employer to discriminate against a woman because of her pregnancy under the Equality Act 2010.
37. In response to the findings of the BIS/EHRC research, the Women and Equalities Select Committee (WESC) launched an inquiry into pregnancy and maternity discrimination.<sup>7</sup> The inquiry built on the existing evidence base, drawing on evidence presented by a large range of stakeholders including Maternity Action, Citizens Advice, and Unite. Maternity Action reported there had been a "significant increase in rates of pregnancy discrimination in the past decade" based on increases seen between the 2005 survey and 2014/15 and their

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<sup>5</sup> Department for Business, Innovation & Skills and Equality and Human Rights Commission (2016): '[Pregnancy and maternity-related discrimination and disadvantage](#)' (viewed on 09 October 2024)

<sup>6</sup> Equal Opportunities Commission (2005): '[Greater Expectations](#)' (viewed on 09 October 2024)

<sup>7</sup> WESC (2016): '[Pregnancy and Maternity Discrimination Inquiry](#)' (viewed on 09 October 2024)

experience of offering advice to pregnant women and mothers. Citizens Advice provided figures that showed the number of people it helped with specific maternity rights and discrimination issues increased between 2014/15 and 2016/17 and that there was a wider unmet need for advice and support to women experiencing pregnancy and maternity discrimination. The WESC concluded that there were unacceptable levels of discrimination and significant issues around a new mother's return to work.

38. More recently, the 2019 Parental Rights Survey reported that 1% of employed mothers who took Maternity/Adoption Leave reported being dismissed, and the same proportion reported being selected for redundancy because of the pregnancy. This figure has remained the same since 2016.<sup>8</sup> The survey also estimates that 70% of mothers who took Maternity or Adoption Leave report that they did not experience any form of unfair treatment during pregnancy, parental leave or on their return to work. Direct comparisons with earlier surveys (2006 or 2009) are not possible due to methodological changes, but the latest survey findings suggest the experience of unfair treatment has not decreased.
39. DBT internal analysis of the Labour Force Survey (LFS)<sup>9</sup> found 0.4% of women with dependents aged 0-4 reported that they left their last job due to being dismissed compared to 0.2% of women without dependents.<sup>10</sup> This supports the view that pregnant women and mothers are being discriminated against in the labour market and may be more likely to face dismissal than their non-pregnant women and non-mother counterparts.
40. Employment Tribunal statistics estimate there were 1,259 Employment Tribunal complaints received under the 'Suffer a detriment and/or dismissal on grounds of pregnancy' jurisdiction in 2022/23.<sup>11</sup> This compares to 1,435 in 2020/21 and 1,636 in 2019/20. Note that this jurisdiction captures complainants who reported they suffered a detriment on grounds of pregnancy which did not necessarily involve a dismissal.
41. Notwithstanding the changes which came into force in April 2024, which extended the protection (as outlined in paragraph 34) to cover the period of pregnancy and a return to work period (18 months from birth), the Government believes we need to go further and enhance existing legislation to make it unlawful to dismiss pregnant women, mothers on ML and mothers who return to work (for a six-month period after work) – except in specific circumstances.
42. International comparison – Austria, Finland, France, Germany, Italy, Spain and Sweden have legislation in place that prohibits dismissal during pregnancy for any reason, after the employer has been made aware of the pregnancy. Like the UK, employers in Belgium, Denmark, Iceland, the Netherlands, Norway, and Portugal can dismiss employees during their pregnancy and ML, if they can prove that the causes are unrelated to leave taking or pregnancy. Italy and Spain have the longest extension of dismissal protection with 12 months following the delivery of the child. In Finland, Norway, Portugal, and the United Kingdom, dismissal protection ends immediately after ML expires.<sup>12</sup>

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<sup>8</sup> Institute for employment studies (2019): '[Parental rights survey](#)' (viewed on 09 October 2024)

<sup>9</sup> ONS (2022): '[Labour Force Survey](#)' (viewed on 09 October 2024)

<sup>10</sup> Please note that the sample for women with dependents aged under 1 was too small to generate reliable findings. As such, a larger sub-group was used (women with dependents aged 0-4).

<sup>11</sup> Gov.uk (2023): '[Tribunals statistics quarterly: July to September 2023](#)' (viewed on 09 October 2024)

<sup>12</sup> OECD (2023): '[Background brief on protection against dismissal in relation to pregnancy and parental leave: A short review of policies in selected OECD countries](#)' (viewed on 09 October 2024)

43. The rationale for Government intervention relates to market failure and equity. Firstly, the evidence suggests that pregnant women and mothers are regularly discriminated against. Discrimination leads to inefficiency in the labour market, causing market failure. Government intervention can mitigate/remove this market failure. Secondly, reducing the discrimination of pregnant women and mothers will increase equity in the labour market. It is unfair that this group has to deal with discrimination and Government intervention can help end the unequitable treatment of pregnant women and mothers in the labour market.
44. There are a number of unintended consequences of the policy that have been considered. For example, the policy might lead to employers being reluctant to employ women on the basis that they cannot dismiss them at specific times. Similarly, the policy may lead to only delaying the dismissal as employers may just wait until the protection period is over and then go through with the dismissal. The likelihood of such unintended consequences occurring can be tested during the consultation. The consultation will be critical to finding the right balance between protecting women and preventing such unintended consequences.

### **Policy objective**

45. The key policy objective is to improve dismissal protection afforded to pregnant women and mothers returning from ML. In addition, the policy also aims to:
- Reduce the number of dismissals of pregnant women and mothers returning from ML.
  - Improve employment rates and outcomes for pregnant women and mothers.
  - Improve businesses awareness of their obligations, and of their employees' rights around dismissal.
46. The expected outcomes of the policy are:
- Improved wellbeing for mothers and pregnant women at work.
  - Improved participation of women in the workforce.
  - Reduction in the gender pay gap.

### **Description of options considered**

47. There are existing broad powers in the ERA which we are seeking to enhance. Therefore, a non-regulatory reform would be unlikely to meet the intended objective of the policy. We propose primary legislation is required to strengthen dismissal protections for pregnant women using the Employment Rights Bill and will define the detail and any specific exceptional criteria in secondary legislation.

### **Summary and preferred option with description of implementation plan**

48. Primary legislation will be required in order to enact amendments that achieve the Government's policy aims. The provisions will create a power for the Secretary of State to make regulations regarding dismissal during the period of pregnancy prior to the start of ML, and to extend existing powers so that regulations can be made regarding dismissal after return from the relevant statutory leave entitlements.
49. Once the required amendments to primary legislation are in place, secondary legislation will later be required to set out much of the detail of the extended dismissal protection.

50. We will consult on the implementation of the Bill powers, provisionally expected during 2025. Following consultation, the enhanced dismissal protection will be delivered via secondary legislation.

**NPSV: monetised and non-monetised costs and benefits of each shortlist option (including administrative burden)**

51. Due to a lack of available data, it is not possible to estimate the costs and benefits of specific policy options. Further to this, a myriad of assumptions, for which no reliable evidence is available, would have to be made in order to attain an overall estimate of the costs and benefits of the policy. As such, an illustrative analysis of the costs and benefits is provided.
52. This analysis describes the scenario where the individual, as a result of the policy, is no longer dismissed from their job by their employer. In the counterfactual scenario, the individual is dismissed from their job by their employer. There is no data available to suggest when pregnant women/new mothers are dismissed i.e. before, during or after ML, in the counterfactual scenario. This would impact the estimated benefits and costs. In order to capture maximum illustrative costs, the analysis assumes that, in the counterfactual scenario, the individual is dismissed by their employer before the Statutory Maternity Pay 'Qualifying Week' (the 15<sup>th</sup> week before the expected week of childbirth). This means that individuals are only eligible for Maternity Allowance in the counterfactual scenario.
53. Eligible population - to estimate the total number of new and expectant mothers in employment, we use the ONS Annual Population Survey (APS) microdata for January to December 2023 to estimate the number of women with a dependent child aged up to 1 year old who are employees.<sup>13</sup> DBT analysis of this data suggests that 411,000 women with a dependent child aged up to 1 year old were employees.
54. Following this, we then use findings from the BIS/EHRC report, using the proportion of pregnant women and mothers who were dismissed (1%).<sup>14</sup> Using this figure, we estimate that the number of mothers who are employees and are dismissed from their job is 4,100.
55. Monetised costs - There are potentially multiple costs and benefits associated with this policy change. We have presented illustrative monetised costs and benefits which are the most significant and directly linked to the policy at this stage as much of the policy detail is being developed. Monetised costs are divided into one-off (primarily in the form of familiarisation) costs for businesses, and recurring costs to businesses, individuals and the Exchequer.
56. Recurring costs – The monetised recurring costs are:
- Net business costs: Large employer contribution to maternity payments (minus benefit to small employers) and wage costs for the individual (minus the cost of hiring a replacement if the firm chooses to do so).
  - Exchequer costs: Statutory Maternity Pay cost (discounted by amount covered by business).
57. Recurring benefits - The monetised recurring benefits are:
- Individual benefit: Additional statutory payments (Statutory Maternity Pay less Maternity Allowance payment) and kept wages.
  - Exchequer benefit: Savings from no longer paying Maternity Allowance.
58. Non-monetised costs and benefits – making it harder for businesses to dismiss pregnant women and new mothers will have costs and benefits beyond those estimated in the IA, as

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<sup>13</sup> ONS (2024): '[Annual Population Survey](#)' (viewed on 09 October 2024). This is the most recently available full year of data.

<sup>14</sup> Department for Business, Innovation & Skills and Equality and Human Rights Commission (2016): '[Pregnancy and maternity-related discrimination and disadvantage](#)' (viewed on 09 October 2024)



some impacts (particularly indirect) are difficult to quantify, and relevant data sources are limited.

59. Please note that all monetised cost/benefit estimates are rounded to the nearest £100k; all counts of individuals are rounded to the nearest hundred and tables may appear incorrect due to rounding.

## **Costs and benefits to business calculations**

### One-off costs – Business familiarisation costs

60. Due to the policy, businesses will likely have to spend time familiarising themselves with the new legislation. Familiarisation with the legislation is illustrative at this stage but is assumed to consist of reading and understanding the legislation, and informing staff within the organisation.
61. However, it is not possible to reliably estimate the cost of familiarisation at this stage as further policy work is required to understand how extended dismissal protection for this group of employees will interact with existing legislation including redundancy protection for pregnant women and returning mothers. For the purposes of illustration, familiarisation time is assumed to be 1 hour. Our current approach to assuming familiarisation time is based on whether the legislation is new and an assessment of the complexity of the legislation. For new legislation that is assessed as simple i.e. similar to existing legislation, then familiarisation time is assumed to be 30 minutes. For new legislation that is more complex i.e. it differs significantly from existing legislation, assumed familiarisation time is more variable but can be up to 3 hours. This policy will introduce new legislation, however the specifics of this legislation is yet to be decided. To reflect this uncertainty, a familiarisation time of 1 hour is chosen as a balance between the simple and complex legislation approaches.<sup>15</sup>
62. An HR Manager or Director is likely to be responsible for familiarisation. Using data from the Annual Survey of Hours and Earnings 2023 (ASHE), the median hourly wage rate is £26.31 per hour.<sup>16</sup> Applying an uprating of 21% to include non-wage labour costs results in a total rate of £31.83 per hour. Table 1 below shows the approach taken for estimating familiarisation costs and also illustrates the sensitivity of the total familiarisation costs to the assumption on familiarisation time.
63. To estimate the number of businesses impacted we use DBT business population estimates for 2023 and remove Northern Irish businesses to ensure only Great Britain is captured.<sup>17</sup> We also remove businesses with zero employees.<sup>18</sup>

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<sup>15</sup> A related IA uses 30 minutes familiarisation time for small businesses and 2 hours each for multiple people in larger businesses. Parliament.uk (2022): '[Pregnancy and maternity discrimination: extending redundancy protection for women and new parents](#)'

<sup>16</sup> ONS (2024): '[Annual Survey of Hours and Earnings](#)' (viewed on 09 October 2024)

<sup>17</sup> Gov.uk (2023): '[Business population estimates](#)' (viewed on 01 October 2024). The latest available data at the time of the analysis.

<sup>18</sup> To remove businesses with zero employees, we have used the ratio of businesses with zero employees in the private sector and applied it to the whole economy. Private sector businesses make up the vast majority of the business population, so aggregate results are not strongly affected by this.

**Table 1: Illustrative familiarisation costs for businesses after policy implementation**

Number of Firms	Assumed Time (hrs)	Wage and Non-Wage Cost (Per Hour)	Total Costs
1,470,000	1	£31.83	<b>£46.9m</b>
Sensitivity Analysis			
1,470,000	0.5	31.83	<b>£23.4m</b>
1,470,000	1.5	31.83	<b>£70.3m</b>

64. We have estimated total one-off familiarisation costs to be £46.9m. This assumes all firms in Great Britain familiarise with the legislation on introduction and for the same amount of time. Further work will be undertaken to understand what level of familiarisation will be required.

Recurring business costs - employer contribution to Statutory Maternity Pay (SMP) costs

65. Firms who otherwise would have dismissed a pregnant woman will now contribute to Statutory Maternity Pay (SMP). This entitlement is equivalent to 90% of salary for the first six weeks of ML, and £184.03 per week for the subsequent 33 weeks. Employers administer statutory pay on behalf of Government and small employers can recover 103% of statutory payments that they make to their employees from HMRC. This represents a benefit to small businesses of 3% of their Statutory Maternity Pay. Larger employers (defined as those with a National Insurance contributions bill of £45,000 or more) can recover 92% of Statutory Maternity Pay made to their employees, thus large employers face a cost of 8% of their Statutory Maternity Pay. Using Business Population Estimates we calculate an average contribution of 5.7% to Statutory Maternity Pay from employers.<sup>19</sup>

66. To qualify for Statutory Maternity Pay, employees must have worked continuously for the same employer for at least 26 weeks and earned on average £123 per week. Analysis of APS microdata shows that 98.0% of female employees with a dependent child under 1 have worked for the same employer continuously for at least six months. For the earnings requirement we use the latest ASHE 2023 data to estimate the percentage of female employees who earn at least £123 per week at 93.8%. This is used to calculate that the population eligible for SMP is 3,800 (4,100 x 98.0% x 93.8%). It is assumed that the remaining 300 women (4,100 – 3,800) would be eligible for Maternity Allowance (MA).

**Table 2: Statutory Maternity Pay costs for Employers after policy implementation, per annum**

Eligible Population (Employee Mothers at Risk Of Dismissal)	4,100
% Working at Least 6 Months	98.0%
% Earning at Least £120	93.8%

<sup>19</sup> Due to a lack of data availability, we have used business size by number of employees as a proxy for the number of businesses with a National Insurance contributions bill of £45,000 or more. We estimate that 21% of UK employees are employed by small businesses (<20 employees) and that 79% of UK employees are employed by large businesses (>20 employees). Using these estimates, we calculate an average business recovery rate of 94.3%.

Population Eligible for SMP	3,800
Statutory Maternity Pay Per Person: Consisting of 6 Weeks at 90% of Average Weekly Pay <sup>20</sup> (£489.00) and 33 Weeks at £184.03	£8,700
Average Business Contribution to SMP	5.7%
<b>Total Business Contribution to SMP</b>	<b>£1.9m</b>

Sensitivity Analysis	
Eligible Population (Employee Mothers at Risk of Dismissal)	Total Business Contribution to SMP
-50% (2,100)	£0.9m
+50% (6,200)	£2.8m

67. Overall, this yields a best estimate of maternity payments from employers of £1.9m per year. Table 2 above includes analysis on how sensitive the total business contribution to SMP is to changes in the assumed eligible population.
68. We calculate a weighted median weekly wage for pregnant women using ASHE 2023 data and weight this by the age of mothers for live births across Great Britain in 2022, yielding an estimate of £489.00 for the weekly wage costs for pregnant women. This approach is shown in Table 3 below.

**Table 3: Calculating median weekly wages for pregnant women/new mothers**

Age Group	Employees (000s)	Median Weekly Pay (£) <sup>21</sup>	Weighted Weekly Median Pay (£)	% Live Births (GB) by Age of Mother <sup>22</sup>
16-17	190	80.6	419.3	40.5%
18-21	593	211.8		
22-29	2,248	502.6	539.2	54.4%
30-39	3,178	539.2		
40-49	3,030	530.6	507.5	5.1%
50-59	2,935	483.7		
60+	1,312	352.9		

69. We calculate the weighted median wage for three broad age bands, as data on mother's age at birth is separated according to these age bands. ASHE data on median weekly pay

<sup>20</sup> See calculations in Box 1 below.

<sup>21</sup> ONS (2024): '[Annual Survey of Hours and Earnings](#)' (viewed on 09 October 2024)

<sup>22</sup> ONS (2024): '[Births by parents' characteristics](#)' & National Record of Scotland (2024): '[Births Time Series Data](#)' (viewed on 09 October 2024). Both the latest available data at the time of analysis.

and number of employees is used for these calculations. This approach is set out in Box 1 below for females aged 16–29 as an example.

### Box 1: Weighted median weekly wage calculation example

Weighted weekly median wage (age group) = (No. Employees x Median weekly pay) ÷ Total No. Employees

Weighted weekly median wage (16 - 29) = [(No. Employees (16 -17) x Median weekly pay (16 - 17)) + (No. Employees (18 - 21) x Median weekly pay (18 - 21)) + (No. Employees (22 - 29) x Median weekly pay (22 -29))] ÷ (No. Employees (16 - 17) + No. Employees (18 – 21) + No. Employees (22 – 29)

= (190 x 80.60) + (593 x 211.80) + (2,248 x 502.60) / (190 + 593 + 2,248) = £419.30

When continued to cover 30 to 60+ age group.

Weighted weekly median wage (new and expectant mothers) = (Weekly median pay x % live births by age of mother)

= (£419.30 x 40.5%) + (£539.20 x 54.4%) + (£507.50 x 5.1%) = £489.00

90% of weighted weekly median wage (for first 6 weeks of SMP) =

0.9 x £489.00 = £440.10

### Recurring business costs - employer cost of individual's wages

70. Firms who otherwise would have dismissed a pregnant woman will now continue paying their wages when they are not on ML. The weighted female average weekly wage (proxy for a pregnant woman) is £489.00 (see above calculations). This cost is partially offset by the cost of hiring and training replacement, if the firm would have chosen to do so. The average recruitment cost and the average training cost per employee is £1,500<sup>23</sup> and £1,780<sup>24</sup>, respectively. However, assuming the firm acts rationally, the benefits of dismissing the pregnant woman must outweigh the costs in order for them to make that decision. The benefits and costs the firm uses to make this decision are potentially non-monetisable.

71. The analysis has considered the effect of the policy on Employment Tribunals (ET), however there is no reliable evidence to suggest whether the policy would lead to an increase or a decrease in ET caseload. Typically, any new legislation generates a degree of litigation as employers need to understand their obligations and how they apply in various situations which can create a new area of employer-employee dispute. The number of workplace disputes and cases that go forward to the ET will be determined by how complicated the new legislation is, the level of employer support and how the policy is interpreted. The policy aims to reduce the number of dismissals of pregnant women in the medium to long-term, but this may cause issues and increases in the short-term. However, it is also possible that any disputes that reach ET may be expected to be faster and or less expensive to adjudicate if

<sup>23</sup> CIPD (2022): '[Resourcing and Talent Planning Report 2022](#)', page 12 (viewed on 09 October 2024)

<sup>24</sup> Department for Education (2023): '[Employer Skills Survey 2022](#)', page 145 (viewed on 09 October 2024)

the legislation is more straightforward. There is too much uncertainty to reliably quantify the impact of the policy on ET at this stage. As such, the analysis does not provide any cost estimates in relation to ET.

Recurring business costs – employer costs associated with retaining pregnant workers or workers returning from ML

72. Economic theory suggests that when a business dismisses someone they do so because the costs of employing them outweigh the benefits. This means that businesses will incur labour costs from retaining pregnant women and/or employees returning from ML, who would, in the absence of legislation, be dismissed. However, it is difficult to reliably quantify this impact, particularly in marginal dismissal decisions, as it requires a number of theoretical assumptions which go beyond the available evidence. For example, the following theoretical assumptions have to be considered:

- The benefit to the business of keeping someone employed, who would otherwise be dismissed, is less than the cost of employing them (otherwise, they would not be dismissed) but, by how much, is uncertain. We have not attempted to estimate this benefit but, arguably, the net impacts will be negative and close to zero in marginal dismissal cases.
- What happens at the end of the protection period? Would pregnant women and/or employees returning from leave be dismissed at a later point (after the protection period elapses)?
- Any labour costs incurred by business (from keeping employee on) would largely be a transferred benefit to workers in the form of wages but this assumes those workers would not secure alternative employment.

73. Assumptions are also required on how business will respond, which carry different levels of business impact. For example, they may undertake formal disciplinary procedures, put the employee on a performance improvement plan, offer an alternative role or agree on a settlement to mutually end employment.

74. There may also be costs to employers if a returning parent employee is less productive than another employee (non-parent) who would have potentially been hired as a replacement. The employer may seek to address cost pressures by increasing prices, lowering profits or trying to increase productivity elsewhere.

75. **Error! Reference source not found.** below summarises the monetised illustrative costs to business after policy implementation.

**Table 4: Summary of monetised illustrative additional costs to business after policy implementation, per annum**

Familiarisation Costs (one-off)	£46.9m
Total Business Contribution to SMP	£1.9m

Employer benefits

76. Positive benefits are likely to flow to businesses driven by having employees who feel accepted in the workplace being more committed to the business. It is possible that

employees may see a long-term future at the company, contributing to lower labour turnover and the business retaining the knowledge and skills of its workforce.

### **Impact on small and micro businesses**

77. To meet the policy objective of tackling discrimination in the workplace against pregnant women and new parents, the dismissal protections must apply to all firms irrespective of size. Allowing small businesses to opt out of the policy would undermine the policy objectives, as it would signal that Government condones discrimination against pregnant women and new parents in small firms.
78. Furthermore, pregnant mothers and new parents in small businesses may be more vulnerable to dismissals than their counterparts in larger firms, where employment practices may be less formal. The BIS/EHRC report found that mothers working for small employers were more likely to say that they felt forced to leave their jobs.<sup>25</sup>
79. As a group, small businesses will not be disproportionately affected by this policy. 29% of all employees work in small and micro businesses, meaning that the majority of employees eligible for enhanced dismissal protection work in medium and large businesses.<sup>26</sup>
80. Recognising that smaller businesses may have limited resources compared to larger businesses, ways of mitigating impacts on smaller businesses will be tested via consultation. This could include providing clear guidance on dismissal procedures. We have also considered how reduced discretion in dismissal decisions would affect small and micro businesses. It is likely that small firms are impacted more than larger firms by employee absence, in terms of workload, labour costs of finding a replacement, and internal knowledge and capabilities.
81. Small and micro businesses will avoid the cost of contributions to Statutory Maternity/Paternity/Adoption pay as unlike larger businesses, small and micro businesses receive a monetary benefit for this component as they can recover 103% of statutory payments from Government.
82. Small and micro firms will face familiarisation costs, but small and micro businesses may potentially spend less time on familiarisation than larger firms as they have fewer managers/employees to inform and are able to quickly filter information throughout the organisation. Due to a lack of evidence, the analysis assumes that all firms, regardless of size, spend the same amount of time familiarising themselves with the policy.
83. Small and micro businesses may also reap the benefits of retaining staff and supporting pregnant mothers and new parents in the workplace – employee loyalty and morale, a positive and inclusive workplace culture that is associated with happy and productive employees, and retention of skills and knowledge, for example.<sup>27</sup>

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<sup>25</sup> The report defines small employers as those with less than 50 employees.

<sup>26</sup> Gov.uk (2023): '[Business population estimates](#)' (viewed on 09 October 2024)

<sup>27</sup> Bellet C, De Neve J & Ward G (2019): '[Does Employee Happiness have an Impact on Productivity?](#)', Said Business School (viewed on 09 October 2024)

## Costs and benefits to households' calculations

### Individual Benefit - Statutory Maternity Pay paid to an individual following policy implementation (SMP and MA) minus Maternity Allowance (MA) payment before policy implementation

84. Pregnant women who are no longer dismissed will now benefit from Statutory Maternity Pay (there may also be additional benefits from any occupational maternity pay the employers chooses to pay beyond the statutory rate) paid at 90% of average salary for the first 6 weeks and at the statutory rate for £184.03 per week for the remaining 33 weeks.<sup>28</sup> However, we also assume that women who were dismissed prior to the implementation of the policy would claim MA, which is paid to those that do not qualify for SMP (including self-employed and unemployed) at the statutory rate for the entire 39 weeks (i.e. they do not receive 6 weeks at 90% of average salary). We calculate the difference to derive the net benefit of Statutory Maternity Pay compared to Maternity Allowance to mothers. We assume that all pregnant women otherwise dismissed would have been able to claim MA given the low earning threshold for the qualifying criterion. Table 5 below presents the calculations.

**Table 5: Total Statutory Maternity Pay and Maternity Allowance payments after policy implementation, per annum**

Eligible Population for SMP	3,800
Eligible Population for MA	300
Statutory Maternity Pay Per Person: Consisting of 6 Weeks at 90% of Average Weekly Pay (£489.00) and 33 Weeks At £184.03	£8,700
Unit Cost of MA (£184.03 Per Week For 39 Weeks)	£7,200
Total SMP Received	£32.9m
Total MA Received	£2.4m
<b>Total Payment Received</b>	<b>£35.3m</b>

85. For pregnant women no longer dismissed, we assume that this entire group would have claimed Maternity Allowance (MA) previously. These payments are calculated by taking the statutory pay rate for maternity allowance and assuming all pregnant women previously dismissed would have claimed this for the entire 39 weeks (this implicitly assumes that the employee will not secure alternative employment following their dismissal in the first 9 months after having a baby). Table 6 below presents the calculations.

**Table 6: Maternity Allowance payments before policy implementation, per annum**

Eligible Population	4,100
Unit Cost of MA (£184.03 per week for 39 weeks)	£7,200
<b>Total Cost of Not Receiving MA</b>	<b>£29.5m</b>

<sup>28</sup> Gov.uk (2024): [‘Maternity pay and leave’](#) (viewed on 09 October 2024)

86. The net benefits to individuals are estimated by calculating the total payments from maternity pay (SMP and MA) less maternity allowance prior to policy implementation, aggregated across all the women who would be protected from dismissal while pregnant. We estimate an annual net benefit of £5.8m per year to individuals.<sup>29</sup> Table 7 below summarises the individual benefits and includes analysis on how sensitive the total individual net benefit is to changes in the assumed eligible population.

**Table 7: Individual benefits (SMP and MA), per annum**

<b>Before Policy Implemented (Counterfactual)</b>	
Maternity Allowance	£29.5m
<b>After Policy Implemented</b>	
Statutory Maternity Pay	£32.9m
Maternity Allowance	£2.4m
Total (SMP + MA)	£35.3m
<b>Net benefit</b>	
<b>SMP and MA Received in Intervention Scenario Minus MA Received in Counterfactual</b>	<b>£5.8m</b>

<b>Sensitivity Analysis</b>	
<b>Eligible Population</b>	<b>Net Benefit</b>
-50% (2,100)	£2.9m
+50% (6,200)	£8.7m

Individual Benefit - maintained wages

87. The pregnant woman who otherwise would have been dismissed will now continue receiving her wages when not on ML. The average weekly wage for a pregnant woman is £489.00.

Individual Benefit - pregnant women and mothers returning to work

88. Career prospects may improve for new parents, average job tenure may increase, labour market attachment supports the development of skills and knowledge, and the likelihood of wage progression increases.

<sup>29</sup> Please note that the cost of maternity allowance after policy implementation (£2.4m) is not an additional cost as the 300 women receiving MA after policy implementation are assumed to also receive MA in the counterfactual. However, to simplify the analysis this cost has been accounted for in both scenarios throughout.



89. New parents are likely to benefit from mental health and wellbeing impacts by remaining in employment. Unemployment is negatively associated with life satisfaction and happiness, evidenced by a large body of empirical research.<sup>30</sup>
90. The analysis does not account for employer Maternity Pay (termed Occupational Maternity Pay) i.e. where an employee has access to a policy which is more generous than the statutory scheme (an employer may change this policy and apply specific terms and conditions on access to these schemes). In some circumstances an employee may now benefit from a more generous maternity pay package (and the employer would face the associated costs for this) if they would otherwise be dismissed. As such schemes are discretionary or a matter of contractual law, they are outside the scope of this Impact Assessment.
91. In addition, the analysis does not account for Universal Credit (UC)/Job Seeker's Allowance (JSA). Individuals would potentially benefit from claiming UC/JSA during the period they are unemployed after being dismissed in the counterfactual scenario. Although considered, it was decided that UC/JSA would not be included in the estimated impacts. This is because assumptions on take-up, individual circumstances and eligibility would have to be made without credible evidence to support them. It was decided that it would be bad practice to produce potentially large benefit/costs estimates that are founded on unsupported assumptions.

## **Business environment**

### Competition Assessment

92. The policy under discussion would apply to all employers and is unlikely to adversely affect the competitiveness of any particular sector given the relatively small number of businesses that will be affected. The policies are not expected to affect market structure, the ability of new firms to enter markets, or firm's production decisions. Similarly, the policies are not expected to affect investment or innovation.
93. Using the Competition and Market Authority's (CMA) "competition assessment checklist" we find there is no need to conduct a detailed assessment of the impact of the proposals on competition. We do not expect the market share for products and services provided by either the private or public sector to be affected by the proposed policy. The changes would apply to all sectors of the economy and given the small number of cases of pregnancy/maternity dismissal; the likelihood any given employer is affected is expected to be low.

## **Trade implications**

94. From a legal standpoint, the policy does not impact international trade as it is compliant with international obligations and does not have any implications for trade partners or foreign businesses operating in the UK. In addition, the impact is on total labour costs and therefore comparative advantage will be small. Furthermore, the preferred option will not introduce requirements on foreign-owned companies that go above and beyond those which are UK-owned.

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<sup>30</sup> For example, Blanchflower DG & Oswald AJ (2004): '[Well-being over time in Britain and the USA](#)', Journal of Public Economics (viewed on 09 October 2024)

## Environment: Natural capital impact and decarbonisation

95. We expect that there is no or negligible impact on the environment, natural capital, and decarbonisation as a result of the policy. The regulation does not directly relate to environmental or decarbonisation goals.

## Other wider impacts (consider the impacts of your proposals)

### Exchequer cost – contribution to Statutory Maternity Pay costs

96. As discussed previously, pregnant women who are no longer dismissed will now benefit from Statutory Maternity Pay paid at 90% of average salary for the first 6 weeks and at the statutory rate for £184.03 per week for the remaining 33 weeks. Statutory Maternity Pay represents costs to the Exchequer. The methodology set out in the 'Costs and benefits to business calculations' section is used to estimate the number of eligible women who satisfy the criterion for claiming SMP. After policy implementation, we estimate that 3,800 women would be eligible for SMP, leaving 300 women only eligible for the less generous MA.
97. As discussed in the 'Costs and benefits to business calculations' section, large employers can reclaim 92% of SMP payments and small employers can reclaim 103% of SMP payments. We estimate an average firm contribution to SMP payments of 5.7%. This means that the Exchequer is responsible for 94.3% of the cost of SMP payments (100% - 5.7%). As the cost of SMP is shared between businesses and the Exchequer, the figures reported in this section will be different to the individual benefits of SMP figures reported in the 'Costs and benefits to households' calculations' section.
98. Accounting for the proportion of the payment covered by large businesses and the (larger) proportion recovered by small businesses, we estimate annual Exchequer SMP costs at £31.0m (see Table 8 below).

**Table 8: Total cost of SMP to the Exchequer after policy implementation, per annum**

Population Eligible for SMP	3,800
Statutory Maternity Pay per person: Consisting of 6 weeks at 90% of Average Weekly Pay (£489.00) and 33 weeks at £184.03	£8,700
Exchequer Contribution to SMP	94.3%
<b>Total Cost of SMP to the Exchequer After Policy Implementation</b>	<b>£31.0m</b>

### Exchequer cost - costs of Maternity Allowance

99. As mentioned previously, after policy implementation, we estimate that 3,800 women would be eligible for SMP, leaving 300 women only eligible for the less generous MA (see Table 9 below). MA is entirely funded by the Exchequer.

**Table 9: Total cost of MA to the Exchequer after policy implementation, per annum**

Population Eligible for SMP	300
Maternity Allowance per Person: 39 weeks at £184.03	£7,200
Exchequer Contribution to MA	100%
<b>Total Cost of MA to the Exchequer After Policy Implementation</b>	<b>£2.4m</b>

100. Overall, we estimate a total cost of SMP and MA to the Exchequer after policy implementation of £33.4m.

101. These costs (as with the Exchequer benefits below) are subject to uncertainty driven by the behaviour of employers in response to any new regulation.

Exchequer benefit - savings from no longer paying Maternity Allowance

102. In the counterfactual, we assume that the entire population would be dismissed and be ineligible for SMP. Instead, the entire population would receive MA.

103. Using the calculations in Table 6, we estimate annual savings to the Exchequer of £29.5m per year after policy implementation.

104. The net cost to the Exchequer is estimated by calculating the total payments from maternity pay (SMP and MA) after policy implementation less maternity allowance prior to policy implementation. We estimate an annual net cost of £3.9m per year to the Exchequer. Table 10 below presents these calculations and includes analysis on how sensitive the total net cost to the Exchequer is to changes in the assumed eligible population.

**Table 10: Net cost of SMP and MA to the Exchequer, per annum**

<b>Before Policy Implemented (Counterfactual)</b>	
Maternity Allowance	£29.5m
<b>After Policy Implemented</b>	
Statutory Maternity Pay	£31.0m
Maternity Allowance	£2.4m
Total (SMP + MA)	£33.4m
<b>Net cost</b>	
<b>SMP and MA Cost to the Exchequer in Intervention Scenario Minus MA Received in Counterfactual</b>	<b>£3.9m</b>

Sensitivity Analysis	
Eligible Population	Net Cost
-50% (2,100)	£2.0m
+50% (6,200)	£5.9m

105. The policy supports broader goals of addressing the gender imbalance in the workplace and female labour market participation.
106. Supporting pregnant women and new parents through making it harder for them to be dismissed may confer benefits to the Exchequer if these individuals are able to maintain close attachment to the labour market, in the short and long-term. Increased female labour market retention can lead to increased productivity, economic diversification and reductions in income inequality.<sup>31</sup>

### Equality Assessment

107. As a part of the Equality Act 2010, public bodies are expected to account for equality impacts. The Public Sector Equality Duty (PSED), created under the Act, requires Ministers to consider the potential effects of intervention on individuals with 'protected' characteristics. Specifically, the PSED requires Ministers to have regard to the following:
- Eliminating unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - Advancing equality of opportunity between people who share a protected characteristic and those who do not; and
  - Fostering good relations between people who share a protected characteristic and those who do not.
108. The PSED covers 9 protected characteristics in total: age, race, sex, disability, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership.
109. Age - The policy is targeted at pregnant women and returning mothers who are likely to fall into certain age bands. Table 11 below shows the proportion of maternities split by age bands, with the majority of these occurring in the 25–29 and 30–34 age groups. This suggests that the proposal may benefit some employees in particular on its introduction. However, over time all women will benefit from this reform with younger women knowing they will have this protection in the future and older women will have derived the benefit when they were younger.

<sup>31</sup> International Monetary Fund (2018): ['Pursuing Women's Economic Empowerment'](#) (viewed on 09 October 2024)

**Table 11: Live births by age of mothers, England & Wales (2022) and Scotland (2022)**

Age Band	Live births (2022)	Percentage
Under 20	15,845	2.4%
20 to 24	78,544	12.0%
25 to 29	169,812	26.0%
30 to 34	223,446	34.2%
35 to 39	131,328	20.1%
40 and over	33,447	5.1%

110. Pregnancy and Maternity & Sex - this policy has gender implications as it is primarily concerned with providing a sense of security to women before and after their pregnancy in the form of more robust employment protections. As stated previously, the policy aims to reduce the amount of discrimination towards pregnant women and mothers returning to the workplace.

111. Remaining Characteristics - the proposal is designed to have a positive impact on pregnant women and returning mothers and therefore will benefit female employees falling into these groups. We do not expect that stronger protections for pregnant women/returning mothers to have a disproportionate effect on other groups. However, there may be some small negative impacts on other groups or other workers if an employer attempts to deal with cost pressures by reducing worker benefits more generally, for example. The policy is unlikely to create barriers to equality in relation to an employee's race, disability, religion or belief, sexual orientation, or gender reassignment.

### Risks and assumptions

112. The costings and analysis in this impact assessment are based on several key assumptions, in estimating the eligible populations and predicting firms' behavioural responses. There is inherent uncertainty in making these assumptions, but we have attempted to model the costs and benefits to the best of our ability using evidence available to us. Table 12 below summarises the risks and assumptions associated with the analysis.

**Table 12: Risks and Assumptions Log**

Assumption	Detail	Discussion
Eligible population	We assume that applying the proportion of all mothers that reported being dismissed in the BIS/EHRC survey (1%), to the number of females with a child under 1 who are employees (411,000), is representative of the total number of pregnant women/new mothers who are employees and are dismissed annually.	This is a reasonable and well-informed assumption based on robust survey data.

Employers' behavioural response in the counterfactual scenario	We assume that in the counterfactual, employers dismiss pregnant women before they are eligible for SMP i.e. on payroll in the 'qualifying week' - the 15th week before the expected week of childbirth.	The topic nature means there is an absence of reliable information on when dismissals for pregnant women and returning mothers takes place. This takes a maximalist approach to capture the earliest a dismissal might occur.
Dismissal rate	We assume that the BIS/EHRC research from 2016 remains an appropriate source of evidence on the proportion of pregnant women and new mothers who are dismissed.	The Parental Rights Survey 2019 stated that of mothers who were employees/workers and took Maternity/Adoption Leave, 1 per cent reported being dismissed. This supports the assumption and the use of the data.
Number of pregnant women no longer dismissed	We assume that all pregnant women who would previously be dismissed in the counterfactual scenario are no longer dismissed.	Making this assumption means that estimates using the 4,100 figure are upper bound estimates. There is an absence of data on the reason for dismissals therefore it is not possible to estimate how many pregnant women would still possibly be dismissed.
Effect on Employment Tribunals	We assume that there is no effect on the number of Employment Tribunal (ET) cases.	The analysis has considered the effect of the policy on Employment Tribunals (ET), however there is no reliable evidence to suggest whether the policy would lead to an increase or a decrease in ET caseload. Typically, any new legislation generates a degree of litigation as employers need to understand their obligations and how they apply in various situations which can create a new area of employer-employee dispute. The number of workplace disputes and cases that go forward to the ET will be determined by how complicated the new legislation is, the level of employer support and how the policy is interpreted. The policy aims to reduce the number of dismissals of pregnant women in the medium to long-term, but this may cause issues and increases in the short-term. However, it is also possible that any disputes that reach ET may be expected to be faster and or less expensive to adjudicate if the legislation is more straightforward. There is too much uncertainty to reliably quantify the impact of the policy on ET at this stage. As such, the analysis does not provide any cost estimates in relation to ET.
Universal Credit (UC)/ Job Seeker's Allowance (JSA)	We did not include estimates on the benefits/costs of an individual claiming UC/JSA for the period	Although considered, it was decided that UC/JSA would not be included in the estimated impacts. This is because assumptions on take-up,

	they are unemployed and not on ML.	individual circumstances and eligibility would have to be made without credible evidence to support them. It was decided that it would be bad practice to produce potentially large benefit/costs estimates that are founded on unsupported assumptions.
Hiring decisions	We have not estimated the impact of employers hiring decisions changing towards female employees within a certain age range	It is possible that some employers concerned that they will be in a position of retaining pregnant women they otherwise would dismiss will instead opt to avoid or reduce the number of female employees they hire entirely. This will undermine both the protection and wider attempts to increase female and maternal labour market participation in particular. However, employment protection for pregnant women and returning mothers is already well-established (e.g. recent extensions to redundancy protections) therefore this proposal is unlikely to fundamentally change employer behaviour.