

Consultation Response

Make Work Pay:
Enhanced dismissal
protections for pregnant
women and new mothers

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Employment Law sub-committee welcomes the opportunity to consider and respond to the UK Government's Make Work Pay: Enhanced dismissal protections for pregnant women and new mothers consultation.¹ The sub-committee has the following comments to put forward for consideration.

¹ [Consultation on enhanced dismissal protections for pregnant women and new mothers](#)

Consultation Questions

Questions 1 – 8

Not applicable.

Question 9: In general, when do you think pregnant women and new mothers are at most risk of unfair treatment? (Please select all that apply)

A. During pregnancy.

B. During Maternity Leave.

C. Soon after they have returned to work (e.g. within six months of returning).

D. Some time after they have returned to work (e.g. after six months of returning).

E. Other.

F. Don't know.

If relevant, please explain your answer and provide any supportive data/evidence

Our position is that pregnant women and new mothers are particularly vulnerable to unfair treatment during pregnancy, maternity leave, and the initial six-month period following their return to work (options A, B and C). These stages present heightened risks due to a combination of factors, including the physical effects of pregnancy and the post-partum period, as well as necessary absences for medical appointments, maternity leave, and during the return to work when they may have absence during settling in periods. During these times, individuals may also be subject to negative stereotyping or assumptions regarding their commitment and professional capability.

Question 10: In general, when do you think pregnant women and new mothers are at most risk of dismissal? (Please select all that apply)

A. During pregnancy.

B. During Maternity Leave.

C. Soon after they have returned to work (e.g. within six months of returning).

D. Some time after they have returned to work (e.g. after six months of returning).

E. Other.

F. Don't know.

If relevant, please explain your answer and provide any supportive data/evidence

Our position is that new mothers are most at risk of dismissal during maternity leave and in the six month period following their return to work (options B and C). In our experience, employers will generally be reluctant to dismiss an employee shortly after a pregnancy is announced, given the risk that such action could be perceived as linked to the pregnancy. However, employees on maternity leave often occupy a weaker position in redundancy selection exercises and may face heightened risk of dismissal upon their return, often coupled with a lack of support in their transition back to work.

Question 11: What impact have the 2023/24 extended redundancy protections for pregnant women and new mothers had on how pregnant women and new mothers are treated in the workplace?

- A. Positive.
- B. Negative.
- C. Negligible.
- D. Don't know.**

If relevant, please explain your answer and provide any supportive data/evidence.

This is difficult to say at this stage. Any data on whether the changes made in 2023/24 to the existing protections have had an impact on how pregnant women and new mothers are treated in the workplace would be useful overall in considering whether there is a need for additional protections.

Question 12: What kind of test should be used to decide whether a pregnant woman or new mother was fairly dismissed during the protected period?

- A. Replace the current 'range of reasonable responses' test for fairness with a new stricter standard that employers must meet, alongside proving a fair reason.
- B. Narrow the scope of the existing five fair reasons, and/or remove some of them altogether.
- C. Other**
- D. Don't know.

If relevant, please explain your answer.

We do not support replacing the "range of reasonable responses" test. It is a well-

established standard that provides flexibility and judicial consistency. We believe that maintaining the current test, but supplementing it with a statutory Code to apply during the protected period, may be more straightforward to implement and for employers to follow. This approach would also avoid employers having to understand and apply an additional legal test. Where there is a group redundancy, for example, this would necessitate applying different legal tests to their decision making in relation to employees within the same pool – for smaller employers and those without access to specialist legal advice, this may be overly complex.

Similarly, narrowing the scope of the existing fair reasons for dismissal is unlikely to be workable in practice and risks unintended consequences.

The current test requires an employer to identify a reason for the dismissal; the reasons that can be relied upon have all been identified as potentially fair reasons. All of these fair reasons may have a significant impact on a business and, in many situations, may be unconnected and unrelated to pregnancy or maternity.

Removing or narrowing the fair reasons test would create impractical and burdensome obligations for employers, and the tests suggested below are insufficiently precise. For example, and as explained in further detail below, we are unclear when the threshold of a ‘significantly detrimental effect’ would be met. We are concerned that the lack of clarity would leave employers uncertain about how to ensure compliance.

If the narrowing of the scope goes too far, it may mean that, in terms of practical effect, it prevents employers from dismissing relevant employees during the protected period other than in the most rare of situations – this may mean that these employees benefit from a greater protection than is needed to address the underlying vulnerability to dismissal during that period.

We are also concerned that disputes over interpretation would lead to more employment tribunal claims and could result in satellite litigation related to the various limbs of the test.

An alternative option for consideration

The Government could consider whether a new ACAS statutory code should be introduced, setting out clear guidance for employers to follow when contemplating a dismissal during the protected period. This would supplement the existing “range of reasonable responses” test rather than replace it, ensuring fairness (and considered, transparent decision making) without creating legislative burdens which may be impractical.

The new statutory code could mirror the structure of the existing ACAS Code of Practice on disciplinary and grievance procedures². As with that Code, failure to comply could result in an uplift of up to 25% of any compensation awarded in a successful employment tribunal claim. This approach would provide clarity,

² [Acas Code of Practice on disciplinary and grievance procedures](#) | [Acas](#)

consistency, and enforceability without requiring material changes to the existing statutory test for fairness.

Key Features of the Proposed Code could include:

Mandatory compliance prior to dismissal during protected period: Employers would be required to follow the Code during the protected period, ensuring safeguards around dismissal decisions affecting pregnant employees and new mothers. This would be in recognition of the fact that there is an existing statutory code in place in respect of disciplinary processes to address issues of conduct, and would not be intended to replace this.

Consultation requirements: A duty to:

- Meet with the employee and consult meaningfully prior to any dismissal during the protected period.
- Consider and consult with the employee about relevant factors such as, for example, flexible working options, health and safety adjustments, and alternative roles, where applicable and proportionate.
- Demonstrate that these factors were properly considered before any dismissal decision.

Duty to seek redeployment: A formal obligation to explore suitable alternative vacant roles before dismissal, similar to the existing duty in redundancy processes. An exception to this could be gross misconduct dismissals and/or where there is an irretrievable breakdown in the relationship. We believe that this would reinforce the principle of avoiding dismissal during the protected period wherever possible.

Automatic right of appeal: Introduce an automatic right of appeal for all dismissals during the protected period, including those for some other substantial reason (SOSR) or redundancy, where currently no appeal is required (albeit may be offered in line with general fairness principles). This would strengthen procedural fairness and reduce the risk of arbitrary decisions.

Summary

A new statutory Code could offer a balanced, enforceable solution that promotes fairness without overcomplicating the legal framework. It could provide clear guidance, safeguards, and meaningful consequences for non-compliance, while maintaining the established fairness test.

A further option to consider

Another option which the government could consider to strengthen protection in this area (outside of protection from dismissal) would be to extend the period of protection for unfavourable treatment arising from pregnancy or maternity, under

section 18 of the Equality Act 2010, to align with the proposed protected period referred to in questions 21 and 29 of this consultation.

Question 13: If 'A' to question 12, what should that new test be? (Please select all that apply)

- A. Continuing the employment of the pregnant woman or new mother would have a significantly detrimental effect on the business.
- B. Continuing the employment of the pregnant woman or new mother poses a health and safety risk to customers, staff, or the public.
- C. Continuing the employment of the pregnant woman or new mother has a serious negative impact on the wellbeing of others.
- D. Other.**
- E. Don't know.

If relevant, please explain your answer

Not applicable. We note for completeness that the options outlined above at A to C would be difficult to make work in practice, and are therefore potentially problematic for several reasons.

Risk of undermining enhanced protections: The proposed tests appear to allow business needs or colleague wellbeing to override the enhanced protections proposed to protect pregnant women and new mothers. This would dilute the purpose of the protected period and could lead to discriminatory outcomes.

Lack of clarity and precision: Terms such as "significantly detrimental effect on the business" or "serious negative impact on the wellbeing of others" are vague and subjective. Without clear statutory definitions, these tests would create uncertainty and invite inconsistent interpretation.

Health and safety justification (Option B): We are unclear as to when the continued employment of a pregnant woman or new mother could realistically pose a health and safety risk to others. Existing health and safety legislation already provides mechanisms for addressing genuine risks, making this limb unnecessary and potentially misleading.

Potential for increased litigation: Introducing broadly defined tests such as these would likely generate disputes over interpretation, potentially leading to more tribunal claims rather than reducing them.

Question 14: Thinking about the fictional examples above - and any personal

or professional experience you may have - when do you think it should be possible to dismiss a pregnant woman or new mother on grounds of conduct? (Please select all that apply)

A. Employers should be able to dismiss them fairly for any kind of misconduct; the rules shouldn't be narrowed.

B. They should be dismissed if they have committed an act of gross misconduct (e.g. theft, violence).

C. They should be dismissed if their continued employment poses a health and safety risk to customers, staff, or the public.

D. They should be dismissed if their continued employment has a serious negative impact on the wellbeing of others.

E. They should be dismissed if their continued employment causes significant harm to the business.

F. Other – please specify.

G. Don't know.

If relevant, please explain your answer

We support option A, that employers should be able to dismiss fairly for any kind of misconduct, provided the dismissal meets the established threshold of seriousness and follows a robust process.

The principle that dismissal for conduct must be sufficiently serious to justify termination should continue. This ensures consistency with existing employment law and avoids creating a two-tier system that could lead to confusion and/or unintended consequences.

We note that dismissals for a first offence during this period would, per relevant case law, need to be sufficiently serious as to amount to gross misconduct in any event.

Noting that the existing Acas Code would apply in relation to any disciplinary process (and should continue to do so), it may be appropriate to consider the addition of a new statutory ACAS Code relating to such dismissals (as outlined in our response to Question 12 above). This would:

- Require meaningful consultation and consideration of mitigating factors (e.g., pregnancy-related health issues, stress, or adjustments).
- Provide clear guidance for employers and employees, reducing uncertainty and litigation risk.

- Include a potential requirement to consider alternative roles, although we note this may not be appropriate to apply to dismissals amounting to gross misconduct.

We do not agree with option B - *Gross misconduct only*. Limiting dismissals to gross misconduct is too restrictive and could prevent employers from addressing serious but non-gross misconduct issues (e.g., repeated breaches of policy). In many situations, instances of repeated misconduct may have arisen prior to any pregnancy/ maternity and be ongoing.

Our view on options C-E - *Health and safety risk / wellbeing / harm to business* is that these tests are difficult to define / understand / apply objectively. A lack of clarity could undermine enhanced protections by permitting dismissals based on broadly defined business or wellbeing considerations.

We propose that dismissal for conduct should remain possible where the behaviour is sufficiently serious but must be accompanied by enhanced procedural safeguards, which could be set out in a new statutory Code. We believe that this strikes the right balance between protecting pregnant women and new mothers during the protected period and maintaining fairness for employers.

Question 15: Thinking about the fictional examples above - and any personal or professional experience you may have - when do you think it should be possible to dismiss a pregnant woman or new mother fairly on grounds of capability? (Please select all that apply)

A. Employers should be able to dismiss them fairly for any kind of capability issue; the rules shouldn't be narrowed.

B. Employers should still be able to dismiss fairly on capability grounds, but only if there's no suitable alternative role available, or one was offered and turned down.

C. Dismissal should be allowed if continuing employment would seriously harm the business.

D. Dismissal should be allowed if their continued employment poses a health and safety risk to customers, staff, or the public.

E. Dismissal should be allowed if their continued employment has a serious negative impact on the wellbeing of others.

F. Dismissal should be allowed if the employer can clearly show the employee

won't be able to do the job after the protected period ends.

G. Other - please specify.

H. Capability should not be a fair reason for dismissal during the protected period.

I. Don't know.

If relevant, please explain your answer

Employers considering dismissal on capability grounds will already need to comply with the relevant Acas Code of Practice, as well as any applicable internal policies. These frameworks ordinarily require a staged process, a reasonable opportunity to improve and provision of adequate support/training prior to any decision to dismiss on these grounds.

Pausing or restarting such processes during pregnancy or maternity may significantly elongate the process and could result in the enhanced protection in fact extending well beyond the protected period, which could be considered to be disproportionately preferential (particularly in situations where the concerns were identified a significant period of time before the employee became pregnant). It also potentially detracts from an employer's ability to address genuine concerns openly – which may not be in the employee's best interests either.

We recognise that some new mothers may experience temporary dips in performance as they adjust to new patterns of balancing working and home life (potentially coupled with a new working pattern), usually following a prolonged period of absence on maternity leave, and as they transition back to work.

Views will inevitably differ on whether additional protection is required in this context. Some may regard further protection as unnecessary, while others may consider that existing capability processes provide adequate safeguards.

However, recognising that a degree of caution may be welcomed at this time, introducing a duty to consider alternative roles prior to confirming a capability dismissal (Option B) could be a more proportionate way of ensuring that retention of employment is maintained, where appropriate. As mentioned above, this could be reflected in a statutory code of practice.

Question 16: Thinking about the fictional examples above - and any personal or professional experience you may have - when do you think it should be possible to dismiss a pregnant woman or new mother fairly on grounds of redundancy during the protected period? (Please select all that apply)

A. Employers should be able to dismiss them fairly for any kind of redundancy, as long as they've been offered a suitable alternative vacancy if there is one;

the rules shouldn't be narrowed.

B. An employer should still be able to dismiss on redundancy grounds, where there is no suitable alternative vacancy, and where terminating her employment would mitigate any financial difficulties that were affecting – or were likely to affect in the immediate future – the employer's ability to continue the business (or to perform its statutory functions, if it is a public sector employer with statutory duties).

C. Employers should still be able to dismiss on redundancy grounds where the business/organisation ceases to exist and the employee has been offered any suitable alternative vacancy available with the employer, or an associated employer.

D. Other - please specify.

E. Don't know.

If relevant, please explain your answer

Those on maternity leave and new mothers are, it would appear, particularly vulnerable in relation to redundancy dismissals due to a range of factors, including their current or recent absence from the workplace, the limited availability of recent work product on which to assess performance, potentially weaker working relationships with decision-makers arising from that absence, and the possibility that aspects of their role have been absorbed by others during their leave, narrowing the scope of their duties on return.

In light of these concerns, we consider that some additional protection in redundancy exercises is appropriate. However, protections that amount in practice to maintaining employees on a protected basis, rendering dismissal possible only in exceptional circumstances, would not be proportionate and may give rise to undesirable consequences.

Providing for additional stages and safeguards prior to a redundancy dismissal for those in the protected period could provide a more balanced solution. For example, a statutory code (with appropriate uplift in compensation for non-compliance) could contain a duty to consider other ways to avoid the redundancy (eg. part-time working) and/or introducing a mandatory right of appeal and/or require a decision making panel (rather than sole decision maker) where proportionate.

[Question 17: Thinking about the explanation above - and any personal or](#)

professional experience you may have - when do you think it should be possible to dismiss a pregnant woman or new mother fairly on grounds of statutory prohibition during the protected period? (Please select all that apply)

A. Employers should be able to dismiss them fairly for any kind of statutory prohibition issue; the rules shouldn't be narrowed.

B. Employers should still be able to dismiss on statutory prohibition grounds, but only if there's no suitable alternative role available, or one was offered and turned down.

C. Other - please specify.

D. Don't know.

If relevant, please explain your answer

We agree that employers should be able to dismiss for statutory prohibition, without the need for additional protections, taking into account that the duty of fairness is already covered under general employment law. There does not appear to us to be a specific vulnerability for pregnant employees or new mothers in relation to this ground of dismissal. Specific legislation to cover this may therefore be unnecessary to address the 'harm'. In addition, we would anticipate this would only apply to very limited circumstances.

If it was felt that pregnant employees and new mothers were vulnerable to dismissal 'per se', an additional protection could be to include an automatic right of appeal for dismissal on this ground during the protected period. As suggested above, this right could be introduced through a statutory code.

Question 18: Thinking about the explanation above - and any personal or professional experience you may have - when do you think it should be possible to dismiss a pregnant woman or new mother on grounds of SOSR during the protected period? (Please select all that apply)

A. Employers should be able to dismiss them fairly for any kind of SOSR issue; the rules shouldn't be narrowed.

B. Employers should still be able to dismiss on SOSR grounds, but only if there's no suitable alternative role available, or one was offered and turned down.

C. Dismissal should be allowed if continuing employment would seriously harm the business.

D. Dismissal should be allowed if their continued employment poses a health and safety risk to customers, staff, or the public.

E. Dismissal should be allowed if their continued employment has a serious negative impact on the wellbeing of others.

F. Other - please specify.

G. SOSR should not be a fair reason for dismissal during the protected period.

H. Don't know.

If relevant, please explain your answer

In our experience, SOSR dismissals often take place in circumstances in which there has been a breakdown in the relationship, but where there are insufficient grounds to dismiss solely for conduct or capability. Often it is relied upon to avoid the lengthy procedural requirements associated with conduct or capability dismissals. However, there is still a high bar within existing case law for an employer to be able to fairly dismiss for SOSR. Therefore, whilst it is perceived to have breadth (and therefore could be an area in which pregnant employees and new mothers are vulnerable to dismissal), in our view the circumstances in which an employer can fairly dismiss for SOSR are relatively narrow.

The scope of this dismissal reason has taken shape through case law developments.

In our view, it would not be appropriate to require employers to consider alternative roles as often in SOSR dismissals there has been a complete breakdown in relationship.

However, it may be appropriate to offer a mandatory right of appeal by way of additional safeguard and to ensure robust decision making. As suggested above, this right could be introduced through a statutory code.

Question 19: When should employees be entitled to the enhanced dismissal protections?

A. When the employment relationship begins (when they agree with an employer that they'll start work for them, e.g. when a contract is signed).

B. From the day they start work.

C. After an initial period of employment of between 3-9 months, aligned with a typical probation period.

D. Other – please specify.

If relevant, please explain your answer

Option B aligns with existing dismissal and redundancy protections for pregnant women and new mothers, including automatic unfair dismissal (available from day one). This option provides clarity in the alignment.

The purpose of reforms is to enhance protection for pregnant women; introducing a qualifying period for the enhanced protection undermines that purpose.

However, further research to identify when the period of vulnerability exists would be useful in determining this.

Question 20: At what point should the enhanced dismissal protections start for pregnant women?

A. When the employee becomes pregnant.

B. When the employee becomes aware that she is pregnant.

C. When an employee informs her employer that she is pregnant.

D. Other - please specify.

If relevant, please explain your answer

Option C aligns with existing enhanced redundancy protections for women so this is familiar to employees / employers. To bring forward the start of the enhanced protections to when the employee is pregnant but unaware, or to when only the employee knows of the pregnancy and has not shared it more widely, would seem unfair and put too harsh a burden on the employer.

Early days of pregnancy symptoms can be exhibited, often affecting behaviour or attendance, however we would expect that in any cases where action was taken as a result (e.g. warnings / dismissal) this would not materialise for a few weeks giving the employee time to become aware of the situation and share this with their employer.

However, further research to identify when the period of vulnerability exists would be useful in determining this.

If a statutory code were to apply to any dismissal decisions made once the employer is aware of a pregnancy, this should encourage employers to carefully consider the relevant issue (whether relating to conduct / capability / performance / absence, etc.) in discussion with the employee and provide her an opportunity to provide explanation / mitigation / explore alternatives.

Additionally, an employer, once on notice of pregnancy, would be required to properly consider any earlier period wherein the employee was pregnant (even without actual or constructive knowledge during that earlier period about their pregnant status) when making any decision impacting the employee's employment once on notice. We propose that there is precedence for this approach in relation

to disability protection (*Baldeo v Churches Housing Association of Dudley - EAT*),³ whereby constructive / actual knowledge at a later stage in relation to acts happening in an earlier stage (absent actual / constructive knowledge) should take into account the employee's protected characteristic retrospectively. The statutory code rules would then apply, including in relation to that earlier period.

Question 21: When should the protection 'window' for new mothers entitled to maternity leave end?

A. 18 months from the birth of the child – aligning with the 2023/24 redundancy protections.

B. Six months from the return to work (the 'return to work' being the end of the Maternity Leave period).

C. Don't know.

Option A is a recognisable and consistent approach to continue, to replicate the period in the protections introduced in 2023/24. It is a fair approach for all new mothers to receive the same 18 months of enhanced dismissal protection, regardless of when they go back to work.

However, further research to identify when the period of vulnerability exists would be useful in determining this.

Question 22: Should women who are not entitled to Maternity Leave have protection against dismissal for two weeks after the end of their pregnancy?

A. Yes.

B. No – please explain your answer.

C. Other – please explain your answer.

D. Don't know.

We are supportive of explicating the existing approach and aligning with the 2023/24 enhanced redundancy protections. Women who are not entitled to Maternity Leave (for example, because of miscarriage before 24 weeks) would have this enhanced protection against dismissal for two weeks after the end of the pregnancy, regardless of how their pregnancy ends.

³ *Baldeo v Churches Housing Association of Dudley & District Ltd* UKEAT/0290/18/JOJ (Employment Appeal Tribunal, 11 March 2019).

Questions 23-25

Not applicable.

Question 26 - Do you think that parents who take long, family leave entitlements (i.e. Adoption Leave, Shared Parental Leave or Neonatal Care Leave) are vulnerable in a dismissal situation?

A. Yes.

B. No.

C. Don't know.

If relevant, please explain your answer and provide any supportive data/evidence.

Dependent on the length of time taken as leave. Often, the longer an individual is out of the workplace, then the higher the risk of vulnerability in a dismissal situation. By way of example, an employee who takes a period of leave of a month or two may be less likely to experience a material impact on working relationships, reintegration to working life, etc. However, if the period of absence were to be, for example, six months or more – those employees are potentially likely to experience similar vulnerability/disadvantage to new mothers.

However, this will not always be the case and will depend on the particular circumstances of a case. For example, although an employee taking neonatal care leave may be out of work for a shorter period of circa 12 weeks, the potential impact that this situation may have on them may result in them being at an increased level of vulnerability when they do return to work.

It would be helpful to know whether statistics are available regarding detriment/dismissal for having taken these types of leave.

Question 27: Do you think the enhanced dismissal protections should also cover employees taking these other types of long family leave? (Please select all that apply):

A. Adoption Leave.

B. Shared Parental Leave.

C. Neonatal Care Leave.

D. Bereaved Partner's Paternity Leave.

If relevant, please explain your answer and provide any supportive data/evidence.

The purpose of the proposals regarding Maternity Leave is stated as follows: “Our aim is to ensure that dismissal protections are meaningfully strengthened for pregnant women and new mothers, recognising the unique risks to job security that this group faces.”

We would question what specifically is meant by “unique risks to job security”? Is this due to length of time out of the workplace? Facing assumptions/stereotypes upon return? The answer to this may help to determine whether the protection should be extended. Do those taking these forms of leave face the same or similar risks to their job security?

Question 28: Thinking about your answer to question 27, should the protection against dismissal start from the first day of the leave?

- A. Yes.
- B. No.
- C. Don’t know.
- D. Other – please specify.

If relevant, please explain your answer.

In line with previous answers, it may be preferable to set a minimum length of leave to be taken before enhanced protection is given. Alternatively, as referred to in below, having protection end on the date leave ends for those taking less than six weeks of leave.

If an employee has taken only a couple of weeks’ leave for other reasons, they would not be in the same position as a new mother. Offering identical protection in those cases would not address the particular vulnerabilities that new mothers face.

There is a risk this could lead to people taking short leave to acquire enhanced protection for a disproportionate length of time.

Question 29: Thinking about your answer to question 28, how long should the protection against dismissal last? (Please select all that apply)

- A. For Adoption Leave, it should follow on from the approach of the enhanced redundancy protections for Adoption Leave (i.e. 18 months from the birth of the child/placement for adoption or entry into Great Britain).**
- B. For Shared Parental Leave, Neonatal Care Leave and Bereaved Partner’s Paternity Leave, it should follow on from the approach of the enhanced redundancy protections for Shared Parental Leave and Neonatal Care Leave**

(i.e. if the employee takes less than six weeks of continuous leave, the protection ends on the last day of the leave; if they take more than six weeks of continuous leave, the protection ends 18 months from the birth of the child/placement for adoption or entry into Great Britain).

C. Other – please explain your answer

Option A - If existing protections are followed, this will be easier to understand for employers and reduces the administrative burden.

For Option B, the restriction of protection for those taking under six weeks of leave helps to address concerns regarding those taking short periods of leave. However, in our view, the greatest disadvantage arises for those parents who take much longer leave periods, eg six months or more.

Question 30: How do we ensure women, including those from minority groups, are aware of the enhanced dismissal protections for pregnant women and new mothers? (Please select all that apply)

A. Through intermediaries / trade unions / advice organisations (e.g. Pregnant then Screwed, Maternity Action, Working Families).

B. Clear information in onboarding and employee handbooks.

C. Through government / regulatory / public bodies (e.g. Gov.uk, Acas, EHRC, Health & Safety Executive).

E. Other - please specify.

Please explain your answer – we welcome separate detail on how women from minority groups can be made aware as part of your answer.

We consider all of the above to be relevant. We would suggest; clear information being provided through independent organisations – e.g. Acas, EHRC, HSE- and adding detail into handbooks in line with other forms of statutory leave. Advice organisations should be encouraged to provide updates regarding enhanced protections. Additionally, information being provided in GP surgeries and hospital settings may be helpful.

In all cases, ensuring information is communicated in an accessible format – consider accessibility for those with disabilities and those whose first language is not English.

Question 31: How do we ensure employers are aware of these changes?

(Please select all that apply)

A. Through intermediaries / advice organisations (e.g. business groups).

B. Through government / regulatory / public bodies (e.g. Gov.uk, Acas, EHRC, Health & Safety Executive).

C. Other - please specify.

Please explain your answer.

Clear information provided via independent organisations – e.g. Acas, EHRC, HSE

Ensuring information is communicated clearly to allow employers to be aware of what the changes are and when they are to come into force.

Question 32: How can we best support businesses, including smaller businesses, through this change and to avoid disputes escalating to the Employment Tribunal? (Please select all that apply)

A. Clear guidance.

B. Awareness raising campaign.

C. Employer training / webinars / workshops.

D. Templates / model policies / checklists.

E. Free advice routes.

F. More information about dispute resolution (e.g. Acas early conciliation).

F. Other - please specify.

Please explain your answer.

We believe that all of the above methods will be useful in order to ensure smaller employers feel supported in navigating the introduction of changes.

Question 33: What unintended consequences, if any, do you think could arise from the enhanced dismissal protections? (Please select all that apply)

A. Increased discrimination – hesitancy in or avoiding hiring women of childbearing age.

B. Negative perception of workplace fairness/culture.

C. Employers delay dismissal decisions until after protection period lapses.

D. Negative impact on hiring generally.

E. Legal uncertainty - employers avoid fair dismissal due to risk.

F. Administrative burden (e.g. additional documentation).

G. Unsustainable or unrealistic asks on small businesses.

G. Other - please specify.

H. None.

Please explain your answer.

Further research is required to identify exactly what problems the new protections are designed to fix, in order to provide a fair and tailored solution. If not, there is a danger of the fix not fitting the problem. This could lead to all of the above consequences arising e.g. hesitancy in employing women of childbearing age, negativity surrounding the protections from all sides. Keeping any solution as simple as possible would be of significant benefit to employers, in particular small businesses.

Question 34: What unintended consequences, if any, do you think could arise if the policy were to exclude capability and SOSR as fair reasons to dismiss a pregnant woman or new mother (paragraph 36)?

Please explain your answer.

Those who truly have performance issues would not be able to be dismissed fairly, leading to productivity issues for employers and businesses; further strain on wider teams; and a sense of inequality in the business.

Removal of SOSR as a reason would mean possible legitimate dismissals would not be permitted, for example, non-renewal of fixed term contracts, actions causing reputational risk (that didn't necessarily fall into conduct) and clash of personalities leading to irreconcilable differences between parties. All of these could have a significant impact on businesses.

Question 35: What action(s) could be taken to mitigate against any unintended consequences? (Please select all that apply)

A. Clear guidance.

B. Training and support for employers.

C. Other - please specify.

D. None.

All of the above. In relation to 'Other' being the additional research / analysis suggested above, in order to provide a tailored and effective solution, the extent of the problem needs to be clear.

Question 36: What do you think are the main causes of pregnancy and maternity discrimination? (Please select all that apply)

A. Lack of awareness.

B. Negative attitudes or bias.

C. Cost and operational pressures.

D. Fear of legal risk or complexity.

E. Poor communication (e.g. during Maternity Leave).

F. Other - please specify.

Please explain your answer and provide any supportive data/evidence.

All of the above.

We believe that all of the listed factors (A–E) contribute to pregnancy and maternity discrimination, often in overlapping and reinforcing ways.

A. Lack of awareness: Many employers and managers are not fully aware of their legal obligations under equality and employment law, or of the practical needs of employees during pregnancy and maternity. This lack of awareness can lead to unintentional discrimination, such as failing to make reasonable adjustments or overlooking rights to flexible working.

B. Negative attitudes or bias: Persistent stereotypes about women's commitment to work after having children can fuel discriminatory behaviour. Some employers assume that mothers will be less reliable, less ambitious, or less productive, which can result in missed opportunities for promotion, exclusion from projects, or even dismissal. These biases are often unconscious but deeply embedded in workplace culture.

C. Cost and operational pressures: Employers may perceive maternity leave and associated rights (such as flexible working or temporary cover arrangements) as costly or disruptive. Smaller businesses in particular may feel the operational strain of covering long absences. This can lead to resentment or reluctance to support employees fully, manifesting as discriminatory practices.

D. Fear of legal risk or complexity: Some employers fear making mistakes when navigating complex maternity and employment law. Rather than engaging openly, they may avoid conversations or make overly cautious decisions that disadvantage employees. This can increase the risk of discrimination.

E. Poor communication (e.g. during Maternity Leave): A lack of clear, supportive communication during maternity leave can leave employees feeling isolated or excluded. For example, failing to keep in touch about workplace developments, or not discussing return-to-work arrangements early enough, can create unnecessary barriers. Effective communication is critical to ensuring a smooth reintegration, yet many organisations fall short.

F. Other factors: Broader societal structures also play a role. Women are still more likely to be the primary caregivers, which compounds workplace challenges and makes them more vulnerable to discrimination. In addition, organisational cultures that prioritise presenteeism or long hours can indirectly penalise mothers who need flexibility.

Supporting Evidence

*Equality and Human Rights Commission (EHRC, 2016 research)*⁴ found that 77% of mothers reported negative or discriminatory experiences during pregnancy, maternity leave, or on return to work. Around 11% of mothers reported being dismissed, made redundant, or treated so poorly they felt forced to leave their job.

*Pregnant Then Screwed (2025 research with Women in Data)*⁵ noted up to 74,000 women per year are let go, constructively dismissed, or made redundant while pregnant, on maternity leave, or within a year of returning. This represents 12.3% of women potentially pushed out of the workforce, a 37% increase since 2016.

*Pregnant Then Screwed (2024 NDA research)*⁶ found over “430,000 mothers in the UK have been legally gagged” by non-disclosure agreements (NDAs) after experiencing discrimination, bullying, or harassment at work. Three-quarters of those gagged reported negative impacts on their mental health.

*Pregnant Then Screwed (2023 survey)*⁷ stated over half of mothers (52%) reported experiencing workplace discrimination during or after pregnancy, and 1 in 5 mothers had such negative experiences they left their jobs altogether.

Pregnancy and maternity discrimination is multi-causal, arising from a combination of lack of awareness, entrenched bias, operational pressures, legal complexity, and poor communication. Tackling it requires a holistic approach: raising awareness, challenging stereotypes, improving communication, and supporting employers to manage operational and legal responsibilities effectively. We believe that enhancing employment protections whilst allowing business to continue to manage operational requirements and address individual issues during the

⁴ [Pregnancy and maternity discrimination research findings | EHRC](#)

⁵ [Up to 74k forced out of work due to pregnancy and maternity](#)

⁶ [Over 430k mothers have been legally gagged in the UK following workplace discrimination, harassment or bullying - Pregnant Then Screwed](#)

⁷ [New study reveals over half of mums have experienced workplace discrimination during or after pregnancy | Tommy's](#)

protected period would be a positive step towards tackling the effects of workplace discrimination.

Question 37: What other changes should the government prioritise to tackle pregnancy and maternity discrimination?

Please explain your answer and provide any supportive data/evidence

We believe that enhanced protection should primarily be restricted to pregnancy and maternity, given the unique and significant challenges associated with these circumstances. However, we acknowledge that similar considerations may apply to adoption, particularly for a primary adopter who takes an extended period of adoption leave comparable to maternity leave. The impact of other forms of leave has also been considered above.

We would encourage further Government research into the area to ensure that any response is correctly targeted and appropriate.

We also note that the proposals for reform are concentrated on dismissal as the detriment pregnant and new mothers face. We would suggest there are many other forms of discrimination and detriment pregnant and new mothers face in the workplace (lack of promotion opportunities, harassment, bias, being given less favourable tasks or given less responsibilities, pay and benefit bias). There are mechanisms in place dealing with this however, if the dismissal regime is being reviewed it may also make sense to review the wider detriment review. Again, the right approach should be directed by research into the area.

Returning from maternity leave often requires substantial adjustment. Employees must rebuild professional confidence, re-engage with workplace dynamics, and adapt to the pace of work after a prolonged absence. At the same time, they are balancing new and demanding responsibilities at home, including the care of a young child. This dual adjustment, professional reintegration alongside intensive caregiving, is distinct from other forms of long leave. For example, sabbaticals may involve a period away from work, but they rarely entail the same level of personal and domestic transformation upon return.

Societal structures also play a critical role. Mothers are still more likely to be the primary point of contact for childcare, which compounds the challenges they face when re-entering the workplace. This expectation places additional pressure on them to manage both professional responsibilities and the immediate demands of family life. Additionally, pregnant women and those returning from maternity leave may also be vulnerable to societal stereotypes (particularly that of the male being the primary earner and woman being a stay at home care-giver) which could result in them being subject to unconscious bias, prejudice and discriminatory attitudes, which may not be suffered to the same extent by those taking other types of family leave.

By contrast, those returning from shorter periods of leave, such as sickness absence or paternity leave, do not typically encounter the same scale of adjustment. Their time away from work is shorter, meaning they are less likely to experience significant skill fade or workplace detachment. Further, the responsibilities they assume outside of work during these shorter absences are generally less intensive and enduring than those associated with maternity or primary adoption leave.

For these reasons, we consider enhanced protection to be most appropriately applied to pregnancy and maternity, with scope to extend it to adoption in cases where the primary adopter takes a substantial period of leave (and similarly to shared parental leave). This approach ensures that protections are targeted where they are most needed, reflecting both the practical realities of workplace reintegration and the broader social context in which caregiving responsibilities are distributed.



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