



Department for
Business, Energy
& Industrial Strategy

GOOD WORK PLAN: PREGNANCY AND MATERNITY DISCRIMINATION CONSULTATION

Extending redundancy protection for women
and new parents

Government response



OGL

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Background to Consultation

Through the modern Industrial Strategy, the Government is working to transform our economy. Ensuring that everyone, no matter what their background, can enter into and progress at work lies at its heart and is central to the “Good Work Plan”.

In December 2018, the Government set out in the Good Work Plan ambitious reforms to ensure the UK leads the world in meeting the challenges of the changing world of work. This is the biggest package of workplace reforms for over 20 years, including policy and legislation to ensure workers can access fair and decent work. Parliament has now passed the first tranche of new laws introduced alongside the Good Work Plan which, among other things, will close a loophole which allows agency workers to be paid less than their permanent counterparts and extends the right to a written statement of employment particulars to all workers.

Research that the Department for Business, Energy and Industrial Strategy (BEIS) and the Equality and Human Rights Commission (EHRC) published in 2016 demonstrates that pregnancy and maternity discrimination is still far too prevalent. Overall, three in four mothers (77%) said they had a negative or possibly discriminatory experience during pregnancy, maternity leave, and/or on return from maternity leave.

There are two main pieces of legislation which offer protections for pregnant women and new mothers. These are the Equality Act 2010 and the Employment Rights Act 1996 and regulations made under it (the Maternity and Parental Leave etc. Regulations 1999). The Equality Act sets out a ‘protected period’ during which women who are pregnant or have recently given birth are explicitly protected from discrimination.

Women on maternity leave also currently have special protection in a redundancy situation. Under the Maternity and Parental Leave etc Regulations 1999, in such a situation, employers have an obligation to offer employees on maternity leave a suitable alternative vacancy where one is available. This gives women on maternity leave priority over other employees who are also at risk of redundancy.

However, evidence received by the Women and Equalities Select Committee¹ found that, once new mothers returned from maternity leave some were being forced out of work. This period of time is not covered by the existing protections. Additionally, “Good Work: the Taylor review of modern working practices”² commented that greater consolidation across the Equality Act and the Employment Rights Act could make it easier for businesses and individuals to understand their rights and obligations in relation to pregnancy and maternity discrimination.

In looking to address these issues the Government published a consultation on extending redundancy protection for pregnant women and new parents. It ran from 25th January 2019 to 5th April 2019 and invited views on ways of achieving additional protection from redundancy for those returning from maternity and other forms of parental leave, and creating a more consistent approach to pregnant mothers and those on maternity leave.

¹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/pregnancy-and-maternity-discrimination-15-16/>

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

The consultation sought views on three main issues:

- whether the redundancy protection currently available for maternity leave should be extended into a period of “return to work”;
- whether similar protections should be afforded to other groups who take extended periods of leave for similar purposes, such as adoption or shared parental leave; and
- whether the steps that the Government is taking to increase business and employer awareness of their rights and obligations might be improved to tackle pregnancy discrimination more effectively.

The consultation also set out the Government’s position on enforcement and tribunal time limits in response to issues raised by the Women and Equalities Select Committee.

Next Steps

Government is determined to take action to address pregnancy and maternity discrimination. Following the consultation, we now commit to:

- ensure the redundancy protection period applies from the point the employee informs the employer that she is pregnant, whether orally or in writing;
- extend the redundancy protection period for six months once a new mother has returned to work. We expect that this period will start immediately once maternity leave is finished;
- extend redundancy protection into a period of return to work for those taking adoption leave following the same approach as the extended protection being provided for those returning from maternity leave – it will be for six months;
- extend redundancy protection into a period of return to work for those taking shared parental leave, taking account of the following key principles and issues:
 - the key objective of this policy is to help protect pregnant women and new mothers from discrimination;
 - the practical and legal differences between shared parental leave and maternity leave mean that it will require a different approach;
 - the period of extended protection should be proportionate to the amount of leave and the threat of discrimination;
 - a mother should be no worse off if she curtails her maternity leave and then takes a period of Shared Parental Leave;
 - the solution should not create any disincentives to take Shared Parental Leave;
- establish a taskforce of employer and family representative groups. The taskforce will make recommendations on what improvements can be made to the information available to employers and families on pregnancy and maternity discrimination. It will also develop an action plan on what steps Government and other organisations can take to make it easier for pregnant women and new mothers to stay in work.

Summary of Responses

Should the redundancy protection currently available for maternity leave be extended into a period of “return to work”?

Over three quarters of respondents to the consultation agreed that the redundancy protection currently provided when someone is on maternity leave should be extended into a period of return to work. Responses were also generally positive on the benefits for both individuals and employers.

When considering what would be adequate for a “return to work” period for redundancy protection purposes, nearly three quarters of respondents felt that six months was appropriate. When answering the question about when redundancy protection should start, over two thirds of respondents agreed that this should be from the point when an employee informs her employer.

Government will ensure the redundancy protection period applies from the point the employee informs the employer that she is pregnant, whether orally or in writing.

Government will also extend the redundancy protection period for six months once a new mother has returned to work. We expect that this period will start immediately once maternity leave is finished, notwithstanding any additional leave which may immediately follow.

Should similar protections be afforded to other groups who take extended periods of leave for similar purposes?

Consultation responses were clearly in favour (over 80%) of providing similar redundancy protections to other groups returning to work having taken extended periods of leave for similar purposes to maternity leave. Adoption leave and Shared Parental Leave were considered most similar to maternity leave.

Adoption leave has a number of features which are common with maternity leave. Importantly, it must be taken in a single block.

Government will extend redundancy protection into a period of return to work for those taking adoption leave. It will do so following the same approach as the extended protection it is providing for those returning from maternity leave – it will be for six months.

Shared Parental Leave works differently. It is:

- designed to give parents the maximum flexibility so that they can combine work and leave in ways which best suit their particular needs and circumstances;
- can be combined with maternity leave;
- can be taken for very short periods;
- can be taken on a number of occasions throughout the first year of a child's life.

This can raise a number of issues.

Government agrees that parents returning from Shared Parental Leave should receive some protection from redundancy, however we do not think a father returning from one week's shared parental leave should be in exactly the same position as a mother returning from 12 month's maternity leave. For example, giving a new parent six month's redundancy protection following one week of Shared Parental Leave is not proportionate to the threat of discrimination.

Government will extend redundancy protection into a period of return to work for those taking shared parental leave. It is developing the design of this new protection, taking account of the following key principles and issues:

- The key objective of this policy is to help protect pregnant women and new mothers from discrimination
- The practical and legal differences between shared parental leave and maternity leave mean that it will require a different approach
- The period of extended protection should be proportionate to the amount of leave and the threat of discrimination
- A mother should be no worse off if she curtails her maternity leave and then takes a period of Shared Parental Leave
- The solution should not create any disincentives to take Shared Parental Leave.

We will work with stakeholders to develop a workable solution and look to bring forward legislation when Parliamentary time allows.

We have concluded that paternity leave does not justify equal treatment to maternity leave when it comes to redundancy protection. At least in part, the purpose of the extended period of protection is to ensure that employers do not make an early judgement on performance in the first few months of someone returning to work after a long absence. That would not be the case with paternity leave.

Can the steps that the Government is taking to increase business and employer awareness of their rights and obligations be improved to tackle pregnancy discrimination more effectively?

While respondents to the consultation generally felt that the quality of the information currently available was fairly good, there were concerns that pregnant women and new mothers were not always aware that it existed, or where they might look for it. There were also concerns about small businesses and their awareness of their obligations when it comes to pregnancy and maternity discrimination. The clear view was that Government could be doing more to inform individuals and employers of their rights and obligations.

We also heard separately from people who felt that, having looked at measures to make it harder for employers to make pregnant women and new mothers redundant, Government should now be considering whether more can be done to make it easier for women to stay in and return to work.

Government will establish a taskforce of employer and family representative groups. The taskforce will make recommendations on what improvements can be made to the information available to employers and families on pregnancy and maternity discrimination. It will also develop an action plan on what steps Government and other organisations can take to make it easier for pregnant women and new mothers to stay in work.

Tribunal Time Limits

The consultation discussed the Women and Equalities Select Committee suggestion that the three month time limit for bringing a claim in pregnancy and maternity discrimination cases should be extended to six months. We received over 500 responses specifically on the issue of tribunal time limits.

Government will consult / is consulting to explore the evidence for changing Employment Tribunal time limits for claims relating to discrimination, harassment and victimisation, including on the ground of pregnancy and maternity.

Analysis of Consultation Questions

Response Breakdown³

In total there were **643** responses to the consultation.

538 responses were received seeking an extension to the time limits to tribunal cases. This will be the subject of a separate government consultation exercise which will be undertaken at a later date. These responses will be considered alongside responses to that consultation.

This Government response focuses on the **105** responses which were directly concerned with the content of the consultation document – extending redundancy protection and the adequacy of existing advice and guidance.

A total of **74%** of respondents said that they were happy for their contributions to be published, of which over half did not want identifying information to be released. A further **26%** wanted their responses to be treated as confidential.

78% of responses were from individuals, **11%** from employers, **2%** from Trade Unions, **3%** from organisations representing industry/employer groups. We also received a response from the Women and Equalities Select Committee.

We ran a number of roundtable discussions with interested stakeholder groups representing both employers and individuals. In addition we held 2 separate workshop sessions specifically to consider the impact of extending the redundancy protection afforded under the Employment Rights Act 1996 and the regulations made under it (the Maternity and Parental Leave etc Regulations 1999 MAPLE) into the “return to work” period for mothers to other groups who are taking extended periods of leave for similar purposes – i.e. that are akin to maternity leave. That work continues.

Of the respondents to the consultation, **47%** were employed in the private sector, **27%** in the public sector and **11%** in the charity sector. **14%** did not specify.

³ 1. Responses have been rounded to the nearest percentage point.
2. Not all respondents answered every question

Extension of Redundancy Protection for Women and New Parents

The consultation proposed that the simplest way of achieving additional protection against redundancy was to extend the protection provided under MAPLE⁴ for an extra six months once a new mother had returned to work. This would mean that new mothers who had recently returned to work had the same protection as that enjoyed by those on maternity leave.

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

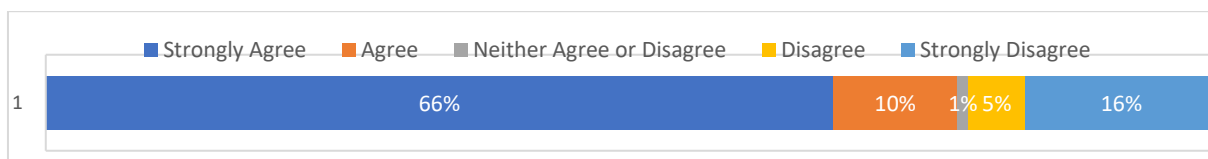


Figure 1. Agree that protections against redundancy should be aligned

99% answered the question.

76% strongly agreed or agreed with the proposal that protections against redundancy following a return to work from maternity leave should be aligned with those already in place during maternity leave.

⁴ <http://www.legislation.gov.uk/uksi/1999/3312/contents/made>

Figure 2: Agree that protections against redundancy should be aligned.

Broken down by sector by individual responses with answers to one or more parts of the question. 96 responses

| Option | Strongly agree | Agree | Neither agree or disagree | Disagree | Strongly disagree | Don't know | Not Answered |
|---------------------------|----------------|-------|---------------------------|----------|-------------------|------------|--------------|
| Private Sector | 31 | 4 | 0 | 1 | 9 | 0 | 0 |
| Public Sector | 19 | 5 | 0 | 2 | 0 | 0 | 0 |
| Charity/ Voluntary Sector | 6 | 0 | 1 | 1 | 2 | 0 | 1 |
| Other | 1 | 2 | 0 | 0 | 3 | 0 | 0 |
| Not Answered | 4 | 0 | 0 | 1 | 3 | 0 | 0 |

75% of respondents agreed that redundancy protection for new mothers into a period of return to work should be aligned with the protection already in place during maternity leave.

A number of respondents representing new mothers expressed the view that they felt vulnerable returning to work and that by extending the period of protection into a period of return to work it would allow time to adjust with fewer concerns over job security.

Some respondents also suggested that an extension would ensure that employers did not make an early judgement on performance in the first few months of someone returning to work after a long absence.

There was clear acceptance of the need to protect women from unlawful discrimination and the continued risk of being made redundant on return, with some respondents providing anecdotal evidence of mothers being subject to redundancy proceedings within six months of returning to work after maternity leave.

A very small number of responses suggested the protections should be applied to women who return to work after a miscarriage or stillbirth.

Nevertheless, **23%** of respondents strongly disagreed or disagreed with the proposal that protection should be extended. The arguments put forward included concerns that giving protection to one group meant that other individuals were at higher risk of being selected for redundancy, and that was unfair. Similarly, as long as a legitimate and fair consultation

process was carried out, redundancy should be applied to all workers, and that a woman returning from maternity leave should not be treated differently - selection for redundancy should be based on skills, competence and performance and employers should be able to choose to retain the best employees for the job.

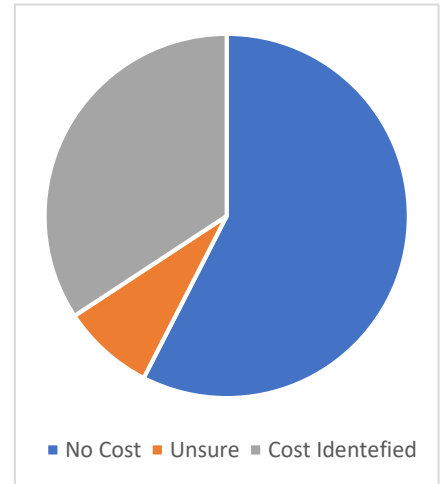
2. What costs do you believe the extension would bring:

a) For individuals?

70% answered the question.

From the responses received, **58%** said they did not anticipate additional costs falling to mothers returning to work after a period of maternity leave.

Where a cost was identified, it was argued that it would not fall on the mother returning to work, but instead on those workers who would not be protected in a legitimate redundancy situation. In effect, a direct consequence of the consultation proposal was that those who were not pregnant or new mothers would be more likely to be made redundant.

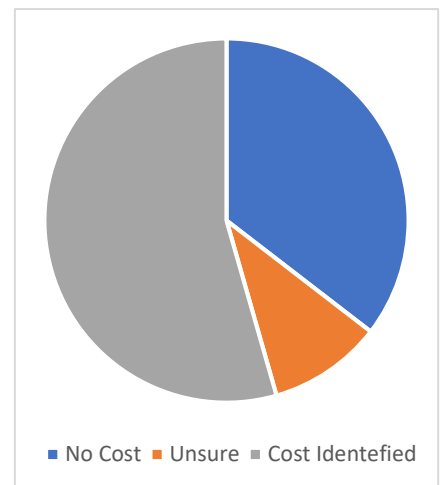


b) For businesses?

75% answered the question.

65% did foresee additional costs to business. These were mostly from employers. Businesses would incur a one-off cost from having to familiarise HR and managers with a new approach, re-writing policies and training staff. It would be more challenging for smaller businesses.

Some employers and individuals saw this as a short-term cost which would be mitigated by the later benefits of greater retention and more productive workforce.



Others suggested it would make it harder for SMEs to structure their business flexibly and make it more difficult to reduce overheads when required. Smaller employers would have less discretion in choosing alternative staff for redundancy and retaining the best worker. Similarly, making it harder to make someone redundant could have an associated cost of keeping someone on who may otherwise have been made redundant.

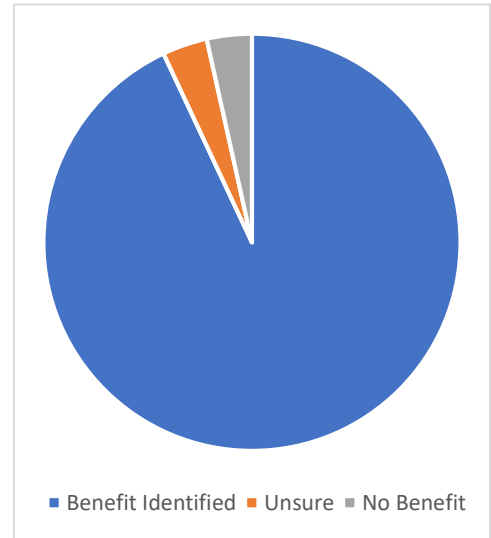
3. What benefits do you believe the extension would bring:

a) For individuals?

82% answered the question.

93% of respondents identified at least one benefit for individuals. The majority strongly agreed that the extension would bring increased protection against discrimination and support women and new parents with the knowledge that they were protected by law.

Most respondents suggested that the benefits included greater job security by reducing the risk of redundancy in the first six months of return and being treated fairly and equally. Others said it would help dispel the misconception that mothers are unable to work after childbirth by allowing the additional time to re-establish themselves in the workplace without any additional anxiety about job security.

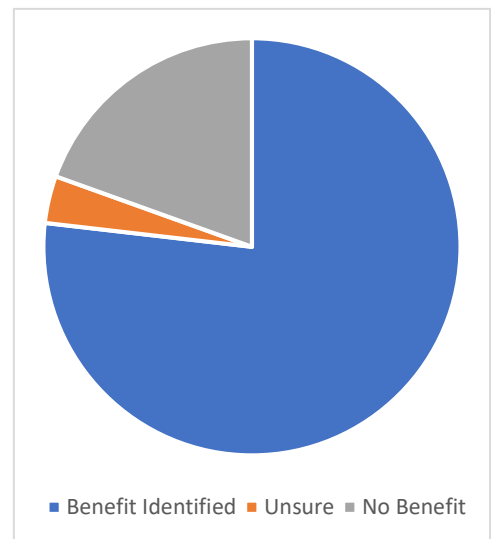


b) For businesses?

78% answered the question.

77% of respondents identified at least one benefit for businesses. **20%** did not see any direct benefits. A good proportion of responses strongly agreed that there were wider benefits to the extension of protection which included enhancing an employer's reputation by treating employees fairly without discrimination and making it a more attractive business to work for.

Many responses pointed to the wider benefits of a positive working environment and better mental and physical wellbeing by alleviating pressure and providing greater assurance of financial stability. Additionally, there was a broader economic advantage of supporting women's participation in the labour market. The consultation proposal would allow mothers returning to work to maintain their attachment to the labour market, supporting a more diverse workplace.



Some respondents also suggested that increasing redundancy protection in this way would ensure unscrupulous employers did not undermine those who were fair and honest. It would also encourage a culture shift in tackling redundancy discrimination and increase employers' awareness of discrimination.

The creation of a more inclusive, supportive environment where women felt that they were a valued employee would in turn drive commitment and loyalty. Respondents also made the point that businesses would benefit in the long term from retaining the knowledge, skill and talent of their workforce, ensuring diversity in the workplace, as well as contributing to a lower turnover of staff.

A number of responses raised the broader economic advantages of retaining more women in the labour market. Maternity discrimination is seen as a contributor to the gender pay gap. The

consultation proposal would help address the gender imbalance in the workforce by reducing pregnancy and maternity discrimination. Businesses would benefit from reduced recruitment and training costs, and increased productivity from a more diverse and engaged workforce.

How long should any additional protection apply?

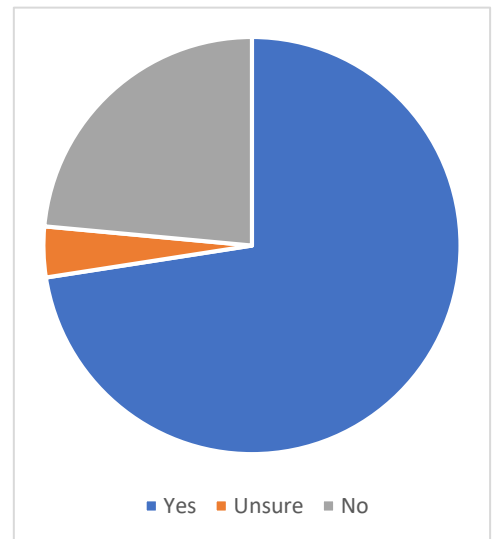
4. Do you agree that six months would be an adequate period of “return to work” for redundancy protection purposes?

97% answered the question.

73% agreed that six months strikes the right balance between returning to work after a period of maternity leave and providing returning mothers with protection. It would give greater consistency of protection and make it simpler for individuals to understand and exercise their rights.

There was general consensus that an additional 6 months redundancy protection was a realistic timeframe in which a new mother could re-establish herself back at work. This would encourage more employers to act more fairly towards new mothers and reduce risk of redundancy.

24% did not agree to the extended protection. Some felt that this period was too long and if a business faced difficulties during the protected period it would be unfair not to include returning mothers along with the rest of the workforce for potential redundancy. It would also place undue burden on businesses seeking to structure their business effectively and flexibly.



Of the responses, **10.5%** said that women had sufficient protections.

Others commented that Government would need to consider how the six-month protection would apply when a mother takes another period of leave immediately after maternity leave.

5. If you think a different period of “return to work” would work better, please say what that should be and explain why

41% answered the question.

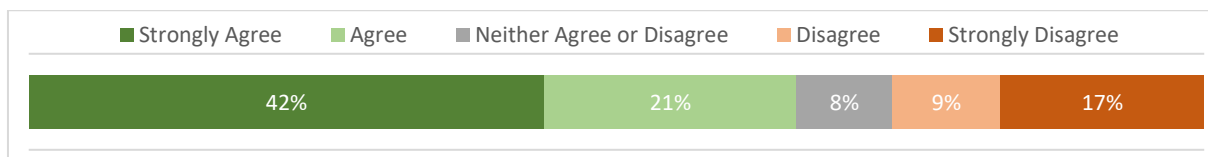
While there was some variation in views on the length of extended protection, overall **68%** agreed that six months was appropriate.

Alternative suggestions included a maximum of three months as there was a need to balance employees' needs with the needs of the employer. Some respondents suggested twelve months was a better option and would be more impactful. It would give mothers more adjustment time to overcome any challenges during the first year of parenthood. Some respondents also said it would reflect the same period as maternity leave and would be more

of a buffer from risk of redundancy. There was also a suggestion that the period should apply to both parents and cover a maximum of eighteen months.

When the additional protection should begin

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



97% answered the question.

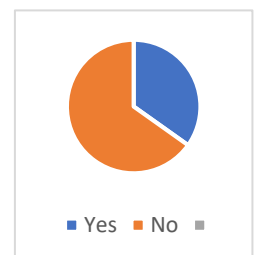
63% agreed or strongly agreed that pregnancy should be defined as starting at the point that a woman informs her employer that she is pregnant in writing.

7. Do you think a different reference point should be used?

84% answered the question.

65% said a different reference point should not be used.

Those suggesting a different reference point said that the definition of the start of pregnancy for redundancy protection purposes should reflect the Equality Act 2010 s.18 (6), where the protected period begins at the start of a woman's pregnancy. Similarly, women who had orally notified their employer early in pregnancy should be afforded the same protection as their colleagues who had provided written protection.



Other Groups

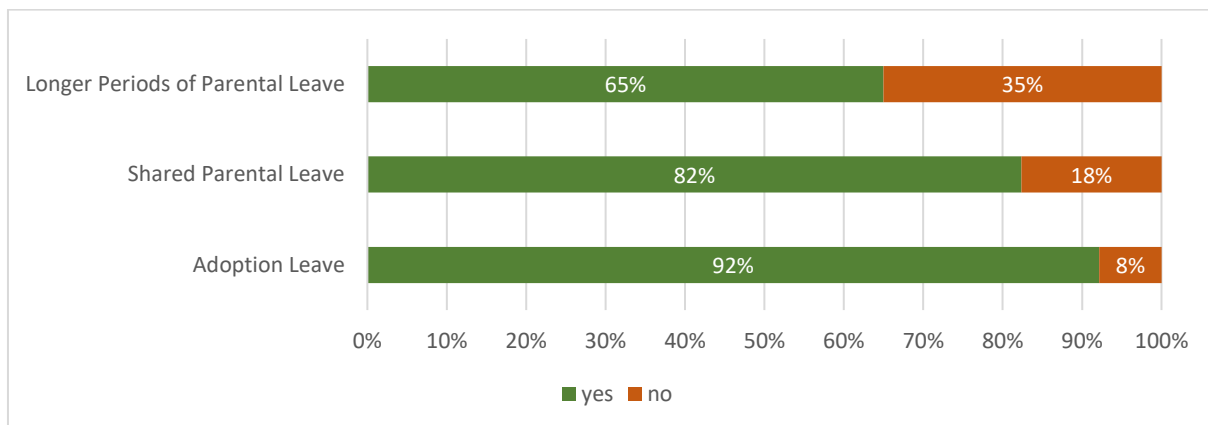
The consultation considered extending the redundancy protection into a “return to work” period for other groups who take extended periods of leave for purposes similar to maternity leave.

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

Adoption Leave,

Shared Parental Leave, and

Longer periods of Parental Leave?



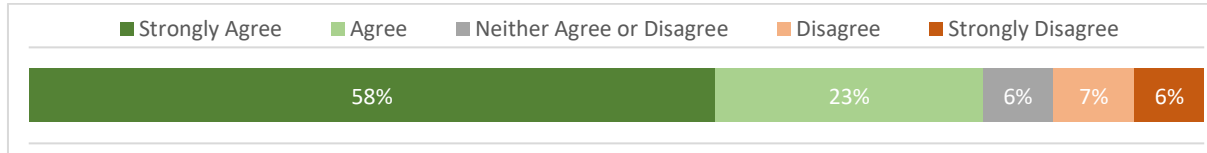
There were 96 responses with answers to one or more parts of the question.

A significant majority agreed that the most direct equivalents to return to work from statutory maternity leave are adoption leave (**92%**), shared parental leave (**82%**) and longer periods of parental leave (**65%**).

Of the 96 responses, only three said paternity leave was a direct equivalent and that fathers should be given stronger protections.

Two responses suggested that those who experience a miscarriage should be deemed equivalent for these purposes as well as those parents who experience premature birth.

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



98% answered the question.

81% of those strongly agreed or agreed to extending the additional redundancy protection afforded by MAPLE to other groups.

Respondents suggested that we should specify the exact forms of other parental leave that would qualify for protection. There should also be clarity around when the protection starts, particularly where other forms of leave are taken after parental leave.

Some pointed to the challenges created by the flexibility of shared parental leave and the practical consequences of administering any additional protection in those circumstances. Under Shared Parental Leave, parents can take multiple blocks of leave between periods at work or combined with other types of leave. A few respondents argued that that flexibility made it less of a direct equivalent to maternity leave, even though agreeing to the protection in principle. It was much harder to determine when the protection would apply - for example, how redundancy protection would be apportioned between different periods of discontinuous leave.

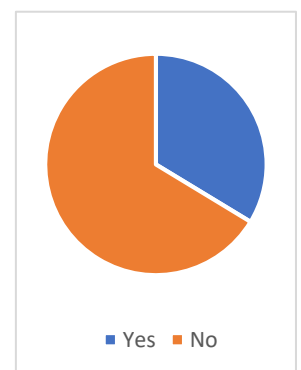
Those disagreeing to the additional protection for such groups pointed to the risks of creating different sets of rules for different types of leave which might add complexity.

10. Are there other forms of leave which should be considered for additional redundancy protection on return to work?

94% answered the question.

66% of these suggested that there were no other forms of leave which should be considered for additional redundancy leave protection on return to work.

Suggestions of other forms of leave which should be considered included sickness, those returning from long term illness, miscarriage, paternity and carers' leave. They argued that the main reason for their inclusion was that these individuals could face similar discrimination and challenges returning to work.



Awareness of rights and obligations

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

The consultation invited comments on what more might be done to improve awareness of rights and obligations in relation to pregnancy and maternity discrimination.

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

96% answered the question.

26% felt the steps were not very or not at all effective, and 31% didn't know.



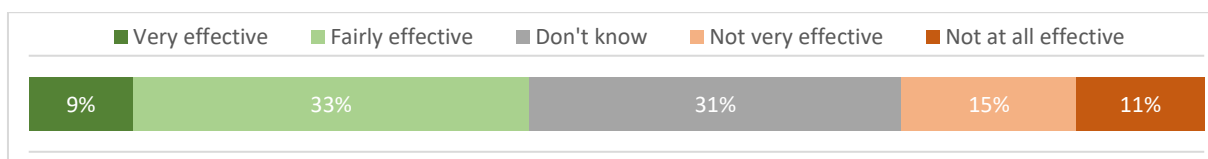
Respondents suggested that the quality of information available was fairly good and the information provided through Acas guidance and the EHRC was easy to understand and accessible. The information provided by independent organisations was also helpful.

Responses from the voluntary/charity sector expressed concerns that not all individuals were able to understand their rights and had limited awareness of their legal protections. There was a lot of information available, but individuals needed to actively seek it out. Women often raised basic questions around their pregnancy and maternity rights on online parenting forums as they had no idea where to find information.

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

98% answered the question.

44% of these felt that the steps taken have been effective or fairly effective in informing employers in relations to pregnant women and new mothers.



Respondents suggested that larger employers were more aware than smaller employers of their obligations and duties to pregnant women and new mothers. Smaller businesses had limited resources and ability to familiarise themselves with the law.

13. How do you think these steps might be improved/

There were **54%** responses to this part of the question.

From those who answered, respondents saw a need for further guidance for both employees on their rights and employers on their obligations. Some suggested that Government might look to develop tools to help employers to communicate pregnancy and maternity rights and obligations to employees.

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

41% answered the question.

A number of responses considered the points where pregnant women and mothers came into contact with "officialdom" and wondered whether more might be done to provide information through healthcare systems. Some suggested that relevant information might be made available in GP surgeries, and should be provided when the pregnancy is confirmed. It was also suggested that midwives could play a role and might provide information in some sort of pregnancy pack during antenatal visits.

Other respondents suggested that there should be a general public awareness campaign through social media and forums used by mothers. Schools/nurseries could be a possible place to 'spread information', especially for mothers planning a second pregnancy.

A number of respondents thought employers should make family friendly policies more public.

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

Respondents suggested that this was something Government should lead – it was best placed to work with all stakeholders including business and wider stakeholders including parents.

Further points raised in consultation responses

Enforcement

A number of respondents raised enforcement issues in their responses.

One suggestion was to change the focus and require the employer to show why it was necessary and proportionate to make a new mother redundant, rather than the employee making the case that they had experienced discrimination.

A further suggestion was to consider making reporting on the number of women returning from maternity leave mandatory and to make companies publish annually the total number of pregnant employees in their workforce and how many of those leave - with reasons for leaving.

Tribunal Time Limit

We received 528 campaign responses on the question of tribunal time limits.

Government will consult to explore the evidence for changing Employment Tribunal time limits for claims relating to discrimination, harassment and victimisation, including on the ground of pregnancy and maternity.

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

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