

<b>Title:</b> Pregnancy and maternity discrimination: extending redundancy protection for women and new parents <b>IA No:</b> <b>RPC Reference No:</b> RPC-4334(1)-BEIS <b>Lead department or agency:</b> Department for Business, Energy and Industrial Strategy <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> March 2019			
	<b>Stage:</b> Consultation			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Contact for enquiries:</b> lfran.Naeem@beis.gov.uk				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2016 prices)	One-In, Three-Out	Business Impact Target Status
-£88.3m	-£377.5m	£43.9m	In scope	Qualifying provision

**What is the problem under consideration? Why is government intervention necessary?**

In 2016, BIS and EHRC published a report examining the prevalence and nature of pregnancy and maternity discrimination in the workplace. It found that 11%<sup>1</sup> of mothers felt forced to leave their job, either by being dismissed, made compulsorily redundant or treated so poorly that they felt they had to leave their job. An inquiry by the Women and Equalities Select Committee highlighted particular issues for mothers returning to the workplace. Protections against pregnancy and maternity discrimination at work are contained in separate pieces of legislation. This creates a difference in legal protections between pregnant women and new mothers returning to work to those on maternity leave, who have greater protection. The Government will be consulting on extending the existing protections available to women during maternity leave into pregnancy and on return to work.

**What are the policy objectives and the intended effects?**

Greater consistency of redundancy protection across pregnancy, maternity and for a short period following return to work will help tackle redundancy discrimination in the workplace and the particular issues arising around a new mother's return. The BIS/EHRC report found that overall three in four mothers surveyed reported a discriminatory or possibly discriminatory experience during pregnancy, maternity leave and/or on return to work. Greater consistency of protection would make it easier for individuals to understand and exercise their rights. Furthermore, this would create greater clarity for businesses around their obligations and responsibilities regarding pregnant women and new mothers.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1: Do Nothing

Option 2(non-legislative): More effective advice and guidance, encouraging more employers to recognise potential signs of pregnancy discrimination in the workplace and further encourage employers to tackle redundancy discrimination.

Option 3 (preferred): Extend redundancy protection offered by the Maternity and Paternal Leave etc Regulations (MAPLE) 1999 beyond the maternity leave period to pregnant women and those returning from maternity leave for a specified period of time.

<b>Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2026</b>				
Does implementation go beyond minimum EU requirements?			Yes	
Are any of these organisations in scope?			<b>Micro</b> Yes	<b>Small</b> Yes
			<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>	
			<b>Non-traded:</b>	

<sup>1</sup> Pregnancy and Maternity related discrimination and disadvantaged research: Experiences of mothers (2016), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf)

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible  
SELECT SIGNATORY:

Date:  
\_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 3

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -177.3	High: -28.3	Best Estimate: -103.3

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	28.4	16.2	167.8
High	28.4	121.6	1075.1
Best Estimate	28.4	68.9	621.5

#### Description and scale of key monetised costs by 'main affected groups'

One-off costs (best estimates)

Employers: familiarisation costs of £28.4m.

Recurring annual costs (best estimates)

Employer: £53.5m (made up of £0.8m contribution to maternity payments, £52.7m labour costs).

Exchequer: £15.4m (£13.5mn Statutory Maternity Payments, £1.9m Maternity Allowance payments)

#### Other key non-monetised costs by 'main affected groups'

The reforms may lead to businesses incurring additional administrative costs from having to collect evidence in order to make someone else redundant.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	16.2	139.5
High	0	104.3	897.8
Best Estimate	0	60.2	518.2

#### Description and scale of key monetised benefits by 'main affected groups'

Recurring annual costs (best estimates)

Employers: £5.4m (£5.3m savings from not having to pay redundancy payments, £0.2m savings from no Employment tribunals (ET) or Early Conciliation (EC) claims.

Individuals: £40.7m (Wages less redundancy payments £38.4m, maternity payments £2.3m, £0.06m savings from no ET or EC)

Exchequer: £14.0m (£13.9m savings from not paying Maternity Allowance, £0.1mn savings from no ET or EC).

#### Other key non-monetised benefits by 'main affected groups'

Pregnant and redundant mothers will benefit from being able to return to a work environment where there is less of a misperception of their contributions to employers. This will help reduce of redundancy discrimination and may contribute positively to health and well-being outcomes. The Exchequer might benefit from pregnant women and mothers returning to work maintain their attachment to the labour market. Accumulating more labour market experience may help prevent the gender pay gap from widening upon return to work.

#### Key assumptions/sensitivities/risks

The key assumption is modelling how businesses will respond to the introduction of the proposed policy and how businesses will react to the policy.

#### Discount rate

3.5%

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only): £219.3m
Costs: 48.6	Benefits: 4.7	Net: 43.9	

## Evidence Base (for summary sheets)

### Problem under consideration

1. In 2016 BIS and EHRC commissioned research to investigate the prevalence and nature of maternity and pregnancy discrimination in the workplace. The survey explored the views and experiences of 3,254 mothers on a range of issues relating to managing pregnancy, maternity leave and mothers returning to work. Using a random sample of birth registration records held by the Office for National Statistics (ONS) and National Records of Scotland (NRS), mothers with children aged between 9 and 24 months were selected for telephone interviews.
2. The research found that 11% of mothers felt forced to leave their job, either by being dismissed, made compulsorily redundant or treated so poorly that they felt they had to leave their job. The report also found that three in four mothers had said they had a discriminatory or possibly discriminatory experience.
3. The research also explored employer awareness of and attitudes to their legal rights and responsibilities. The employer's survey was based on a sample of workplaces (with at least 5 employees) across Great Britain and was drawn from the Interdepartmental Business Register (IDBR), with results based on 3,032 telephone interviews. Only workplaces with at least 5 staff members were sampled.
4. Whilst almost 70% of employers felt they had a high level of awareness about the rights of female employees, most employers believed that women should declare to employers if they are pregnant during recruitment, indicating the potential for discrimination at all stages of a mother's employment journey. It may appear difficult to reconcile these two findings, however, the former resulted from a very general question, which did not go into further detail to test awareness. The second finding resulted from a narrower question, where employers were asked whether a woman *should* declare upfront during recruitment if they are pregnant. Workplaces that had managed a pregnant worker in the last three years (63%) were less likely to feel a woman should declare their pregnancy upfront at recruitment than those who had not (75%).
5. In response to the BIS/EHRC research the Women and Equalities Select Committee (WESC) launched an inquiry into pregnancy and maternity discrimination, drawing attention to the findings of the research. The inquiry also drew on evidence presented by a large range of stakeholder organisations and individuals. It concluded that there were particular issues around a new mother's return to work. This is created by the fact that a mother has enhanced protection against redundancy when on maternity leave but this protection does not apply once she has returned to work. The inquiry recommended extending redundancy protection to apply throughout pregnancy, maternity leave and for six months afterwards.
6. Employment law relating to pregnancy and maternity and redundancy is covered by different Acts of Parliament – the Equality Act 2010 and the Employment Rights Act 1996. 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 discrimination that arises due to her pregnancy; any illness related to her pregnancy, or absence because of that illness; being on compulsory maternity leave; or seeking to take, taking or having taken ordinary or additional maternity leave.
7. Regulation 10 of the Maternity and Parental Leave etc. Regulations 1999 (MAPLE) takes this protection a stage further for the period of maternity leave. It states that if it is not practicable by reason of redundancy for an employer to continue to employ a woman on maternity leave, the employee is entitled to be offered (not just invited to apply for) a suitable available vacancy with her employer (or an associated employer). This gives the woman priority over other employees who are at risk of redundancy, even if they are better qualified for the job. This protection applies only whilst the woman is on maternity leave.
8. To address the specific issues highlighted by WESC and, more generally, protect new and expectant

mothers from discrimination by ensuring that the rights afforded to them apply more consistently across pregnancy and maternity, there is a case to extend the extra protection available under MAPLE during maternity leave into the pregnancy and for a period upon return to work.

9. The Taylor Review of modern employment practices concluded that the legislation in this area is complex. The current absence of a consolidated or uniform position across pregnancy, maternity and a return to work period may drive unproductive costs as businesses struggle to understand their obligations and how much they change. Consolidating these protections, could also help businesses understand their obligations and allow individuals to exercise their rights more easily.
10. In response to the BIS/EHRC report WESC also highlighted the need for greater enforcement of measures to prevent maternity and pregnancy discrimination during redundancy, raising the concern that currently the burden of enforcement predominantly rests with women. Those making a discrimination claim at Tribunal must demonstrate unfavourable treatment with the burden to provide evidence placed on the individual. Under the MAPLE Regulations, the requirement is on the employer to demonstrate that there is no suitable alternative job available. Providing greater consistency of protection during maternity and into a period of return to work, as called for by the WESC, would help reduce the burden on women seeking to make a claim at tribunal.
11. We are pursuing a non-statutory approach to maternity discrimination generally. We have updated and consolidated guidance and have taken steps to signpost that advice and guidance at appropriate stages using other interactions with pregnant women and new mothers – such as through DWP’s MAT B1 form and the NHS’s Start for Life programme. However, a non-statutory approach cannot address the specific issue with the unevenness in redundancy protection afforded to pregnant women and new mothers and the behaviours this can drive.

## **Rationale for intervention**

12. Research has demonstrated the extent of pregnancy and maternity discrimination which exists in the workplace, notwithstanding the fact that it is unlawful. That is why the Government has taken a number of steps to increase individuals’ awareness of their rights and businesses’ awareness of their obligations.
13. Research has also indicated that the current legislative approach to redundancy for pregnant women and new mothers may not be providing adequate protection as a result of the enhanced protections against redundancy under MAPLE only being available during maternity leave. Beyond this period, the level of protection is not as strong and pregnant women and returning mothers could still be subject to redundancy discrimination. There is therefore a role for government to consider whether that protection might better be achieved by extending the protection afforded by MAPLE beyond the maternity leave period.
14. There are societal benefits from new and expectant mothers being able to maintain close links to the labour market without facing the threat of redundancy. It could be argued that employers may be less incentivised to provide an adequate level of employment protection, with their concerns more shaped with managing the costs associated with employing pregnant women and new mothers. This is supported by evidence in the BIS/EHRC report, which found that 70% of employers believed that women should declare to potential employers at recruitment if they are pregnant.
15. As mentioned in the Taylor review, there is a case for creating greater consistency between the legislation containing the redundancy protections against maternity and pregnancy discrimination, which are currently contained in separate pieces of legislation described earlier. A more consistent approach to the legislation would provide greater clarity and help employers more easily understand their obligations.
16. The proposed policy is likely to provide a more accepting environment for a mother returning to work, where they can address any possible misconceptions about their value to the employer. More widely, they are likely to be more productive when returning to the workplace than if they had been made redundant. Further benefits may also flow to the business resulting from having a more committed

individual return to work having been supported through all stages of pregnancy.

17. Another important reason for government intervention is the achievement of equity objectives. It is important that Government supports all groups of people in the economy. Protection against redundancy for new and expectant mothers will help tackle the issue of discrimination in the workplace. Looking further ahead, remaining in the labour market for longer could help combat widening wage differentials between men and women. Recent research<sup>1</sup> on the gender pay gap has found that the difference is relatively small upon entering the labour market before widening around the late 20s, coinciding with the arrival of children. The report found that the gap is fairly stable until the first child arrives, after which there is a gradual and continuous rise in wage gap up to a third, 13 years after the birth of first child. Part of this is driven by the large employment gaps that open between men and women shortly after child birth, leading to a large gap in accumulated labour market experience. If the protections allow mothers to return to work quickly, this could prevent such experience gaps opening up in the first place and aid wage progression.

## Policy Objective

18. Providing greater consistency of approach to redundancy protections would:

- Tackle discrimination based on the (mis)perception that a new mother cannot make a full contribution in the workplace against pregnant women and new mothers returning to work, by protecting them from redundancy for a limited period beyond their statutory period of maternity leave.
- Make it easier for individuals to understand and then seek to exercise their rights and to increase business awareness of their rights and obligations to better tackle pregnancy discrimination in the workplace.

## Options Identification

19. The main options being considered are:

### Option 1 - Do nothing

20. The protection against redundancy afforded by MAPLE would continue to apply only to the maternity leave period. Based on anecdotal evidence, the issue of different rights applying during the pregnancy and maternity period would remain with employers simply waiting and making a new mother redundant immediately on return to work would remain. This is not the “good work” envisaged under Industrial Strategy, it does not help increase the participation of women in work and it has consequences for the gender pay gap (a key driver of which is the time women spend out of work providing childcare).

### Option 2 – More effective advice and guidance

21. The BIS/EHRC report also found that only 10% of employers surveyed reported low awareness of pregnant women’s rights, which suggests that a promotional campaign may not fully address the issue of pregnancy and maternity discrimination.
22. Despite the above, we have committed to review and update advice and guidance on pregnancy and maternity discrimination generally to ensure it is as effective as it can be. The consultation invites views on how effective these steps have been, and might be, and asks what more be done in this area.
23. Advice and guidance cannot address the specific issue of the different levels of protection which apply over different periods during pregnancy and maternity.

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<sup>1</sup> <https://www.ifs.org.uk/publications/10358>

**Option 3 - Legislate to extend the existing protections provided during maternity leave by MAPLE to mothers who are expecting and for six months following statutory maternity leave.**

24. This option would require primary legislation.
25. The consultation will consider the point in pregnancy from which redundancy protection should apply. The initial preference set out in the consultation is that this should be consistent with the requirements of the Pregnant Workers Directive (when a woman informs her employer that she is pregnant) but we will be inviting views on whether we should look to go further.
26. WESC have previously recommended extending redundancy protection to cover the six-month period upon return to work, pointing to similar arrangements in Germany, where women are protected from loss of employment for up to four months following child birth. With this in mind, the Government will consult on extending MAPLE for six months, providing greater consistency between those on maternity leave and those looking to return to work.
27. Whilst the Government has considered multiple options for how long the protection should last upon return to work, six months was deemed to be a sufficiently long period for a new mother to re-establish herself in the workplace and demonstrate her value to the employer and help tackling the (mis)perception that a new mother will be a less effective performer than her colleagues. It was thought that three months would simply delay the point at which an employer sought to make a new mother redundant. Twelve months was thought too long a period for these purposes and would represent an unjustified burden on businesses seeking to deploy their staff most effectively. Limited information exists on how effective similar proposals have been in other countries, making it difficult to argue there is a specific amount of time for which the protection should last. However, the consultation will invite stakeholders to submit views on the lead option and justify alternative proposals. In turn, we will refine our estimates and modelling assumptions following the results of the consultation.
28. The Government is also committed to improving the provision of information on maternity rights to ensure that employees can better understand their rights and employers are aware of their obligations. In response to the Taylor review of modern working practices, the Government committed to consolidating the maternity and discrimination pages on gov.uk and working more closely with a range of partners such as Acas and EHRC to this effect. Whilst more effective guidance in isolation will not be sufficient to protect against pregnancy and maternity discrimination, this remains a key part of the preferred option and the consultation will ask stakeholders what additional steps can be taken to improve advice and guidance.

**Rationale and evidence that justify the level analysis using in the IA (proportionality approach):**

29. For a consultation IA we have modelled the costs and benefits as best we can with evidence at hand. It would be disproportionate to carry out a large evidence review to validate our assumptions at present. Given the uncertainty that rests with trying to model how businesses could react to the reforms we realise it would be beneficial to improve the evidence base where possible. Therefore, we will aim to refine our assumptions and estimates during the consultation phase and base this on conversations with other stakeholder groups.

**Monetised costs and benefits**

*Methodological Approach*

30. We have attempted to model the costs and benefits to individuals, businesses and the Exchequer of widening the special protections afforded under MAPLE to cover the twenty-week period before a pregnant woman goes on maternity leave. In addition, we have also costed the extension of redundancy protection for a period of six months after a new mother returns to work.

31. To calculate the estimates for the benefits and costs, the model first attempts to build the target population that would be affected by Option 3. We have estimated the costs of Option 3 (legislative option) upon the policy being implemented.
32. After the legislation is implemented, we assume that businesses can respond in two ways; in the first scenario we assume that businesses respond to the legislation by making another member of staff redundant, leaving their overall labour costs unchanged.<sup>2</sup> In the second scenario, we assume the businesses do not make someone else redundant and thus bear the associated labour costs of paying her in the periods before and after she goes on maternity leave. For the counterfactual we assume the woman was involuntarily made redundant in both scenarios. For our best estimate we assume that 50% of businesses fall into first scenario and the remaining 50% in the second scenario. This is based on survey evidence<sup>3</sup> exploring the main reasons why employers make workers redundant. We shall be using the consultation phase to test the validity of these assumptions.
33. It could also possible that businesses may seek to offset labour costs by cutting costs elsewhere in the business. We have yet to factor this into the analysis but will be seeking to use the consultation phase to see how businesses may respond to the policy and accordingly refine our assumptions.
34. In addition to the costs outlined above, we model the one-off familiarisation costs incurred as businesses spend time to understand the new legislation and the Exchequer costs of providing statutory maternity payments during maternity leave to affected individuals, less the contribution made by employers.

#### *Eligible population*

35. We first make use of ONS<sup>4</sup> and NRS<sup>5</sup> data on live birth characteristics split by the age of the mother to derive the total number of births for the most recent year available (2016) giving us a total of 750,800 births across Great Britain. Since the policy only affects those in employment we calculate the employment rate for females of child bearing age. We find that almost 100% of mothers who gave birth in 2016 were aged 45 or under; therefore, we attempt to calculate the employment rate for this group (Table 1).

**Table 1** – Employment rate for females aged 16 – 49, UK

Age group	Employment level	Employment Rate
16 - 17	178,000	26.2%
18 - 24	1,673,000	60.7%
25 - 34	3,468,000	77.5%
35 - 49	5,148,000	79.8%

36. The age groups for the number of females employed do not match up exactly to age groups for mothers at childbirth, with the former capturing women aged 46 – 49 but we do not imagine this will be significantly different to employment rates of women aged between 35 – 45. Those aged 46 – 49 will not have reached the State Pension Age, which is the earliest age individuals can start receiving their state pension; this is currently 65 for women.<sup>6</sup> Even employees with workplace pensions are unlikely to have retired before 55 as individuals will have had less time to build up their pension pot and could face a tax charge of up to 55% on payments from their pension before they reach 55.

<sup>2</sup> This obviously assumes the same wage rates and productivity of the women being retained relative to the alternative staff member being made redundant.

<sup>3</sup> Workplace Employment Relations Survey (WERS), 2004 & 2011

<sup>4</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/livebirths/datasEmploymentTribunal/birthsbyparentscharacteristics>

<sup>5</sup> <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2016>

<sup>6</sup> <https://www.pensionsadvisoryservice.org.uk/about-pensions/the-state-pension/know-your-state-pension-age>



Therefore, it is unlikely that women aged 46 – 49 will have employment rates that deviate markedly to those aged 35 – 45. Furthermore, research conducted by the IFS examining the employment trends of women over the last 40 years found that the employment rate of women aged 25 – 54 reached 78% in 2017, which is comparable to employment rates for age groups shown above.<sup>7</sup> To calculate the employment rate across the 16 – 49 group, we first calculate the size of labour force across each age group using ONS data.<sup>8</sup>

<b>Calculation of employment rate for females aged 16 – 49</b>	
Labour Force =	Employment level ÷ Employment Rate
Labour Force (16 – 17) =	168,000 ÷ 26.2% = 680,000
Labour Force (18 – 24) =	1,673,000 ÷ 60.7% = 2,756,000
Labour Force (25 – 34) =	3,468,000 ÷ 77.5% = 4,474,000
Labour Force (35 – 49) =	5,148,000 ÷ 79.2% = 6,452,000
Labour Force (16 – 49) =	680,000 + 2,756,000 + 4,474,000 + 6,452,000 = 14,362,000
<b>Employment Rate (16 – 49) =</b>	<b>Employment Level (16 – 49) ÷ Labour Force (16 – 49)</b>
Employment Rate (16 – 49) =	10,467,000 ÷ 14,362,000 = <b>72.9%</b>

37. Applying the employment figure above to the total number of births above gives us the total number of new and expectant mothers in employment. Since the self-employed fall outside the scope of the policy we strip these out of the eligible population. Since we do not have age break-downs for women who are self-employed we make use of the overall self-employment rate (16 – 64) for women as proxy for self-employment rate new mothers (10.7%)<sup>9</sup> and remove these from the employed population.
38. We exclude new and expectant mothers working in businesses with only one employee<sup>10</sup> (under the simplifying assumption that a proportion of these firms will genuinely require a redundancy and have no other staff who can be made redundant instead).
39. Following this, we then use the findings from the BIS/EHRC report<sup>11</sup>, using the proportion of pregnant women and mothers returning from maternity leave who were made redundant, which were 1% and 2% respectively<sup>12</sup>. This gives us the total number of women made redundant (including voluntary redundancies) whilst pregnant and on return from maternity leave. To derive the number of women made involuntarily redundant we only focus on the proportion of cases where an alternative position was not offered, or a position was offered at a lower level (73%)<sup>13</sup>; the remaining 27% were offered alternative positions at the same or higher level. The 73% figure is applied to the estimated number of women made redundant (including voluntary redundancies) to obtain the populations of pregnant women/new mothers made involuntarily redundant. The box below shows how we have calculated the final populations for pregnant women and returning mothers.

<sup>7</sup> <https://www.ifs.org.uk/uploads/BN234.pdf>

<sup>8</sup> Table A05: Labour market by age group: Women by economic activity and age (seasonally adjusted) , ONS

<sup>9</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/trendsinselfemploymentintheuk/2018-02-07>

<sup>10</sup> This has been calculated as 0.7% but has been shown below in workings as 1% for simplicity

<sup>11</sup> Pregnancy and Maternity related discrimination and disadvantaged research: Experiences of mothers (2016), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf)

<sup>12</sup> Pregnancy and Maternity related discrimination and disadvantaged research: Experiences of mothers (2016), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf)

<sup>13</sup> As this mirrors current protections for women on maternity leave, which effectively require employers to offer those on maternity leave an alternative post at a level comparable with their current post.

40. We have assumed that upon the implementation of the policy there will be no behavioural changes on the percentage of businesses offering alternative positions at a lower level. It could be feasible that after the proposed option is legislated that businesses which were able to offer a position of higher quality in the current system but choose not to will now be under pressure to do so, meaning the 73% figure might yield a high estimate of the number of involuntary redundancy cases. We shall gather further evidence during the consultation phase to test this assumption. It could also be possible that after the policy is implemented, employers may incur higher administrative costs in collecting evidence in order to justify making someone redundant; these costs have not been estimated in the IA.
41. Under the current system employers could still be justified in making pregnant women/returning mothers redundant for reasons unrelated to pregnancy and where it can be demonstrated that no suitable alternative position exists e.g. where businesses faced the threat of bankruptcy and closure. Since this would still follow under the proposed policy we attempt to carve out these cases, using data from European Restructuring Monitor (ERM)<sup>14</sup>, which provides information on the large restructuring events reported in national media across EU member states. The data shows that 31% of job losses can be attributed to bankruptcy/closure or relocation<sup>15</sup>. We deduct the percentage of cases from the entire target population to arrive at a final figure below. One limitation with the data source is that the monitor almost exclusively reports on restructuring in medium and larger size firms. Whilst we do not have information for small firms we would imagine that the percentage of jobs lost to bankruptcy or closure in these firms would likely to be higher since small firms tend to have less complex organisational structures and are likely to incur job losses for more conventional reasons. The database has covered restructuring events since 2002 so is unlikely to be adversely impacted by the financial crisis.

Total number of new and expectant mothers in employment = Total number of births a year (GB) 2016 x Employment rate for females

$$= 750,800 \times 72.9\% = 547,100$$

Total number of new and expectant mothers self-employed = Total number of new and expectant mothers in employment x Percentage of working females, who are self-employed

$$= 547,100 \times 10.7\% = 58,500$$

Total number of new and expectant mothers in employment excluding self-employed = Total number of new and expectant mothers in employment - Total number of new and expectant mothers self-employed

$$= 547,100 - 58,500 = 488,600$$

Total number of new and expectant mothers employed in workplaces with 1 employee = Total number of new and expectant mothers in employment excluding self-employed x Percentage of UK private-sector employment in workplaces with 1 employee

$$= 488,600 \times 1\% = 3,400$$

Total number of new and expectant mothers employed in workplaces with more than 1 employee = Total number of new and expectant mothers in employment excluding self-employed - Total number of new and expectant mothers employed in workplaces with 1 employee

$$= 488,600 - 3,400 = 485,200$$

<sup>14</sup> [https://www.eurofound.europa.eu/observatories/emcc/erm/restructuring-statistics?field\\_value\\_group\\_by=restructuring\\_type&field\\_value\\_country=9520&field\\_value\\_sector=All&date\\_from=&date\\_to=&edit-submit=Apply](https://www.eurofound.europa.eu/observatories/emcc/erm/restructuring-statistics?field_value_group_by=restructuring_type&field_value_country=9520&field_value_sector=All&date_from=&date_to=&edit-submit=Apply)

<sup>15</sup> Stripping out these cases leaves us with 69% cases (100% - 31%). We carve out these cases to avoid including cases where the employer could be justified in making redundancies for reasons unrelated to pregnancy and thus avoid overestimating the target population.

Total number of women made redundant while pregnant including 'voluntary' redundancies = Total number of new and expectant mothers employed in workplaces with more than 1 employee x Proportion of all mothers reported being made redundant whilst pregnant

$$= 485,200 \times 1\% = 4,900$$

Total number of women made redundant on return from maternity leave including 'voluntary' redundancies = Total number of new and expectant mothers employed in workplaces with more than 1 employee x Proportion of all mothers reported being made redundant on return from maternity leave

$$= 485,200 \times 2\% = 9,700$$

Women who would be protected from redundancy while pregnant excluding voluntary redundancies = Total number of women made redundant while pregnant including 'voluntary' redundancies x Share of new and expectant mothers were made redundant where no alternative position offered/lower level

$$= 4,900 \times 73\% = 3,500$$

Women who would be protected from redundancy on return from maternity leave excluding voluntary redundancies

= Total number of women made redundant on return from maternity leave including 'voluntary' redundancies x Share of new and expectant mothers were made redundant where no alternative position offered/lower level

$$= 9,700 \times 73\% = 7,100$$

Women who would be protected from redundancy while pregnant excluding voluntary redundancies (Excluding bankruptcy/closure cases/relocation)

= Women who would be protected from redundancy while pregnant excluding voluntary redundancies x Percentage of job losses not due to bankruptcy/closure/relocation

$$= 3,500 \times 69\% = 2,500$$

Women who would be protected from redundancy while pregnant excluding voluntary redundancies (Excluding bankruptcy/closure cases/relocation)

= Women who would be protected from redundancy on return from maternity leave excluding voluntary redundancies x Percentage of job losses not due to bankruptcy/closure/relocation

$$= 7,100 \times 69\% = 4,900$$

42. When estimating the eligible population we have not made use of the 11% of mothers who felt forced to leave their job since this covers the period between the mother informing her employer of her pregnancy up to the point when they were questioned in the survey. Mothers who had a child between 9 months and 24 months, who had worked during pregnancy were eligible for interview. The purpose of the policy is to extend redundancy protection into pregnancy and for a period after the mother returns to work, which is why we have used figures on the percentage of mothers made redundant whilst pregnant (1%) and upon their return from maternity leave (2%). The consultation will invite views on extending redundancy protection upon return to work to new parents, who take extended periods of leave for similar purposes as maternity leave i.e. adoption leave, shared parental leave and parental leave. We have limited the modelling to focus on pregnant women and returning

mothers as this remains the lead option but will revise our estimates in line with policy development.

**Table 2** – Summary of Costs and benefits

<b>Scenario Description</b>		
	<b>Scenario 1: Substitution</b>	<b>Scenario 2: Cost - offset</b>
<b>Without enhanced redundancy protection (Before)</b>	Mother is made redundant	Mother is made redundant
<b>With enhanced redundancy protection (After)</b>	Mother is kept on AND Another member of staff is made redundant instead	Mother is kept on
<b>Additional Business costs and benefits</b>		
<b>Recurring business costs</b>	(Contribution to maternity pay (in relation to pregnant mothers)	(Contribution to maternity pay (in relation to pregnant mothers)
		Labour costs of keeping the mother for the period of protection (pregnant and returning mothers)
<b>One-off costs to business</b>	Familiarisation Costs	Familiarisation Costs
<b>Recurring benefits to business</b>		Benefits of not having to pay redundancy pay (pregnant and returning mothers)
		Benefits of no costs for Employment Tribunal and early conciliation (pregnant and returning mothers)
<b>Additional benefits to individuals</b>		
<b>Recurring benefits to individuals</b>	Maternity pay less Maternity allowance (those pregnant at time of redundancy)	Maternity pay less Maternity allowance (those pregnant at time of redundancy)
		Benefits of no costs for Employment Tribunal and Early Conciliations (pregnant and returning mothers)

		Wages less redundancy payments (pregnant and returning mothers)
<b>Additional benefits to Exchequer</b>		
<b>Recurring benefits to exchequer</b>	Benefit of no longer paying Maternity Allowance	Benefit of no longer paying Maternity Allowance
		Benefits of no costs for Employment Tribunals and Early Conciliations (pregnant and returning mothers)
<b>Additional costs to Exchequer</b>		
<b>Recurring costs to exchequers</b>	Maternity pay (pregnant mothers)	Maternity pay (pregnant mothers)

### Scenario modelling

43. We assume that there are effectively two scenarios of how employers behave under the current legislative framework and how they might behave in response to the proposed reforms. Assumptions will need to be made in relation to the proportion of businesses that might fall within each scenario.
44. **Scenario 1 (Substitution)** describes employers who, before the introduction of enhanced protections, would have made a pregnant women/mother returning from maternity leave redundant. We assume that after the introduction of the legislation these employers would make another member of staff redundant instead. As a result, employers in scenario 1 would face costs relating to the business contribution to maternity pay (for the pregnant women kept on). There would be no business benefits, e.g. because businesses would still incur redundancy payments in relation to those they make redundant instead and potential Employment Tribunal (ET) costs<sup>16</sup>.
45. **Scenario 2 (Cost - offset)** describes employers who, before the introduction of enhanced protections, would have made a pregnant women/mother returning from maternity leave redundant. We assume that after the introduction of the legislation, these employers would no longer make the woman redundant, but nor would they make anyone else redundant either. Employers in scenario 2 would thus face additional recurring labour costs from keeping the pregnant/returning women and costs associated with the business contribution to maternity pay. They also accrue benefits from not having to pay redundancy pay and costs associated with Employment Tribunals and Early Conciliation. As the initial motivation for making the women redundant may have been to cut costs, it may be that a proportion of these employers would cut costs elsewhere in the business instead, e.g. by cutting premium payments for overtime etc. The potential reduction of costs in other parts of the business would be classified as indirect costs and have not been considered within the IA.

<sup>16</sup> This obviously assumes the same wage rates and productivity of the women being retained relative to the alternative staff member being made redundant.

46. A key component of the model rests with how businesses will react to proposed reforms and which scenario they might fall in. Management decisions will depend on the size of the business, existing costs, sector and how the skills/knowledge of the pregnant woman or mother returning to work and her value to the employer. Additional labour costs may drive some businesses to make staff redundant elsewhere in the business, leaving overall labour costs unchanged, based on our assumptions about the comparability of skills between pregnant women/returning mothers and other employees.
47. We acknowledge the assumption on skill comparability may not always hold with the employer having to make someone, who could be better suited to the role, redundant. However, we argue that an employer will be incentivised to find someone similarly skilled to the mother in order to minimise costs to the business. A large employer will have more scope to find suitable staff for redundancy as they will have a larger pool of candidates to select. In these instances, we feel the initial assumption on skill comparability between protected mothers and other staff to be reasonable.
48. However, we recognise that a small employer will have less discretion in choosing alternative staff for redundancy. Here, it is more likely the business will have to resort in making someone redundant, who was not their first choice. It can be argued that if the skill disparities are very large, employers could respond to the reforms by not making this person redundant, given their value to the business and consistent with behaviour in scenario 2. Whilst we accept that making staff redundant may negatively impact productivity and morale we have not monetised this as it is impossible to quantify this and predict how firms will implement these redundancies.
49. In practice, firms do not have perfect information on the relative skill disparities between staff members, limiting the ability to make such comparisons. In absence of this information we resort to assumption that alternative employees chosen for redundancy will be similarly skilled to the protected employees, yielding no additional labour costs in scenario 1.
50. Whilst the precise business response to the reforms cannot be predicted with certainty, we attempt to model business behaviour using data from the Workplace Employment Relations Survey (WERS)<sup>17</sup>, which has previously examined relationships and operations at the workplace. For those employers who had to make redundancies in the last 12 months, workplace managers were asked what had been the main reason. The table below illustrates the break-down for the last two surveys.

Main Reason	2004	2011
Lack of demand for products/services	24%	28%
Shortage of materials	1%	0%
Automation/mechanisation/new equipment	3%	2%
Reorganised working methods	36%	32%
Improved competitiveness/efficiency/cost reduction	12%	9%
Merger with another establishment or organisation	3%	2%
Industrial disputes	0%	0%
Reductions in budget/cash limits	8%	18%
Some other reason (please specify)	13%	9%

51. The table above suggests that firms face several different events which could lead to redundancy and occur over different timeframes e.g. some appear to be a short-term response, for example, to a lack of demand or financial constraints, whilst others appear to be more strategic, perhaps driven by restructuring over the longer term. For firms falling into scenario 1, we assume these firms are making redundancies as a response to an immediate pressure – and therefore we assume they would make someone else redundant. We attempt to estimate the proportion of businesses following this strategy by using the table above to calculate the percentage of businesses making

<sup>17</sup><http://nesstar.ukdataservice.ac.uk/webview/index.jsp?v=2&mode=documentation&submode=abstract&study=http://nesstar.ukdataservice.ac.uk:80/obj/fStudy/7226&top=yes>

redundancies over the 'short term', which we believe would include i) Lack of demand for products/services, ii) Improved competitiveness/efficiency/cost reduction, iii) Reductions in budget/cash limits.

52. Using 2011 data we find that 55% of firms cited these 'short-term' reasons above. However, these results may have been affected by the 2008 financial crisis; a larger percentage of firms may have cited lack of demand as a main reason for redundancies than in other years. To avoid over estimating the percentage of firms following scenario 1, we also include the survey results from the previous 2004 survey and find 44% of firms citing these short-term factors. For our best estimate we take the approximate midpoint and assume 50% of firms will follow scenario 1. For the remaining firms (50%), who do not make anyone redundant in response to the reforms, we assume these will fall into scenario 2.
53. The assumptions on how businesses could react to the policy are based on limited evidence and remain uncertain and will serve as a holding assumption at present as we cannot predict with a high level of confidence how firms will react to the policy. We plan to use the consultation to explore how businesses could react to the imposition to the proposed option i.e. do they seek to lower costs elsewhere in the business. Table 3 shows the percentage of businesses falling into the different scenarios.
54. The WERS survey results are based on a stratified random sample from the Inter Departmental Business Register (IDBR), with the overall sample being representative of workplaces with at least 5 employees. Whilst the results will not cover the businesses with fewer than 5 employees, the 'short term' factors for redundancy we have identified for scenario 1 are likely apply to the smallest companies and even argue they are more likely to be affected by these short-term factors given their size. The current approach allows us to take a more cautious view as it is feasible the percentage of firms citing short term factors would be higher if the survey also covered firms with fewer than 5 employees.

**Table 3 – Scenario Modelling**

Estimate	Scenario 1: Substitution % of businesses	Scenario 2: Cost - offset % of businesses
Low	100%	0%
Best	50%	50%
High	0%	100%

55. The modelling throughout estimates that extending the period of redundancy protection will yield additional costs to businesses, which may impact recruitment behaviour after policy implementation. However, the Equality Act 2010 prohibits employers from discriminating against candidates on the grounds of pregnancy and maternity which should serve to minimise the risk of adverse recruitment behaviour. There is also a timing effect that counters any disincentives in employing women of child bearing age as the employer only bears the additional costs of the redundancy protection at the point at which the mother notifies the employer of her pregnancy and not at the interview stage. It could also be argued that employers already face similar disincentives at recruitment, if they perceive a likelihood of maternity leave absence. Since the proposals extend rather than create a new level of protection, we anticipate the reforms to have a modest impact on business incentives. Ultimately, recruitment decisions are far more likely to be influenced by how well the candidates meets the skills required by the employer.

# Monetised Benefits

## Business Benefits

### Savings from not having to pay redundancy payments

56. After the redundancy protections are extended, businesses will benefit from no longer having to pay statutory redundancy payments to pregnant women and mothers returning to work in scenario 2. For scenario 1, those businesses who would have made someone else redundant still face these payments and thus these benefits will not flow to them. Since these benefits only materialise in scenario 2, we then apply a factor of 50% to the population eligible for redundancy payments for pregnant women and returning mothers. Redundancy pay depends on length of service and the age of the employee during service and employees are required to have worked for at least two years with their current employer to receive the entitlement. Since this information is not already available in the public domain, we are unable to provide a full derivation of the population figures in Tables 4 and 5 and instead describe the broad approach. We have analysed LFS micro data to calculate the average number of years served for employees aged 21 or under, 22 – 40 and 41+<sup>18</sup> to mirror the age bands upon which redundancy pay rates are based.<sup>19</sup> Calculation of the redundancy payments can be found below.<sup>20</sup>

Redundancy pay per year of service age 41 and more = 1.5 weeks of pay x average no. years of service age 41 and more

Redundancy pay per year of service age 22 – 40 = 1 weeks of pay x average no. years of service age 22 – 40

Redundancy pay per year of service age less than 22 = 1/2 weeks of pay x average no. years of service age less than 22

Table 4: Redundancy payments previously paid to pregnant women

Age group	Population	Redundancy Pay per year	Average years of service	Total Cost
Proportion of mothers aged 40+	40	£540	9	£0.2m
Proportion of mothers aged 25-39	800	£360	5	£1.5m
Proportion of mothers aged under 24	180	£180	2	£0.1m

Table 5: Redundancy payments previously paid to returning mothers

Age group	Population	Redundancy Pay per year	Average years of service	Total Cost
Proportion of mothers aged 40+	90	£540	9	£0.4m
Proportion of mothers aged 25-39	1,600	£360	5	£3.0m

<sup>18</sup> Current redundancy pay rates are based on the age of the recipient. The relevant age ranges that receive different amounts of redundancy pay are: under 22, 22-40 and 41 and older. <https://www.gov.uk/redundant-your-rights/redundancy-pay>

<sup>19</sup> <https://www.gov.uk/redundant-your-rights/redundancy-pay>



Proportion of mothers aged under 24	400	£180	2	£0.2m
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57. The estimated savings on redundancy payments depends on what proportion of businesses we assume fall into each of the scenarios set out above. If all businesses behave as in Scenario 1 there are no savings on redundancy payments as businesses will have to pay these out to the staff members who they lay off instead of pregnant women/returning mothers. In the high cost estimate, where all businesses previously made pregnant women/returning mothers redundant, we estimate annual savings of £10.7m. ***In our best estimate, we estimate annual savings on redundancy payments of £5.3m.***<sup>21</sup>

#### Savings from reduced Employment Tribunals and Early Conciliation

58. Using evidence from the BIS report on the pregnant women/new mothers going to Tribunal or Early Conciliation that the implementation of the reforms will no longer materialise, yielding savings to business. We apply figures from the report on the proportion of mothers seeking advice from Acas on early conciliation (4%) and lodging a complaint at the Employment Tribunal (1%)<sup>22</sup> to our eligible population to derive the number of pregnant mothers/new mothers who will no longer have to go through Employment Tribunal (100) or Early Conciliation (300)<sup>23</sup>. Again, since these additional costs only materialise in scenario 2, we apply a factor of 50% to the population figures for the best estimate. Combining this with BEIS estimates of the unit employer costs of an employment tribunal hearing (£3,500) and costs of early conciliation (£460) based on a survey of employment tribunal applications<sup>24</sup> ***we estimate annual savings to employers between £0m and £0.4m with a best estimate of £0.2m per year.***

#### *Individual Benefits*

##### Wages received from employers less redundancy payments

59. Extending the MAPLE protections beyond maternity leave means both pregnant and returning mothers will now benefit from the salary they continue to receive before going on leave. These salary payments should be seen as a direct transfer from businesses to individuals. Since these are costs to businesses we calculate these in a similar fashion but do not lift these upwards to account for non-wage costs, incurred by employers. For pregnant women now protected from redundancy we calculate the salary in two parts; 20 weeks before they go on maternity leave and for an additional six months upon return to work. We apply the median weekly earnings for females excluding overtime for females, aged 16 and over and calculate this over the eligible population.

60. Since businesses no longer have to pay out redundancy payments to individuals in scenario 2, these benefits no longer flow to individuals. We ***estimate benefits of wages less redundancy payments between £0m and £76.7m with a best estimate of £38.4m per year.*** The box below illustrates how we have estimated this for the best case.

<sup>21</sup> Aggregating figures across tables 5 and 6 gives slightly different figure due to rounding

<sup>22</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf), p145)

<sup>23</sup> Figures rounded to nearest 100

<sup>24</sup> Findings from the Survey of Employment Tribunal Applications 2013 (SETA)

### Payments to pregnant women

Eligible population = Population size x % employees falling into scenario 2  
= 2,500 x 50% = 1,200

Total wages received before maternity leave (20 weeks) = Eligible population x Median Wages x 20  
= 1,200 x £359.90 x 20 = £8.9m

Total wages upon return to work (26 weeks) = Eligible population x Median Wages x 26  
= 1,200 x £363.26 x 26 = £11.6m

Total payments received (less redundancy payments) = £8.9m + £11.6m - £1.8m = £18.7m

### Payments to returning mothers

Eligible population = Population size x % employees falling into scenario 2  
= 4,900 x 50% = 2,500

Total wages upon return to work (26 weeks) = Eligible population x Median Wages x 26  
= 2,500 x £363.26 x 26 = £23.2m

Total payments received (less redundancy payments) = £23.2m - £3.6m = £19.7m

Population figures rounded to nearest 100 and payments rounded to nearest £0.1m

### Maternity Pay (SMP) less Maternity Allowance (MA) payments

61. Pregnant women who are no longer made redundant will now benefit from maternity pay, which they receive from their employer, which is paid at 90% of average salary using ASHE 2017 data for the first 6 weeks and then at the statutory rate for £145.18 per week for the remaining 33 weeks.<sup>25</sup> However, we also assume that women who were made redundant prior to the implementation of the policy would have been able to claim MA, which is paid to the self-employed and those who have stopped working at the statutory rate for the entire 39 weeks. We calculate the difference to derive the net benefit of maternity payments to mothers. Using the same reasoning earlier in the IA, this assumes that all pregnant women otherwise made redundant would have been able to claim MA given the low earning thresholds for the qualifying criterion. After the legislation is implemented we assume those who do not qualify for SMP can instead claim MA.
62. The benefits here are estimated by calculating the net payments from maternity pay less maternity allowance, aggregated across all the women would be protected from redundancy while pregnant. **We estimate an annual benefit of £2.3m per year to individuals from maternity payments less maternity allowance.** Table 6 below shows how we have arrived at this figure.

<sup>25</sup> <https://www.gov.uk/maternity-pay-leave/pay>

**Table 6:** Individual benefits (Maternity payments and Maternity Allowance)

After Policy implemented	
Maternity Pay	£14.3m
Maternity Allowance <sup>26</sup>	£1.9m
Before Policy Implemented (counterfactual)	
Maternity Allowance	£13.9m
<b>Net payments to individuals</b>	<b>£2.3m</b>

Savings from reduced Employment Tribunals (ET) and Early Conciliation (EC)

63. Following a similar strategy used to estimate these benefits for businesses above we attempt to calculate savings for individuals who no longer go to tribunal or early conciliation. Combining this with BEIS estimates on unit individual costs of an employment tribunal hearing (£1,000) and costs of early conciliation (£144) based on a survey of employment tribunal applications<sup>27</sup> **we estimate annual savings to individuals between £0m and £0.12m with a best estimate of £0.06m per year.**

*Exchequer Benefits*

Savings from no longer paying Maternity Allowance

64. For pregnant women no longer made redundant, we previously assumed that this entire group would have claimed Maternity Allowance (MA), which is less generous, at cost to the Exchequer. Under the proposed option, these women who are protected under the enhanced redundancy protection will no longer claim MA and instead claim SMP (see above for more detail on this). Therefore, we cost the savings to the Exchequer from no longer incurring the costs associated with MA.

65. The benefits here are calculated by taking the statutory pay rate for maternity allowance and assume all pregnant women previously made redundant claim would have claimed this for the entire 39 weeks. **We estimate annual savings to the Exchequer of £13.9m per year for our best estimate.**

**Table 7:** Exchequer savings for Maternity Allowance payments no longer paid

Eligible population	2,500
Unit Cost of MA (£145.18 per week for 39 weeks)	£5,662
Total Savings of not having to pay MA	£13.9m

Savings from reduced ET and EC claims

66. Like businesses and individuals, the Exchequer now benefits from no bearing the costs linked with ET and EC claims for both pregnant women and mothers returning to work. The methodology is the same, but we apply the unit Exchequer costs to derive the aggregate savings to the Exchequer here.

67. The unit Exchequer cost of an employment tribunal hearing is £2,300<sup>28</sup> and the Exchequer cost of early conciliation is £123, taken from Acas annual report.<sup>29</sup> Applying these costs to the number of pregnant women and women returning to work who go through EC and ET, **we estimate annual savings to the Exchequer of £0.1m for our best estimate.**

<sup>26</sup> Using the qualifying criterion, we find approximately 300 women would not qualify for SMP once the reforms are implemented and thus assume they would have been able to claim MA instead at cost to the Exchequer. These are also added to the SMP payments paid out of the Exchequer to arrive at a total Exchequer impact.

<sup>27</sup> Findings from the Survey of Employment Tribunal Applications 2013 (SETA)

<sup>28</sup> Figure provided by MoJ

<sup>29</sup> <http://www.acas.org.uk/media/pdf/e/s/Acas-annual-report-2016-2017.pdf> (p27)

## Costs to business

### Familiarisation costs

68. Due to the policy, businesses will have to spend more time familiarising themselves with the new legislation. Given that smaller businesses have fewer staff and thus a lower likelihood of pregnant women/or women returning from maternity we assume that they will need less time to familiarise themselves with the new regulation. We assume that for smaller businesses (1 – 49 employees)<sup>30</sup>, a manager or senior member of staff will spend around 30 minutes to understand the policy and that in large businesses (>50 employees) an HR director and 3 HR administrative assistants will each spend around 2 hours to familiarise themselves and potentially update HR policies and guidance. We have not used the EU Commission classifications to define firm size throughout. Smaller businesses are likely to have less complex communication systems and so filtering information down the organisation about the new legislation will be less resource intensive. However, for larger businesses, HR directors will need to set aside time to understand the legislation and inform other members of staff and provide training to managers across the company, which may have multiple sites.
69. Across all companies, we value the resource costs using data from the Annual Survey of Hours and Earnings (ASHE) 2017<sup>31</sup>. Businesses with 50 employees or more are likely to have a HR Manager or Director to lead on familiarisation. Using data from ASHE, we find the hourly wage rate to be £26.59 per hour. This is uprated by 20.1% to £32.07 per hour to include non-wage labour costs. In addition, the large firms will have 3 HR admin assistants each on £11.38 per hour. After accounting for non-wage costs, large firms incur total costs of £13.72 for each admin assistant. For smaller firms we assume the burden of understanding the new legislation falls on the Managing Director/Owner, finding the average wage of Managers/Directors/Senior official to be £26.15 and £31.54 after adjusting for non-wage costs. The table below shows how we have estimated the familiarisation costs across both small and large firms.

**Table 8 – Scenario Modelling**

Business Size	Number of firms	Assumed Time (hrs)	Wage and non-wage cost (per hour)	Total Costs
Small Firms (1 - 49 employees)	1,345,000	0.5	£31.54	<b>£21.2m</b>
Large Firms (>50 employees)	49,000	2	£73.24	<b>£7.2m</b>

70. Using the 2017 BEIS Business population estimates for the whole economy, **we estimate total familiarisation costs to be £28.4m**. We will use the consultation period and information collected during the consultation phase to validate our assumptions for the final stage Impact assessment.

### Labour costs

71. Some businesses, depending on their behaviour before and after the policy being implemented, will incur a labour cost from retaining pregnant staff or staff returning from maternity leave that would otherwise have been made redundant. These costs are highly dependent on a) the point at which pregnant women are made redundant; and b) the duration of the protection for returning mothers. For pregnant mothers, we assume they were made redundant after they formally tell their employer in writing they are pregnant (usually 20 weeks before the due date). Therefore, after the policy is implemented this results in an additional 20 weeks of labour costs for affected employers. For the same population we also cost the labour costs for an additional six months essentially assuming employers would have previously made returning mothers redundant upon their return to work. We will be aiming to speak to external stakeholders to establish the validity of this assumption.

<sup>30</sup> Despite not including women who work in businesses with only one employee when calculating the number of eligible women, we include businesses with only one employee in the calculation of the familiarisation costs. This is because we assume that businesses with only one employee will familiarise themselves with the policy even though they will never make use of it.

<sup>31</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasEmploymentTribunal/occupation4digitsoc2010ashtable14>

72. It could be possible that businesses incur reorganisation costs in scenario 1, when taking on new workers. We have yet to factor this into the analysis and will be using the consultation to fill any evidence gaps here. It is also important to note that a sizeable proportion of these costs will be a transfer to affected individuals in the form of wages they previously would not have received prior to the legislation being implemented. The difference between the labour costs incurred by business and wage payments received by individuals are the non-wage costs incurred by firms, which will mainly cover social contributions. These can also be interpreted as a transfer to the individual, however, since we do not know when the individual benefits from these additional payments we do not include them in the benefits to individuals.
73. The labour costs are estimated for both pregnant women and mothers returning from work. We calculate a weighted median weekly wage for affected women using ASHE 2017 data and weight this by the age of mothers for live births across Great Britain in 2016, yielding an estimate of £359.90 for the weekly wage costs (Table 9). An adjustment factor<sup>32</sup> is also applied to reflect non-wage costs incurred by business. Wage costs are taken from ASHE 2017 provisional data.<sup>33</sup> For the pregnant women otherwise made redundant, we conservatively cost the labour costs for the 20 weeks before maternity leave and the six months after the end of maternity leave<sup>34</sup>. For women returning to work, we follow a similar approach but only estimate labour costs for the six months of protection after they return from maternity leave. Applying these wage rates to the relevant eligible populations our **best estimate of the labour costs to employers is £52.7m per year. In our low-cost estimate, businesses do not incur any labour costs and in our high cost estimate labour costs are £105.4m per year.**

**Table 9** – Calculating Median weekly Wages for pregnant women/new mothers

Age group	Employees (000s)	Median Weekly Pay (£) <sup>35</sup>	Weighted Weekly median Pay (£)	% Live Births (GB) by age of Mother <sup>36</sup>
16-17	155	60.8	308.9	46.1%
18-21	649	168.8		
22-29	2,232	366.8		
30-39	2,896	408.1	408.1	49.6%
40-49	3,140	375.1	351.7	4.3%
50-59	2,943	360		
60+	994	253.2		

74. Since the data on the mother's age at birth is split into three broad groups, we calculate a weighted median wage for each of these groups using ASHE data on median weekly pay. For the 16 – 29 group we calculate the median wage across these groups using data on the number of employees in these age groups (see below).

<sup>32</sup> Non -wage costs (20.6% )Eurostat, April 2018

<sup>33</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/agegroupashetable6>

<sup>34</sup> Reflecting policy design

<sup>35</sup> ASHE 2017

<sup>36</sup> ONS and NRS data on live births (2016)

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))] ÷ (155 + 649 + 2,232)

= (155 x 60.8) + (649 x 168.8) + (2,232 x 366.8) = £308.1

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

= (£308.9 x 46.1%) + (£408.1 x 49.6%) + (£351.7 x 4.3%) = £359.90

75. Table 10 shows how we have calculated the labour costs for our best estimate, where 50% of companies fall into scenario 2. We apply this to the estimated populations of pregnant women and returning mothers and then estimate the labour costs these firms pay both before and after the maternity leave period (20 and 26 weeks respectively). The unit wage costs are uplifted to reflect the non-wage costs firm incur and the above assumes that each person works for one employer only.

**Table 10** – Labour costs for pregnant women and mothers returning to work (best estimate)

	<b>Pregnant women</b>	<b>Mothers returning to work</b>
Population size	2,500	4,900
% of businesses falling into scenario 2	50%	50%
Adjusted population <sup>37</sup>	<b>1,200</b>	<b>2,500</b>
Unit labour costs (before Maternity leave)	£434.04	
Total Labour costs (before Maternity leave) - 20 weeks	£10.7m	
Unit labour costs (upon return to work) <sup>38</sup>	£438.09	£438.09
Total Labour costs (upon return to work) - 26 weeks	£14.m	£28.0m
<b>Total Labour costs</b>	<b>£24.7m</b>	<b>£28.0m</b>

#### Maternity pay costs

76. All firms who would have otherwise made a pregnant woman redundant will now contribute to statutory maternity pay. This entitlement is equivalent to 90% of salary for the first six weeks of maternity leave, and £145.18 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. Larger employers (defined as those with a National Insurance contributions bill of £45,000 or more) can recover 92% of statutory maternity payments made to their employees, equivalent to a cost of 8% of the statutory payments they make. Using the population estimates we calculate an average contribution of 5.8% to statutory maternity payments from employers.

77. To qualify for statutory maternity pay, employees must have worked continuously for the same employer for at least 26 weeks and earned on average £116 per week. We make use of earlier

<sup>37</sup> Apply 50% factor to populations to account for businesses pursuing cost-offset strategy.

<sup>38</sup> Labour costs uplifted for period upon return to work, reflecting percentage change in wages over time (ASHE 2017)

analysis of LFS micro data, which found that 97% of female employees had worked for the same employer continuously for at least six months. For the earning requirement we use ASHE 2017 data to calculate where £116 falls on the female earning distribution. At the 10<sup>th</sup> percentile weekly earnings (excluding overtime) are £111 per week and £172 per week at the 20<sup>th</sup> percentile. We assume that earnings between the deciles are equally distributed (with each percentile representing approx. £6) calculating £116 for the 11<sup>th</sup> percentile. The table below summarises how we have derived the maternity pay estimates.

**Table 11 – Maternity Pay costs for Employers**

Eligible population	2,500
% working at least 6 months	97%
% earning at least £116	89%
Population eligible for SMP	2,100
Maternity pay per person	£6,734
Average Business contribution	5.8%
<b>Business contribution to SMP</b>	<b>£0.8m</b>

78. **Overall, this yields a best estimate of maternity payments to employers of £0.8m per year** This is also the case for our low cost and high cost scenario as in both scenarios businesses contribute the same amount to the statutory maternity payments.

## Costs to Exchequer

79. For those pregnant women who previously would have been made redundant they will now be able to claim statutory maternity payments at cost to the Exchequer. The methodology above is used to calculate the number of eligible women who satisfy the criterion for claiming SMP.
80. Employers can usually reclaim at least 92% of SMP and 103% if the business qualifies for Small Employer’s relief (those with National Insurance contributions bill of less than £45,000). We deduct the average business contribution to SMP to derive the Exchequer costs (94.2% of SMP payments to pregnant women).
81. Accounting for the proportion of the payment that is covered by large businesses and the larger proportion that can be recovered by small businesses; we estimate **annual Exchequer costs of £13.5m for the statutory maternity payments**. Using the table above this is calculated as follows:

$$\text{Exchequer costs (annual)} = (2,500 \times 97\% \times 89\%) \times (£6,734.41) \times (1 - 5.8\%)$$

## Summary

82. Table 12 shows all the monetised costs and benefits estimated for the impact assessment. Again, the assumptions on how businesses will behave in response to the legislation being implemented will shape the overall costs for this policy, which we will seek to firm up during the consultation. The largest component of the costs are the labour costs, which firms incur under the policy and should be interpreted as a direct transfer from businesses to pregnant/returning mothers.

<b>Table 12 – Monetised costs and benefits from consolidating redundancy protections</b>			
	<b>Low estimate</b>	<b>Best estimate</b>	<b>High Estimate</b>
<b>Business Costs</b>			
<b>One-off (familiarisation costs)</b>	<b>£28.4m</b>	<b>£28.4m</b>	<b>£28.4m</b>
<b>Recurring (annual) costs</b>	<b>£1.2m</b>	<b>£53.5m</b>	<b>£106.2m</b>
<i>Of which labour costs (pregnant women and returning mothers)</i>	£0m	£52.7m	£105.4m
<i>Of which contribution to maternity payments</i>	£0.8m	£0.8m	£0.8m
<b>Exchequer costs</b>			
<b>Recurring (annual) costs</b>	<b>£15.4m</b>	<b>£15.4m</b>	<b>£15.4m</b>
<i>Of which on-going statutory payment cost (discounted by amount covered by business)</i>	£15.4m	£15.4m	£15.4m
<b>Individuals Benefits</b>			
<b>Recurring (annual) benefits</b>	<b>£2.3m</b>	<b>£40.7m</b>	<b>£79.1m</b>
<i>Of which wages less redundancy payments<sup>39</sup></i>	£0m	£38.4m	£76.7m
<i>Of which additional statutory payments<sup>40</sup></i>	£2.3m	£2.3m	£2.3m
<i>Of which savings in costs for ETs and EC<sup>41</sup></i>	£0m	£0.06m	£0.12m
<b>Business Benefits</b>			
<b>Recurring (annual) benefits</b>	<b>£0m</b>	<b>£5.5m</b>	<b>£11.8m</b>
<i>Of which no longer paying redundancy payments</i>	£0m	£5.3m	£10.7m
<i>Of which savings in costs for ETs and EC</i>	£0m	£0.2m	£0.4m
<b>Exchequer Benefits</b>			
<b>Recurring (annual) benefits</b>	<b>£13.9m</b>	<b>£14.0m</b>	<b>£14.1m</b>
<i>Of which no longer paying maternity allowance</i>	£13.9m	£13.9m	£13.9m
<i>Of which savings in costs for ETs and EC</i>	£0m	£0.1m	£0.2m

<sup>39</sup> For both pregnant women and those returning from maternity leave

<sup>40</sup> Shown as maternity payments less maternity allowance here

<sup>41</sup> Employment Tribunals and Early Conciliation



## Non-monetised costs and benefits

83. Extending the redundancy protections to cover pregnant women and new mothers will have costs and benefits beyond those we have estimated throughout the IA. Even with evidence from the consultation available we anticipate calculating these to be extremely difficult given the level of ambiguity of earlier studies on the impact of employment protection legislation.<sup>42</sup>

### *Benefits to pregnant women and mothers returning to work*

84. Aside from the direct benefits from being paid their existing salaries individuals will return to a more accepting work environment, which is likely to benefit the family. For this group of individuals average job tenure may increase, during which they build their skills and knowledge, maintaining their attachment to the labour market and aiding with wage progression.

85. A more supportive work environment for affected individuals may also yield positive benefits in terms of improving wellbeing and health of the employees by being able to participate in the labour market for longer. A well-known paper<sup>43</sup> on wellbeing provides evidence highlighting the impact of income on wellbeing with empirical analysis finding that on average that higher income is associated with higher happiness. The same study also found that relative income, where people compare their own salary to others, also affected levels of wellbeing. Other studies have also found linkages with employment status being one of the most influential factors on well-being.<sup>44</sup>

### *Employer benefits*

86. Positive benefits may also 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.

### *Benefits to wider economy and Exchequer*

87. Supporting employers could confer also benefits to the Exchequer if they are able to maintain close attachment to the labour market. A review of the economic literature of the factors linked to well-being concluded there was consensus on the existence of a strong relationship between well-being and psychological health.<sup>45</sup> Higher levels of psychological health could impose less strain on public services.

## Small and Micro-Business Assessment (SaMBA)

88. In light of the survey evidence of pregnancy and maternity discrimination, the proposed policy will affect employers of all sizes in order to consolidate redundancy protection across the labour market. Allowing opt outs for businesses of a certain size would go against the policy aims and would undermine the rights of the affected individuals. It would also allow smaller businesses to discriminate against pregnant women and new mothers returning to work. To meet our objectives this requires that the redundancy protections are consolidated across all businesses regardless of size. The analysis below shows that small businesses will not be disproportionately affected by the policy being implemented.

89. Using Business population statistics, we find that small and micro companies make up 97% of all businesses. These businesses also make up 28% of all employees and 30% of total turnover. Therefore, we assume that 28% of all employees eligible for the extended redundancy protections are likely to work for small and micro businesses.

90. However, it could be reasonable to assume that smaller companies may be more likely to make

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<sup>42</sup> Employment protection legislation: its economic impact and the case for reform, 2003 (European Commission)

<sup>43</sup> Well-being over time in Britain and the USA, D. Blanchflower and A. Oswald, 2004

<sup>44</sup> Personal Wellbeing in the UK, ONS (2013)

<sup>45</sup> Dolan, P., Peasgood, T. and White, M., 2008. Do we really know what makes us happy? A review of the economic literature on the factors associated with subjective well-being. *Journal of economic psychology*, 29(1), pp.94-122.

someone else redundant as they are more likely to be impacted by worker absence compared to a much larger firm. For this reason, it is more reasonable to expect that a smaller company might be more justified in making someone else redundant to alleviate the impact on their costs. If this is the case, we might expect a larger proportion of these firms to fall in scenario 1, potentially reducing the labour costs incurred by small firms.

91. Regarding familiarisation costs, we argue above that since there is likely to be lower prevalence of pregnant women working for smaller firms, the costs of understanding the legislation would be lower for these businesses. Using population estimates and ASHE 2017 we find that small and micro businesses (97%) account for 75% of total familiarisation costs; however, we must also factor in that these businesses only account for 30% of total turnover. Thus, when comparing against turnover, the familiarisation costs do appear to be disproportionately affecting the smaller firms. However, on a per company basis this is not the case with the familiarisation costs imposing a unit cost of £15.38 for small and micro businesses compared to £143.32 for large companies (50 or more employees). Regarding the business contributions to maternity pay, this is alleviated by the fact that smaller employers can recover 103% of statutory payments compared to 92% for larger businesses.
92. We have previously described both the monetary and non-monetary benefits of greater consistency in redundancy protections across the different stages of pregnancy to tackle redundancy discrimination. Exempting small and micro businesses from the policy would undermine equity objectives and the aims of the policy. The BIS/EHRC report revealed that mothers who worked for small employers<sup>46</sup> were more likely to say they felt forced to leave their jobs. Exempting small and micro businesses would also mean a sizeable percentage of the benefits identified above will not be realised, namely the salary payments to individuals affected by the policy.

## Equality Assessment

### Age

93. As a part of the Equality Act 2010, public bodies are expected to account for equality impacts and the Public Sector Equality Duty (PSED), created under the Act in order to consider the potential effects of intervention on individuals with 'protected' characteristics. The PSED covers 9 protected characteristics in total: age, race, gender, disability, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership.
94. The policy is targeted at pregnant women and returning mothers who are likely to these types of employees, who are more likely to fall in certain age bands. The table 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.

**Table 13 – Age Break-downs of mothers at birth, 2016**

Age Band	Number of Maternities (2016)*	Percentage
Under 20	24,439	3%
20 to 24	110,889	15%
25 to 29	211,108	28%
30 to 34	237,619	32%
35 to 39	134,761	18%
40 and over	31,926	4%

<sup>46</sup> The report defines small employers as those with under 49 employees.

## *Pregnancy and Maternity*

95. The policy under discussion may also have gender implications as it is concerned with providing a sense of security to women before and after their pregnancy in the form of more robust employment protections. This will aim to reduce the amount of discrimination towards pregnant women and mothers returning to the workplace so they can avoid redundancy protection.

## *Remaining Characteristics*

96. The proposal is designed to have a positive impact on pregnant and returning mothers and therefore will benefit female employees falling into these groups, however, we do not expect that firmer protections for pregnant women/returning mothers to have a disproportionate effect on other groups. The option will make it unlawful for employers to make women redundant because of their maternity/pregnancy status and thus the changes outlined are unlikely to create barriers to equality in relation to an employee's religion and belief, gender reassignment, sexual orientation, disability and race and their marriage/civil partnership status.

## **Competition Assessment**

97. The option 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.

98. Using the competition filter test 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 redundancy, the likelihood any given employer is expected to be low.

99. Furthermore, the policies will not affect market structure or the ability of new firms to enter markets or affect firm's production decisions.

## **Risks and assumptions**

### *Modelling risks and assumptions*

100. The preliminary costings and analysis in this consultation stage impact assessment are based on several key assumptions, covering the eligible populations and how we think businesses could behave in response to the proposals. Given the level of inherent uncertainty in these assumptions, there is a risk that the scenarios modelled do not reflect future outcomes.

101. We have identified those areas where the existing evidence base underpinning these assumptions is limited. We will use the consultation period to broaden the evidence base where possible. The main area where the level of uncertainty is significant is how businesses could react to the extension of MAPLE beyond maternity leave. We do not attempt to model costs and benefits beyond this period for which MAPLE would cover under the proposed option.

102. In the assessment of the options we try to allow for this uncertainty by providing low, medium and high cost estimates modelled around the percentage of businesses that fall into the different scenarios.

103. Since we are unable to observe precisely when discrimination occurred it was necessary to form assumptions on the point at which discrimination would have occurred absent the policy. Given the lack of data, we followed a cautious approach and assumed for pregnant women going on maternity leave, discrimination would have occurred at the point at which they inform their employer in writing they are pregnant (20 weeks). For returning mothers we assumed that discrimination would have occurred at the point at which they returned to work, yielding an additional six months of salary

payments. The sensitivity analysis section attempts to show the additional labour costs in the event that discrimination would have happened later in the counterfactual.

## Sensitivity Analysis

104. The counterfactual represents what would have happened had the policy not been implemented, with MAPLE continuing to cover the period of maternity leave, beyond which there would be no redundancy protection. In the modelling throughout we have conservatively estimated the costs and benefits of extending redundancy protection from 20 weeks before maternity leave and 6 months following the end of maternity leave for returning mothers. However, it is possible that discrimination may have occurred later than we have assumed i.e. closer to when the mother goes on maternity leave and after the mother returns to work. The tables below model the additional labour costs faced by employers, allowing for discrimination to have occurred at different time periods in the counterfactual. We do this by comparing the number of additional weeks of protection they would receive from the policy compared to what would have happened in the counterfactual. This is done for pregnant women before they go on maternity leave and mothers returning from work. The first row of each table shows amount of additional protection we have currently modelled, 20 weeks before maternity leave and 26 weeks after maternity leave.

**Table 14** – Additional labour costs from pregnant women going on maternity leave

Additional weeks	Additional Labour Costs (£m)
<b>20 (current)</b>	<b>10.7</b>
16	8.5
12	6.4
8	4.3
4	2.1

**Table 15** – Additional labour costs from mothers returning to work

Additional weeks	Additional Labour Costs (£m)
<b>26 (current)</b>	<b>28.0</b>
22	23.7
18	19.4
14	15.1
10	10.8
6	6.5