

Pregnancy and Maternity Working Group

Final Report – 2021



The Pregnancy and Maternity Working Group was set up towards the end of 2016 in response to research published by the Equality and Human Rights Commission (EHRC) and Department for Business, Innovation and Skills which found that around one in nine mothers across the UK reported that they were either dismissed; made compulsorily redundant where others in their workplace were not or treated so poorly they felt they had to leave their job.

One in five mothers said they had experienced harassment or negative comments related to pregnancy or flexible working from their employer and /or colleagues and 10% of pregnant workers said their employer discouraged them from attending antenatal appointments.

Although pregnancy and maternity pay and employment rights are a matter reserved to the UK Government these harrowing findings prompted the Scottish Government to act and address these injustices within the powers that we have. In response I established the pregnancy and maternity discrimination working group to review, develop and enhance guidelines for employers to make clear their duties and promote best practice. We also aimed to improve access to information and guidance for pregnant women and new mothers on their rights at work and signpost them to available support. Since its inception in 2016 the group has taken forward a range of work to meet our objectives, a summary of which is provided in the following pages.

As we have all experienced, 2020 was a year unlike any other and the Covid -19 pandemic not only impacted on the frequency and method of group meetings but brought into focus the need to address any adverse effects that COVID-19 has had and could continue to have on pregnant women and new parents. During the initial stages of the pandemic and the introduction of the UK government support schemes it became evident that the design of the schemes had not considered equalities issues and were having an unequal impact on women who had been on maternity leave. Scottish Government called on the UK Government to rectify these failures.

Our own research¹ found that adverse labour market effects ensuing from lockdown measures could have a disproportionate longer term impact on women and that pregnant women and mothers' employment opportunities could be further adversely affected by any roll-back in EU-derived employment protections post Brexit.

It is imperative then that going forward we ensure that pregnant women, mothers and partners are supported and considered in our economic recovery from the pandemic. This will include influencing the development of the UK Employment Bill being introduced this year.

As the remit of this group has been fulfilled I would like to express my sincere gratitude to group members for the commitment and time dedicated to this agenda over the past four years. But the work does not stop here and I will ensure that work to end pregnancy and maternity discrimination in the workplace will be taken forward by the Gender Pay Gap Action Plan Working Group.

Jamie Hepburn, Minister for Employability and Skills.

¹ <https://www.gov.scot/publications/the-impacts-of-covid-19-on-equality-in-scotland/>

(1) Create guidelines, or review and embed existing guidelines, for employers to ensure best practice on recruitment, retention, and development of pregnant employees

Throughout the lifetime of the group a number of presentations on existing guidelines and best practice were delivered by member organisations and invited guests at working group meetings. These helped to inform a review of information and advice available to employers and staff including:

- An overview of BTs pregnancy and maternity policies and guidance;
- The role of [Advisory, Conciliation and Arbitration Service \(ACAS\)](#), which provides advice on how employers can support employees through pregnancy and maternity, as well as how employees can make a claim for pregnancy and maternity discrimination;
- An insight into the work being undertaken by [Maternity Action](#) who provide online advice and guidance to employees;
- Growing up in Scotland's Maternal Employment Research detailing the progress made in helping more women return to work after having children;
- [Healthy Working Lives](#) who provide a range of advice for employers and employees via their website; advice phone line and training events for businesses;
- The [Federation of Small Businesses](#) provision of pregnancy and maternity advice to their members. This includes a [risk assessment template](#) which is intended to help businesses comply with their legal requirements;
- Health & Safety pregnancy and maternity related policy and toolkit within Police Scotland; and
- Lloyds Banking group's pregnancy and maternity leave policy. As a result of this presentation, Lloyds were invited to share their best practice with businesses participating in the Scottish Parliament's 11th Business in the Parliament Conference in September 2017.

Group member EHRC have produced a suite of toolkits for employers and employees on pregnancy and maternity, available on their website:

- [Pre-pregnancy and pregnancy employer toolkit](#)
- [Maternity, paternity or shared parental leave and pay employer toolkit](#)
- [After maternity or adoption leave employer toolkit](#)
- [Adoption, paternity or shared parental leave for adoptive parents and pay employer toolkit](#)
- [FAQ for employers](#)

The working group worked with Young Scot to provide advice on pregnancy and maternity in the workplace to young people across Scotland. This resulted in a [Top 10 tips](#) guide available on the Young Scot website.

We have worked with the UK Government on a number of issues including reviewing the guidance they have available [on their webpages](#) to pregnant women and new mothers and providing links to advice on Mat B1 forms.

As a result of the work of the group, and following the Enterprise and Skills Review, a more coordinated system of business support has been designed, enabling businesses to access the support they need. The website [Find Business Support](#) which went live in December 2019 provides advice and signposting to employers on pregnancy and maternity, which is a protected characteristic under the Equality Act 2010. The advice includes how to avoid discriminatory practices, comply with the law and ensure equality and diversity in the workplace.

(2) Include best practice in managing pregnancy and maternity appropriately within the Scottish Business Pledge

The [Scottish Business Pledge](#) is a values-led partnership between Government and business. It is a shared ambition of boosting productivity, competitiveness, sustainable employment, and workforce engagement and development. The Business Pledge aligns with our ambitious Fair Work First criteria and includes a core requirement for employers to take forward work to reduce gender pay gaps. We know that pregnancy and maternity discrimination is a driver of the gender pay gap and advice, guidance and best practice has been provided to employers.

On International Women's Day 2017 a guest blog by Rosalind Bragg, Director, Maternity Actions, 'Taking action on pregnancy discrimination' was included on The Pledge.

The refreshed Scottish Business Pledge and their new website went live on 10th October 2019. It provides advice to employers on how to take action to address the gender pay gap. This includes suggesting employers makes changes to how they support employees through pregnancy and maternity and provides links to EHRC's Working Forward guidance and online toolkits.

Existing Pledge signatories are in the process of being transitioned to the new structure, with work being developed to support them to fulfil the new core element of addressing gender pay gaps. The deadline for transition has been extended from March 2020 to 1 September 2021 due to COVID.

The Scottish Government, its agencies and partners including members of the working group continue to signpost and promote this guidance to businesses.

(3) Strengthen employer advice to ensure that work environments are safe and healthy for pregnant women and new mothers, including providing employment rights information

In support of this commitment the Scottish Government and EHRC have held a number of meetings with stakeholders such as Healthy Working Lives, Health & Safety Executive, NHS Scotland and liaised with other policies across the Scottish Government which focus on the Best Start Grant, Partnership Information Network (PIN) and Health Care Service Users and Fit For Work.

Work has been carried out to ensure websites such as [Ready Steady Baby](#), [NHS Inform](#) and [The Parent Club](#), that are targeted at supporting pregnant women and new mothers, include links to the relevant pregnancy and maternity guidance such as those published by EHRC and ACAS.

Following research conducted by the Scottish Women's Development Forum, Police Scotland updated their standard operating procedures to ensure consistency of support across the organisation and developed Risk Assessment guidance and a Pregnancy and Maternity Information booklet to support managers and staff.

Police Scotland created a National Flexible and Agile working group and within Ayrshire run Keeping in touch (KIT) day events where pregnant officers and staff (and those on maternity leave) are given the opportunity to catch up with key supervisors, management, HR and Finance to discuss common themes and support.

COSLA have reported pregnancy and maternity policies are in place to provide managers with clear processes for ensuring safe, healthy working environments for pregnant women

working within local authorities. This has resulted in 47% of Councils having been awarded the Healthy Working Lives gold accreditation and a further 33% of Councils have gained either silver or bronze accreditation which support them in developing health promotion and safety themes in the workplace in a practical, logical way, that's beneficial to both employers and employees.

The working group have noted the important role that Trade Union representatives can have in promoting positive pregnancy and maternity policies. We continue to engage in discussions with STUC regarding the possibility of developing training for Union equalities representatives.

Healthy Working Lives, who provide advice on controlling risks for new and expectant mothers, arranged training events on improving health and safety awareness and risk assessments for employers. Prior to the pandemic, Healthy Working Lives committed to liaising with the group on shaping their range of resources relating to pregnancy and maternity for employers. This element of their work had to be paused due to the pandemic as they lead on the public health response to COVID.

The group contributed to Scottish Government's response to the UK Government's 2019 consultation on extending redundancy protection for pregnant women and new mothers. The UK Government has agreed to the extension of redundancy protections, although they have yet to implement this. Scottish Government will continue to press the UK Government to implement this.

Throughout the pandemic, Ministers have highlighted to the UK Government that pregnant women and those on maternity leave were not considered in the design of either of the two support schemes put in place to protect incomes. There was a lack of clear advice to employers regarding how to support pregnant women during the pandemic including the need for workplace risk assessments. In December 2020 the UK Government made available advice to pregnant employees, however as yet have not provided specific advice to employers.

Members of the group have participated in the Safer Workplaces ministerial working group, which led to the development of [sectoral guidance](#) for employers during Covid. [Working from Home guidance](#) has been produced as well as advice for employers on occupational risk assessments, including a risk assessment tool for individuals to assess their own risk.

(4) Improve public monitoring and reporting of pregnancy and maternity under the Scottish Public Sector Equality Duty.

The Public Sector Equality Duty aims to give the public a better understanding of public authorities and give them an opportunity to challenge on any issues. The most recent Public Sector Equality Duty (PSED) report, [Measuring Up 7](#), published by the EHRC on 08 December 2017 and covering the 4 year period from 2013-2017 showed that pregnancy and maternity is still one of the characteristics that is least often reported on in relation to employee compositions. With regard to employee recruitment the reporting rates for pregnancy and maternity were also poor with only 8% of respondents reporting on recruitment for this protected characteristic.

The Scottish Government has committed to reviewing the implementation of the public sector equality duty. One of the key recommendations of the EHRC report was that the Scottish Government should work with the EHRC and other partners to assess the effectiveness of the public sector equality duty in delivering change

This review has been delayed due to the COVID outbreak, with mainstreaming officials fully focussed on embedding equality and rights matters within the pandemic response. As we move from a phase of emergency response to a renewal phase, officials have reappraised how best to take forward the review. They have committed to producing an interim report which will include learnings from Covid by February 2021. A wider mainstreaming strategy will be completed by summer 2021. This action will be taken forward by the Gender Pay Gap Working Group and has been included in the Gender Pay Gap Action Plan.

(5) Develop an industry specific communications strategy around the benefits of positive pregnancy and maternity policies

The Scottish Government have led on developing a communications strategy around the benefits of employers having positive pregnancy and maternity policies. This details events where positive pregnancy and maternity messages, tailored to appropriate sectors and audiences, are being included within Ministerial speeches, stakeholder events or related media channels. As part of this strategy a workshop at the Business in the Parliament event, was used to specifically show case the benefits of pregnancy and maternity benefits as well as other inclusive workplace practices such as flexible working.

Over the course of the working group, members have shared their work plans and invited others to consider in relation to their own working practices. Police Scotland for example have reported on their ongoing work to improve monitoring and reporting; have shared their SWDF report on pregnancy and maternity as well as new maternity pay and support for staff undertaking IVF.

In recognition of the pregnancy and maternity related issues faced by employees and employers in certain sectors, as identified with the EHRC's report, the working group helped to shape and draft the criteria of the Workplace Equality Fund (WEF). The WEF first opened to applications on 08 February 2018, aimed at supporting businesses to identify and promote practice that works to reduce employment inequalities, discrimination and barriers.

One of the projects funded by the WEF [Outside the Box](#), aims to provide women with practical advice on returning to work after maternity leave, and give employers guidance on putting solutions in place to support working women with children. One of the key work strands of the project includes an evaluation function, which measures whether Mums Returning to Work training has brought about a change in practice and policy.

The WEF 2019-2020 continues to work to develop more inclusive and diverse workplaces with priority groups such as minority ethnic people, disabled people and women. Applications for a new short term fund to support employers to embed diversity and equality throughout the pandemic was launched on 4 December 2020. Successful projects can be viewed [here](#).

Scottish Government also launched the Women Returners Fund on 4 December 2020. The programme aims to support women returners across Scotland who have had a career break due to childcare, other care or health commitments. The programme will address the 'motherhood penalty', a key driver of the gender pay gap. Applications for a new short term fund to support women during the pandemic was launched on 4 December 2020.

In response to the Scottish Government commissioned research into women in the farming and agricultural sector, published in June 2017, a Scottish Government co-chaired Taskforce was established with a remit to engage with gender inequality issues, as well as better succession planning, better access to training and progression within the industry and more appropriate health and safety measures. A paper was provided to this Taskforce on issues relating to pregnancy and maternity which highlighted the available advice and guidance. The key findings of the [Taskforce final report](#) were published in November 2019 and

Scottish Government has committed to a full review of the impact of the recommendations by the end of 2027.

In 2019, ACAS provided employer training events to SMEs on pregnancy and maternity discrimination. The training covered shared parental leave options; arranging cover for maternity leave for people on temporary contracts; return to work induction plans; time off for antenatal appointments; and support for parents if birth was premature.

Flexible working benefits all workers and especially those with care commitments such as new parents to achieve a better work life balance. Together with the Hunter Foundation through our Social Innovation Partnership, the Scottish Government is funding [Flexibility Works](#) in 2020/21 to support and promote the development of flexible and family friendly workplaces to employers. This includes offering vital advice and support to business and organisations on how to adapt to remote working to respond to the Covid-19 crisis.

Scottish Government have also been supporting flexible working experts Timewise to better support parents to find quality flexible work which will not only help to reduce the gender pay gap but tackle poverty by raising household income.

In 2020 in response to Covid, we funded Timewise to deliver a rapid response programme to provide training and guidance to over 300 employers on adapting workplaces to flexible working. Training was augmented by the recruitment of a flexible work change agent network of employability intermediaries. The training will equip intermediaries with knowledge to support employers to embrace flexible work. It will also enable them to better support low income parents and carers who are looking to improve their existing job or find a new job. Real impact (behavioural change, enhanced skills and staff retention) will be evaluated in 2021.

Two toolkits on flexible working have been made available. The first is aimed at [employees](#) to provide advice on making the business case for a change in working patterns, such as to take cognisance of caring responsibilities, and a 'how-to' guide on having good conversations with managers. The second provides HR professionals and [line managers](#) with practical information on how to put structures in place to make flexible working possible.

A Flexible Jobs Index for Scotland will be published by March 2021 to track the state of the flexible vacancy market pre- and post- Covid-19. This will identify trends in flexible hiring and will provide information on where more action is needed regionally and in which sectors.

(6) Monitoring and Evaluation

The working group have been keen to explore how progress on reducing pregnancy and maternity discrimination can be measured. One method of evaluation was to work with employers to encourage the inclusion of a sub-set of questions relating to pregnancy and maternity discrimination in planned workplace surveys.

We have met with a range of sector groups to take forward monitoring and evaluation issues. This has included Women in Agriculture; Women in Architecture; Women in Arts; Women in Banking and Finance; Women in Engineering; Women in Insurance; Women in Law; Women in Technology; and Women in Aquaculture.

Women in Rail gave a presentation to the group on their 2019 research findings on the employment challenges that women, who make up 16% of their workforce, face in the Scottish rail sector. This research found that workers tended to remain in the rail sector, could attain a good work/life balance, flexible working was offered to women with family commitments; and although positive results a gender pay gap still existed in the rail sector.

The Coalition of Care and Support Providers in Scotland (CCPS) shared research findings from their study on exploring and identifying barriers to good practice with the group. Findings indicated that respondents felt that their duties, mainly as a result of a health and safety risk assessment, had been adapted or altered to take account of pregnancy. Changes to duties, as a result of staff requests and risk assessments, also occurred once there was a return to work. However the survey flagged up that there was a resourcing issue around flexible working and that limited Statutory Maternity Pay (SMP) was an issue, with 84% being in favour of a fund to help claim back SMP in the third sector. Some participants thought that there is a need for reduced cost/tax breaks to help with child care rather than there being a need for more advice and guidance for the sector while other respondents indicated a need for changes and improvements to guidance on pregnancy and maternity issues for third sector organisations. Around half of the respondents sought advice and guidance externally from sources including law firms, HR consultancy services, and websites including ACAS.

Fathers Network Scotland also shared their survey results, which indicated that fathers' roles in childcare are changing. 63% of fathers surveyed had asked their employer to change their working patterns to accommodate their caring responsibilities and training and consultancy sessions were being undertaken with employers.

In 2019, Skills Development Scotland provided an update on pregnancy and maternity within Modern Apprenticeships (from 2012/13 to 2018/19). Their analysis showed an increase of 89% of people in Modern Apprenticeships identifying as having a leaver code of maternity/paternity over this period. Positively, more modern apprentices were found to return from maternity/paternity leave and complete their apprenticeship (16%).

The Scottish Government funded the [Growing Up in Scotland Maternal Employment](#) research, published on 01 November 2017. This explored changes to mothers' employment status and trajectories over the first five years of their child's life, examining the characteristics of mothers unable to find paid work, the likelihood of mothers returning to work and the main barriers they face, such as childcare. It found that mothers in less advantaged circumstances, such as young mothers and/or single parents with low levels of skills and qualifications, may be in particular need of support.

Supporting mothers who want to enter, re-enter, or remain in paid work after childbirth is an important objective for the Scottish Government. It ties in with wider efforts to address the gender pay gap and eliminating child poverty. Both of these are key components of the Scottish Government's aim to create a Fairer Scotland. The working group have been updated on the number of policies and interventions that are in place, or being developed, which seek to help facilitate women's engagement in paid work after childbirth and/or overcome barriers to maternal employment. The findings from the working group have also fed into the development of a pilot scheme aimed at reducing the burden of upfront childcare costs for families, focussing on a deposit guarantee scheme.

The monitoring and evaluation of pregnancy and maternity discrimination questions in workplace surveys is a longer term commitment which will continue to be monitored by the Gender Pay Gap Action Group. Prospective work includes a STUC-led survey to union representatives and COSLA-led discussions with local authorities on the possibility of using software to monitor pregnancy and maternity. Discussions have been held with City of Edinburgh Council. COSLA will take this action forward, approaching developers to assess the feasibility of this.

Going forward

The pandemic in 2020 made many of the common topics and themes that have arisen in our discussions over the years all the more salient. It showed that pregnant women and those on maternity leave were not considered in the design of either of the two support schemes put

in place to protect incomes. The Self-Employed Income Support Scheme in particular was found to be prejudiced against women who had taken any maternity leave in the preceding three years. Scottish Ministers repeatedly raised these issues to the UK Government, calling on them to take women's caring responsibilities into account. The pandemic also highlighted that many employers and line managers remain ignorant of health and safety legislation as it pertains to pregnancy and maternity and the importance of the need to emphasise policies that protect women within this protected characteristic. And very significantly, Covid catapulted flexible working, in particular home working to front of stage, showing that remote and home working can work very well, with no ensuing loss of productivity. It also shone a light on existing inequalities, the difficulties of balancing work and childcare, and the precariousness often of women, in particular pregnant women and new mothers, in the workplace.

Going forward work to tackle pregnancy and maternity discrimination will be taken forward by the Gender Pay Gap working Group. That group looks at the many drivers of the gender pay gap and how Scottish Government and others can take action to improve gender equality in the workplace and reduce the gap.



With thanks to the members of the working group:

Frank Blair, Advisory, Conciliation and Arbitration Service
Clare Hussain, Scottish Women's Development Forum, Police Scotland
Lorna Glen, UNITE the Union (STUC Women's Committee representative)
Debbie Walls, Convention of Scottish Local Authorities
Susan Love, Federation of Small Businesses
Laura Pasternak, Equality and Human Rights Commission
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Susi O'Brien, Coalition of Care Providers Scotland
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