

## EXPLANATORY MEMORANDUM TO

### THE MATERNITY AND PARENTAL LEAVE ETC. AND THE PATERNITY AND ADOPTION LEAVE (AMENDMENT) REGULATIONS 2008

2008 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Department of Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Description

2.1 The Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2008 (“the Amendment Regulations”) amends the provisions of the Maternity and Parental Leave etc Regulations 1999 and the Paternity and Adoption Leave Regulations 2002 respectively, which will apply to the parents of children expected to be born or placed for adoption, on or after 5 October 2008. The amendments remove the distinctions between the rights of employees on ordinary maternity leave and those on additional maternity leave. Similar distinctions between the rights of employees on ordinary adoption leave and additional adoption leave are also removed.

#### 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

#### 4. Legislative Background

4.1 As a result of the High Court order in *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] EWHC 483 (Admin), in which the Court ruled that the Employment Equality (Sex Discrimination) Regulations 2005 (the “2005 Regulations”), did not comply with the requirements of European law, the Sex Discrimination Act 1975 has been amended by the Sex Discrimination Act 1975 (Amendment) Regulations 2008. These Regulations include amendments in relation to claims for discrimination on grounds of maternity, which eliminate any distinction in the types of claim a woman can bring in relation to the periods of ordinary and additional maternity leave.

4.2 As a result of these recently amendments, the Sex Discrimination Act 1975 (“the 1975 Act”) allow employees on additional maternity leave to bring claims for discrimination in relation to any of the terms and conditions of her employment except those relating to pay. This means a woman may have a claim if she is not afforded the same benefits of the terms and conditions of employment, except those relating to pay, during additional maternity leave as she is during ordinary maternity leave.

4.3 The Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2008 are being made to clarify the law with regard to terms and conditions of employment which must continue during additional maternity leave so that the position is consistent with the amended 1975 Act. Corresponding changes are made in relation to and additional adoption leave so that the adoption leave regime is consistent with the maternity leave regime.

#### 5. Territorial Extent and Application

5.1 This instrument applies to Great Britain. Separate regulations are to be made in Northern Ireland.

## **6. European Convention on Human Rights**

6.1 Pat McFadden, Minister of State for Employment Relations and Postal Affairs, has made the following statement regarding Human Rights:

In my view the Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2008 are compatible with the Convention rights.

## **7. Policy background**

7.1 The 1975 Act gives protection against unfair treatment during maternity leave. These amendments are required to clarify the terms and conditions of employment that must continue during additional maternity leave so that the requirements of the Maternity and Parental Leave etc Regulations 1999 are consistent with those of the 1975 Act. To preserve consistency between the Maternity and Parental Leave Regulations and Paternity and Adoption Leave Regulations 2002, corresponding changes are made in relation to additional adoption leave.

7.2 Regulations 4 – 7 of the Amendment Regulations 2008 amend the Maternity and Parental Leave etc Regulations 1999 to extend the non-pay terms and conditions to which a woman is entitled during ordinary maternity leave to the period of additional maternity leave.

7.3 Regulations 8 – 10 of the Amendment Regulations 2008 amend the Paternity and Adoption Leave Regulations 2002 to extend the non-pay terms and conditions to which a woman is entitled during ordinary adoption leave to the period of additional adoption leave

7.4 As was the case with the Sex Discrimination Act 1975, the amended 1975 Act has no impact on entitlement to terms and conditions relating pay, as defined by European community law. Employers are therefore not obliged to go beyond the obligations of the Social Security Act 1989 which provides that pension contributions must continue during periods of paid family leave. The Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2008 do not change this provision or extend pension rights during unpaid additional maternity or adoption leave.

7.5 It is estimated that some 247,000 mothers take some additional maternity leave and that approximately 173,000 are employees who would benefit from the extension of entitlement to contractual non-pay benefits during this period. Approximately 4000 employees take adoption leave each year, as it is recommended practice that at least one adoptive parent is able to spend time at home with the child during the first few months of placement it is assumed that all will benefit from the extension of entitlement during additional adoption leave.

### *Consultation*

7.6 No formal consultation has been carried out on these regulations as they are largely consequential to the 1975 Act. Informal consultation on the draft regulations has involved interested parties including representatives of employers, trade unions and parent groups.

## *Guidance*

7.7 The Department for Business, Enterprise and Regulatory Reform publishes guidance on Maternity and Adoption Leave at <http://www.berr.gov.uk/employment/workandfamilies/index.html>. This will be updated to reflect the amending regulations.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum

## **9. Contact**

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## Summary: Intervention & Options

<b>Department /Agency:</b> Business, Enterprise and Regulatory Reform	<b>Title:</b> Impact Assessment of amendments Maternity and parental leave regulations and Paternity and Adoption leave regulations 2008	
<b>Stage:</b> Final	<b>Version:</b> 1	<b>Date:</b> 27 June 2008
<b>Related Publications:</b> (Amendments) 2008      Regulatory Impact Assessment for Sex Discrimination Act 1975		

**Available to view or download at:**

<http://www.>

**Contact for enquiries:** Karen Haseldine

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

Amendments have been made to the Sex Discrimination Act to remove the exception which allowed an employer to discriminate against a woman on additional maternity leave. This ensures that the right to non-pay contractual terms and conditions to which a woman is entitled during ordinary maternity leave continues throughout additional maternity leave. As a consequence, changes are proposed to Maternity and Parental leave etc regulations to restore parity with the Sex Discrimination Act and to avoid confusion for employers and employees.

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

High Court judgement of March 2007<sup>1</sup> ruled on the effect that the amendments to the Sex Discrimination Act 1975 (SDA) must have. Government policy is to give effect to this judgement and is making changes to the Maternity and Parental leave regulations to reflect the amended Sex Discrimination provisions so as to clarify the legal position. There is no additional burden on employers as a result of these amendments. In addition, Government policy is to provide protection for employees taking adoption leave that is, as far as possible, equivalent to that afforded to biological mothers.

**What policy options have been considered? Please justify any preferred option.**

Giving effect to the judgement and doing no more at the earliest appropriate opportunity is the only viable option. The impact on Maternity provisions, as detailed in this assessment, is as a direct result of the SDA changes and as such has no additional burden (cost estimates are provided within the IA for SDA amendments 2008 and are repeated here for transparency). Changes to adoption provision are being made to provide equivalent protection to adopters and the additional costs are detailed here.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The Government regularly reviews maternity and adoption provisions through Maternity and Paternity rights surveys. The next survey will take place in 2009 to be published 2010.

<sup>1</sup> *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] EWHC 483 (Admin)

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***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) the benefits justify the costs.***

Signed by the responsible Minister:

Pat McFadden, Minister of State for Employment Relations and Postal Affairs    Date: 27 June 2008

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b> Extension of entitlement to terms and conditions of employment during Ordinary Adoption leave to Additional Adoption leave.
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Transition costs arise from familiarisation costs only. In addition to these costs of £5.91m per year arise from the provision of non-pay contractual benefits during additional adoption leave.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ <b>6.33m</b>		
	<b>Average Annual Cost</b> (excluding one-off)		
	£ <b>5.91m</b>		<b>Total Cost (PV)</b> £ <b>-55.31m</b>
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Women on Additional Maternity or Adoption Leave to receive the same non-pay benefits of terms and conditions as when on Ordinary Maternity or Adoption Leave.
	<b>One-off</b>	<b>Yrs</b>	
	£ <b>0</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ <b>0</b>		<b>Total Benefit (PV)</b> £ <b>0</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'			

Key Assumptions/Sensitivities/Risks

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range</b> (NPV) £ <b>-55.31m</b>	<b>NET BENEFIT</b> (NPV Best estimate) £ <b>-55.31m</b>
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What is the geographic coverage of the policy/option?	Great Britain			
On what date will the policy be implemented?	1 October 2008			
Which organisation(s) will enforce the policy?	Employment Tribunal			
What is the total annual cost of enforcement for these organisations?	£			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)						(Increase - Decrease)
Increase of	£	0	Decrease of	£	0	<b>Net Impact</b> £ 0
Key:						Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

## **Strategic Overview**

The Sex Discrimination Act 1975 has been amended to eliminate any distinction in the types of claim a woman can bring in relation to the periods of ordinary and additional maternity leave. This means a woman may have a claim if she is not afforded the same benefits of the terms and conditions of employment during additional maternity leave as she is during ordinary maternity leave.

For the purposes of legal clarity the Maternity and Parental Leave Regulations are being amended to extend the non-pay rights that a woman has on Ordinary Maternity Leave to the period of Additional Maternity Leave. The impact on Maternity provisions, as detailed in this assessment and in the Regulatory Impact assessment for the Sex Discrimination Act (amendments) 2008, are as a direct result of the SDA changes and have no additional burden to employers.

Since Statutory Adoption Leave and Pay were introduced in 2002, the rights of an adopter on adoption leave have, where possible, broadly equal to those of a biological mother taking maternity leave. To continue this parity of entitlement, the provisions of the Maternity and Parental Leave Regulations are being copied into the Paternity and Adoption leave Regulations to extend the non-pay contractual rights an adopter has during ordinary adoption leave to the period of additional adoption leave.

### **The Issue**

The Maternity and Parental etc Leave regulations must be amended as a consequence of the amendments to the Sex Discrimination Act. Not to do so would have the potential to cause confusion about the rights and responsibilities of employees and employers in relation to non-pay benefits of the terms and conditions of employment when on maternity leave.

### **Objectives**

The main objective of this change is to provide legal clarity between the amended Sex Discrimination Act, the Maternity and Parental Leave Regulations and Paternity and Adoption Leave Regulations. The intended outcome is for employees taking Additional Maternity or Adoption leave to have the same non-pay contractual benefits as during ordinary maternity or adoption leave, bringing UK law into line with EU law.

### **Overall Benefits**

Women on Additional Maternity or Adoption Leave will benefit from the same non-pay benefits of terms and conditions as when on Ordinary Maternity or Adoption Leave.

The amendments to Maternity and Parental Leave regulations and Paternity and Adoption Leave regulations reflect these changes and reduce confusion for employers and employees, who may otherwise be misled by conflicting legislation.

The changes proposed do not alter fundamentally the way the law works in practice and the new information that employees and individuals need to know about is modest.

### **Costs**

The costs for Maternity provision have already been detailed in the Impact Assessment for amendments to the Sex Discrimination Act and are repeated here for consistency but do

not constitute an additional burden. In addition to these, costs for changes to Adoption leave provision are also detailed.

## **Contractual terms and conditions during Ordinary and Additional Maternity and Adoption Leave**

The proposed amendments to the MPLR, which will provide entitlement to continuation of the same non-pay contractual terms and conditions during Additional Maternity and Adoption leave as during Ordinary Maternity and Adoption leave, are likely to have some impact on some, but not all, employers.

Those employers affected will be those who satisfy the following: a) provide benefits of terms and conditions of employment (other than remuneration)<sup>2</sup>, and b) employ women who take maternity leave or adopters who take adoption leave for periods longer than 26 weeks, and c) do not currently provide those non-pay benefits after the 26th week, (i.e. during AML / AAL).

The types of benefits that are likely to result in an additional policy cost for employers who satisfy a), b) and c) above, are, for example: contractual annual leave above the statutory minimum, company cars, gym membership, and mobile telephones, among others. Also included in this list is the matter of counting time spent on AML / AAL towards length of service calculation, which is discussed in more detail below.

### Impact

The calculation of the additional policy cost must be based on an assumption made about the anticipated amount of AML / AAL actually taken by employees. At present, relatively few employees take AML / AAL, but with the recent extension of statutory pay to 39 weeks (leaving the last 13 weeks of maternity / adoption leave unpaid), it is anticipated that more women will take at least some AML / AAL in future.

Thus, previous estimates of the take-up and duration of maternity leave show that around 247,000 mothers may take 27 weeks or longer (some 173,000 female employees are estimated to take AML from weeks 27 – 52)<sup>3</sup>. Assumptions have also been made about the varying periods of AML actually taken within this number, as some mothers will return to work within the 27-52 week period.

It is estimated that approximately 4000<sup>4</sup> employees take adoption leave each year. It is recommended practice that at least one adoptive parent is able to spend time at home with the child during the first few months of placement. It is therefore assumed that there is 100% take-up of the entitlement to paid adoption leave.

The net additional cost to employers as a result of the need to provide non-pay contractual benefits (with the exception of length of service calculations - see below) is therefore:

<b>Costs already included within the SDA Impact assessment</b>
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<sup>2</sup> "Remuneration" means benefits that consist of the payment of money to an employee by way of wages or salary, and that are not benefits whose provision is regulated by the employee's contract of employment (i.e. non-contractual). Remuneration (as defined) during maternity leave is not affected by the SDA, with the exception of "maternity related remuneration" (meaning remuneration to which the woman is entitled as a result of being pregnant or being on maternity leave), remuneration in respect of times when a woman is not on maternity leave or remuneration by way of bonus in respect of times when a woman is on compulsory maternity leave.

<sup>3</sup> For further details see the Work and Families: Choice and Flexibility Final RIA in the 2005 Compendium of Regulatory Impact Assessments, Volume 1, DTI, Employment Relations Research Series No. 48, <http://www.berr.gov.uk/files/file27449.pdf>

<sup>4</sup> Work and Families: Choice and Flexibility Final RIA in the 2005 Compendium of Regulatory Impact Assessments, Volume 1, DTI, Employment Relations Research Series No. 48, <http://www.berr.gov.uk/files/file27449.pdf>

<i>Maternity:</i>	
Cost of contractual annual leave	£157.43m
Cost of fringe benefits	£30.32m

<b>Additional costs arising from these amendments</b>	
<i>Adoption:</i>	
Cost of contractual annual leave	£7.38m
Cost of fringe benefits	£490k

However there is evidence to show that some employers offer such benefits over and above the statutory minimum<sup>5</sup>. We have assumed here that 30% of employers already offer such extended benefits. Hence the total cost effect calculated above should be reduced by this amount to reflect this.

Thus the policy cost of providing non-pay benefits during Additional Maternity leave is estimated to be £131.43m.

**The additional policy cost of providing non-pay benefits during Additional Adoption leave is estimated to be £5.51m**

Length of Service Calculations

A further impact on employers as a result of these amendments is likely to be a new requirement to include periods of time spent on AML as part of an employer's calculations in respect of length of service for the purposes of assessing seniority.

As above, the impact will only be felt by employers whose employees actually take AML and where they are entitled to benefits based on their total length of service. Clearly the employer must, too, be in a position where, were it not for the change in the law, it would have actually discounted any period of time spent on AML from such calculations.

For the purposes of the cost calculations, we have considered here two principal areas where length of service may be an additional cost issue, namely:

- pay and progression that is based on length of service; and
- additional annual leave entitlement earned through length of service

Before presenting the cost estimates for the impact of the policy change in these areas, some qualifications need to be made.

First of all, since the introduction of the Equality Employment (Age) Regulations in October 2006, only periods of service up to 5 years may be considered permissible in such calculations. Data shows that around 60% of mothers with children aged under 5 have the necessary qualifying job tenure<sup>6</sup>.

Second, of those 247,000 employed mothers who take 27+ weeks maternity leave, not all will return to work and of those who do a proportion change employer. In both cases their right to service-related benefits will cease. Data from the 2005 Maternity and Paternity

<sup>5</sup> Data from the 2005 Maternity and Paternity Rights Survey indicate that 29% of all mothers were in receipt of occupational maternity pay, compared with 58% who received SMP only and 11% who received MA. CIPD data also show that at the end of 2006 26% of employers already offered extended maternity leave and 37% offered enhanced maternity pay.

<sup>6</sup> See Table 15.3 in H. Robinson, Gender and Labour Market Performance in the Recovery, in R. Dickens, P. Gregg, J. Wadsworth (eds), The Labour Market Under New Labour: The State of Working Britain.

Rights Survey<sup>7</sup> shows that in 2005, 74% of women returned to and remained in work. We have further assumed some mothers change employer once they have returned to work and estimate that 70% of mothers return and remain with the same employer. Third, estimates of the duration of maternity leave used in the 2005 Work and Families: Choice and Flexibility RIA can be used to determine the proportion of mothers who may return to work between 27 and 52 weeks. For this we have estimated those taking between 27 and 39 weeks and those taking 40 to 52 weeks.

Fourth, because of the difference in the type and provision of length of service benefits between the public and the private sector, the analysis undertaken has taken account of this in order to arrive at more reliable cost estimates.

As a result of the above, the relevant affected population has been scaled down to produce the following cost estimates.

### ***(i) pay and progression***

Data from the CIPD<sup>8</sup> shows that 88% of public services and 40% of private services use length of service as a criterion in the determination of annual pay awards. Using data from the Annual Survey of Hours and Earnings (ASHE) 2007 on median weekly wages for public and private sector employees we have estimated the effect of these policy changes will amount to £20.94m for maternity and £340k for adoption.

Similarly when it comes to progression, the CIPD survey shows that 41% of public service employers and 9% of private service sector employers used length of service as one of a number of reasons for determining promotion. We assume here that there is a 10% chance of promotion within an organisation and furthermore that such a promotion results in an increase in salary of 10%. On this basis, **we estimate the effect of the policy change on progress 23k for adoption** in addition to £1.59m for maternity.

### ***(ii) increased leave entitlement***

There is little accurate data available on increased annual leave entitlement due to length of service. However, a survey of companies by IRS in February 2005<sup>9</sup> found that 61% of employee groups had service-related holiday and that annual leave is most commonly added at the rate of 1 day a year for the first 5 years' service. This rate of accrual may well be an upper end estimate, but using this as a benchmark would result in an estimated effect of £2.62m for maternity and **£39k for adoption from this policy change**.

Thus the policy cost of providing length of service benefits is estimated to be £25.15m for additional maternity leave.

**The additional policy cost for providing these benefits during additional adoption leave is estimated at £402.**

### Simplification Measures

The removal of the exceptions relating to the employee's terms and conditions during AML will have a positive impact as a simplification measure. Whereas previously the claims of discrimination which could be made differed depending on whether it related to a period of Ordinary or Additional maternity leave, employers will now need to be aware of, and comply with, a single approach during maternity leave.

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<sup>7</sup> see table 5.1 in ERRS No.50: 80% of mothers had returned to work by 17 months, but 6% returned and then left employment.

<sup>8</sup> Reward Management 2007, CIPD, February 2007, <http://www.cipd.co.uk/NR/rdonlyres/08FE4AE7-7DD5-4185-9070-F34225A6EBOC/0/rewmansr0107.pdf>

<sup>9</sup> IRS Employment Review No. 817, February 2005

## Summary Table

The overall effect of these changes is given in the summary table below and amount to up to £156.68m for maternity and **£5.91m for adoption**

## **Overarching familiarisation costs**

### Reading and Understanding Guidance

Employers will need to be made aware of the nature of the changes being introduced. The format of the guidance, and the method of communicating it, will naturally help determine the response by employers. Guidance explaining the changes to maternity and adoption provision will be available via Businesslink.gov.uk and Direct.gov.uk. The 'Pregnancy and Work' leaflet, which provides guidance for employees and employers on maternity rights at work will also be updated to reflect changes.

There will be a small cost to a manager in each business or organisation of reading and understanding this guidance which explains the law. We assume that small, medium and large employers in Great Britain will spend 10 minutes reading guidance, at a total cost of no more than £6.33 million.

### Costs to the Exchequer

The associated guidance will be available online and key stakeholders will be notified by email.

Specific costs and benefits are discussed above.

### Administration Costs

There are no new administration processes or costs associated with these changes.

## **Enforcement, sanctions and monitoring**

The Government has improved its guidance on maternity and adoption provisions to reduce non-compliance by employers due to ignorance of the law. For instance through 'Pregnancy and Work: A guide for employees' and 'Pregnancy and Work: A guide for employers' which are distributed to all pregnant women and are available on the BERR website.

The primary means of enforcing the amended Maternity and Parental etc Leave Regulations will remain with individuals bringing claims to the employment tribunals.

## **Post-implementation review**

The Government has no specific plans for evaluation of the implementation of these amendments but does keep Maternity and Adoption legislation under regular review through Maternity and Paternity rights surveys.

### Sectors affected

All employers in the public, private and voluntary sectors have the potential to be affected by these changes. They will all need to be aware of the changes and will have to familiarise themselves with them, and make any adjustments necessary to comply with the legislation, for instance where policies or practices do not accommodate the changes.

## Estimated Quantifiable costs

	<u>Cost (£m)</u> <u>Maternity</u>	<u>Cost (£m)</u> <u>Adoption</u>
<b>1. Non-pay Benefits</b>	<b>£131.43</b>	<b>£5.51</b>
- <i>Contractual annual leave</i>	110.21	5.17
- <i>Fringe benefits</i>	21.22	0.34
<b>2. Length of Service</b>	<b>£25.15</b>	<b>£0.402</b>
- <i>Annual pay awards</i>	20.94	0.34
- <i>Progression</i>	1.59	0.023
- <i>Increased leave entitlement</i>	2.62	0.039

The costs for Maternity provision have already been detailed in the Impact Assessment for amendments to the Sex Discrimination Act and are repeated here for consistency, they are not additional policy costs.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes/No
Small Firms Impact Test	Yes	Yes/No
Legal Aid	No	Yes/No
Sustainable Development	No	Yes/No
Carbon Assessment	No	Yes/No
Other Environment	No	Yes/No
Health Impact Assessment	No	Yes/No
Race Equality	Yes	Yes/No
Disability Equality	Yes	Yes/No
Gender Equality	Yes	Yes/No
Human Rights	Yes	Yes/No
Rural Proofing	No	Yes/No



**Table 1: Familiarisation costs of proposals to amend the Maternity and Parental Leave regulations and Paternity and Adoption Leave regulations 2008**

	Time Required	Unit cost	Cost per firm	Number of firms	Total Cost (£m)
Micro firms	10 minutes	£26.95 <sup>10</sup>	£4.91	1,054,875	5.17
Small firms	10 minutes	£26.95	£4.91	176,505	0.86
Medium & large firms	10 minutes	£29.11 <sup>11</sup>	£4.85	37,615	0.18
Public authorities	10 minutes	£29.11	£4.85	25,481	0.12
Total					£6.33

This represents familiarisation costs for all companies; however it is likely that a reduced proportion of companies will incur these costs as companies where there are no or few women of childbearing age within the workforce will not be affected.

### Competition assessment

A detailed competition assessment is not necessary for the proposals put forward in this Regulatory Impact Assessment. The proposals presented apply across the board and across all sectors of the economy. They do not favour one sector of employment or business activity over another.

Question	Answer Yes / No
Directly limit the number or range of suppliers?	No
Indirectly limit the number or range of suppliers?	No
Limit the ability of suppliers to compete?	No
Reduce suppliers' incentives to compete vigorously?	No

<sup>10</sup> Source: Annual Survey on Hours and Earnings (ASHE) Survey 2007 – code 11

<sup>11</sup> Source: Annual Survey on Hours and Earnings (ASHE) Survey 2007 – code 1135

### **Small firms' impact test**

We do not expect that the impact of this amendment to MPLR would have a significantly greater impact on small firms than on large firms. As with large firms and public authorities, small firms will need to familiarise themselves with the new guidance. On the costs side, we expect them to spend 5-10 minutes doing this. On the benefits side, there will be increased clarity in the law.

### **Human Rights**

The provisions of the Maternity and Parental etc Leave Regulation are compatible with the European Convention on Human Rights.

## Equality Impact Assessment

### Amending the Maternity and Parental leave Regulations and Paternity and Adoption Leave Regulations to reflect changes to the Sex Discrimination Act 1975

#### 1. Introduction

- 1.1 This Equality Impact Assessment addresses the proposals to reflect the amendments to the Sex Discrimination Act 1975 (SDA) within the MPLR. This assessment considers the impact of the proposals in terms of race, disability and gender.
- 1.2 The aim of this Equality Impact Assessment is to ensure that the implications for gender, race and disability equality are thoroughly assessed, and to provide assurance that changes needed to mitigate any potential adverse impacts have been identified.
- 1.3 The assessment follows the guidance produced by the former Commission for Racial Equality on conducting Equality Impact Assessments. While addressing the impact of proposals on all the equality strands, it therefore also fulfils our duties, arising from section 71 of the Race Relations (Amendment) Act 2000, section 3 of the Disability Discrimination Act 2005 and the section 76A of the SDA, to assess and consult where required on the likely impact of proposed policies on the promotion of race equality, equality for disabled people and gender equality.

#### 2. Proposals

- 2.1 We propose to amend the MPLR to reflect the changes to the SDA which require a woman on Additional Maternity leave to have the same rights to non-pay contractual benefits as a woman on Ordinary Maternity Leave.
- 2.2 The changes will apply to the law in England, Scotland and Wales only. In Northern Ireland separate but equivalent law on Maternity and Adoption Leave apply. Separate regulations are being brought forward in Northern Ireland to make equivalent changes to the Maternity and Parental Leave (Northern Ireland) and Paternity and Adoption Leave (Northern Ireland).

#### 3. Context and drivers for the proposals

- 3.1 The European Equal Treatment Amendment Directive is a legal framework that covers all European member states and updates the 1976 Directive on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. In Great Britain, the SDA has provided similar, and in some respects wider, protections for over 30 years. The Act has been amended to take account of the Court's ruling on the interpretation of European requirements.
- 3.2 The Maternity and Parental etc leave regulations are being amended to reflect these

changes and to provide clarity for everyone about their rights and responsibilities during Maternity and Adoption Leave.

#### **4. Impact of the proposals**

- 4.1 This section analyses the likely impact in respect of the race, disability and gender equality duties. It provides analysis of the impact on men and women and an analysis of any differential impact that could arise due to a person's race, sexual orientation, religion or belief, age or whether they are disabled or not.
- 4.8 The MPLR and PALR make certain exceptions to an employee's entitlement to the terms and conditions of their employment during maternity and adoption leave. Following the amendment of the SDA to enable the same claims of discrimination to be made relating to the terms and conditions of employment in relation to periods of both ordinary and additional maternity leave, we are amending the MPLR and PALR to remove these exceptions. This will mean that women will have enhanced protections against detriment during maternity and adoption leave than is the case at present.

#### **5. Conclusion**

- 5.1 The Government believes that the proposed amendments to the MPLR covered by this Equality Impact Assessment will benefit women in respect of maternity leave discrimination. Clarification that women are entitled to benefit from all of the terms and conditions of their employment whilst on additional maternity leave (other than in relation to benefits by way of remuneration) will be particularly helpful to women of childbearing age. There is no discernable difference in the impact these proposals could have due to a person's race, sexual orientation, religion or belief, age or whether they are disabled or not.

#### **6. Consultation**

- 6.1 The judgment of the High Court set out the effect that the law must have in respect of employment and related areas, therefore no consultation was required ahead of the amendments to the SDA. These changes to the MPLR are consequential and therefore do not require additional consultation. The Government Equalities Office consulted with the EOC (which was subsequently replaced by the Commission for Equality and Human Rights) on the regulations amending the SDA and the EOC commented on draft regulations.
- 6.2 The draft MPLR amendments were also shared with key stakeholders including employers, trade unions and parenting groups for comment.

#### **7. Decisions on whether to adopt the policy**

- 7.1 The regulations reflect the amended SDA following the ruling of the Court to recast specific provisions in relation to maternity leave discrimination.

#### **8. Monitoring arrangements**

8.1 The amendments will be monitored through research by BERR on Maternity and Paternity rights as carried out in periodic surveys of new parents.