

Equality and Human Rights Impact Assessment (EHRIA)



To be completed by the person leading the EHRIA	
Title of Policy or Practice:	Maternity, Parenting and Adoption Policy
Lead Author/Reviewer:	John Kelly / Michele Watson / Nikki Malinowski
Date EHRIA Commenced:	16/06/2019
Version number:	
Date EHRIA Completed:	11/01/2021
Date New/revised policy/practice signed off by Management:	
Date EHRIA actions due for review on:	

Revision History			
Revision Date	Version	Summary of Changes	Authoriser
22/12/2020	4	Updated data regarding part-time workers, and inclusion of new legislation.	CA and KS.

For official use only by the Equality and Diversity Team	
EHRIA Tracker Number:	
Quality Assessor name:	
Date Quality Assessed:	
Publication date:	

Remember! When completing the Equality and Human Rights Impact Assessment 'policy/practice' must be interpreted in the widest possible sense to include the full range of SPS policies, provisions, criteria, functions, procedures, practices and activities for employment and service delivery.

Stage 1: Background information

What is the title of the new or revised policy/practice?

Maternity, Parenting and Adoption Policy

What is it?

A new policy/practice

A revised policy

Are there any other SPS policies that will be altered by the proposed changes?

If so they will also need to be impact assessed separately

Yes (Please provide details)

No

Who is leading the developing and/or implementing the new or revised policy/practice?

This is the person who should lead the impact assessment as they are the decision maker for the changes to be implemented.

Name	Nikki Malinowski
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Role	ER&R Manager
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Business Area	Human Resources
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Who else is involved in the Equality and Human Rights Impact Assessment?

Those involved must have a detailed understanding of the policy/practice area and must be in a position to ensure that changes can be made to a developing policy/practice where they are required. It is advisable to seek the support of an Equality & Diversity Manager or practitioner for expert input. The Trade Union Side should be involved in support of the SPS Partnership agreement. Add additional boxes as necessary.

Name	Willie Carle
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Role	POA
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Business Area	TUS
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Name	John Cairney
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Role	POA
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Business Area	TUS
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Name	Glen Di Caccia
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Role	PCS
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Business Area	TUS
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Name	Kate Skibtschak
Role	HRBP – Engagement & Inclusion
Area	Corporate Services
Name	
Role	
Business Area	

Stage 2: Scoping and evidence gathering

Scoping	
Why are you introducing the new policy/practice, or why are you revising an existing policy/practice?	As part of an overall policy review within SPS. To ensure that the policy is compliant with the relevant legislation.
What is the intended outcome(s) and impact of the new policy/practice, or making the changes to an existing policy/practice?	<p>Opportunity to review the existing policy as part of the 3 year policy review cycle, bring in line with current employment legislation, and to ensure fairness and transparent treatment of staff, incorporating best practice and guidance for SPS staff and managers.</p> <p>Improve ease of access for individuals with reading impairment by providing document in an alternative format.</p> <p>SPS is seeking to follow best practice (beyond basic compliance) in relation to the range of HR policies that will enhance equality of opportunity and inclusion for parents who are in same-sex relationships, and transgender staff. The revised policy has been written in such a way to make the information accessible to all SPS staff and use language that is designed to be inclusive.</p>

Evidence gathering

WHO did you consult with?

SPS Equality & Diversity Team, SPS Employment Relations & Reward Team, Trade Union Partners including POA(S), PCS, Prospect and the Prison Governors Association, Scottish Government Policy, HR Business Partners group, HR Assistants group, and the HR Policy Steering Group (including representatives from the Operations Directorate).

What quantitative and/or qualitative evidence as well as case law relating to equality and human rights have you considered when deciding to develop new or revise current policy/practice? How did it shape your policy/practice?

This policy is relevant to all employees across SPS but will be of particular importance to expectant parents; partners of expectant parents; expectant adoptive parents and those with parenting responsibility. The policy impacts on a number of the 9 protected characteristics protected under the Equality Act 2010.

In terms of the composition of the SPS workforce the 2020 SPS Employee breakdown as at December 2020 was (based on 4499 employees):

- 33.6% of the total SPS workforce are women, an increase from 30.17% in 2018.
- 66.4% of the total SPS workforce are men, an decrease from 69.83% in 2018.

Source: SPS Business Improvement Team.

- 4.4% of female employees are part time, an decrease from 11% in 2018.
- 7.7% of male employees are part time, an increase from 6% in 2018.

Source: SPS Annual Report - April 2020.

SPS Maternity & Parenting Cases

	2018	2019
Adoption	1	1
Maternity	53	60
Paternity	30	19
Shared Parental Leave	3	0
Total	87	80

Source: Pay, Pensions & Relocation Services team.

Scottish Demographics

2018 saw 51,308 births in Scotland.

Source: Statistics.Gov.Scot

913,000 people aged between 0 and 15 lived in a one family household.

291,000 lone parent families, 87 per cent were female lone parent families and 13 per cent were male lone parent families.

Household living arrangements of people over 16

56% of the 4.3 million people aged 16 and over in households lived in a married, same-sex civil partnership or cohabiting couple.

The proportion of those who were married (or in a same-sex civil partnership) fell from 50 per cent in 2001 to 46 per cent in 2011, while the proportion in cohabiting couples increased from 8 per cent to 11 per cent.

Dependent children

20% of the population were dependent children – 1,036,000 people.

The majority (69%) lived in a one couple family:

24% in female lone parent households,

2% in male lone parent households

6% in other households (e.g. households with more than two generations present).

The proportion of households with dependent children decreased from 28% in 2001 to 26% in 2011, mainly reflecting a decrease in the proportion of households with two or more dependent children.

Source: Scotland's Census 2011

367 children were adopted in the year during the year ended 31 July 2018.

Source: CoramBAAF

Parental Bereavement Leave

Section 14 of the revised policy now includes the legislative update that enables employees who have suffered a stillbirth or the loss of a child under the age of 18 to take 2 weeks paid parental bereavement leave. Legislation allows for 2 weeks paid at statutory rates, however SPS want to support employees going through these circumstances by paying 2 weeks at full basic pay.

Currently SPS eHR system does not record whether any of these instances were related to a child's death aged 18 and under.

The number of instances of Special Leave relating to Bereavement taken across SPS in 2018-19 was 710. The number of associated working days taken equated to 1,611.

UK Child Deaths

	2016	2017	2018
Total deaths	293,001	298,843	304,373

18 and under	2,664	2,684	2,639
% 18 and under	0.9	0.9	0.9

Source: Office for National Statistics

Scottish Child Deaths

	2016	2017	2018
Total deaths	56,728	57,883	58,503
18 and under	345	315	326
% 18 and under	0.61	0.54	0.56

Source: National Records of Scotland

Foster to Adopt

The policy has also been updated to include legislation implemented in 2015 that allows employees who are foster carers that are registered to foster a child with the intention of adopting that child, to access full Adoption Leave and Pay where eligible.

In accordance with section 22C of the Children Act 1989 and Paternity & Adoption Leave Regulations 2002 as amended in the Paternity and Adoption Leave Regulation 2014, a foster carer must be a 'dual approved prospective adopter' or 'pre-approved adopter', and the child must have been placed with the employee with the intention of fostering to adopt that child.

Case Law

Onigbanjo v London Borough of Croydon 2301468/2016

Summary of claim: *the Employment Tribunal held that the failure to carry out a risk assessment, in a situation where her employer was aware that she was pregnant, that her work was of a nature that could involve harm or danger to the health and safety of a new or expectant mother, and that the risk arose from work processes or conditions, constituted pregnancy and maternity discrimination.*

Compensation awarded: *to be determined at a further remedy hearing.* [Click here for our analysis of Onigbanjo v London Borough of Croydon](#)

Freear v Vossloh Cogifer UK Ltd 1800747/2016

Summary of claim: *the Claimant informed her employer that she was pregnant on 9 December 2015. Later that day she was told that her position was at risk of redundancy, and was later threatened with disciplinary action after she was signed off work sick by her GP. The Employment Tribunal held that she had been threatened with redundancy and disciplinary action because she was pregnant.*

Compensation awarded: £43,735.09

[Click here for our analysis of Freear v Vossloh Cogifer UK Ltd 1800747/2016](#)

A lookout for potential future reviews is the Good Work Plan: pregnancy and maternity discrimination consultation process currently being undertaken. In December 2018, the Government set out in the Good Work Plan ambitious

reforms to ensure the UK leads the world in meeting the challenges of the changing world of work. Extending redundancy protection for women and new parents is one area included within these reforms. The consultation sought views on three main issues:

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

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

WHAT did you learn from your evidence-gathering exercises?

SPS as an employer has seen an increase in its female employees in the last 3 years and also within that number a slight increase in female employees working part time, with the exception with 2019 where it saw a slight decrease.

The data and research demonstrates there is not a typical “family” and SPS cannot make assumptions that when there is an instance of maternity, adoption or parenting there will also be a partner.

The policy and associated documentation uses language designed to make the revised policy inclusive of all SPS employees. Removing the reference to ‘birth mother’ and replacing it with ‘birth parent’ to acknowledge employees who may be transitioning to another gender, or do not attribute themselves to either gender.

HOW will this shape your policy/practice?

This will ensure the policy is in line with the current legislation.

This policy will advise and inform employees and managers as to their statutory rights.

This revision will also incorporate the increase in maternity leave as detailed in the 2018-20 pay deal.

Stage 3: Identifying impact/outcomes

The Public Sector Equality Duty

In terms of the equality risk assessment for the employee journey including recruitment, retention, progression, promotion, training etc.

The impact and outcomes of the new/revised policy/practice will:

Contribute to eliminating discrimination, harassment and victimisation?

E.g.

- Raise awareness of our SPS vision and values for equality and diversity
- Challenge appropriately any behaviours or procedures which do not value diversity and advance equality of opportunity

POSITIVE:

It will contribute to eliminating discrimination, harassment, victimisation

NO EFFECT:

It will have no effect on discrimination, harassment and victimisation

NEGATIVE:

It will make discrimination, harassment and victimisation worse

Advance equality of opportunity between those who share a protected characteristic and those who do not?

E.g.

- Remove or minimise disadvantage
- Meet the needs of equality groups that are different from the needs of others participation in public life

POSITIVE:

It will advance equality of opportunity

NO EFFECT:

It will have no effect on equality of opportunity

NEGATIVE:

It will reduce equality of opportunity

Foster good relations between those who share a protected characteristic and those who do not? E.g.

- Tackle prejudice
- Promote understanding

POSITIVE:

It will foster good relations

NO EFFECT:

It will have no effect on good relations

NEGATIVE:

It will cause good relations to deteriorate

Human rights

Will the new/revised policy/practice breach the human rights articles? :

Consider for people in custody in terms of the equality risk assessment of the prisoner journey with us which includes admission, residential care, establishment regime, health and wellbeing, through care, people in custody management, visits etc.

Human rights

Consider for staff in terms of the equality risk assessment for the staff journey with us which includes recruitment, retention, progression, promotion, training etc.

Consider:

European Convention on Human Rights

Article 2	Right to life (e.g. suicide prevention)
Article 3	Prohibition of torture (e.g. person unable to consent)
Article 4	Prohibition of slavery & forced labour (e.g. safeguarding vulnerable people)
Article 5	Right to liberty & security (e.g. security procedures)
Article 6	Right to a fair trial (e.g. disciplinary procedures)
Article 7	No punishment without law (e.g. disciplinary procedures)
Article 8	Right to respect for private & family life (e.g. access to family)
Article 9	Freedom of thought, conscience & religion (e.g. sacred space)
Article 10	Freedom of expression (e.g. whistleblowing procedures)
Article 11	Freedom of assembly & association (e.g. trade union recognition)
Article 12	Right to marry (e.g. pregnancy)
Article 14	Prohibition of discrimination (e.g. protected characteristic groups)
Protocol 1 Article 1	Protection of property (e.g. staff/prisoner property)
Protocol 1 Article 2	Right to education (e.g. accessible information)

International Covenant on Economic, Social and Cultural Rights. Rights to:

- Work in just and favourable conditions
- Social protection
- An adequate standard of living
- The highest attainable standards of physical and mental health
- Education

It will uphold human rights articles.

It will breach with human rights articles.

<p>When considering all your responses to Stage 3 if you selected <u>POSITIVE</u>:</p>	<p>Please move on to stage 4 where you will be asked to provide details of the equality group(s) affected, the impact and evidence you considered.</p>
<p>When considering all your responses to Stage 3 if you selected <u>NEGATIVE</u>:</p>	<p>Please move on to Stage 4 where you will be asked to provide details of the equality group(s) affected and the impact and strategies to mitigate the impact to a reasonable level, or to remove the impact altogether.</p>
<p>When considering all your responses to Stage 3 if you selected for ALL areas <u>NO EFFECT</u>:</p>	<p>Please justify your conclusions here and move directly to Stage 5.</p>

Stage 4: Analysis of impact/outcomes

You have indicated that this new/revised policy/practice will have an impact/outcome on one or more of the 3 main duties of the Public Sector Equality Duty and Human Rights articles for people in custody or staff. Use these sections below to indicate whether the impact is positive or negative, and justify your assessment using the data and evidence you have already gathered (via statistics, consultation, etc.)

What are the positive impacts?

Does the new/revised policy or practice: Advance equality of opportunity? Remove discrimination? Remove harassment? Remove victimisation? Foster good relations? Encourage participation by disabled people? Uphold human rights articles? Detail the positive impact here.

The policy will continue to support SPS employees who wish to take time off for the purposes of child care as parents or adoptive parents. It also signposts the process for claiming statutory elements such as leave and pay. It further reinforces rights for those in same sex relationship with regard to child care, reflecting the increase in occupational maternity and adoption pay introduced by SPS as part of the pay deal.

The quantitative data reflects that the majority of children live in an environment which has 2 parents either in a marriage or cohabiting setting.

The language used in this reviewed policy is consistent with SPS policy language and is designed to be gender neutral and non-discriminatory throughout. The revised policy seeks to make clear throughout that it is applicable to all employees. It also sets out the provisions for attending ante natal appointments to both parents and that male employees have equal rights to time off for fertility appointments and to have their requests treated favourably.

The policy also provides above statutory paid time off for employees who suffer the loss of a child aged 18 and under.

The policy now also indicates the legislative position for employees who are fostering a child with the intention to adopt that child, and the provision of adoption leave and pay.

Please select which group(s) will be affected by the positive impact, and provide details below each category:

Age (e.g. older people or younger people):

The policy is applicable to employee of all ages.

Race (e.g. people from black or any minority ethnic groups):

The policy is applicable to employee of all races.

Gender (e.g. women or men):

The policy allows for both men and woman to benefit from an element of maternity leave if they so wish.

Disability (e.g. people with visible or non-visible disabilities, physical impairments):

The policy is applicable to all employees regardless of disability.

Gender Identity (e.g. changed/changing gender from that assigned at birth):

The policy is applicable to all employees regardless of gender identity.

Religion or Belief (e.g. belonging to a particular religion/belief or no affiliation):

The policy is applicable to all employees regardless of religion or belief.

Sexual orientation (e.g. lesbian, gay, bisexual or heterosexual):

The policy is applicable to all employees regardless of sexual orientation.

Maternity and Pregnancy (e.g. pregnant/on maternity leave/breastfeeding):

Marriage and civil partnership:

Socio-economic groups:

Human rights compliance (e.g. civil, political, economic, social, and cultural rights):

Inclusive Communications. What consideration have you given to the communication needs of those who will be impacted by your policy/practice, and what steps are you taking to ensure your policy/practice will be easily understood by them? For example, accessible formatting of document, alternative formats such as Plain English, Easy Read, foreign language translations, BSL translation, etc.

This policy is available in other formats if required.

What are the negative impacts?

Does the new/revised policy or practice: Create any barriers or issues for people from an equality group? Discriminate against any equality group? Have a negative impact on community relations internally and/or externally? Reduce any equality groups' access to a service or any other aspect of prison life? Reduce any equality group entry or progression as a member of staff, breach human rights articles?

Any aspect of the policy/practice that has a negative impact must either be mitigated to a reasonable, objectively justifiable level, or abandoned altogether if this is not possible

Detail the negative impacts here:

Please select which group(s) will be affected by the negative impact, and provide details of the negative impact and how you will mitigate against it below each category:

Age (e.g. older people or younger people):

Race (e.g. people from black or any minority ethnic groups):

Gender (e.g. women or men):

Disability (e.g. people with visible or non-visible disabilities, physical impairments):

Gender Identity (e.g. changed/changing gender from that assigned at birth):

Religion or Belief (e.g. belonging to a particular religion/belief or no affiliation):

Sexual orientation (e.g. lesbian, gay, bisexual or heterosexual):

Maternity and Pregnancy (e.g. pregnant/on maternity leave/breastfeeding):

Marriage and civil partnership:

Socio-economic groups:

Human rights compliance (e.g. civil, political, economic, social, and cultural rights):

Stage 5: Identifying options and course of action

Recommended course of action: select relevant outcome and check the box when prompted:

Outcome 1: Proceed – no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified.

Policy/practice addresses the intended outcome and is positive in its language and terminology. It advances equality and human rights as well as fosters good relations.

Outcome 2: Proceed with adjustments to remove barriers identified for discrimination, advancement of equality of opportunity and fostering good relations or breach of human rights articles.

Outcome 3: Continue despite having identified some potential for adverse impact or missed opportunity to advance equality and human rights (justification to be clearly set out).

Outcome 4: Stop and rethink as actual or potential unlawful discrimination or breach of human rights articles has been identified.

Summary of outcome decision and any other recommendations

Please provide summary here:

SPS will continue to operate this policy taking heed of any future changes in legislation should there be any. The policy will be reviewed in the event of any significant changes or relevant case law developments.

Outline plans to action and review the impact of the new/revised policy/practice.

- Note: any evidence that raises concern would trigger an early review rather than the scheduled date.
- Indicate if there is any data which needs to be collected as part of action to be taken and how often it will be analysed.
- Indicate how the person responsible will continue to involve relevant groups and communities in the implementation and monitoring of the new/changed policy/practice.

What:	Any significant changes in legislation e.g. The Good Work reforms.
Why:	This reform will significantly change maternity rights after returning to work, and timelines for making tribunal claims.
Who:	SPS TUS, ER&R, HR
When:	As required.
Name of lead:	
Date:	