



Equality and Human Rights Impact Assessment (EHRIA) Publication Document

This template summarises the key decisions/actions taken by the SPS in the development of the EHRIA, and has been separated from the full EHRIA document for publication on the SPS external website in compliance with statutory requirements.

Background	
Title of the Policy	Maternity and Paternity Policy
Date EHRIA completed	15 March 2024
Review date and frequency	The policy will be reviewed as and when required to reflect changing business and legislative requirements.
Is this a new or revised policy/practice?	New <input type="checkbox"/> Revised <input checked="" type="checkbox"/>

Scoping
<p>What are the aims of this policy/practice?</p> <p>The policy has been reviewed to ensure compliance with the Paternity Leave Amendment Regulations (2024). The changes provide increased flexibility and better support working parents by allowing employees to split up their paternity leave entitlement and take it within an extended timeframe.</p>
<p>WHO did you consult with?</p> <p><u>Extract from 2021 EHRIA</u> 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).</p> <p><u>Updates 2024</u> TUS, PGA(S), Head of Equality, Diversity and Inclusion, HR Business Partners.</p>
<p>WHAT did you learn?</p> <p><u>Extract from 2021 EHRIA</u></p> <ul style="list-style-type: none">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 demonstrate 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 use 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.

Updates 2024

Legislation

Where the expected week of birth, the expected date of placement for adoption, or the expected date of entry into Great Britain for adoption, is **on or after 6 April 2024:**

- Employees can choose to take either two non-consecutive weeks' paternity leave, or a single period of either one or two weeks. (Previously only a single period of either one or two weeks).
- The period in which paternity leave must be taken is extended to 52 weeks after the birth or adoption placement (previously it was 56 days).
- Notice of entitlement to take paternity leave must be given on or before the 15th week before the expected week of birth (or by the end of the matching week), followed by at least 28 days' notice of each period of leave. (Previously both notice of entitlement and intention to take paternity leave had to be given by the 15th week before the expected week of birth/within 7 days of matching.)

Other

- Employers can improve gender equity and inclusion by establishing procedures that encourage employees to return to the organisation following maternity or adoption leave, and to take up paternity and shared parental leave.
- Policies that support working parents should not exclude or disadvantage same-sex partners.
- Enhancing statutory provisions can deliver more balance and choice over the distribution of caring responsibilities and better reflect the changing nature of modern families.

Workforce Data (April 2023)

- AGE: 4.84% (16y-24y), 26.22% (25y-34y), 21.42% (35y-44y), 21.5% (45y-54y), 23.8% (55y-64y) and 2.21% (65y+).
- GENDER: 36.48% (female) and 63.52% (male).
- ETHNICITY: 34.3% (white), 7% (undisclosed), 58.2% (no response). The numbers of employees reporting their ethnic status as BAME has remained constant at less than 1% of the workforce population.
- DISABILITY: 8.2% of SPS employees declared on e-HR that they have a disability.
- GENDER IDENTITY: The SPS does not currently collect data in relation to gender identity of staff.
- RELIGION: Approximately 20% of employees have disclosed a religion or belief and 10% have chosen not to disclose their religion or belief. Over 60% of employees have not provided any information. Approximately 10% have advised they have no religion or belief.
- SEXUAL ORIENTATION: 65% of our employees have not provided any information on sexual orientation. Of those whose sexual orientation has been recorded, the majority are heterosexual/straight, with less than 2% recorded as gay, lesbian, bisexual or other.
- MATERNITY: In 2023, there were 101 maternity cases.
- MARITAL STATUS: Over 60% of our employees have not provided any information on marital status. Of those who have provided information approximately 23% have declared they are Married/Civil Partnership.
- SOCIOECONOMIC: The SPS does not currently collect data in relation to staff who identify as experiencing, or having experienced, socioeconomic disadvantage.

HOW will this shape your policy/practice?Extract from 2021 EHRIA

- 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 pay as detailed in the 2019-21 pay deal.

Updates 2024

- The revised policy reflects legislative requirements.
- The policy continues to encourage employees to make full use of their entitlements to support a positive work life balance.
- The SPS continues to provide more than the statutory provisions for paternity pay.
- Gender neutral language continues to be used as far as possible to be inclusive of all working parents.

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?Extract from 2021 EHRIA

- 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.
- We have reviewed the composition of the SPS workforce, and the number of maternity and parenting cases over the last two years. For example, there were 87 cases (maternity, adoption, parental, shared parental leave) in 2018 and 80 cases in 2019. We have also looked at external demographics, e.g. number of births in Scotland.
- 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. Additional evidence reviewed include the number of instances of Special Leave relating to Bereavement taken across SPS external figures regarding Scottish child deaths.
- We have also reviewed best practice from several other organisations within the public, private and third Sectors. We have had input from various stakeholders across the SPS.
- Reviewed externally recommended best practice, e.g. Chartered Institute of Personnel and Development (CIPD), X-XpertHR, and Advisory, Conciliation and Arbitration Service (ACAS)
- Relevant case law considered:
 - Onigbanjo v London Borough of Croydon 2301468/2016: the ET 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.
 - Freear v Vossloh Cogifer UK Ltd 1800747/2016: the Claimant informed her employer that she was pregnant and 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.

Updates 2024**Legislation**

- [The Paternity Leave \(Amendment\) Regulations 2024 \(legislation.gov.uk\)](https://legislation.gov.uk)

Other

- [Government publishes draft paternity leave... | CIPD HR-inform](#)
- [Paternity leave | Family-friendly rights | Employment law guide | Tools | XpertHR.co.uk](#)
- [Paternity: Handle a paternity leave and pay request \(birth situation\) | Interactive flowcharts | Tools | XpertHR.co.uk](#)
- [Form for employee to request paternity leave and pay in respect of birth child | Letters and forms | Tools | XpertHR.co.uk](#)
- [Advancing gender equality in the workplace: Supporting employees | Equality and diversity | Leading practice guides | Tools | XpertHR.co.uk](#)
- [Employer focus on working parents: Parental leave and pay and childcare policies \(cipd.org\)](#)

Impact

Will the impact and outcomes of the new/revised policy/practice:

Contribute to eliminating discrimination, harassment and victimisation? E.g. <ul style="list-style-type: none"> • 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 <input checked="" type="checkbox"/>
	NO EFFECT: It will have no effect on discrimination, harassment and victimisation <input type="checkbox"/>
	NEGATIVE: It will make discrimination, harassment and victimisation worse <input type="checkbox"/>
Advance equality of opportunity between those who share a protected characteristic and those who do not? E.g. <ul style="list-style-type: none"> • 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 <input checked="" type="checkbox"/>
	NO EFFECT: It will have no effect on equality of opportunity <input type="checkbox"/>
	NEGATIVE: It will reduce equality of opportunity <input type="checkbox"/>
Foster good relations between those who share a protected characteristic and those who do not? E.g. <ul style="list-style-type: none"> • Tackle prejudice • Promote understanding 	POSITIVE: It will foster good relations <input checked="" type="checkbox"/>
	NO EFFECT: It will have no effect on good relations <input type="checkbox"/>
	NEGATIVE: It will cause good relations to deteriorate <input type="checkbox"/>
Will the policy reduce inequalities of outcome as described within the Fairer Scotland Duty 2018?	It will take steps to reduce socio-economic inequalities. <input checked="" type="checkbox"/>
	It will make no impact on reducing socio-economic inequalities. <input type="checkbox"/>

Impact Will the impact and outcomes of the new/revised policy/practice:	
Will it uphold human rights?	It will uphold human rights articles. <input checked="" type="checkbox"/>
	It will breach human rights articles. <input type="checkbox"/>

Please summarise the results of the Equality & Human Rights Impact Assessment, including the likely impact of the proposed policy/practice advancing equality and human rights.

Positive Impacts
<p>Protected characteristics affected:</p> <p><u>Extract from 2021 EHRIA</u></p> <ul style="list-style-type: none"><i>The policy will continue to support SPS employees who wish to take time off for the purposes of childcare 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 childcare, reflecting the increase in occupational maternity and adoption pay introduced by SPS as part of the pay deal.</i><i>The quantitative data reflects that the majority of children live in an environment which has 2 parents either in a marriage or cohabiting setting.</i><i>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.</i><i>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.</i><i>The policy also provides above statutory paid time off for employees who suffer the loss of a child aged 18 and under.</i><i>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.</i> <p><u>Updates 2024</u></p> <ul style="list-style-type: none">Gender Cultural expectations and gender norms mean that women are more likely to take on the role of caregivers. The Paternity Leave Amendments provide increased flexibility and better support working parents by allowing employees to split up their paternity leave entitlement and take it within an extended timeframe.Gender Reassignment The use of gender-neutral language is inclusive to colleagues of all genders; supporting all working parents to feel recognised and able to access support.Maternity and Pregnancy The Paternity Leave Amendments provide increased flexibility and better support working parents by allowing employees to split up their paternity leave entitlement and take it within an extended timeframe.Age

Positive Impacts

There is no upper age limit for adoption in the UK, and employees of all ages may be a parent to a child under eighteen. The Maternity and Paternity Policy supports employees of all ages to engage in their parenting entitlements.

Negative Impacts

Protected characteristics affected:

Impact	Mitigation
N/A	N/A

Recommended course of action

Outcome 1: Proceed – no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified.	<input checked="" type="checkbox"/>
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.	<input type="checkbox"/>
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).	<input type="checkbox"/>
Outcome 4: Stop and rethink as actual or potential unlawful discrimination or breach of human rights articles has been identified.	<input type="checkbox"/>

Summary of Outcome decision and Recommendations

Policy addresses the intended outcome and is positive in its language and terminology. It advances equality and human rights as well as fosters good relations. Recommendations to remove or minimise any actual or potential negative impacts identified, and to build positive impacts:

- Policy made accessible to all staff on SharePoint.
- Revised Policy communicated via Notice to Staff.
- Communications to HR teams to understand revisions and support application across the SPS.
- Continued access to Occupational Health, Employment Assistance Programme and wider Health and Wellbeing offer.

Outcome is to launch revised policy. Research and consultation undertaken through the development and associated support indicates the introduction will have a positive impact. Specific positive impacts addressed by the policy include meeting legislative requirements and providing working parents with increased flexibility. There have been no negative implications for employees identified, therefore the recommendation is to publish framework.

Next steps

Publication of Policy which will be effective 6th April 2024.

If you require this document in an alternative format, please contact ASKERandR@prisons.gov.scot