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BY CLAIRE SYMMS, KRISTABEL IBUAKA,
MINEET KAUR & JENNIFER REYNOLDS



AN ETERNITY FOR MATERNITY

Executive Summary:

Maternity worker rights and protections are among the most developed in UK Labour Law. However, there remain many gaps whereby these workers are inadequately supported and discriminated against. As a result, these workers, predominantly women, are often forced into positions of greater economic and social vulnerability. Following, current maternity worker provisions reinforce gender-based and socio-economic inequalities and are insufficient at ensuring a sustainable maternity workforce. This policy brief explores 4 key issues within this domain and offers measures for reform to fortify maternity worker protections within the UK's Labour Law framework.

WHAT TO EXPECT
WHEN YOU'RE
EXPECTING:

**A.PAY
DISPROPORTIONALITY**

B. SICK-PAY

**C. 'ADDITIONAL'
SUPPORT**

**D. MISCARRIAGES OF
JUSTICE**

MATERNITY MATTERS

A. The Statutory Maternity Pay Regulations 2006 S2.2 dictate that the ‘Maternity Pay Period’ is for 39 weeks.[1]

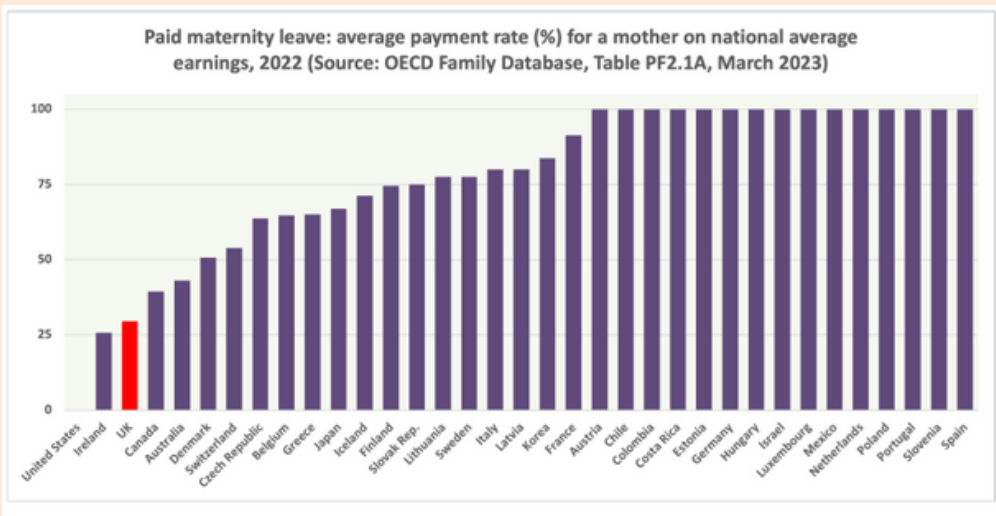
This is **directly disproportionate** to the average length of maternity leave which is 52 weeks. Consequently, employers are not obligated to pay workers for the full duration, *forcing* some women back into the workforce. Maternity Action’s 2023 Cost of Living Survey revealed that nearly 3 in 5 respondents returned to work for financial reasons, vastly affecting their ‘post - partum recovery, mental health, mother-child bonding and ability to breastfeed’[2]

Furthermore, Statutory Maternity pay (SMP) is calculated as ‘90% of employees’ weekly earnings for the first 6 weeks’, followed by a ‘weekly flat rate of £172.48 for the remaining 33 weeks or 90% of their average weekly earnings (whichever is lower)’.[3]

This is **less than half of the average living wage**. Whilst this calculation is a form of government guidance for employers, it is commonly used throughout the country. As a result of this poor pay, mothers are often forced to use food banks or go without food altogether [4], highlighting the inadequacies of this current calculation.

Reform:

- Amend the Statutory Maternity Pay Regulations 2006 S2.2 to a period of 52 weeks, reflective of the average length of maternity leave.
- SMP should at least be increased to the standard living wage for the duration of maternity leave.



[5]

[1] Statutory Maternity Pay Regulations 2006, S2.2.
[2] Maternity Action, ‘Forced to return early - the impact of low rates of maternity pay’ (January 2024) <https://www.linkedin.com/pulse/forced-return-early-impact-low-rates-maternity-pay-maternity-action-xln8f/?trk=article-ssr-frontend-pulse_more-articles_related-content-card> Accessed 6/3/24.
[3] ‘Statutory Maternity Pay and Leave: employer guide’ <<https://www.gov.uk/employers-maternity-pay-leave>> Accessed 6/3/24.
[4] Maternity Action, ‘A Perfect Storm; pregnancy, new motherhood and the cost of living crisis’ (Maternity Action, November 2023) <<https://maternityaction.org.uk/wp-content/uploads/A-Perfect-Storm-ReportNov2023FINAL.pdf>> Accessed 9/10/24.
[5] OECD Family Database, Table PF2.1A, (March 2023) <https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf> Accessed 6/3/2024

B. Per the **Statutory Maternity Pay Regulations 2006** [6], pregnancy-related sick periods are included in the 90% weekly earnings calculations outlined above.

This can produce lower average earnings and thus less maternity pay for women. Considering nearly 70% of women suffer from intense pregnancy illnesses [7], requiring sick leave, the economic implications this can have on new mothers are particularly widespread. Following, it can **exacerbate their existing economic vulnerabilities** and lead to the same unsustainability in maternity that A. discussed.

Further, research shows that **Black, Asian, and Minority Ethnic (BAME) women are disproportionately affected by pregnancy sicknesses** like nausea and hyperemesis gravidarum, increasing their need for sick leave.[8] Resultingly, BAME women who receive SMP are more likely to become economically disadvantaged. Therefore, the current framework indirectly perpetuates racial prejudice amidst maternity workers.

Reform:

- Pregnancy-related sickness should be excluded from SMP calculations so that taking sick leave does not directly reduce maternity pay and reinforce economic and racial inequalities.

[6] Statutory Maternity Pay Regulations 2006

[7] C. Brierley, 'Why seven in ten women experience pregnancy sickness' (*University of Cambridge*, December 2023) <<https://www.cam.ac.uk/stories/pregnancy-sickness-cause>> Accessed 10/3/24.

[8] L. Fiaschi, C. Nelson-Piercy, S. Deb, R. King and L.J. Tata, 'Clinical management of nausea and vomiting in pregnancy and hyperemesis gravidarum across primary and secondary care: a population-based study' [2019] 126 BJOG 10 <<https://pubmed.ncbi.nlm.nih.gov/30786126/>> Accessed 5/3/24.

C. The **UK's Shared Paternal Leave Regulations 2014 (SPL)** aim to facilitate shared parenting during a child's first year or after adoption. However, **s.5(3)(c)** limits the father/partner's SPL entitlement, tying it to the end of the mother's statutory maternity leave. [9]

This renders any additional support counterproductive, as **s.5(3)(c) relies on the sacrifices of mothers' legal entitlements**. Further, it exacerbates gender inequalities, as fathers'/partners' lack of independent rights for extended parental leave **confines women into the archaic 'primary caregiver/secondary worker' role**. Additionally, SPL eligibility is contingent on the mother's entitlement to maternity leave and pay. This creates more barriers for additional support, as it won't be available where women don't qualify. [10] Resultingly, SPL is also hollow at a practice level, as research indicates a low uptake, with some fathers opting for annual leave instead or to supplement. [11]

Reform:

- S.5(3)(c) SPL must be reformed to grant fathers/partners autonomous rights for extended parental leave without compromising women's maternity leave. This would modernise current provisions by fostering *actual* shared caregiving responsibilities and dismantling entrenched gender norms.

[9] Shared Parental Leave Regulations 2014 s.5(3)(c)

[10] J. Allen, 'Maternity, paternity, paternal leave and gender' (*Women's Budget Group*, March 2021) <[Maternity-paternity-and-parental-leave.pdf \(wbg.org.uk\)](https://www.wbg.org.uk/wp-content/uploads/2021/03/Maternity-paternity-and-parental-leave.pdf)> Accessed 10/3/24.

[11] Maternity Action, 'The impact on mothers and families of low maternity payments and the cost of living crisis' (*Maternity Action*, November 2023) <[LitReviewFinaltext05122023.pdf\(maternityaction.org.uk\)](https://www.maternityaction.org.uk/wp-content/uploads/2023/05/LitReviewFinaltext05122023.pdf)> Accessed 10/3/24.

D.

In the UK, a miscarriage is pregnancy loss before 24 weeks [12].

Under s.18(6)(b) Equality Act 2010 (EA), ‘beginning with the end of the pregnancy’, working women are only protected from pregnancy discrimination for 2 weeks [13].

This short duration is unfounded as it is incongruent to miscarriage recovery which can take ‘a few weeks’. [14] Additionally, it situates women who develop subsequent physical or mental conditions which take longer than 2 weeks to diagnose or surface in a legal black hole whereby maternity and disability protections are inapplicable. Therefore, current law exposes women who miscarry, and are unrecovered, to **unfair but legal** dismissals and discrimination.



[15]

“I LOST MY BABY THEN I LOST MY JOB” [16]

The Parental Bereavement Leave and Pay Act 2020 excludes employees who experience miscarriages from 2 weeks’ paid leave. [17]

This is unjust as, per the NHS, ‘people affected by a miscarriage go through a bereavement period’ which ‘take[s] several weeks’. [18] It also forces sick leave as a substitute which isn’t guaranteed. [19] This **‘others’ and invalidates women who miscarry** as they enjoy far fewer rights and validation than women who surpass 24 weeks of pregnancy.

Reform:

- Pregnancy discrimination protections for women who miscarry must be extended to increase their accessibility and ability to safeguard.
- Following other jurisdictions (Figure X), the UK is considering the Miscarriage Leave Bill [21], which proposes 3 days’ paid leave for employees who miscarry. This should be implemented but amended to better compliment the NHS’s guidance of ‘several weeks’ and balance the rights between women experiencing pregnancy loss.

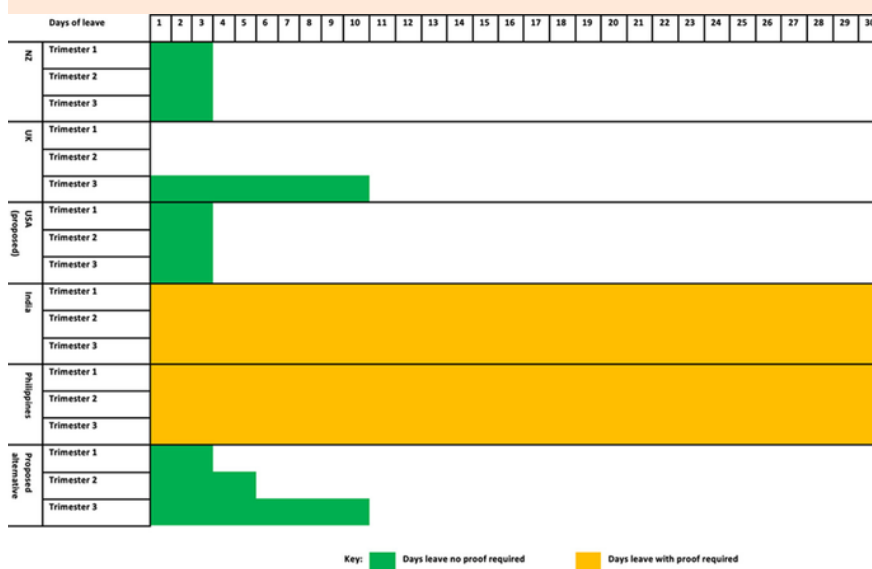


Figure X [20]

[12] National Health Service, ‘Miscarriage- Overview’ (National Health Service, 9 March 2022) <<https://www.nhs.uk/conditions/miscarriage/>> Accessed 5/3/24.

[13] Equality Act 2010, s.18(6)(b)

[14] Miscarriage Association, ‘After a miscarriage’ (Miscarriage Association) <<https://www.nhs.uk/conditions/miscarriage/afterwards/>> Accessed 5/3/24.

[15] Tommy’s ‘Understanding the psychological impact of a miscarriage’ (Tommy’s, 2021) <<https://www.tommys.org/research/research-topics/miscarriage-research/piepe-miscarriage-mental-health#:~:text=A%20recent%20study%20suggests%20that,to%20around%201%20in%205.>>> Accessed 5/3/24.

[16] N. Iqbal, “I lost my baby then I lost my job”- one mother’s fight to change working rights’ (The Guardian, 18 August 2019) <<https://www.theguardian.com/law/2019/aug/18/women-employment-rights-pregnancy-miscarriage-birth-redundancy>> Accessed 5/3/24.

[17] Statutory Parental Bereavement Leave and Pay Act 2020

[18] National Health Service, ‘Miscarriage- Afterwards’ (National Health Service, 9 March 2022) <<https://www.nhs.uk/conditions/miscarriage/afterwards/>> Accessed 5/3/24.

[19] Nathan Hodson and Ray Jerram, ‘Introduction of miscarriage bereavement leave in New Zealand in 2021: A comparison with international experiences’ [2023] 132 Health Policy 1, 2.

[20] Ibid.

[21] Miscarriage Leave HC Bill (2022-23) [136]

Recommendations:

• Explicitly exclude pregnancy-related sick leave from SMP calculations. [24]

• Increase SMP [22] so women receive the minimum wage for the duration of maternity leave.

• Amend the Statutory Maternity Regulations 2006 [23] so that maternity pay is available for 52 weeks, proportionate to the maximum maternity leave period.



• Reform S.5(3)(c) SPL [25] to grant partners the independent right to extended parental leave, separate to mothers' maternity leave and pay statuses.

• Conduct research to extend miscarriage discrimination protections under s.18(6)(b) EA [26] to better reflect miscarriage realities.

• Introduce the proposed Miscarriage Leave Bill [27] but amend its leave and pay entitlements from 3 days to 7-14.

[22] 'Statutory Maternity Pay and Leave: employer guide' <<https://www.gov.uk/employers-maternity-pay-leave>>

[23] Statutory Pay Regulations 2006

[24] 'Statutory Maternity Pay and Leave: employer guide' <<https://www.gov.uk/employers-maternity-pay-leave>>

[25] Shared Paternal Leave Regulations 2014, s.5(3)(c)

[26] Equality Act 2010, s.18(6)(b)

[27] Miscarriage Leave HC Bill (2022-23) [136]

TOTAL WORD COUNT: 1,005

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