

# Equality Act Review Policy Briefings

To inform Government and Parliamentary Debate

## Refinement of 'Mental Disability' to Account for Short term Maternal Mental Health

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People suffering from mental health conditions are highly likely to experience **stigma and discrimination**. This group of people are amongst the most likely to be unemployed and living in inadequate housing. Mental illness discrimination can lead to homelessness and redundancy, creating a negative feedback loop. The consequent of this predicament can be life threatening, with discrimination alienating the sufferer from society. This effect can be amplified if the person belongs to more than one discriminated group.

Mental health conditions are known to be variable; **episodic, long-lasting or temporary**. The Equality Act views a discriminable mental health condition as a disability that substantially impairs day-to-day functioning on a long-term basis.\* The expected or minimum time frame for this impairment is **one year**. Mental health conditions that are episodic, with high likelihood of repeat, can be covered. The fixed time period results in a doubled **burden of proof**. The claimant suffering from a mental health condition must show it to be a long-lasting disability. The claimant must also provide inferable facts that show discrimination has taken place.

This isolated window **excludes those who suffer short term non-episodic mental health conditions**. This exclusion stands in contrast with the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) definition. The DSM-5 makes no reference nor distinction using time frames. The International Classification of Diseases and Related Health Problems (ICD-10), similarly makes **no reference to time frames**.

The **'long-term' stipulation** of the Equality Act dangerously excludes maternal mental conditions such as perinatal and postpartum mental health conditions, which last under a year on average. The Equality Act offers a **26-week** window of postpartum

discrimination protection. However, this makes no reference to mental health conditions associated with pregnancy. Mothers can take **6 to 12 months to recover** completely from postpartum psychosis. A condition, according to the NHS that effects 1 in 500 mothers after giving birth. Similarly, variable timelines exist for perinatal OCD. In addition, postpartum depression can last 3 to 6 months for 75% of sufferers\*\*, which also falls outside of the remit of the Equality Act.

Postpartum depression has been shown to cause negative workplace trajectories for many women. There is a lack of literature on the effects of other maternal mental health conditions in the workplace. Despite this, **77%** of pregnant women faced negativity or possible discrimination at work, according to the UK Equality and Human Right's Commission. Pregnant mothers, irrespective of mental health, are highly likely to face discrimination. This coupled with the Equality Act's stringent time period leaves many discriminated women **without protection**. These protected characteristics intersect to produce **compounded discrimination** against pregnant women with mental health conditions.

The Equality Act's definition also fails to account for the **intersectionality of mental health discrimination**. In the above case, women experience mental health in a particular manner when pregnant. This biological fact intersects with and can be magnified by well-known protected characteristics such as **ethnicity, race, gender, religion, refugee status**, to name a few. A systematic review published in 2019, showed that ethnic minority women were at greater risk of being unable to access perinatal mental health support.\*\*\* This was due to culturally **dismissive health providers**. Discrimination of this type shows how multiple protected characteristics interact. The 12-month time period would exclude these women from a discrimination claim, on the basis of mental health.

Freedom from mental health discrimination is a key **human right**. Including an **expansive time period** would validate the experience of women who suffer from mental health discrimination. Pregnant women would then have the ability to **combat unfair discrimination**. This would fundamentally begin a process of accounting for intersectional characteristics in discrimination legislation.

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## Policy recommendations

1. Re-examination of the definition of 'long-lasting' to include maternal mental health conditions lasting between 6 and 11 months.
2. Explicit inclusion of maternal mental health in pregnancy discrimination legislation.
3. Parliamentary debate on whether intersectionality should be included into the Equality Act
4. Independent research into maternal mental health discrimination in the workplace.

## BIBLIOGRAPHY

<sup>†</sup>Equality Act 2010, <https://www.gov.uk/definition-of-disability-under-equality-act-2010>

<sup>††</sup>Royal College of Psychiatrists, Help is at Hand: Post Natal Depression. Accessed at: <https://www.sth.nhs.uk/clientfiles/File/PostNatalDepression%5B1%5D.pdf>

<sup>†††</sup>Watson H, Harrop D, Walton E, Young A, Soltani H, 2019. A systematic review of ethnic minority women's experiences of perinatal mental health conditions and services in Europe. <https://doi.org/10.1371/journal.pone.0210587>