



# Equality and Human Rights Impact Assessment Publication Document

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

<b>Background</b>	
<b>Title of the Policy</b>	Menopause Policy & Guidance
<b>EHRIA Lead (role)</b>	HR Business Partner
<b>Date EHRIA completed</b>	26 January 2023
<b>Review date and frequency</b>	Three Years
<b>Is this a new or revised policy/practice?</b>	New <input checked="" type="checkbox"/> Revised <input type="checkbox"/>

<b>Scoping</b>	
<b>What are the aims of this policy/practice?</b>	
<ul style="list-style-type: none"> <li>• Support any employee experiencing the menopause and help them to minimise the impact it can have on them while at work, enabling them to remain in employment.</li> <li>• Respect the individual experience of each employee and create an environment where an employee can feel confident enough to raise issues about their symptoms or request reasonable adjustments.</li> <li>• Raise awareness of menopause transition and provide information/ support for employees who are directly and indirectly affected.</li> <li>• Foster an environment in which colleagues can openly and comfortably instigate conversations or engage in discussions about the menopause in a respectful and supportive manner.</li> <li>• Minimise disruption to service provision due to the menopause and fulfil duty of care requirements towards employees.</li> </ul>	
<b>WHO did you consult with?</b>	
<ul style="list-style-type: none"> <li>• Wellbeing Policy Review Group with representatives from Trade Union Side and HR.</li> <li>• TUS women's working group.</li> <li>• Staff Networks</li> <li>• Head of Equality Diversity and Inclusion</li> <li>• Prison Governors Association</li> <li>• Governors in Charge and management teams.</li> <li>• HR Business Partners</li> <li>• Wellbeing of Women – Menopause Pledge Group.</li> <li>• Civil Service – Ministry of Justice - Supporting the Workplace in Menopause network group.</li> <li>• SG Network Group</li> </ul>	

- Occupational Health provider.

## WHAT did you learn?

- **Advisory, Conciliation and Arbitration Service (ACAS) – Advice on Menopause at Work** [Talking with staff about the menopause: Menopause at work - Acas](#);
  - The menopause is not a specific protected characteristic under the Equality Act 2010. But if an employee or worker is put at a disadvantage and treated less favourably because of their menopause symptoms, this could be discrimination if related to a protected characteristic, for example: age, disability, gender reassignment, sex.
  - Not all trans, VSD (variations of sex-development) or non-binary people take hormones, but those who do can experience menopause symptoms when stopping or restarting treatment
  - Trans men might experience menopause symptoms if their ovaries remain and they're not given hormone therapy
  - Trans men and intersex women might experience surgical menopause if their ovaries are removed
  - Trans men and intersex women might not experience menopause symptoms with hormone therapy, but they may experience hormonal disruption
  - Trans women and intersex women might experience some of the symptoms related to the menopause if their hormone therapy treatment is interrupted or hormone levels change.
- **Chartered Institute of Personnel and Development (CIPD) – ‘Menopause at Work: A Guide for People Professionals’** [The menopause at work: a guide for people professionals \(cipd.co.uk\)](#) –
  - 30% of those surveyed said they had been unable to go into work because of their menopause symptoms – but only one quarter of that group felt able to tell their line manager the real reason for their absence.
  - Three in five of those experiencing menopause transition believe their symptoms have a negative impact on them at work.
  - The average age to undergo the menopause in the UK is 51, but around 1 in 100 experience it before the age of 40, known as premature ovarian insufficiency (POI) or ‘premature menopause’. Often, there is no clear cause for the early onset of menopause, but it can also be because of surgery (for example hysterectomy, oophorectomy) or illness, or treatment (such as chemotherapy).
  - Good people management is crucial to supporting those experiencing the Menopause and there are a wide range of physical and psychological symptoms associated with the Menopause. CIPD therefore recommend a ‘cafeteria’ strategy, ‘where women can choose from a range of options to assist with their specific symptoms, depending on severity, regularity and duration’ (Beck et al 2018)
  - It’s important to use inclusive language so that nobody feels side-lined and so that everyone knows how to access any support they might need.
- **Case Law**
  - Rooney V Leicester City Council Employment Appeal Tribunal 7 October 2021 - In this key 2021 case, the EAT ruled that an employment tribunal had wrongly decided that a

woman suffering with menopausal symptoms was not disabled. While the case law in this area develops, employers should ensure that line managers understand how menopausal symptoms can impact an employee's wellbeing, performance, and attendance.

- Davies V Scottish Courts and Tribunal Service ET 9 May 2018 – The Tribunal treated Menopause as a Disability and said that there was a clear causal link between the claimant's disability and her conduct. Managers must be trained in issues surrounding the Menopause and employees with symptoms may bring disability (and/or sex or age) discrimination claims if employers do not take such health challenges seriously.
- **XPert HR Commentary and Insights –**
  - [Brain fog: The menopause symptom impacting women at work | Commentary and insights | Tools | XpertHR.co.uk](#) One in four women consider leaving their job because of their menopausal symptoms - and one in 10 do. Just 22% of workers have spoken about menopause at work. Over 78% of people had experienced brain fog as an effect of menopause. - brain fog can cause people to forget what they are saying mid-sentence
  - <https://www.xperthr.co.uk/commentary-and-insights/brain-fog-the-menopause-symptom-impacting-women-at-work/166419/?keywords=menopause&searchrank=6> The number of tribunal cases in which employees are alleging menopause-related discrimination is on the rise.
- **SPS Head of Equality Diversity and Inclusion -** Gender neutral language should be used to ensure that the document is inclusive of all colleagues, including those who identify as a gender which is different to the one to which they were assigned at birth. The use of 'women' for example excludes colleagues who identify as non-binary or Transgender and are experiencing Menopausal symptoms.
- **SPS Workforce Data**
  - The age breakdown for the SPS (08/11/22) is: 2.94% (16y-24y), 26.5% (25y-34y), 21.5% (35y-44y), 22.1% (45y-54y), 24.5% (55y-64y) and 2.43% (65y+).
  - The gender breakdown for the SPS (08/11/22) is: 36% (female) and 64% (male).
  - The ethnicity breakdown for the SPS (08/11/22) is: 34.15% (white), 7% (undisclosed), 58.4% (no response). The numbers of employees reporting their ethnic status as BAME has remained constant at less than 1% of the workforce population.
  - As of 1<sup>st</sup> November 2022, 8% of SPS employees declared on e-HR that they have a disability.
  - The SPS does not currently collect data in relation to gender identity of staff.
  - As at 08/11/22, Approximately 20% of employees have disclosed a religion or belief and 10% have chosen not to disclose their religion or belief. Over 50% of employees have not provided any information. Approximately 10% have advised they have no religion or belief.
  - As at 08/11/22, over 60% 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.

- In the rolling year from November 2021 to November 2022, there were 107 maternity cases at SPS.
- As at 08/11/22, 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.
- 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?**

- Clear outline of the roles and responsibilities of all parties in ensuring the application of the policy and achievement of its purpose to mitigate against discrimination and disadvantage of any person or group.
- Evidence based explanation of the menopause, its symptoms, causes and treatments to support understanding and awareness;
- Inclusion of 'Key Consideration Points for Meeting Colleagues about Menopause' in the policy and guidance to support Line Managers to have purposeful and supportive consent-based conversations to enable individuals to access workplace adjustments that meet their needs. This supports the SPS to advance equality of opportunity and mitigate health and safety risks.
- Places a responsibility on Senior Managers and Governors to promote the policy and encourage behaviours that are consistent with organisational values, and a responsibility on all employees to help and support others, in order to foster good relations between persons who are experiencing the menopause and persons who are not.
- Embedding references to the Employee Passport into the Menopause Policy and Guidance to signpost employees and line managers to utilise this document to support individuals experiencing Menopausal symptoms. This reflects the cafeteria-style approach recommended by CIPD where individuals can identify support or adjustments that meet their individual needs.
- Employee Passport takes cognisance of the developing case law, whereby menopause may account as a disability, by providing a mechanism for positive conversations and access to workplace adjustments.
- Access to Menopause Learning Modules on the MyLO platform for all staff and line managers to support awareness and understanding and equip colleagues to challenge inappropriate behaviours.
- Inclusion of Section 9.3 'Tips for Talking to your Line Manager about Menopause' to support individuals to take the first step to having these difficult conversations.
- Earlier drafts of the policy used gender-specific language, this was revised in later drafts to consistently use gender-neutral language to ensure that all colleagues experiencing menopausal symptoms are included within the scope of the policy and know how to access the available support.

### **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?**

This policy has been developed in consultation with the trade union partners (TUS) and has been developed in accordance with guidance from the following:

- Equality Act 2010, which protects workers against discrimination;
- Equality and Human Rights Commission (EHRC) – Code of Practice on Employment;

- Health and Safety at Work Act 1974, which says an employer must, where reasonably practical, ensure everyone's health, safety and welfare at work;
- Fair Work Agreement (dated 08/11/2018) between the Scottish Ministers and the recognised Civil Service Unions.
- Advisory, Conciliation and Arbitration Service (ACAS) – Advice on Menopause at Work [Talking with staff about the menopause: Menopause at work - Acas](#);
- Chartered Institute of Personnel and Development (CIPD) – ‘Menopause at Work: A Guide for People Professionals,’ [The menopause at work: a guide for people professionals \(cipd.co.uk\)](#)
- Case law [Disability Discrimination Cases | CIPD The 10 most important employment law cases in 2021 | Commentary and insights | Tools | XpertHR.co.uk](#);
  - Rooney V Leicester City Council Employment Appeal Tribunal 7 October 2021
  - Davies V Scottish Courts and Tribunal Service ET 9 May 2018
- Xpert HR Commentary and Insights
  - [Brain fog: The menopause symptom impacting women at work | Commentary and insights | Tools | XpertHR.co.uk](#)
  - [Menopause-related employment tribunal claims on the rise | News | Tools | XpertHR.co.uk](#)
- Benchmarking against policies and practises of several other employers within the UK Civil Service, public bodies, private and third sector and the model policy available via Xpert HR;
- Advice from our solicitors Anderson Strathern to understand compliance with legislation and associated risks;
- Insights and feedback from colleagues across the SPS including advice from the SPS’ Head of Equality Diversity and Inclusion;
- SPS Workforce Data.
- Scottish Government Employee Passport Equality Impact Assessment
  - <https://www.gov.scot/publications/employee-passport-eqia/documents/>

<p><b>Impact</b> Will the impact and outcomes of the new/revised policy/practice:</p>	
<p><b>Contribute to eliminating discrimination, harassment and victimisation?</b> E.g.</p> <ul style="list-style-type: none"> <li>• Raise awareness of our SPS vision and values for equality and diversity</li> <li>• Challenge appropriately any behaviours or procedures which do not value diversity and advance equality of opportunity</li> </ul>	<p><b>POSITIVE:</b> It will contribute to eliminating discrimination, harassment, victimisation <input checked="" type="checkbox"/></p>
	<p><b>NO EFFECT:</b> It will have no effect on discrimination, harassment and victimisation <input type="checkbox"/></p>
	<p><b>NEGATIVE:</b> It will make discrimination, harassment and victimisation worse <input type="checkbox"/></p>

<p><b>Impact</b> Will the impact and outcomes of the new/revised policy/practice:</p>	
<p><b>Advance equality of opportunity between those who share a protected characteristic and those who do not?</b> E.g.</p> <ul style="list-style-type: none"> <li>Remove or minimise disadvantage</li> <li>Meet the needs of equality groups that are different from the needs of others participation in public life</li> </ul>	<p><b>POSITIVE:</b> It will advance equality of opportunity <input checked="" type="checkbox"/></p>
	<p><b>NO EFFECT:</b> It will have no effect on equality of opportunity <input type="checkbox"/></p>
	<p><b>NEGATIVE:</b> It will reduce equality of opportunity <input type="checkbox"/></p>
<p><b>Foster good relations between those who share a protected characteristic and those who do not?</b> E.g.</p> <ul style="list-style-type: none"> <li>Tackle prejudice</li> <li>Promote understanding</li> </ul>	<p><b>POSITIVE:</b> It will foster good relations <input checked="" type="checkbox"/></p>
	<p><b>NO EFFECT:</b> It will have no effect on good relations <input type="checkbox"/></p>
	<p><b>NEGATIVE:</b> It will cause good relations to deteriorate <input type="checkbox"/></p>
<p><b>Ensure Human Rights Compliance?</b></p>	<p>It will uphold human rights articles. <input type="checkbox"/></p>
	<p>It will breach human rights articles. <input type="checkbox"/></p>

**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.**

<p><b>Positive Impacts</b></p> <p>The policy applies to all employees and outlines how the SPS will seek to eliminate any exclusionary or discriminatory practises with particular positive impact identified for the below characteristics.</p> <p>Protected characteristics affected:</p> <ul style="list-style-type: none"> <li><b>Age:</b> The menopause usually happens between the ages of 45 and 55, however it can happen earlier or later naturally, or for other reasons such as cancer treatment.</li> <li><b>Race:</b> In some cultures, it can be viewed as inappropriate or uncomfortable to talk about the Menopause. The Menopause Policy recognises this in that it does not force anyone to discuss the menopause if they do not want to and focuses instead on creating an open and supportive culture should people want to talk about it. This is reinforced using the Employee Passport, which is consent based. Employees are also able to opt to speak with HR, the Occupational Health Provider and/or the Employee Assistance Programme if they do not feel able to start a conversation with their line manager.</li> <li><b>Gender:</b> This policy uses gender-inclusive language to ensure that colleagues of all genders, including those who identify as male, are within the scope of the policy and can access person-centred support.</li> <li><b>Disability:</b> <ul style="list-style-type: none"> <li>While there has been much debate about whether the Menopause should be a Disability under the Equality Act 2010, this area of Case Law is still developing. However, under the Equality Act 2010, employers have a duty not to discriminate and employees should be treated with respect in terms of their age and gender;</li> </ul> </li> </ul>
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**Positive Impacts**

- there have already been successful employment tribunal claims in relation to the menopause.
  - Individuals may experience menopausal symptoms at the same time as having a disability. There are also several treatments for health conditions recognised as disabilities under the Equality Act which may cause the early onset of Menopause, for example a hysterectomy which may be used in some cases of Cancer. This policy provides a route for individuals to access additional support and reasonable adjustments related to their menopausal symptoms, above and beyond the existing provisions available.
  - The policy will be published on SharePoint and therefore will be available to staff in various fonts and text sizes and using assisted technology. Staff will be able to access supporting development modules on MyLO. The policy is subject to an accessibility check to identify and remove common accessibility problems.
- **Gender Identity:**
  - Employees may be nervous about talking about their symptoms because they are worried about ‘outing’ themselves as a trans or non-binary person. This policy uses gender-inclusive language to ensure that colleagues of all genders, including Trans colleagues, who experience menopausal symptoms, are within the scope of the policy and can access person-centred support. This supports them to feel valued and included.
  - The menopause has traditionally been viewed as a female issue. Gender-inclusive language challenges this perception and encourages Line Managers to be cognisant that their team members of all genders may experience the menopause. This in turn encourages employees to discuss the menopause with their Line Manager without fear of a negative reaction.
- **Religion or Belief:** In some religions, it can be viewed as inappropriate or uncomfortable to talk about the Menopause. The Menopause Policy recognises this in that it does not force anyone to discuss the menopause if they do not want to and focuses instead on creating an open and supportive culture should people want to talk about it. This is reinforced using the Employee Passport, which is consent based. Employees are also able to opt to speak with HR, the Occupational Health Provider and/or the Employee Assistance Programme if they do not feel able to start a conversation with their line manager.
- **Maternity and Pregnancy:**
  - Pregnancy can occur during perimenopause, and after the menopause with fertility treatment. Further, individuals may experience menopausal symptoms while on maternity leave and/or breastfeeding.
  - This policy provides a route for individuals to access additional support and reasonable adjustments above and beyond the existing provisions available via the Attendance Management Policy, Maternity and Parenting Policy and Procedure etc.

**Negative Impacts**

Protected characteristics affected:

Impact	Mitigation

<b>Recommended course of action</b>	
<b>Outcome 1:</b> Proceed – no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified.	<input checked="" type="checkbox"/>
<b>Outcome 2:</b> 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"/>
<b>Outcome 3:</b> 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"/>
<b>Outcome 4:</b> Stop and rethink as actual or potential unlawful discrimination or breach of human rights articles has been identified.	<input type="checkbox"/>

<b>Summary of Outcome decision and Recommendations</b>
<p>Recommendations to remove or minimise any actual or potential negative impacts identified, and to build positive impacts:</p> <ul style="list-style-type: none"> <li>• Policy uses gender-neutral language and is explicit that it applies to all employees, regardless of gender. This approach should continue throughout supporting communication and engagement materials.</li> <li>• Policy made accessible to all staff on SharePoint with supporting documentation.</li> <li>• Policy launch communicated via Notice to Staff.</li> <li>• Development modules available to all staff on MyLO.</li> <li>• Launch of new Employee Passport resource.</li> <li>• Briefings for HR teams to understand new policy and support its application across the SPS.</li> </ul> <p>Continued access to Occupational Health, Employment Assistance Programme and wider Health and Wellbeing offer.</p> <p>Outcome is to introduce Menopause policy across SPS. Research and consultation undertaken through the development of policy and associated support indicates the introduction of the policy will have a positive impact. Specific positive impacts addressed by the policy include potential to reduce Gender Pay Gap, increase diversity of employees, developed organisational understanding of legislative requirements, and contributing to Public Sector equality duty. There have been no negative implications for employees identified, therefore the recommendation is to publish policy.</p>

<b>Next steps</b>
Continue to monitor application of policy, with a view to review in three years' time; or earlier to take into account changes or new content 'as and when required'.

If you require this document in an alternative format, please contact [SPSEqualityandDiversityTeam@sps.pnn.gov.uk](mailto:SPSEqualityandDiversityTeam@sps.pnn.gov.uk)