

# PROTECTION FROM REDUNDANCY (PREGNANCY AND FAMILY LEAVE) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Protection from Redundancy (Pregnancy and Family Leave) Bill as brought from the House of Commons on 6 February 2023 (HL Bill 99).

- These Explanatory Notes have been prepared by the Department for Business and Trade with the consent of Baroness Bertin, the Member in charge of the Bill, in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.



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## Overview of the Bill

- 1 Currently, the Secretary of State has powers to make regulations regarding redundancy protection during a period of Maternity Leave, Shared Parental Leave or Adoption Leave.
- 2 The Bill inserts provisions into the Employment Rights Act 1996 to:
  - extend the Secretary of State’s existing powers to make regulations regarding redundancy protection so that such protection can apply after the individual has taken the relevant leave; and
  - introduce a new power so that equivalent legislative provision for redundancy protection can apply during pregnancy.

## Policy background

- 3 Research published in 2016, commissioned by the (then) Department for Business, Innovation and Skills and the Equality and Human Rights Commission, found that approximately one in nine mothers (11%) reported that they were either dismissed, made compulsorily redundant (when others in the workplace were not), or treated so poorly they had to leave their job.<sup>1</sup>
- 4 The publication of this research was followed by a Women and Equalities Select Committee (WESC) inquiry and report on Pregnancy and Maternity Discrimination in August 2016. One of the report’s key findings was that mothers returning from maternity leave still faced discrimination – hence its recommendation that the Government should take steps to improve and provide additional protections from redundancy for both new and expectant mothers. WESC recommended that enhanced protections should apply throughout pregnancy and for 6 months after a woman’s return to work.<sup>2</sup>
- 5 The Government published its response to the WESC report in 2017<sup>3</sup>. It acknowledged the scale of pregnancy and maternity discrimination experienced by new and expectant mothers and committed to consider WESC’s proposals further to “bring forward proposals to ensure that the (redundancy) protections in place for those who are pregnant or returning from maternity leave are sufficient”.
- 6 In January 2019 the Government published a consultation seeking views on extending current redundancy protections for pregnant women and new parents.<sup>4</sup> It recommended that the Government extend the current redundancy protection afforded to women during

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509500/BIS-16-145-pregnancy-and-maternity-related-discrimination-and-disadvantage-summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/509500/BIS-16-145-pregnancy-and-maternity-related-discrimination-and-disadvantage-summary.pdf)

<sup>2</sup> See WESC Report of 4 August 2016, paragraph 11 of the conclusions and recommendations section of the report (recommendation 5) which said: “We are persuaded that additional protection from redundancy for new and expectant mothers is required. The Government should implement a system similar to that used in Germany under which such women can be made redundant only in specified circumstances. This protection should apply throughout pregnancy and maternity leave and for six months afterwards.”

<sup>3</sup> <https://www.gov.uk/government/publications/pregnancy-and-maternity-discrimination-response-to-the-select-committee-report>

<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/773179/extending-redundancy-protection-for-pregnant-women.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773179/extending-redundancy-protection-for-pregnant-women.pdf)

maternity leave under the Maternity and Paternity Leave etc Regulations 1999 to cover a woman's pregnancy and for a period of up to 6 months after she returned to work. The consultation also acknowledged that those returning from forms of leave comparable to maternity leave may have been away from work for potentially long periods and therefore might similarly face discrimination or be prone to less favourable treatment.

- 7 The Government Response was published in July 2019. It made two main commitments: to extend the redundancy protection period to include pregnancy and for 6 months after a new mother has returned to work; and provide the same enhanced protections to those returning from Adoption Leave and Shared Parental Leave.
- 8 In the 2019 Queen's Speech the Government committed to extend redundancy protections to prevent pregnancy and maternity discrimination as part of an employment bill.<sup>5</sup>
- 9 This Bill takes that commitment forward. It does so by following the existing approach in the Employment Rights Act 1996 – giving the Secretary of State powers to make regulations. This will ensure that in future any changes can be made consistently across the different periods – pregnancy, during certain statutory leave and for a period after that leave has been taken – through the same process rather than having different legal protections applying to different periods.

## Legal background

- 10 Section 74(1) Employment Rights Act 1996 provides that Regulations (made under section 71 or 73) may make provision about redundancy during a period of maternity leave. Sections 75C(1)(a) and 75J(1)(a) of that Act make equivalent provision for adoption and shared parental leave respectively. Section 74(3) provides that Regulations made by virtue of section 74(1) may include–
  - a. provision requiring an employer to offer alternative employment;
  - b. provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part X).
- 11 Sections 75C(2) and 75J(2) of that Act make equivalent provision for adoption and shared parental leave respectively.

## Territorial extent and application

- 12 Employment law is reserved for Scotland and Wales but devolved to Northern Ireland. It will be for the Northern Ireland Assembly to decide whether similar provisions should apply in Northern Ireland.
- 13 The clauses extend and apply to Great Britain.
- 14 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

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<sup>5</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/853886/Queen\\_s\\_Speech\\_December\\_2019\\_-\\_background\\_briefing\\_notes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019_-_background_briefing_notes.pdf)

# Commentary on provisions of the Protection from Redundancy (Pregnancy and Family Leave) Bill

- 15 Clause 1 of the Bill provides a new power to enable provision to be made by Regulations about protection from redundancy during and after pregnancy.
- 16 Clause 2 amends existing powers to make Regulations to enable protection from redundancy on return to work from maternity, adoption or shared parental leave.

## Clause 1: Protection from redundancy during pregnancy

- 17 Clause 1 inserts a new Part 5B, comprising new section 49D, into the Employment Rights Act 1996.
- 18 New section 49D follows the approach currently taken for maternity leave, adoption leave and shared parental leave and confers broad powers on the Secretary of State to make regulations covering a “protected period of pregnancy”.
- 19 Subsection (1) of new section 49D introduces the concept of a “protected period of pregnancy”. For consistency with the existing approach to redundancy protection for those taking maternity leave (or adoption or shared parental leave) detailed provision is to be made in Regulations. New subsections (2) and (3) of section 49D provide that a “protected period of pregnancy is a period calculated in accordance with regulations made by the Secretary of State” and that these may include provisions requiring the employer to offer alternative employment and that failure to comply with the provision may provide grounds for the dismissal to be treated as unfair.
- 20 Subsection (4) allows the regulations to provide for the protected period of pregnancy to commence after the pregnancy has ended. This is to allow, for example, a woman who has miscarried before informing her employer of the pregnancy to access the redundancy protection she would have been entitled to had she first informed her employer.
- 21 Subsections (3) to (7) of clause 1 make consequential amendments to the Employment Rights Act 1996 to provide that Part 5B applies to particular types of employment in the same way that Part 8 currently applies to those particular types of employment. Subsection (8) of clause 1 amends section 236(2) of the Employment Rights Act to include reference to new clause 49D so that regulations made under it will be subject to the affirmative resolution process.

## Clause 2: Maternity, adoption and shared parental leave: redundancy

- 22 Clause 2 amends the provisions in the Employment Rights Act 1996 granting the Secretary of State powers to make provision in Regulations about redundancy during maternity leave, adoption leave and shared parental leave.
- 23 Subsection (2) amends the existing power at section 74(1) so that provision can be made about redundancy during or “after” an ordinary or additional period of maternity leave. Subsection (3) similarly amends the power at section 75C(1) (adoption leave: redundancy and dismissal). Subsection (4) does the same for the power at section 75J(1) (shared parental leave: redundancy and dismissal).

## Commencement

- 24 Clause 3 provides that Clauses 1 and 2 will come into force two months after Royal Assent.

## Financial implications of the Bill

- 25 The one-off cost to business of familiarising themselves with the new legislation, for example to amend their HR policies, is estimated at £30.4m. The annual cost to business resulting from contributions to Statutory Maternity Pay is £0.9m. The Impact Assessment also identifies some small Exchequer cost resulting from additional Statutory Maternity Pay estimated to be £17.1m and the benefit of not having to pay Maternity Allowance is estimated to be £15.1m per year. Further information is provided in the Impact Assessment.<sup>6</sup>

## Parliamentary approval for financial costs or for charges imposed

- 26 A money resolution was necessary and passed in the Commons on 3<sup>rd</sup> February 2023 because the Bill authorises new charges on the public revenue or otherwise increases existing charges – broadly speaking, new public expenditure.
- 27 There is a potential increase in expenditure as a result of clause 1(2) of the Bill. The intention is that the power at new section 49D(1) of the Employment Rights 1996 inserted by clause 1(2) will be exercised so as to grant pregnant employees additional protections from redundancy. This is likely to lead to more employees being entitled to statutory maternity pay, the costs of which employers are entitled to claim back from HMRC. Although, as mentioned above, the additional cost of statutory maternity pay will be largely offset by the benefit of not having to pay maternity allowance, the net result is likely to be an overall increase in the amount of statutory maternity pay that employers are entitled to claim back from HMRC. This increase in expenditure will ultimately be covered by money provided by Parliament (by virtue of section 1(5) of the Social Security Contributions and Benefits Act 1992 and section 163(1)(d) of the Social Security Administration Act 1992).

## Compatibility with the European Convention on Human Rights

- 28 This Bill is considered to be compatible with Convention rights. It enables the Secretary of State, by regulations, to make provision about redundancy during and after pregnancy; and after a period of maternity, adoption or shared parental leave. Such provision will enable certain employees (and not others) to benefit from a specific redundancy protection. These decisions are capable of engaging Article 14 of the European Convention on Human Rights, read with Article 8. Whilst men are eligible for adoption and shared parental leave and so therefore can benefit from the extended redundancy protection, in practice the employees most likely to benefit from the exercise of those powers are women. However, the Department considers that these decisions have been taken compatibly with the Convention rights and that the powers are drafted so as to enable them to be exercised in a manner which is compatible with Convention rights. The policy intention has a legitimate aim as outlined above in the policy background section, and is a proportionate approach based on extending the existing protections that apply to employees during maternity, adoption and shared parental leave.

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<sup>6</sup> <https://bills.parliament.uk/publications/49728/documents/2898>

## Related documents

29 The following documents are relevant to the Bill and can be read on the Parliamentary Bills page:

- Impact Assessment

## Annex A – Territorial extent and application in the United Kingdom

| Provision | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Extends and applies to Scotland? | Extends and applies to Northern Ireland? | Would corresponding provision be within the competence of the National Assembly for Wales? | Would corresponding provision be within the competence of the Scottish Parliament? | Would corresponding provision be within the competence of the Northern Ireland Assembly? | Legislative Consent Motion needed? |
|-----------|--|--|----------------------------------|--|--|--|--|------------------------------------|
| Clause 1  | Yes                                      | Yes                                    | Yes                              | No                                       | No   | No   | Yes  | No                                 |
| Clause 2  | Yes                                      | Yes                                    | Yes                              | No                                       | No   | No   | Yes  | No                                 |





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