

New and expectant mothers in the frontline

COVID19, the economic downturn, and the case for Maria Miller's Pregnancy & Maternity (Redundancy Protection) Bill



July 2020

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This joint briefing sets out the case for Government ministers adopting as their own – and speeding into law – the Pregnancy & Maternity (Redundancy Protection) Bill, introduced to the House of Commons by Maria Miller MP on 8 July 2020.

The briefing was written by Maternity Action, and is endorsed by the following organisations and trade unions:

Equally Ours

Fawcett Society

Gingerbread

Pregnant Then Screwed

Women's Budget Group

Working Families

YESS Law

Young Women's Trust

Community Union

FDA

National Education Union (NEU)

Public & Commercial Services Union (PCS)

Royal College of Midwives

UNISON

Unite

University & College Union (UCU)

Usdaw

If your organisation or trade union would like to show its support for the Pregnancy & Maternity (Redundancy Protection) Bill by adding its endorsement to this briefing, please contact: richarddunstan@maternityaction.org.uk

New and expectant mothers in the frontline: COVID19, the economic downturn, and the case for Maria Miller's Pregnancy & Maternity (Redundancy Protection) Bill

There are growing fears that, unlike in the economic recession that followed the 2008 financial crash, it is women – and especially working mothers – whose jobs are most at risk as the Government's COVID19 support schemes wind down over the coming months, and the UK economy contracts.

As journalist Sonia Sodha noted in the Observer in June, “recessions typically affect men more than women, because male employment is more heavily concentrated in cyclical sectors such as manufacturing and construction, whereas women are more likely to work in the public sector. But this is not a typical recession: two of the hardest-hit sectors have been hospitality and retail, both of which are disproportionately female.” And the evidence is overwhelming:

- In May, a study by the London School of Economics concluded that, unlike the post-2008 recession, “the downturn triggered by COVID19 and the lockdown has the potential to result in more women losing jobs than men, as female-dominated sectors such as hospitality face devastation.”
- Later that month, analysis by the Institute for Fiscal Studies concluded that “mothers are one-and-a-half times more likely than fathers to have either lost their job or quit since the lockdown began. They are also more likely to have been furloughed.”
- In June, one in four pregnant women and new mothers surveyed by the TUC had experienced unfair treatment or discrimination at work, including being singled out for redundancy or furlough, and an inquiry by the Petitions Committee of MPs concluded that “the current crisis has put new parents, particularly mothers, at

increased risk of redundancy and hardship”.

- Also in June, a survey by the Office of National Statistics found that parents were almost twice as likely to report that they had been furloughed (13.6%) when compared with workers without children (7.2%).
- And in July, the Office for Budget Responsibility warned that, with the economy set to shrink by more than 12%, as many as one in five of the 9.4 million workers furloughed under the Coronavirus Job Retention Scheme may lose their job when the Scheme ends in October.

Which is why, on 26 June, eleven organisations and trade unions – the Fawcett Society, Gingerbread, Maternity Action, the National Education Union, Pregnant Then Screwed, UNISON, the University & College Union, Usdaw, the Women's Budget Group, Working Families and the Young Women's Trust – wrote to the Business Secretary, Alok Sharma MP, to urge that the Government adopt as its own, and so speed into law, the Pregnancy & Maternity (Redundancy Protection) Bill.

The Bill – a Private Members' Bill (PMB) introduced by the former cabinet minister and previous Chair of the Women & Equalities Committee, Maria Miller MP – would replace the existing, somewhat limited and in practice wholly ineffective legal protection against redundancy for pregnant women and new mothers with a new legal framework, similar to that used in Germany. Under this new framework, it would be unlawful to make such women redundant other than in very limited and specified circumstances, such as the closure of the business. As Maria Miller noted on 8 July when presenting her Bill to the House of Commons:

“The current protections mean that if a woman’s job is at risk of redundancy during her maternity leave, she must be offered any suitable alternative vacancy that is available. She should in theory be given priority, but both the Equality & Human Rights Commission and the Maternity Action helplines show that, in practice, that is woefully inadequate. Employers continually confuse their legal obligations, ignore them or insist that women on maternity leave compete for an alternative post when they are giving birth, have just given birth, or have been out of the workplace for many weeks.”

Background to the Bill

In 2016, joint research by the then Department for Business, Innovation & Skills and the Equality & Human Rights Commission (EHRC) found that three in four new mothers have a negative or possibly discriminatory experience during their pregnancy or maternity leave, or on return to work, with one in nine being treated so badly that they lose or quit their job.

In August that year, in response to the EHRC research findings, [an inquiry by the Women & Equalities Committee of MPs](#) concluded:

“We are persuaded [by the evidence] 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. The Government should implement this change within the next two years.”

In January 2017, in its [response to the Women & Equalities Committee’s report](#), the Government accepted the case for reform of redundancy protection, stating:

Supported by the [Equality & Human Rights Commission](#) and a cross-party group of MPs – including Caroline Nokes, Chair of the Women & Equalities Committee, and Stephen Timms, Chair of the Work & Pensions Committee – the Bill completed its First Reading on 8 July, and is now *provisionally* scheduled to have its Second Reading on 16 October. However, the Bill will be one of dozens of PMBs listed for Second Reading on that date, with only the first one or two bills on the list having any chance of being debated. So, realistically, the Bill now has little if any chance of proceeding further, unless and until it is adopted by the Government.

“The independent research into pregnancy and maternity-related discrimination that we commissioned with EHRC suggests that 6% of all mothers were made redundant, and 2% of all mothers were made redundant on their return from maternity leave. This is clearly unacceptable.”

Two years later, in January 2019, the Government launched a formal consultation, inviting views on “ways of achieving additional protection from redundancy for those returning from maternity and other forms of parental leave, and creating a more consistent approach to pregnant mothers and those on maternity leave.”

Following that consultation, in July 2019 the Government [once again expressed its determination](#) to “take action to address pregnancy and maternity discrimination” but committed only to extend the period covered by the existing, so-called Regulation 10 protection against redundancy. And, in December, the Government stated it would include the necessary provisions in a forthcoming Employment Bill.

Under Regulation 10 of the Maternity and Paternity Leave Regulations 1999, a woman on maternity leave is “entitled to be offered” any suitable alternative vacancy, where one is available, as soon as her job is at risk of redundancy.

In theory, this gives women on maternity leave priority over other employees at risk of redundancy. In practice, however, the protection it offers is little more than a mirage, with employers able to ignore or act in deliberate breach of the law, safe in the knowledge that, having just given birth or been away from the workplace for up to a year, a woman is most unlikely to bring an employment tribunal claim – the only means of challenging an unfair redundancy.

As documented in the [2017 Maternity Action report *Unfair Redundancies*](#), proving such a tribunal claim is notoriously difficult, as the failure to comply with Regulation 10 is rarely if ever made explicit, and the legal costs of pursuing such a claim can easily exceed £10,000. For all too many women, and especially those who are low-paid, it is simply not worth the risk to pursue such a costly legal challenge, so they have no option but to accept an unfair redundancy.

This leaves employers free to ignore or avoid their legal obligations under Regulation 10 with near impunity. And simply extending the period covered by Regulation 10, so as to cover pregnancy and six months after return to work, as the Government committed itself to doing in July 2019, would not address this fundamental flaw.

The Government’s response to Maria Miller’s Bill

In the House of Commons on 8 July, government ministers did not give any indication of their views on the introduction of Maria Miller’s Bill. However, [in a letter to Maternity Action on 13 July](#), the business minister, Kwasi Kwarteng MP, rejected the proposal that ministers adopt Maria Miller’s Bill as their own, and re-iterated the Government’s plan to use its promised (but still unseen) Employment Bill to extend the period covered by the existing Regulation 10 provisions.

Noting that, as those provisions stand, new mothers should be given priority over other colleagues in a redundancy situation, Mr Kwarteng states: “where a new mother feels this has not been the case, she can make a claim for unfair dismissal at an employment tribunal”.

However, this simply highlights the key problem with the Government’s proposal: that effectiveness of the law as it stands relies entirely on individual women bringing an

employment tribunal claim, *after* they have been unfairly made redundant. And, as noted above, this is wholly unrealistic, given the extreme difficulty of proving such a claim and the resultant lack of certainty of success. In short, the Regulation 10 provisions do not deliver ‘priority over other colleagues’ in a redundancy situation.

As Maria Miller noted in the House of Commons on 8 July: extending the period covered by the existing, Regulation 10 provisions “would simply entrench a system that we know does not work”. In contrast, by making it clear that pregnant women and new mothers cannot be made redundant other than in very limited (and specified) circumstances – such as closure of the business – implementation of Maria Miller’s Bill would ensure near certainty of success for any subsequent employment tribunal claim. And that in turn would create a strong disincentive to discriminatory practice by an employer.

Conclusion

Given the likelihood of a new wave of discrimination and unfair redundancies as the Government's COVID19 support schemes wind down and the economy contracts over the coming weeks and months, we believe there is an urgent need for more robust reform of redundancy protection than that planned by the Government, so as to take the onus off women to challenge unlawful practice by their employer, and make it much harder for employers to discriminate in the first place.

A comprehensive legal ban on redundancy, from notification of pregnancy to six months after the woman's return to work (i.e. the same period to which the Government plans to extend Regulation 10 protection), as provided for by Maria Miller's Bill, would provide clarity

to employers on their legal obligations, and – by providing near certainty of success for any subsequent tribunal claim – provide much stronger *preventative* protection against unfair redundancy.

And this stronger legal protection is needed *now*: each week of inaction on the part of government ministers is costing new and expectant mothers their job. Accordingly, we urge the Government to adopt Maria Miller's Pregnancy & Maternity (Redundancy Protection) Bill as its own, and expedite the Bill's passage through Parliament and into law in September or October. In the words of Maria Miller, it is time to "level up the workplace for all women" so that they are "not discriminated against simply because they are pregnant or a new mum".



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