

EXPLANATORY MEMORANDUM TO
THE MATERNITY LEAVE, ADOPTION LEAVE AND SHARED PARENTAL
LEAVE (AMENDMENT) REGULATIONS 2024

2024 No. 264

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument makes provision to extend an existing statutory protection from redundancy that currently applies to those employees who are on maternity, adoption or shared parental leave (“relevant leave”). The extension will mean this protection also applies to pregnant women and new parents who have recently returned from any period of maternity or adoption leave, or from a period of 6 or more weeks of shared parental leave.

2.2 Currently, where a redundancy situation arises when an employee is on relevant leave, the employer is required to offer the employee a suitable alternative vacancy where one is available.

2.3 The Maternity, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 extend the redundancy protection described above so that it also applies:

during pregnancy:

- The redundancy protection during pregnancy will start when an employee tells their employer about the pregnancy. If the employee is entitled to statutory maternity leave, then the protected period of pregnancy ends on the day the statutory maternity leave starts, and the redundancy protection will continue during statutory maternity leave as currently.
- If the pregnancy ends and the employee is not entitled to statutory maternity leave, the protected period ends two weeks after the end of the pregnancy. In these circumstances, the employer needs to be informed of the pregnancy before the protected period of pregnancy would have ended.

to new parents for a period after a qualifying period of relevant leave has ended (“the additional protected period”):

- for those taking maternity leave the additional protected period ends 18 months from the expected week of childbirth, unless the employee has informed the employer of the date of birth of the child. In that case the additional protected period ends 18 months after the date of birth of the child.
- for those taking adoption leave the additional protected period ends 18 months after the placement of the child.
- For those taking 6 or more consecutive weeks of shared parental leave but who have not taken maternity or adoption leave, the additional protected period ends 18 months after the date of birth of the child. For those taking less than six consecutive weeks, the current position will continue to apply, which means that

the redundancy protection will apply where the redundancy situation arises during any period the employee is on shared parental leave.

- The additional protected period applies when the employee is not on qualifying “relevant leave” and runs for whatever remains of the 18 month period.

2.4 This instrument does not alter the current redundancy protection employees currently receive while they are on periods of relevant leave.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

5. European Convention on Human Rights

5.1 The Minister for Enterprise, Markets and Small Business, Kevin Hollinrake MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 are compatible with the Convention rights.”

6. Legislative Context

6.1 The powers being exercised here are under the Employment Rights Act 1996, which was amended by The Protection from Redundancy (Pregnancy and Family Leave) Act which received Royal Assent in May 2023. This 2023 Act was a Private Member’s Bill which was supported by the Government.

6.2 Section 1 of the 2023 Act inserts a new Part 5B into the Employment Rights Act 1996 to allow the Secretary of State to make provision about redundancy during, or after, a protected period of pregnancy.

6.3 Section 2 of the 2023 Act amends:-

- section 74 (maternity leave: redundancy and dismissal) of the Employment Rights Act 1996 to allow the Secretary of State to make provision about redundancy during *or after* a period of ordinary or additional maternity leave;
- section 75C (adoption leave: redundancy and dismissal) of the Employment Rights Act 1996 to allow the Secretary of State to make provision about redundancy during *or after during, or after*, an ordinary or additional adoption leave period; and
- section 75J (shared parental leave: redundancy and dismissal) of the Employment Rights Act 1996 to allow the Secretary of State to make provision about redundancy during *or after during, or after* a period of leave under that section.

6.4 The Maternity, Adoption and Shared Parental Leave (Amendment) Regulations 2024 are the first use of the new regulation making powers set out in the 2023 Act. These regulations give effect to the policy as set out in the Government Response to the 2019 consultation ‘Pregnancy and maternity discrimination: extending redundancy protection for women and new parents’.

7. Policy background

What is being done and why?

- 7.1 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.¹
- 7.2 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.²
- 7.3 The Government published its response to the WESC report in 2017³. 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”.
- 7.4 In January 2019 the Government published a consultation seeking views on extending current redundancy protections for pregnant women and new parents.⁴ It recommended that the Government extend the current redundancy protection afforded to women during 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.
- 7.5 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.
- 7.6 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.⁵

Explanations

What did any law do before the changes to be made by this instrument?

- 7.7 There are currently Regulations under the Employment Rights Act 1996 – the Maternity and Parental Leave Etc Regulations (1999). Or “MAPLE” for short. The MAPLE regulations put a woman on Maternity Leave in a preferential position in a redundancy situation. There are parallel regulations which have the same effect for parents taking Adoption Leave or Shared Parental Leave.

Why is it being changed?

- 7.8 This is covered in paragraphs 7.1 and 7.2.

What will it now do?

- 7.9 These regulations extend that additional redundancy protection so that it applies during pregnancy and once an employee has returned to work. This is set out in more detail at paragraph 2.3 above.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

¹ 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

² 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.*”

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

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773179/extending-redundancy-protection-for-pregnant-women.pdf

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019_-_background_briefing_notes.pdf

9. Consolidation

9.1 No consolidation is necessary as this the first exercise of the powers under the 2023 Act.

10. Consultation outcome

10.1 In 2019 the Government ran a consultation to seek views on extending redundancy pregnant women and new parents. It also set out more widely, what the Government was doing to tackle pregnancy and maternity discrimination and explained the current law on redundancy protection. The government received 643 responses to this consultation.

10.2 The government's response to the consultation proposed to extend the redundancy protection period for 6 months once a new mother has returned to work, to afford the same protection to those taking adoption leave and to extend redundancy protection for those returning from shared parental leave.

10.3 A full consultation response can be found on GOV.UK (<https://www.gov.uk/government/consultations/pregnancy-and-maternity-discrimination-extending-redundancy-protection-for-women-and-new-parents>)

10.4 Consultations have been run with Pregnancy and Maternity Advisory Board and Government has met with a range of businesses to discuss how the secondary legislation will impact them. Businesses were largely content with the secondary legislation Government is putting forward.

11. Guidance

11.1 Guidance will be available on GOV.UK in advance of the instrument coming into force on 06 April 2024.

11.2 We will work with Acas and EHRC to ensure that their guidance reflects the new legislation.

12. Impact

12.1 The impact on business, charities or voluntary bodies is small, £3.6m. As employers they will need to understand the new Regulations and put the processes in place to allow employees to benefit from the additional redundancy protection if it applies.

12.2 The impact on the public sector is limited to the extent to which they may need to manage a redundancy situation involving pregnant women and new parents who will benefit from the additional protection this instrument affords them – those impacts are proportionate to organisations in the private sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No special measures apply to small business.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is we will take a proportionate approach to undertaking a non-statutory Post Implementation Review (PIR) in a period, no earlier, than 5 years following its introduction. This reflects the fact that the policy changes proposed simply extend existing legislation on the length of redundancy protection.

14.2 The non-statutory PIR will seek to assess the following evaluation questions:

- What is the scale of pregnancy and maternity discrimination (including redundancies) and, where possible, what extent have enhanced redundancy protections reduced the incidences of discrimination and redundancy?
- What is the level of awareness of rights in relation to pregnancy and maternity discrimination and how to exercise them among individuals? and
- What is the level of business awareness of their obligations and whether this leads to a reduction in discriminatory behaviour?

14.3 In line with the requirements of the Small Business Enterprise and Employment Act 2015, the Minister for Enterprise, Markets and Small Business, Kevin Hollinrake MP, has made the following statement:

“I have decided that to make provision for a statutory review of this instrument would be disproportionate taking into account its economic impact and would therefore be inappropriate. The Department for Business and Trade will undertake a non-statutory review of the policy in a period, no earlier, than 5 years following its introduction”.

15. Contact

15.1 Keisha Parris at the Department for Business and Trade email: labourmarketparticipation@businessandtrade.gov.uk; phone: 020 7215 3698 can be contacted with any queries regarding the instrument.

15.2 Jayne McCann, Deputy Director for Participation at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Enterprise, Markets and Small Business, Kevin Hollinrake MP, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.