



## Ministerial and other Maternity Allowances Bill HL Bill 172 of 2019–21

In November 2020, the Attorney General, Suella Braverman, announced that she was expecting her second child in early 2021. Under current rules, Ms Braverman would have to resign to be able to take maternity leave. To avoid this the Government has introduced the [Ministerial and other Maternity Allowances Bill](#).

The bill would create a discretionary power to enable the prime minister to designate a minister wishing to take maternity leave as a ‘minister on leave’. This would mean that she would be able to take six months paid maternity leave, subject to certain conditions, and return to her post after. It would also mean that the individual appointed to provide cover for the minister would receive a ministerial allowance equivalent to their salary for up to six months. In addition, the bill would provide for salaried Opposition office holders to take six months paid maternity leave without having to resign.

The bill does not make provision for paternity leave, shared parental leave or adoption leave. These issues, among others, were raised during the bill’s passage through the House of Commons.

The bill completed its Commons stages without amendment on 11 February 2021. It received cross-party support. However, during both second reading and committee stage, MPs raised concerns about matters including: the narrow scope of the bill; the lack of an equalities impact assessment for the bill; the use of gender-neutral language; the time limit of six months for paid leave; and the discretionary nature of the provisions.

Outside of Parliament, although the bill has been generally welcomed, some have argued that the scope of the bill is too narrow. They say that the bill should be used to address wider issues with statutory maternity pay and maternity leave for MPs.

On 22 February 2021, the second reading of the bill is scheduled to take place in the House of Lords. The Government has asked for the bill to be fast-tracked. It will therefore receive its remaining stages, with no report stage, on 25 February 2021. This briefing sets out the background to the bill, summarises what happened during its House of Commons stages and provides a flavour of wider reaction to the bill.

Nicole Winchester | 19 February 2021

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## I. What is the background to the bill?

In November 2020, the Attorney General, Suella Braverman, announced that she was expecting her second child in early 2021.<sup>1</sup> Her announcement highlighted that under current rules she would have to resign to take time off following the birth, a situation that Prime Minister Boris Johnson has said is unacceptable in modern times.<sup>2</sup>

### I.1 What are the current rules for ministers?

Ministers are public office holders and are appointed by the sovereign, on the advice of the prime minister, under royal prerogative powers.<sup>3</sup> Their status and constitutional position means that they are not treated as workers or employees; as such, they have none of the rights or entitlements that other workers are afforded under employment legislation. This means that they have no rights of maternity leave.<sup>4</sup>

The ministerial code provides that ministers who wish to take maternity leave (of up to six months), “or other extended absence from government” must:

[...] seek the permission of the prime minister. Where the prime minister agrees to such a request, the minister must not exercise their functions as a minister during their period of absence unless this is agreed by the permanent secretary and the minister who is temporarily covering the ministerial responsibilities.<sup>5</sup>

In recent years, several junior ministers, including Kemi Badenoch and Chloe Smith, have taken maternity leave and returned to their post afterwards.<sup>6</sup>

### I.2 Why are the rules problematic in this case?

Although the ministerial code provides so ministers can take maternity leave, the Government has argued that where it is an individual office or a very senior office, “these arrangements are particularly difficult to apply”.<sup>7</sup> The Government explains that in these circumstances the “legal exercise of functions of such roles cannot be ‘covered’ by another minister”. This means that for these legal functions to be executed, another minister would have to be appointed to the same rank.

To appoint another minister at the same rank could breach statutory limits on ministerial salaries and ministerial numbers. These limits are set out in legislation, and successive governments have operated

<sup>1</sup> Suella Braverman, [‘Official Twitter account’](#), 28 November 2020 (accessed 9 February 2021).

<sup>2</sup> House of Commons, [‘Written Statement: Ministerial and Other Maternity Allowances Bill’](#), 4 February 2021, HCWS765.

<sup>3</sup> [Explanatory Notes](#), p 3.

<sup>4</sup> *ibid.*

<sup>5</sup> Cabinet Office, [Ministerial Code](#), August 2019, p 11.

<sup>6</sup> Chloe Smith, [‘My priorities for Norwich North: Chloe Smith MP returns from maternity leave’](#), 23 October 2019; and Kemi Badenoch, [‘Kemi Badenoch MP appointed new Exchequer Secretary to the Treasury and Minister for Equalities’](#), 14 February 2020.

<sup>7</sup> [Explanatory Notes](#), p 3.

at or close to them:<sup>8</sup>

- The Ministerial and Other Salaries Act 1975 states that the maximum number of paid ministerial posts allowed is 109, across both Houses.<sup>9</sup>
- The House of Commons Disqualification Act 1975 sets a limit of 95 on the number of paid or unpaid ministers who can sit in the House of Commons.<sup>10</sup>

Therefore, if a minister wished to take maternity leave, the prime minister may not have the flexibility to allow them to remain a salaried member of the Government while appointing another minister to fulfil their role.<sup>11</sup> As the Opposition operates under similar constraints, it would also be affected.<sup>12</sup>

These factors mean that if a senior minister wishes to take extended maternity leave under existing legislation, they would need to resign.

## 2. What would the bill do?

The Ministerial and other Maternity Allowances Bill seeks to address these maternity leave issues by providing for ministers and certain members of the Opposition to take paid maternity leave for six months without having to resign their role. The bill would not create a 'right' to paid maternity leave as such.<sup>13</sup> Instead, it would create a discretionary power for the prime minister and the leader of the Opposition in the relevant House to grant certain office holders six months paid maternity leave.

The bill has seven clauses.

**Clause 1** would allow the prime minister to designate a holder of ministerial office as a 'minister on leave'.

Subsection 1 would allow a person designated as a minister on leave to be paid an allowance if they meet certain conditions. These are set out in subsection 2 and state that the prime minister would be able to designate a person as a minister on leave if they cease to hold their previous ministerial office. It also specifies that the designated minister would remain a member of the Government, as they would continue to hold a ministerial office.

In addition, it would require the designated minister to satisfy either of the conditions set out in subsection 3:

- their due date must be no more than 12 weeks away; or
- they have given birth to a child within the previous four weeks.

<sup>8</sup> [Explanatory Notes](#), p 2.

<sup>9</sup> HM Government, [Maternity Leave and Other Absences by Ministers](#), February 2021, p 3.

<sup>10</sup> *ibid.*

<sup>11</sup> [Explanatory Notes](#), p 2.

<sup>12</sup> *ibid.*

<sup>13</sup> Maternity Action, [Ministerial and Other Maternity Allowance Bill: Briefing for Commons Stages, 11 February 2021](#), February 2021, p 1.

Subsection 4 states that the definition of ‘child’ in the previous subsection would include a still-born child within the meaning of section 41(1) of the Births and Deaths Registration Act 1953.

Subsection 5 sets out the meaning of ‘ministerial office’ and would mean that the prime minister could designate all cabinet ministers, ministers of state, parliamentary secretaries and government whips as a minister on leave. However, they could not include parliamentary private secretaries, as they are not members of the Government.

Subsection 6 states that the designation as a minister on leave would end either:

- automatically after six months; or
- earlier if they are appointed to a new ministerial role, resign or are dismissed.

**Clause 2** would set out the amount of allowance paid to a minister on leave and the rules surrounding the payment.

Subsection 1 would provide for a minister on leave to receive an allowance of six times the monthly ministerial salary that they received in the post they left. This would be paid in six monthly instalments, subject to the provisions in subsections 2 to 4, and would mean that if a minister on leave:

- was previously unpaid, they would not receive an allowance;
- leaves the Government before the end of the six-month period, they would receive the remainder of the allowance as a lump sum; and
- is no longer designated as such, because they have been appointed to another ministerial role or because they have died, the allowance is no longer payable and is reduced proportionately (if there is overpayment in these cases, this could be recovered).

Subsection 5 states that the six-month period referred to in the clause would begin on the day a minister is designated as a minister on leave. Subsection 6 specifies that the allowance paid to a minister on leave would be either from money provided by Parliament or paid out of the consolidated fund.

**Clause 3** would set out how the bill interacts with other legislation relating to ministerial offices and pay.

Subsections 1 and 2 states that when a minister is designated as a minister on leave and this exceeds the statutory limits on the number of ministers, they will not be subject to the consequences outlined in the House of Commons Disqualification Act 1975 for six months from the day of designation.

Subsections 3 to 5 would:

- prevent a minister on leave who is paid an allowance under the bill from also receiving a salary under the Ministerial and other Salaries Act 1975;
- mean that a minister on leave who leaves office would be eligible for a lump sum under the provisions of the Ministerial and other Pensions and Salaries Act 1991; and

- provide that where a minister is appointed as a minister on leave and is a member of the House of Lords, they would not be eligible to receive an allowance under section 5(1) of the Ministerial and other Pensions and Salaries Act 1991 (sometimes known as the Lords office holder allowance).

Section 5(1) of the 1991 act provides for Lords ministers and other salaried Members to receive an office holder allowance. The allowance is payable in addition to a salary paid under section 2 of the Ministerial and other Salaries Act 1975, and is taxed.<sup>14</sup> Section 5(2b) states that an order in council will specify the amount of this allowance, currently set at £36,366 a year.<sup>15</sup> The allowance is intended to help cover the costs of late and overnight working in London. However, the House of Lords Privileges and Conduct Committee in 2018 and the Senior Salaries Review Body in 2009 noted in practice there were no restrictions on what the allowance should be spent on.<sup>16</sup> The bill would provide that anyone taking ministerial or Opposition leave would not be entitled to this allowance because they would not incur any such costs. The allowance would be paid to their maternity cover instead. More detailed information about the allowance and its history can be found in reports by the House of Lords Privileges and Conduct Committee and the Senior Salaries Review Body.<sup>17</sup>

**Clause 4** would enable payments to be made to a person supplying cover for the holders of certain Opposition offices where the substantive office holder is on maternity leave.

Subsections 1 and 2 would allow the person covering to be paid an allowance and set out which Opposition offices would be eligible for it:

- In the House of Commons: the leader of the opposition; the chief opposition whip; or an assistant opposition whip.
- In the House of Lords: the leader of the opposition or the chief opposition whip.

Subsection 3 specifies that it would be for the leader of the opposition in the relevant House to appoint cover. However, it is not clear how the bill would interact with party rules on leadership should the leader of the opposition in either House use the provisions to take maternity leave.

Subsections 4 and 5 would mean that an appointment to cover an absence could only be made when the office holder:

- is pregnant and within 12 weeks of the expected week of the birth; or
- has given birth to a child within the previous four weeks.

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<sup>14</sup> House of Lords Privileges and Conduct Committee, [The Conduct of Lord Bassam of Brighton](#), 24 April 2018, HL Paper 126 of session 2017–19, p 8.

<sup>15</sup> [Lords Office-holders Allowance Order 2010](#).

<sup>16</sup> House of Lords Privileges and Conduct Committee, [The Conduct of Lord Bassam of Brighton](#), 24 April 2018, HL Paper 126 of session 2017–19, pp 8–11; and Review Body on Senior Salaries, [Review of Financial Support for Members of the House of Lords](#), November 2009, Cm 7746, p 33.

<sup>17</sup> House of Lords Privileges and Conduct Committee, [The Conduct of Lord Bassam of Brighton](#), 24 April 2018, HL Paper 126 of session 2017–19; and Review Body on Senior Salaries, [Review of Financial Support for Members of the House of Lords](#), November 2009, Cm 7746.

Subsection 6 would allow more than one person to supply cover for an Opposition office holder during their maternity leave, as long as only one person is providing cover at any one time and the cover lasts no longer than six months in total.

Subsection 7 specifies that the definition of 'child' in subsection 5 would include a still-born child within the meaning of section 41(1) of the Births and Deaths Registration Act 1953.

Subsection 8 states that the temporary appointment to cover maternity leave would automatically end after six months, or earlier if ended by the individual that made the appointment.

**Clause 5** sets out how the allowance paid to a person providing cover would be calculated:

- Subsection 1 states that the person providing cover would receive the same allowance as the office holder for which they are covering received. It also specifies that the allowance would be paid in monthly instalments.
- Subsection 2 would provide for the allowance to stop being paid when the appointment ends, with any overpayment able to be recovered.
- Subsection 3 states that payments made would be charged on and paid out of the consolidated fund.

**Clause 6** would set out other provisions regarding Opposition leave.

Subsection 1 states that where an Opposition office holder in the House of Lords is on maternity leave, she would not be eligible for the Lords office holder allowance, as the person appointed to cover for them would be eligible for it.

Subsection 2 states that any allowance paid under clause 4(1) is to be treated as if it were paid for service as an Opposition office holder. This is for the purposes of the provision in the Constitutional Reform and Governance Act 2010 allowing those offices to be covered by the ministerial pension scheme. This provision would not be needed to allow service as a minister on leave to be pensionable, as the scheme is already open to them due to their ministerial status.

**Clause 7** sets out the bill's territorial extent as applying to the whole of the UK. It also specifies that the bill would come into force on the day it is passed.

### **3. What happened in the House of Commons?**

The Government introduced the Ministerial and other Maternity Allowances Bill in the House of Commons on 4 February 2021. It completed all its remaining stages in the House of Commons on 11 February 2021.

Justifying the fast-tracking of the bill, the Government said both it and the Opposition agreed amending the law to allow ministers and certain Opposition office holders to take paid maternity

leave was a high priority.<sup>18</sup> It also said that the issue had been brought forward by Suella Braverman's announcement.

### 3.1 Second reading

Speaking for the Government, the Paymaster General Penny Mordaunt said:

The bill before the House today will make an important and long-overdue change to the existing law. It will enable all ministers for the first time to take paid maternity leave from their job for an extended period.<sup>19</sup>

Outlining the reasoning behind the bill, Ms Mordaunt said that “the prime minister believes that it is quite wrong for ministers to have to resign in order to leave work after giving birth to care for a new born child”.<sup>20</sup> She explained that the provisions available to those the bill covered would be similar to those for members of the armed forces and the civil service.<sup>21</sup> She also noted that it “responds directly” to a recommendation made in 2014 by the All-Party Parliamentary Group on Women in Parliament.

Addressing the scope of the bill, Ms Mordaunt stated that “the beneficiaries of this bill are indeed very narrow”.<sup>22</sup> She said that although adoption leave and shared parental leave were “important provisions”, they had not been included in the bill as they “require further consideration in the wider constitutional context”.<sup>23</sup> However, she said that the Government would bring forward proposals to address outstanding parental leave issues. Ms Mordaunt added the Government wanted to address them swiftly and had been having cross-party discussions on the issue.<sup>24</sup> She also highlighted a report that Boris Johnson had presented to Parliament, *Maternity Leave and Other Absences by Ministers*, which set out proposals on wider issues.<sup>25</sup>

Speaking for Labour, Rachel Reeves, Shadow Minister for the Cabinet Office and the Chancellor of the Duchy of Lancaster, gave her support to the bill:

Let me say at the outset that the Opposition will be supporting the bill, which is a small but welcome step in updating legislation in this important area.<sup>26</sup>

She also welcomed the minister's assurances that the Government would work on a cross-party basis

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<sup>18</sup> [Explanatory Notes](#), p 5.

<sup>19</sup> [HC Hansard, 11 February 2021, col 526](#).

<sup>20</sup> *ibid*.

<sup>21</sup> *ibid*, col 528.

<sup>22</sup> *ibid*, col 527.

<sup>23</sup> *ibid*, col 528.

<sup>24</sup> *ibid*.

<sup>25</sup> *ibid*; and HM Government, [Maternity Leave and Other Absences by Ministers](#), February 2021.

<sup>26</sup> [HC Hansard, 11 February 2021, col 530](#).

to look at further reforms, arguing that:

Further changes are indeed needed, because the proposals in their current form do not include, as the minister recognised, any provision for paternity leave entitlement, those seeking to adopt or those on shared parental leave. As things stand, we are very much playing catch-up when it comes to parental leave.<sup>27</sup>

Representing the Scottish National Party (SNP), Kirsten Oswald, Deputy Westminster Leader and Shadow Spokesperson for Women and Equalities, welcomed the bill but argued that it did not go far enough.<sup>28</sup> She also questioned why the bill required a pregnant minister to seek the prime minister's permission to take maternity leave.<sup>29</sup> She argued that “the rest of the world has long since moved on to the position that maternity leave should be a right rather than a discretionary benefit”.

Wera Hobhouse, Liberal Democrat Shadow Leader of the House of Commons and Spokesperson for Women and Equalities, said she agreed that the law should be changed to allow the attorney general to take maternity leave.<sup>30</sup> However, she expressed a hope that the bill would “prompt the Government into strengthening the employment rights of pregnant women and new parents across the UK”.

The chair of the House of Commons Women and Equalities Committee, Caroline Nokes, and the chair of the Joint Committee on Human Rights, Harriett Harman, also spoke on the bill.

Ms Nokes welcomed the bill but argued that it was “painfully evident” that it did not go far enough.<sup>31</sup> As a result, she asked the minister for reassurance that “there will be swift action to address questions around adoption, surrogacy and the myriad issues that may well crop up in the future”. She also raised the issue of redundancy protection for pregnant women and new mothers, arguing that if the Government “has found time for a bill for one woman” it should therefore find the time for a bill that could help “thousands of others”.<sup>32</sup> In addition, Ms Nokes asked to see a copy of any equalities impact assessment that had been produced for the bill.<sup>33</sup>

Welcoming the bill, Ms Harman commended the Government for bringing it forward, stating that it sends a “big and important public signal of valuing women’s work and recognising their commitment”.<sup>34</sup> However, she also argued:

The Government have done the right thing by the attorney general and women cabinet ministers; now they need to put right the completely wrong situation for the rest of the women in this country.<sup>35</sup>

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<sup>27</sup> [HC Hansard, 11 February 2021, col 530.](#)

<sup>28</sup> *ibid*, col 537.

<sup>29</sup> *ibid*.

<sup>30</sup> *ibid*, col 547.

<sup>31</sup> *ibid*, col 536.

<sup>32</sup> *ibid*.

<sup>33</sup> *ibid*.

<sup>34</sup> *ibid*, col 541.

<sup>35</sup> *ibid*.



Stella Creasy (Labour MP for Walthamstow) raised concerns, including about leaving office whilst on maternity leave. These concerns are discussed [in section 3.2](#) and [section 4.2](#) of this briefing.<sup>36</sup>

Several MPs raised concerns about the language used in the bill, highlighting that it refers to a person rather than a woman. For example, Joanna Cherry (SNP MP for Edinburgh South West) questioned why the bill did not mention women:

Is this a reflection of the ideological language that is now seen across schools, universities and the NHS, which bans use of the word “woman” and use of the word “lesbian”? Why must we deny the fact that there are two sexes, and why must we deny that biological sex exists?<sup>37</sup>

In addition, Jackie Doyle-Price (Conservative MP for Thurrock) said that she “felt moved to table amendments because of representations that I have had from women about its language”.<sup>38</sup>

Responding to the debate, Penny Mordaunt acknowledged the calls for legislation wider in scope. She said that while she could not confirm a timetable, she thought it should be brought before the House before the summer recess.<sup>39</sup> Referring to Ms Oswald’s point about the bill’s power sitting with the prime minister, she said:

Unfortunately, the power still has to sit with the prime minister. I know that the optics of that are not ideal, but I am afraid that this is hinged on the royal prerogative and that must be the case.<sup>40</sup>

On the issue of language, Ms Mordaunt said that she would provide further explanation in committee, but that she understood “how offensive the word “person” or “persons” can be in this context”. Commenting further, she said:

I hope that we can make some changes, if not to the legislation then to the explanatory notes, that will address some of [these] issues.<sup>41</sup>

### **3.2 Committee stage**

The House debated amendments during committee stage. However, MPs did not amend the bill. Only one amendment was moved to a decision, which the House rejected.

The amendments debated broadly fell into five categories.

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<sup>36</sup> [HC Hansard, 11 February 2021, col 542.](#)

<sup>37</sup> *ibid*, col 553.

<sup>38</sup> *ibid*, cols 541–2.

<sup>39</sup> *ibid*, col 559.

<sup>40</sup> *ibid*.

<sup>41</sup> *ibid*.

### ***Calls for an equality impact assessment***

New clause 1 proposed that the prime minister would have had to lay an equality impact assessment on the provisions of the act before Parliament within three months of the act being passed. Stella Creasy said this would “allow us to look at what the consequences of only acting for 115 women are, and what that means for the broader conversation about public life in this country”.<sup>42</sup> The SNP’s Kirsten Oswald argued that “it is inconceivable that if an equalities impact assessment had been done, the bill would have seen the light of day in its current form”.<sup>43</sup>

Addressing calls for an equality impact assessment, Ms Mordaunt said that it was “easily done” and would be “great for a very small number of people”.<sup>44</sup> However, she argued that it would be “of no use whatsoever in advancing anyone else’s rights or opportunities”. Instead, she said that the Government wanted to:

Undertake an impact assessment that looks at current legislation on the issues we have discussed this afternoon in relation to Members of Parliament. We will also take into account work already done, or in progress, by the relevant select committees, particularly the Procedure Committee and the Women and Equalities Committee.<sup>45</sup>

Ms Creasy welcomed the idea of a wider impact assessment and called for it to include parliamentary staff, a move which Ms Mordaunt agreed IPSA and the House should look at.<sup>46</sup>

### ***Gender-neutral language***

Several amendments would have replaced the word person with either ‘woman’ or ‘minister’ in various parts of the bill. This follows concerns raised in second reading about the use of gender-neutral language.

Sir John Hayes (Conservative MP for South Holland and the Deepings) tabled several of these amendments. He explained:

As drafted, the bill, in effect, extinguishes the ordained particular characteristics of human types. I do not know whether that is as a result of artlessness or heartlessness, but whichever it is, it anonymises and dehumanises.<sup>47</sup>

Jackie Doyle-Price said her amendments would “replace the word “person”, which is causing so much anxiety to women outside this place, with a word that reflects the position in employment law—in this case, “minister””.<sup>48</sup> However, she said that she was not minded to press the amendment if it was

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<sup>42</sup> [HC Hansard, 11 February 2021, col 571.](#)

<sup>43</sup> *ibid*, col 563.

<sup>44</sup> *ibid*, col 590.

<sup>45</sup> [HC Hansard, 11 February 2021, col 590.](#)

<sup>46</sup> *ibid*.

<sup>47</sup> *ibid*, col 579.

<sup>48</sup> *ibid*, col 567.

not suitable, but had tabled them “in a constructive spirit, to try to take the heat out of something causing distress to women”.

Responding, Ms Mordaunt said she was “sensitive” to points made on the issue in both second reading and during committee.<sup>49</sup> However, she argued:

It is not the case that we could legally and correctly use the word “woman” in this piece of legislation, nor could we do so with the term “minister”, because the designation of a person happens after they have ceased to hold their existing ministerial office.<sup>50</sup>

However, she said the Government could put the word “minister” into the explanatory notes, stating that:

Although that is still gender-neutral language, it is a much less jarring term than “person”, and I hope that in doing so, we can address the very legitimate concerns that have been raised about this, while ensuring that the bill is legally sound and not subject to legal challenge and is in line with the drafting conventions that we subscribe to.<sup>51</sup>

Subsequently, press reports have suggested that Lord Hunt of Kings Heath (Labour) would be urging the Government to revisit the language when the bill is debated in the House of Lords.<sup>52</sup>

### ***Increase maternity leave to 12 months***

Several amendments would have extended the period of paid maternity leave from six to 12 months.<sup>53</sup> Speaking to these amendments, Kirsten Oswald said:

A simple click on the gov.uk website would have told the drafters of the bill that statutory maternity leave in the UK is 52 weeks, split into two chunks of 26 weeks. It is not clear to me why the starting point for the arrangements for designating a minister on leave was taken to be six months instead of 12 months, and it does not speak well of what we are saying to the outside world.<sup>54</sup>

In response to the amendments, Ms Mordaunt said: “as I have discussed, we are pegged to the civil service scheme, so I ask her not to press her amendment, and to bear in mind the context of the bill”.<sup>55</sup>

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<sup>49</sup> [HC Hansard, 11 February 2021, col 593.](#)

<sup>50</sup> *ibid*, col 594.

<sup>51</sup> *ibid*.

<sup>52</sup> Danielle Sheridan, [‘Peers urge Government to amend Maternity Bill in order to reference ‘women’](#), *Telegraph* (£), 15 February 2021.

<sup>53</sup> House of Commons, [Thursday 11 February 2021: Committee of the Whole House Proceedings](#), 12 February 2021, amendments 4, 5, 6, 7, 8, 9, 13 and 14.

<sup>54</sup> [HC Hansard, 11 February 2021, col 565.](#)

<sup>55</sup> *ibid*, col 595.

### ***Mandatory not discretionary***

Amendment 3, tabled by Kirsten Oswald, was one of several amendments that would have made paid maternity leave mandatory for qualifying ministerial and Opposition office holders.<sup>56</sup> Explaining her reasons for tabling the amendment, Ms Oswald said:

The bill, as drafted, envisages that the prime minister would—in theory—be entitled to withhold maternity leave from a woman [...] As a matter of principle, that is wrong.<sup>57</sup>

She also argued that the Government should not add to the pressure already facing women around maternity leave by adopting a standard that says to women “your maternity leave is a benefit that may or may not be conferred by your boss”.<sup>58</sup> Instead, she said that “through legislation, we should aim to reflect the standard that we expect Government to meet”.

Responding, Ms Mordaunt said that while she agreed that the Government should do all it can to ensure that new mothers feel able to access the new provision, she argued that the amendment would:

Serve not to only undermine the role of the prerogative power but to constrain a ministerial mother’s ability to choose what leave she takes following the birth of a child. The current provisions have been drafted to preserve both.<sup>59</sup>

### ***Leaving office whilst on maternity leave***

Amendments 1 and 2 would have required the Government to ensure that if a minister on leave or Opposition office holder ceased to hold their designated role whilst on maternity leave, they would continue to be paid.

Stella Creasy tabled the amendments and provided the following explanation during the debate:

Amendments 1 and 2 are probing amendments to recognise some of the questions the bill raises about the practical technicalities and what would happen. The bill seems to take account of the idea that somebody might be demoted while they are on maternity leave and I am sure that the paymaster general will want to clarify that. Although the bill provides that no Minister would be in a financially difficult position if they were removed from their ministerial post while they were on maternity leave, it does not make the same provision for the small number of Opposition office holders. Will the paymaster general clarify what would happen in that case? We all want to ensure that when any woman takes maternity leave, she can do so with confidence and certainty about her financial and logistical position.<sup>60</sup>

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<sup>56</sup> [HC Hansard, 11 February 2021, col 561.](#)

<sup>57</sup> *ibid*, col 563.

<sup>58</sup> *ibid*, col 565.

<sup>59</sup> *ibid*, col 593.

<sup>60</sup> *ibid*, col 577.

Speaking on the amendments, Ms Mordaunt said:

If a Minister on leave were to cease to hold the office before the six months had lapsed, clause 2(3) already provides that she would receive the remainder of her allowance as a lump sum. The only circumstances in which that would not happen is if the minister on leave were appointed to a new ministerial office, in which case she would once again receive a ministerial salary; or, in the tragic event that she died, it would be the case that financial assistance for her dependants would be provided through the ministerial pension scheme.<sup>61</sup>

### ***Unpaid House of Lords ministers***

The issue of unpaid House of Lords ministers and maternity leave was raised, although it was not subject to either an amendment or wider debate. Richard Holden (Conservative MP for North West Durham) asked whether there had “been any consideration of unpaid ministers in the House of Lords”.<sup>62</sup> He noted they “get a daily allowance normally, but they do not receive a salary” and pressed Penny Mordaunt as to whether that had been “taken into consideration at this stage of this legislation”. In response, Ms Mordaunt said:

It is not part of the scope of this bill, but the Prime Minister has said in his written ministerial statement that it is one of the issues he wants this future piece of work to look at. I think it is fantastic that we have more women in the House of Lords, and we want those women to be able to hold ministerial office. If they need to take maternity leave, they should be able to do so.<sup>63</sup>

### **3.3 Third reading**

Because no amendments were made at committee stage, the bill was not debated at report stage. The bill then passed third reading without a debate.<sup>64</sup>

## **4. What else has been said about the bill?**

Although the bill has been generally welcomed outside of Parliament, some argue that the bill’s scope is too narrow and that it should be used to address wider issues with statutory maternity pay and maternity leave for MPs.

### **4.1 Statutory maternity pay**

The charity Maternity Action has said that it welcomes the ability for the attorney general and other ministers to take up to six months of leave on full pay.<sup>65</sup> However, it has described the bill itself as

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<sup>61</sup> [HC Hansard, 11 February 2021, col 595.](#)

<sup>62</sup> *ibid*, col 592.

<sup>63</sup> *ibid*.

<sup>64</sup> *ibid*, col 596.

<sup>65</sup> Maternity Action, [Ministerial and Other Maternity Allowance Bill: Briefing for Commons Stages, 11 February 2021](#), February 2021, p 2.

“deeply flawed and totally inadequate”.<sup>66</sup> It highlighted the fact it would entitle ministers to better terms than those on statutory maternity pay, arguing:

This contrasts with the ludicrously low basic rate of both statutory maternity pay and maternity allowance: just £151.20 per week, equivalent to about half of the national minimum wage (for a 35-hour week).<sup>67</sup>

It also criticised the Government’s decision to fast-track the bill, arguing that the question of “proper maternity, paternity and parental leave for ministers and indeed all MPs has been outstanding for many years”.<sup>68</sup> In addition, it noted that the Government had yet to take forward previous commitments related to maternity issues and criticised its lack of support for other attempts to legislate to protect pregnant women.<sup>69</sup> For example, on 4 February 2021, it tweeted:

Boris Johnson will change the law \*in one day\*.

If he can do that, he can adopt @MariaMillerUK’s much-needed Pregnancy and Maternity Redundancy Protection) Bill, and speed it through Parliament just as quickly.<sup>70</sup>

The Maria Miller (Conservative MP for Basingstoke) bill would prohibit redundancy during pregnancy and maternity leave, and for six months after the end of the pregnancy or leave, except in specified circumstances.<sup>71</sup>

Writing for Politics Home, Harriet Harman welcomed the decision to offer Ms Braverman maternity leave, arguing that they “could have just ducked this and spread the role round other ministers” or asked Ms Braverman to keep a “watching brief” on her office.<sup>72</sup> However, she agreed with others that the bill should act as an opportunity to call on the Government to:

Focus on the wholly inadequate level of maternity allowance and statutory maternity pay, the lack of employment protection for women on maternity leave and the woefully low level of take up by fathers of parental leave because most men can’t afford to take it.<sup>73</sup>

The Fawcett Society welcomed the changes that would allow Ms Braverman to take paid leave and return to her post.<sup>74</sup> However, it also called for the Government to “expand maternity and paternity leave rights, to allow low income workers access to well remunerated leave”.

<sup>66</sup> Maternity Action, ‘[Official Twitter account](#)’, 10 February 2021 (accessed 10 February 2021).

<sup>67</sup> Maternity Action, [Ministerial and Other Maternity Allowance Bill: Briefing for Commons Stages, 11 February 2021](#), February 2021, p 2.

<sup>68</sup> *ibid*, p 1.

<sup>69</sup> *ibid*.

<sup>70</sup> Maternity Action, ‘[Official Twitter account](#)’, 4 February 2021 (accessed 10 February 2021).

<sup>71</sup> UK Parliament website, ‘[Pregnancy and Maternity \(Redundancy Protection\) Bill 2019–21](#)’, accessed 17 February 2021.

<sup>72</sup> Harriet Harman, ‘[As we celebrate Suella Braverman’s maternity leave, we must also guarantee the rights of all new parents](#)’, Politics Home, 4 February 2021.

<sup>73</sup> *ibid*.

<sup>74</sup> Fawcett Society, ‘[Official Twitter account](#)’, 4 February 2021 (accessed 10 February 2021).

In 2016, the Chartered Institute of Personnel Development commissioned a YouGov survey which found that around 18% of organisations had a maternity pay policy like the one in the bill.<sup>75</sup> However, the likelihood of such a policy was higher in public sector organisations (42%), than those in private sector organisations (11%).

## 4.2 Maternity leave for MPs

A variety of individuals and organisations have criticised the bill for not addressing the issues currently experienced by MPs.

For example, Stella Creasy said that the introduction of cover for ministers is “long overdue”.<sup>76</sup> However, she argued that the bill presented parental rights as a “bonus” for being promoted and that no other workplace would guarantee maternity leave and cover as “only the preserve of management”. As a result, she has stated:

I am very prepared to go to court over this, because it is a form of direct discrimination [...] as a backbencher, none of these provisions will apply to myself.<sup>77</sup>

Others have agreed with Ms Creasy. The Trade Union Congress general secretary, Frances O’Grady, said that there should not be a “two-tiered system that privileges some new mums”. Helen Pankhurst, convener at the Centenary Action Group, argued that it was “one rule for the cabinet and another for MPs”.<sup>78</sup>

The chief executive of the Fawcett Society, Felicia Willow, urged the Government to address maternity rights disparities across the country and said that it was now an urgent matter that MPs be given paid maternity cover.<sup>79</sup> She argued that the Government “must not only support its own, but must also help and support all women on maternity leave”.

### **What are the rules for Parliamentarians?**

As office holders and not employees, MPs are excluded from statutory employment rights, including maternity leave. This has led to criticisms that MPs do not have access to formal arrangements for taking maternity and paternity leave, but instead rely on a discretionary system. In 2014, the All-Party Parliamentary Group on Women highlighted the issue:

The lack of formal maternity and paternity leave for MPs is entirely out of step with wider society and gives the impression that the work of a parliamentarian is not appropriate for those with caring responsibilities. Whilst maternity and paternity leave does exist for MPs in practice,

<sup>75</sup> Chartered Institute of Personnel Development, [Labour Market Outlook: Views from Employers: Focus on Working Parents](#), December 2016, p 3.

<sup>76</sup> Jessica Elgot and Alexandra Topping, [Backlash over bill giving UK cabinet ministers paid maternity leave](#), *Guardian*, 4 February 2021.

<sup>77</sup> BBC News, [Stella Creasy threatens legal action over paid maternity leave for ministers](#), 11 February 2021.

<sup>78</sup> Jessica Elgot and Alexandra Topping, [Backlash over bill giving UK cabinet ministers paid maternity leave](#), *Guardian*, 4 February 2021.

<sup>79</sup> *ibid.*

there is no formal system in place. In practice, women who have had babies are usually granted maternity leave, but this is at the discretion of the whips. Witnesses described to us a feeling of going to the Whips Office, forced to beg for ‘special treatment’ due to their personal circumstances. By formalising provisions through a cross party agreement as to the circumstances in which MPs are entitled to leave, whether for reasons of parenthood, caring, sickness or bereavement, we believe Parliament would signify an openness to a wider pool of candidates, both men and women.<sup>80</sup>

Professor Sarah Childs’ report in 2016 also focused on the problem. Professor Childs highlighted that in many other parliaments the provision for maternity leave is the same as in national law. She argued that to become “a truly inclusive institution”, the House of Commons must “accommodate and facilitate both the pregnant woman member and co-parenting and caring MP”.<sup>81</sup>

Members of the House of Lords are neither employees nor office holders, except for certain office holders such as ministers.<sup>82</sup>

In the House of Lords, there are no formal arrangements for maternity leave. If a Member wished to take a period of maternity leave, they could take what in effect is unpaid leave. Members receive an allowance rather than a salary.<sup>83</sup> This allowance is linked to “attendance at Westminster”, which includes, for example, attending a sitting of the House, a committee or taking part in a division.<sup>84</sup> All such participation is voluntary. Therefore, if a Member wished to take maternity leave, they could, amongst other things, informally arrange with their whip not to attend or formally take a leave of absence.<sup>85</sup> However, they would not be able to claim any allowance as they would not have attended.

Two examples in the last decade illustrate approaches that have been taken in practice by Lords Members. In 2011, the *Telegraph* reported an interview with then Labour peer Baroness Worthington which said she commuted to London two or three times a week whilst “technically on maternity leave”.<sup>86</sup> More recently, in November 2020 Baroness Bertin (Conservative) tweeted that she had returned to the Lords from maternity leave<sup>87</sup> having last spoken in a debate in March 2019.<sup>88</sup> In her case, Baroness Bertin participated in remote divisions before her return, though she did not claim the allowance for doing so.<sup>89</sup>

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<sup>80</sup> All Party Parliamentary Group Women in Parliament, [Improving Parliament: Creating a Better and More Representative House](#), July 2014, p 26.

<sup>81</sup> Professor Sarah Childs, [The Good Parliament](#), July 2016, p 20.

<sup>82</sup> Review Body on Senior Salaries, [Review of Financial Support for Members of the House of Lords](#), November 2009, Cm 7746, p 17.

<sup>83</sup> UK Parliament website, [‘Members of the Lords: Allowances’](#), accessed 18 February 2021.

<sup>84</sup> House of Lords, [Guide to Financial Support for Members](#), April 2019, para 3.1.

<sup>85</sup> House of Lords, [Companion to the Standing Orders of the House of Lords](#), April 2017, para 1.37.

<sup>86</sup> Melissa Kite, [‘Breastfeeding baroness launches quiet modernisation of House-of-Lords’](#), *Telegraph* (£), 8 May 2011.

<sup>87</sup> Gabby Bertin, [‘Official Twitter Account’](#), 11 November 2020 (accessed 18 February 2021).

<sup>88</sup> [HL Hansard, 6 March 2019, col 613.](#)

<sup>89</sup> See for example, [House of Lords Publication of Financial Support for Members September 2020](#). Baroness Bertin attended six times but did not claim the attendance allowance.



### **What attempts have there been to address these concerns?**

To address some of these issues, in recent years the House of Commons and the Independent Parliamentary Standards Authority (IPSA) have made changes to proxy voting and pay.

In January 2019, the House of Commons created a pilot scheme of proxy voting for MPs taking maternity, paternity or adoption leave.<sup>90</sup> This pilot scheme was extended several times over the following 18 months (some extensions were in reaction to the Covid-19 pandemic) and the House permanently adopted it in September 2020.<sup>91</sup> It enables MPs who are new mothers, new fathers and adoptive parents to apply to the Speaker for a proxy vote—meaning another MP can vote on their behalf—for a set amount of time based on the circumstances.

However, it has been argued that this system means that a woman on maternity leave is not covered. Explaining this, Meg Hillier (Labour MP for Hackney South and Shoreditch) has argued that while proxy voting has an important role to play, it “can be seen to tether a woman to her job during her six months’ maternity leave and make sure that she has to follow every twist and turn of her job”.<sup>92</sup>

In terms of pay, IPSA—which is responsible for MPs pay—has explained that MPs are able to receive their full salary following the birth or adoption of a child.<sup>93</sup> In addition, it has said they will have access to:

- all their budgets that support their work, such as office, accommodation, staffing and travel costs; and
- funding for additional staff to cover their absence.

The availability of funding for additional staff to help cover for the MP was introduced following calls for change by Stella Creasy. In 2019, Ms Creasy argued that an MP’s role is not confined to Parliament, and requested funding be made available so that she could hire a new member of staff to cover her constituency duties whilst she was on maternity leave. IPSA agreed to provide funding so that she could hire a ‘locum’ MP.<sup>94</sup>

During committee stage of the bill, Ms Creasy argued that despite these changes “it is not clear to me as a pregnant woman what support I would get” and that “the only other MP who sought to take advantage of that system was discouraged and deterred, and was not able to do so”.<sup>95</sup>

More recently, IPSA has launched a consultation on the funding for MP parental leave cover and staff reservists leave.<sup>96</sup> Stating that it is committed to supporting a more family-friendly Parliament, it outlined proposals to create a specific MP Parental Leave Cover Fund and a new policy which will

<sup>90</sup> UK Parliament website, [‘House of Commons implements proxy voting pilot system for new parents’](#), 28 January 2019.

<sup>91</sup> House of Commons Library, [‘Proxy Voting in Divisions in the House’](#), 9 November 2020; and UK Parliament website, [‘Proxy voting scheme’](#), 3 November 2020.

<sup>92</sup> [HC Hansard, 11 February 2021, col 569.](#)

<sup>93</sup> IPSA, [‘Leave and holidays’](#), accessed 10 February 2021.

<sup>94</sup> BBC News, [‘Stella Creasy: UK’s first ‘locum MP’ to cover maternity leave’](#), 3 October 2019.

<sup>95</sup> [HC Hansard, 11 February 2021, col 576.](#)

<sup>96</sup> IPSA, [‘Consultation: Funding for MP Parental Leave Cover and Staff Reservists Leave’](#), February 2021.

clearly set out MPs eligibility for funding and how it would provide it.<sup>97</sup>

## 5. Read more

- HM Government, [Maternity Leave and Other Absences by Ministers](#), February 2021
- House of Commons Library, [Ministerial and other Maternity Allowances Bill 2019–2021](#), 16 February 2021

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<sup>97</sup> IPSA, [Consultation: Funding for MP Parental Leave Cover and Staff Reservists Leave](#), February 2021, p 2.