

Written evidence submitted by Maternity Action [GRA0047]

Dear Caroline and Alex,

I write further to the publication of the transcript of your Committee's oral evidence session with Ministers on 4 November.

In response to Q176 by Alex Davies-Jones about Maria Miller's Pregnancy & Maternity (Redundancy Protection) Bill, which Maternity Action and others have been urging Ministers to adopt as their own and speed into law, BEIS minister Paul Scully stated:

"I actually spoke to Maria Miller about this, her having presented it, because I wanted to make sure we could fully understand. I think we all understand and agree with the sentiment behind it. It is the approach we might not necessarily agree with. I know the German system that she cites in preparing the Bill was the subject of a previous Women and Equalities Committee recommendation. It basically meant that an employer could not dismiss a woman during pregnancy without first securing consent from a state enforcement body. The solution that Government favour is more in line with the current UK system of enforcing employment law through the tribunal system."

In fact, as Minister Scully surely knows, 'securing consent from a state enforcement body' forms no part of Maria Miller's Bill, which is entirely in line with "the current UK system of enforcing employment law through the tribunal system". This is abundantly clear from Maria Miller's speeches, and from our briefings on the Bill. For example, when [first introducing the Bill to the Commons](#), on 21 May 2019, Maria Miller explicitly addressed this point (emphasis added):

"This Bill proposes a much simpler and clearer protection, drawing on the proposals of the Women and Equalities Committee in 2016. The Committee recommended that the Government consider the German model ... The Government's consultation offered a response to that recommendation, objecting on the basis that it would not be appropriate to apply an approach to enforcement that is fundamentally different from that of the rest of employment law.

The Government are already planning to bring forward proposals for a new single enforcement body, so perhaps the novel approach that the Committee put forward may not now be out of the question. **But assuming it is, the Bill I propose today answers those criticisms directly. It would not need a new watchdog to enforce it. The upgraded right would simply be enforced through employment tribunals or through the automatic unfair dismissal provisions that already exist in the Employment Rights Act 1996. The proposal would fit seamlessly within existing structures. It would not require a new quango.** It is in line with the Government's aims. It has been shown to work on other shores. The major change it would make is to offer pregnant women the sort of protection that is long overdue. We know that the protection that is currently written into law is not effective."

Similarly, our March 2020 briefing paper (attached), sent to Minister Scully at the time of publication, states:

"Where necessary, the new right not to be made redundant would be enforced through the Employment Tribunal system, under the existing automatic unfair dismissal provisions of the Employment Rights Act 1996."

However, the whole point of Maria Miller's Bill is to obviate the need for women to bring an Employment Tribunal claim, by reversing the burden of proof. Instead of women having to prove that their redundancy was unfair – a near impossible task – the employer would have to demonstrate that the redundancy was in compliance with the general ban on redundancy.

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In our September 2020 briefing paper (attached), sent to Minister Scully at the time of publication, we stated:

“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.”

I hope that this information is helpful to your deliberations, but please do not hesitate to contact me if you have any questions or would like further information or clarification on any point.

**December 2020**