

MINISTERIAL AND OTHER MATERNITY ALLOWANCES ACT 2021

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Ministerial and other Maternity Allowances Act 2021 (c. 5) which received Royal Assent on 1 March 2021.

- These Explanatory Notes have prepared by the Cabinet Office in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 Women may be put off seeking high office due to inadequate maternity support. The Ministerial and other Maternity Allowances Act 2021 (the Act) provides for the Prime Minister, relying on the prerogative power to make appointments, to advise the Sovereign to appoint a current Government Minister to the position of 'Minister on Leave' for a time-limited period for six months under certain circumstances, namely to enable the Minister in question to take paid maternity leave.
- 2 The payment and office will not count for the salary and headcount limits specified in the Ministerial and other Salaries Act 1975 and the House of Commons Disqualification Act 1975.
- 3 The Act also makes provision allowing for time-limited payments to be made to individuals who are providing cover for certain offices in Her Majesty's Official Opposition (those listed in Schedule 2 to the Ministerial and other Salaries Act 1975) on the basis that the office holder in question is on maternity leave.

Policy background

Background and Current Framework

- 4 The current statutory framework relating to the issue of Ministerial appointments and pay, including the limits and restrictions applicable in this area, consists of three main Acts of Parliament
 - a. The Ministerial and other Salaries Act 1975, which sets out what Ministers are to be paid at different ranks, and imposes cumulative limits on the number of salaries that can be paid at each rank. It also sets out the salary for named Opposition office holders.
 - b. The House of Commons Disqualification Act 1975, which places a limit on the number of ministerial office holders who are entitled to sit and vote in the House of Commons.
 - c. The Ministerial and other Pensions and Salaries Act 1991, which makes provision for certain payments and allowances, including notably a loss of office payment of one quarter of an office holder's annual salary, at the point at which they cease to hold office, subject to certain conditions.
- 5 In addition to those Acts, the Constitutional Reform and Governance Act 2010 makes provision for the creation of a pension scheme for Ministers and certain other office holders in Parliament, including Opposition offices.
- 6 Successive Governments have operated at or close to the salary and headcount limits provided for in the Ministerial and other Salaries Act 1975 and the House of Commons Disqualification Act 1975 in appointments to their administrations. Prime Ministers may not make appointments that exceed these limits. If a woman holding high office were to want to take maternity leave, the Prime Minister does not normally have the flexibility to allow them to remain a salaried member of the Government in addition to appointing another Minister to fulfil their role for the period of their leave. The Opposition operates under similar constraints in terms of salaries for its office holders. Such constraints are a potential barrier to the full participation of women in public life.

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- 7 Ministers are public office holders. They are appointed by the Sovereign on the advice of the Prime Minister of the day under the powers of the Royal Prerogative. Their status and constitutional position means that they are not treated as workers or employees and as such have none of the rights or entitlements that many others working in the UK are afforded under employment legislation. In particular they have no rights in relation to maternity leave.
- 8 In 2014, the All Parliamentary Party Group on Women in Parliament produced a report which made the following recommendation in relation to payment to Ministers for parental leave:

“We note also that while Ministers are now entitled to take maternity and paternity leave, and their work is covered by Ministerial colleagues, there is no additional funding to pay the covering Ministers for their additional responsibilities. We believe that a system of paid cover for Ministers on parental leave should be considered.”
- 9 In 2019 the Ministerial Code was updated to insert provisions allowing for ministers to take a leave of absence from their post. Those provisions describe how ministers can take temporary “leave” for maternity, reflecting recent practice. Desk notes have been developed for departments to reflect the practical arrangements they should take to support Ministers while on maternity leave, keeping them in touch with developments and making arrangements for a supported return. In practice, under these arrangements, the functions and responsibilities of Ministers on maternity leave have been covered by other Ministers already serving elsewhere in Government. A number of women have used this approach, including in this Parliament.
- 10 Where it is an individual office or very senior office, these arrangements are particularly difficult to apply. This is because of the statutory limits on ministerial salaries and numbers set out in the legislation referred to above, and because the legal exercise of functions of such roles cannot be 'covered' by another Minister. The result is that a Minister in such a role who wished to take extended maternity leave would need to resign their office.
- 11 This Act seeks to address this issue by providing for Ministers to be able to take paid maternity leave. The current arrangements already provide the mechanism for Ministers to take a short leave of absence for paternity leave.
- 12 The Act, in providing for a Minister to be designated as a Minister on Leave, allows a Minister to take an extended period of maternity leave while remaining a member of the Government. As such, they would continue to be bound by the Ministerial Code and the principle of collective responsibility. While designated as a Minister on Leave, the office holder will have no specific duties or responsibilities, or exercise any powers in relation to their previous office. They will not be expected to account before Parliament on issues of Government policy while on leave. The Minister on Leave would be able to access papers they were able to access in their previous role (including Cabinet papers if they were a Cabinet Minister) and be kept updated on work going on in respect of their former role, but they could not commission work or take decisions. Ministers exercising powers (i.e. not designated as ‘Minister on Leave’) will remain accountable to Parliament.
- 13 In order to be designated as a Minister on Leave, the Minister would be appointed to a new ministerial office and no longer hold their previous office. It would be for the Prime Minister to advise the Sovereign on the appointment of a person to fill the role vacated by the person designated a Minister on Leave, and that person so appointed would then hold that office in full and without condition. In this way ministerial accountability and clarity in the exercise of the ministerial functions associated with that office will be maintained.

Approach Taken in the Act

- 14 This Act provides a mechanism whereby specific office holders (namely Ministers and certain members of Her Majesty's Opposition) who wish to take maternity leave are able, subject to certain conditions and at the discretion of the Prime Minister or the Leader of the Opposition, to take up to six months leave at full pay, analogous to the situation applicable to the first six months of maternity leave for most Members of the Armed Forces and Civil Servants.
- 15 In relation to Ministers, the objective of the Act is to enable any Minister (holding whichever office in the Government) to take a period of paid maternity leave, whilst remaining a member of the Government. It seeks to minimise any impact on wider constitutional issues by creating an ability to pay an allowance to a Minister appointed to the designated ministerial office as a 'Minister on Leave'; and for that office not to count towards the statutory limits on ministerial salaries and numbers.
- 16 A designation as a 'Minister on Leave' would automatically terminate after six months. An appointment to this office could be brought to an end sooner by either:
 - a. the individual being appointed to another ministerial office (including being appointed to their previous role);
 - b. the individual being dismissed (the prerogative power to dismiss Ministers is maintained); or
 - c. the individual resigning (e.g. as a result of losing their seat in an election held during the six month period, or if there was a change of Government).
- 17 Except where the Minister is appointed to another ministerial role, the Minister would be entitled to retain the payment in respect of the remaining duration of the six month period. They would also be entitled to the standard loss of office payment, equivalent to three months' salary, payable under section 4 of the Ministerial and other Pensions and Salaries Act 1991. Any residual payment would be made as a lump sum.
- 18 The Act does not give or imply a right on the part of a Minister wishing to take maternity leave to be appointed as a Minister on Leave. Any appointment to such a role would remain a prerogative power on advice from the Prime Minister, as would appointment to the Minister's former ministerial office (or a new ministerial office) at the end of the maternity leave.
- 19 The Act also covers the six Opposition offices whose salary is paid for under the ministerial salary legislation referred to above. They are the Leaders of the Opposition and the Chief Opposition Whips in each House, and two Assistant Opposition Whips in the House of Commons. To take account of the fact that such office holders are not appointed by the Prime Minister and do not have statutory functions, the Act adopts a different approach for these offices. The office holder who is to take maternity leave would stay in post and the Act instead authorises a payment to the person (at the discretion of the Leader of the Opposition in the relevant House) who covers their role, on similar terms as outlined above for Ministers. The arrangement may last for up to six months and the eligibility criteria are the same. There is no provision, on termination of the covering person's appointment before the end of six months, for them to receive any lump sum (as they are providing cover rather than taking the time off).

Legal background

- 20 The relevant legal background is explained in the policy background section of these notes. Further information on the legislation amended by this Act is also contained in the commentary on the individual Act sections.

Territorial extent and application

- 21 Section 7 sets out the territorial extent of the Act; that is the legal jurisdictions of which the provisions in the Act are intended to form part of the law. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect. In this Act, the application and extent are both to the whole of the United Kingdom.

Commentary on provisions of Act

Section 1: Payment of maternity allowance: Ministerial office

- 22 This section sets out that the Prime Minister can designate a holder of ministerial office as a ‘Minister on Leave’ for the purpose of paying them an allowance and the conditions which must be satisfied before a designation can take place.
- 23 Subsection (1) provides the basis for a mother or expectant mother designated as a Minister on Leave to be paid an allowance under the Act.
- 24 Subsection (2) specifies that, in order to be designated as a Minister on Leave, the mother or expectant mother must fulfil the conditions set out in subsection (3) and that that mother or expectant mother must have ceased to hold their previous ministerial office (“the first ministerial office”) immediately before appointment to a designated ministerial office, as Minister on Leave.
- 25 Subsection (2) further specifies that the mother or expectant mother so designated by the Prime Minister will remain a member of Her Majesty’s Government for the duration of their tenure as Minister on Leave, because they continue to hold ministerial office.
- 26 Subsection (3) sets out the conditions which the mother or expectant mother in question must satisfy in order to be eligible for designation as a Minister on Leave by the Prime Minister, specified by reference to the anticipated, or actual, birth date of a child. These conditions are framed by reference to other legislative provisions on maternity leave, and provide that the Minister is eligible to be designated as Minister on Leave if:
- a. they are pregnant and the due date is no more than 12 weeks away;
 - b. they have given birth within the last 4 weeks.
- 27 Subsection (4) provides that a “child” for the purposes of subsection (3)(b) includes a still-born child within the meaning of section 41(1) of the Births and Deaths Registration Act 1953.
- 28 Subsection (5) defines “ministerial office” for the purposes of this Act as any of the ministerial offices specified in Parts 1 to 4 of Schedule 1 to the Ministerial and other Salaries Act 1975, as well as the office of Lord Chancellor, which is referred to elsewhere in that Act. This covers all Government ministers, including whips. It does not include Parliamentary Private Secretaries as they are not members of the Government.

- 29 Subsection (6) sets out that a designation as Minister on Leave ends either automatically after a period of six months or earlier if the Minister on Leave ceases to hold the office, for example because they are appointed to a new ministerial role, resign or are dismissed. The maximum period for which an allowance may be paid to a Minister on maternity leave under this Act is therefore six months.

Section 2: Ministerial leave: amount and payment of allowance

- 30 Section 2 sets out the amount of allowance that is to be paid to a Minister on Leave and the modalities of the payment of that allowance.
- 31 Subsection (1) sets the allowance as being six times the monthly salary that the Minister on Leave received in their “first ministerial office”, that is, as described in section 1(2)(b), the office they held immediately before being appointed to the designated ministerial office i.e, before being appointed as ‘Minister on Leave’. It also provides that the allowance is to be paid in six monthly instalments, subject to subsections (2) to (4).
- 32 Subsection (2) provides that the allowance is only available where the Minister on Leave was in receipt of a salary in relation to their “first ministerial office”. A Minister who was previously unpaid will not receive an allowance as a Minister on Leave.
- 33 Subsection (3) states that where the Minister on Leave leaves the Government (i.e. is no longer a Minister) before the end of the six-month period, they are to receive the remainder of the allowance as a lump sum. This is because while a right to maternity leave for a Minister cannot be conferred, certainty of financial support for the duration of that maternity leave can be provided.
- 34 Subsection (4) states that if the Minister on Leave ceases to be designated as such on account of being appointed to another ministerial office, or dying, the allowance is no longer payable and is reduced proportionately. In such cases, if there has been overpayment, subsection (4)(b) allows that any such overpayment may be recovered.
- 35 Subsection (5) defines when the ‘6-month period’ for the purposes of this section begins.
- 36 Subsection (6) sets out that the allowance is to be paid from either money provided by Parliament or is to be charged on and paid out of the Consolidated Fund, depending on how the payments made in respect of the “first ministerial office” as referred to in section 1(2)(b) were paid. With the exception of the Lord Chancellor, Ministers are paid from money provided by Parliament.

Section 3: Ministerial leave: other provision

- 37 This section sets out how the arrangements made in this Act interact with the existing statutory arrangements relating to ministerial offices and ministerial pay.
- 38 Subsection (1) provides that during the period of designation the Minister on Leave does not count for the purposes of the restriction set out in sections 2(1) and (2) of the House of Commons Disqualification Act 1975, which places a limit on the number of Ministers who can sit and vote in the House of Commons. Where a Minister is appointed as a Minister on Leave and this is in excess of the limit, they will not be subject to the consequences of non-compliance with the provisions of the House of Commons Disqualification Act 1975.

- 39 Subsection (2) re-applies the restriction in the House of Commons Disqualification Act 1975 at the end of designation. It provides that, if the Minister on Leave loses the designation by virtue of six months having elapsed, but has not ceased to hold the office, then they are to be considered to have commenced holding that office when the designation ended for the purposes of section 2(2) of the House of Commons Disqualification Act 1975.
- 40 Subsection (3) sets out that a Minister on Leave who is paid an allowance under this Act cannot also receive a salary under the Ministerial and other Salaries Act 1975.
- 41 Subsection (4) provides that ceasing to hold the designated ministerial office as Minister on Leave makes the (former) holder of that office eligible for a loss of office payment under Section 4 of the Ministerial and other Pensions and Salaries Act 1991, subject to the conditions specified in that Act. For the purposes of calculating the amount payable, the relevant salary is the annual salary that the former Minister received immediately before their appointment to the designated office.
- 42 Subsection (5) provides that where a Minister is appointed to the designated ministerial office and is a Member of the House of Lords, they will not be eligible also to receive an allowance under section 5(1) of the Ministerial and other Pensions and Salaries Act 1991 (allowance for ministerial and other office-holders in the House of Lords), sometimes known as the Lords Office Holder Allowance.

Section 4: Payment of maternity allowance: Opposition office

- 43 This section enables payments to be made to a person providing cover for the holders of certain Opposition offices, where the office holder is on maternity leave.
- 44 Subsection (1) provides the basis for the payment of the allowance.
- 45 Subsection (2) identifies the Opposition offices for which an allowance may be paid and defines the term “Leader of the Opposition” in relation to both Houses for the purposes of this Act by reference to section 2(1) of the Ministerial and other Salaries Act 1975.
- 46 Subsection (3) specifies that it is for the Leader of the Opposition in the House of Commons to make an appointment in relation to an office within subsection (2)(a) and that it is for the Leader of the Opposition in the House of Lords to make an appointment in relation to an office within the meaning of subsection (2)(b).
- 47 Subsection (4) sets out that the initial appointment for the purposes of subsection (1) can only be made if the person making the appointment considers that the conditions in subsection (5) are satisfied.
- 48 Subsection (5) sets out the conditions which must be satisfied before an appointment can be made for the purposes of subsection (1). These conditions are the same as those set out in section 1(3)(a) and (b).
- 49 Subsection (6) allows more than one person to provide cover for an Opposition office holder during maternity leave, provided only one person is providing cover at any one time and the period of cover is no more than six months in total. It prevents an appointment for the purposes of subsection (1) from being made after the six-month period, starting with the day on which the initial appointment is made, has elapsed, and also prevents concurrent appointments during that period.
- 50 Subsection (7) states that the reference to “child” for the purposes of subsection (5)(b) includes a still-born child within the meaning of the Births and Deaths Registration Act 1953.

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- 51 Subsection (8) sets out that any appointment under subsection (1) expires automatically after six months from the initial appointment or, if earlier, when it is terminated by the person who made the appointment.

Section 5: Opposition leave: amount and payment of allowance

- 52 This section sets out the calculation of the allowance to be paid to a person pursuant to section 4(1) of this Act.
- 53 Subsection (1) sets the rate of the allowance as being equivalent to the salary which is being paid to the holder of the Opposition office for whom the person appointed under this Act is providing cover. The allowance is paid in monthly instalments during the period of cover.
- 54 Subsection (2) provides that the allowance ceases to be payable when the appointment ends and that any overpayment may be recouped.
- 55 Subsection (3) provides that payments under this section are to be charged on and paid out of the Consolidated Fund. The salaries of these Opposition office holders are also paid out of the Consolidated Fund, under the Ministerial and other Salaries Act 1975.

Section 6: Opposition leave: other provision

- 56 Subsection (1) provides that where an Opposition office holder in the House of Lords is on maternity leave, that person is not eligible for the Lords Office Holder Allowance (under section 5(1)(b) of the Ministerial and other Pensions and Salaries Act 1991); rather it is the person appointed to cover the maternity leave who is eligible for that allowance.
- 57 Subsection (2) states that service as a covering person paid under section 4(1) of the Act is to be treated as if it were service as an Opposition office holder for the purposes of the provision in the Constitutional Reform and Governance Act 2010 which allows those offices to be covered by the Ministerial Pension Scheme. No equivalent provision is needed to allow service as a Minister on Leave to be pensionable since that scheme is already open to them because of their ministerial status.

Section 7: Extent, commencement and short title

- 58 Subsection (1) sets out the Act's territorial extent, which extends to England and Wales, Scotland and Northern Ireland.
- 59 Subsection (2) provides that the Act enters into force on the day that it receives Royal Assent.
- 60 Subsection (3) provides that the short title of the Act is the Ministerial and other Maternity Allowances Act 2021.

Commencement

- 61 All the provisions of the Act commenced on Royal Assent, in accordance with section 7.

Related documents

62 The following documents are relevant to the Act and can be read at the stated locations:

- Ministerial Code:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826920/August-2019-MINISTERIAL-CODE-FINAL-FORMATTED-2.pdf
- Report by the All Parliamentary Party Group on Women in Parliament, 'Improving Parliament' (2014):
<http://www.appgimprovingparliamentreport.co.uk/>

Annex A – Hansard References

63 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	04 February 2021	Vol. 688 Col. 1153
Second Reading	11 February 2021	Vol. 689 Col. 526
Public Bill Committee	11 February 2021	Vol. 689 Col. 561
Report and Third Reading	11 February 2021	Vol. 689 Col. 596
<i>House of Lords</i>		
Introduction	11 February 2021	Vol. 810 Col. 602
Second Reading	22 February 2021	Vol. 810 Col. 635
Grand Committee	25 February 2021	Vol. 810 Col. 924
Report	25 February 2021	Vol. 810 Col. 966
Third Reading	25 February 2021	Vol. 810 Col. 966
Commons Consideration of Lords Amendments	01 March 2021	Vol. 690 Col. 51
Royal Assent	01 March 2021	House of Commons Vol. 690 Col. 82
		House of Lords Vol. 810 Col. 1056

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