



## DEMOCRATIC SERVICES COMMITTEE – 17<sup>TH</sup> MARCH 2022

**SUBJECT:** CHANGES TO THE FAMILY ABSENCE PROTOCOL FOR MEMBERS OF LOCAL AUTHORITIES

**REPORT BY:** HEAD OF DEMOCRATIC SERVICES AND DEPUTY MONITORING OFFICER

### 1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise members of the changes to the Family Absence Protocol for Members of Local Authorities which increases the amount of paid absence a member is entitled to in respect of adoption leave and to ask committee to note the changes to the Family Absence Protocol attached at appendix 1 in bold italics.
- 1.2 To note that a report will be presented to Council seeking approval to incorporate the amended Protocol within the Constitution.

### 2. SUMMARY

- 2.1 To ask members to consider and note the changes to the period of adopter's absence for members as a result of the Local Government and Elections Wales Act 2021.

### 3. RECOMMENDATIONS

Members are asked

- 3.1 To note the content of the report and the changes made to the Family Absence for members of Local Authorities Protocol as set out in Appendix 1 and
- 3.2 To note that the report will be presented to Council seeking approval for the Head of Legal Services and Monitoring Officer to amend the Constitution by substituting the existing Protocol with the amended version attached.

### 4. REASONS FOR THE RECOMMENDATIONS

- 4.1 To give effect to the changes made to adopter's absence for members.

### 5. THE REPORT

- 5.1 Part 2 of the Local Government Wales Measure 2011 introduced a new entitlement to family absence for Councillors subject to prescribed conditions being met which were set out in The Family Absence for Members of Local Authorities (Wales) Regulations 2013 (the 2013 Regulations). The regulations limited the maximum period of absence that could be taken for each of the five types of family absence: maternity absence, newborn absence, adopters' absence, new adoption absence and parental absence.
- 5.2 The Council adopted a Family Absence for Members of Local Authorities Protocol which is contained within Part 5 of the Constitution and a copy of which is attached at Appendix 1.
- 5.3 In more recent times Council's and the Welsh Local Government Association made representations for the regulations to be brought up to date. In response Welsh Government undertook consultation at the end of 2020 seeking views on the proposal to increase the period of adopter's absence from 2 to 26 weeks which was unanimously supported to those who responded to the consultation.
- 5.4 As a result the changes were brought about by the Local Government and Elections Wales Act 2021 (the Act) which removed the limitations on the maximum absence periods enabling them to be set at any level through new regulations.
- 5.5 The Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021 updated the 2013 Regulations to include specific provisions relating to adopters' absence increasing it from 2 to 26 weeks thus mirroring the period of absence for maternity leave. This will enable biological and adoptive parents to take the same amount of family absence to enable them to provide a supportive and nurturing environment for their children in the early stages of developing relationships and bonding. This is an important equality and diversity reform for local elected members.
- 5.6 The entitlement arises at the physical date of placement of the child with the member for adoption. It is the actual date of placement of the child, which is important for the start of this absence, not the date of placement according to any legal document. No evidence of adoption is required from the member in order to be entitled to a period of adopter's absence. Multiple children adopted at the same time would not enable a member to take multiple periods of adopter's absence.
- 5.7 A member who satisfies prescribed conditions as to their relationship with another person who is adopting a child as set out in the protocol may take two weeks new adoption absence. A member is not entitled to take adopter's and new adoption absence in relation to the same child. Multiple children adopted at the same time would not enable a member to take multiple periods of new adoption absence. If a member jointly adopts a child with another member, one member may elect to be the child's adopter for the purposes of the Regulations and would be entitled to a period of adopter's absence. The other member would not be entitled to a period of adopter's absence but would be entitled to a period of new adoption absence.
- 5.8 The regulations make a number of changes for adopter's leave similar arrangements to those already in operation regarding maternity leave and include the following  
  
Prescribes conditions a member must satisfy in order to be eligible for adopter's absence and procedures for varying the start date and duration of absence.

Provides that the period of adopter's absence is 26 weeks (subject to a member giving noticed under the new regulation 14) and makes provision about the period of absence in situations where more than one child is adopted as part of the same arrangement.

Prescribes the period within which adopter's absence must start and that a member may chose the date on which the adopter's absence starts.

Prescribes how a member may bring a period of adopter's absence to an end.

Makes applicable to adopter's absence the same procedure for determining whether a member may undertake certain duties during their adopter's absence as applies to members wishing to undertake certain duties on maternity absence

## 5.9 **Conclusion**

Members are asked to note the content of the report and the updated provisions included in the Family Absence Protocol in bold italics at Appendix 1. Council will be asked to authorise the Head of Legal Services and Monitoring Officer to amend the Constitution to incorporate the updated Protocol.

## 6. **ASSUMPTIONS**

- 6.1 The changes reflect the legislative requirements and as such no assumptions are necessary within this report.

## 7. **SUMMARY OF INTEGRATED IMPACT ASSESSMENT**

- 7.1 As the report reflects statutory changes no Integrated Impact Assessment is necessary.

## 8. **FINANCIAL IMPLICATIONS**

- 8.1 The report of the Independent Remuneration Panel for Wales includes provision for family absence whereby an elected member on a basic salary or a senior salary holder is eligible, they will continue to receive their salary for the duration of the absence. It is a matter for Council to decide whether to make a substitute and must follow the provisions in the IRP report and the budgetary provision will be considered as and when necessary.

## 9. **PERSONNEL IMPLICATIONS**

- 9.1 There are no personnel implications arising from this report.

## 10. **CONSULTATIONS**

- 10.1 This report represents statutory changes however a copy of the report has been provided to the consultees below.

## **11. STATUTORY POWER**

### **11.1 Local Government and Elections Wales Act 2021 and The Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021**

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## Appendix 1

### **PROTOCOL FAMILY ABSENCE FOR MEMBERS OF LOCAL AUTHORITIES**

#### **1. BACKGROUND**

1.1 The Family Absence for Members of Local Authorities (Wales) Regulations 2013 **as amended by the Family Absence for Members of Local Authorities (Wales) Regulations 2021** create an entitlement of Members to the following types of Family Absence:

(a) **Maternity Absence** – Available to pregnant Members who can take an absence period of up to a maximum of 26 weeks.

(b) **Newborn Absence** – Available to a Member who is married to, the civil partner or partner of a child's mother and expects to have responsibility for the upbringing of the child. Up to two consecutive weeks are available to be taken within 56 days of a child's birth.

(c) **Adopter's Absence** – Available to a Member who adopts a child **who can take an absence period of up to a maximum of 26 weeks. ~~Up to two consecutive weeks are available to be taken within 56 days of a child being adopted. Where more than one child is placed with the member as part of the same arrangement, a member is entitled to adopter's absence only in respect of the first child placed with the member for adoption.~~**

(d) **New Adoption Absence** – Available to a Member who is married to, the civil partner or partner of a person adopting a child and expects to have responsibility for the upbringing of the child. Up to two consecutive weeks are available to be taken within 56 days of a child being adopted.

(e) **Parental Absence** – Available to a Member who has or expects to have responsibility for the care of a child and does not satisfy the criteria for Maternity Absence, Newborn Absence, Adopters Absence or New Adoption Absence. Up to 90 days can be taken in a single or a series of absences from the date a councillor assumes responsibility for the care of a child under the age of 14 and ends 1 year later.

2. Members can claim a period of Family Absence by satisfying the following requirements:

#### **2.1 Maternity Absence**

(a) No later than 15 weeks before the expected week of childbirth or, if that is not practical, as soon as reasonably practical, a Member must give written notice to the Head of Democratic Services of:

- a. The Member's pregnancy.
- b. The expected week of childbirth.
- c. The date on which the Member intends the maternity absence will start.
- d. The duration of the period of maternity absence. The period of absence will be 26 weeks unless the Member specifies a shorter period of time.

(b) A Member can vary the period of absence by giving the Head of Democratic Services a new start date at least one week before the intended start date or at least one week before the new start date or, if that is not reasonably practicable, as soon as possible. Regardless,

Maternity Absence will start automatically on the day after childbirth, if the baby is born before the date specified by the Member.

(c) A Member must provide a certificate from a registered medical practitioner or midwife stating the expected week of childbirth if requested to do so by the Head of Democratic Services.

(d) A Member can vary the duration of Maternity Absence by giving the Head of Democratic Services written notice of the new duration by giving at least one week notice before the expected end of the absence or, at least one week before the intended new end of the period of absence or, if that is not practical, as soon as is reasonably practical.

(e) Maternity Absence may begin between the start of the 11th week before the expected childbirth and the day after childbirth occurs.

(f) Although a Member can choose the day on which their maternity absence starts, if a member is absent from a meeting during the 4 week period before the start of the expected childbirth due wholly or partly to pregnancy, the Maternity Absence will begin on the day after the meeting from which the Member was absent.

(g) A Member may cancel Maternity Absence at anytime before the start of Maternity Absence by giving written notice to the Head of Democratic Services.

## **2.2 Newborn Absence**

(a) A Member must give the Head of Democratic Services written notice of the date the Member intends the period of Newborn Absence to start. The period of absence will be 2 consecutive weeks unless the Member specifies a shorter period of time.

(b) Newborn Absence may be taken between the day of childbirth and 56 days after that date.

(c) A Member may cancel Newborn Absence at anytime before the start of Newborn Absence by giving written notice to the Head of Democratic Services.

## **2.3 Adopter's Absence**

(a) A Member must give the Head of Democratic Services written notice of the date the Member intends the period of Adopter's Absence to start ***and the duration of the period of adopter's absence the member intends to take if less than 26 weeks. Adopters' absence may begin either on the day on which the child is placed with the member for adoption or on any of the 14 days preceding that day and a member can chose the start date within these parameters. The period of absence will be 2 consecutive weeks unless the Member specifies a shorter period of time. The period of adopter's absence will be 26 weeks unless the member gives written notice that the period of adopter's absence will be shorter than 26 weeks.***

***(b) A Member can vary the start date of the Adopter's Absence by giving the Head of Democratic Services written notice of the new start date at least one week before the original start date or at least one week before the new start date whichever is the earlier or, if that is not reasonably practicable, as soon as is reasonably practicable.***

***c) A Member can vary the duration of Adopter's Absence by giving the Head of Democratic Services written notice of the new duration at least one week before the expected end of the absence originally notified by the member or, at least one week before the new intended end of the period of absence whichever is the earlier or, if that is not practical, as soon as is reasonably practical.***

***(d) A Member may bring the period of adopter's absence to an end earlier that notified above by notifying the Head of Democratic Services in writing of their intention to do so at least 7 days before their return.***

***(e) A Member may cancel a period of Adopter's Absence at any time before the start of Adopter's Absence by giving written notice to the Head of Democratic Services***

#### **2.4 New Adoption Absence**

- (a) A Member must give the Head of Democratic Services written notice of the date the Member intends the period of Adopter's Absence to start. The period of absence will be 2 consecutive weeks unless the Member specifies a shorter period of time.
- (b) New Adopter's Absence may be taken between the date on which a child is placed with the adopter and 56 days after that date.
- (c) A Member may cancel New Adopter's Absence at anytime before the start of New Adopter's Absence by giving written notice to the Head of Democratic Services.

#### **2.5 Parental Absence**

- (a) A Member must give the Head of Democratic Services written notice of:-
  - a. Their intention to take parental Absence.
  - b. The date on which the Member intends the Parental Absence will start.
  - c. The duration of the period of Parental Absence.
  - d. Whether the absence is intended to be taken as a single period or as a series of absences. Where Parental Absence is to be taken in a series of absences, a Member must give the Head of Democratic Services advance written notice of the intended start date and duration of each period of parental Absence.
- (b) If requested to do so, a Member must give the Head of Democratic Services evidence in relation to the extent that they have responsibility for the child.
- (c) The period of absence will be up to 90 days which can be taken in a single or a series of absences from the date a councillor assumes responsibility for the care of a child under the age of 14 and ends 1 year later.
- (d) A Member may cancel Parental Absence at anytime before the start of Parental Absence by giving written notice to the Head of Democratic Services.
- (e) A Member may bring any period of Parental Absence to an end earlier than intended by notifying the Head of Democratic Services in writing of their intention.

#### **2.6 Records and Notification of Family Absence**

- (a) The Head of Democratic Services will keep a record of all notifications and periods of maternity absence, parental absence, newborn absence, adopters' absence and new adoption absence (collectively referred to as family absence) taken and will inform the Mayor, Leaders of each political group and Chair of Democratic Services Committee of all periods of family absence.

#### **2.7 Cancellation of Family Absence by Council**

- (a) If the Head of Democratic Services suspects that a Member is not entitled to the family absence as notified, he/she may cancel or end a Member's family absence if he/she is of the view that the Member is not entitled to such absence in accordance with the Regulations.
- (b) A Members remuneration will be withheld if a Member does not return from family absence by the date determined in paragraph (c) below.
- (c) In the event of a decision by the Head of Democratic Services to cancel the Family Absence he/she shall notify the Mayor of his intention to cancel and thereafter give written notice to the Member of the decision to cancel or bring to an end the period of family absence and the date from which the Member must return from family absence.

#### **2.8 Members right to Appeal against Cancellation of Family Absence**

(a) A Member may within 28 days of being notified by the Head of Democratic Services that a period of family absence being cancelled or ended, complain in writing to the Head of Democratic Services regarding the cancellation.

(b) The Head of Democratic Services will refer any complaint received under para (a) above to the Panel constituted in accordance with the Family Absence for Members of Local Authorities (Wales) Regulations 2013 who will determine the complaint made.

(c) The Panel may:-

- Confirm the decision of the Head of Democratic Services; or
- Substitute its own decision as to the Member's entitlement to family absence in accordance with the Regulations.

## **2.9 Members request to perform duties/attend meetings during a period of Family Absence**

(a) Any Member on Family Absence may subject to paragraph (b) and (e) below:-

(i) Attend any meeting or perform any duty associated with being a councillor within specific dates.

(b) The Member must obtain the permission of the Mayor (or Deputy in his or her absence) before attending any meeting or exercising any duty.

(c) In seeking permission the Member will (if able) specify start and finish dates in any application to suspend Family Absence.

(d) The Mayor will inform Leaders of each political group of the Council before granting permission under paragraph (b) above.

(e) A Member may complain in writing to the Head of Democratic Services regarding a refusal under paragraph (b) above.

(f) The Head of Democratic Services will refer a complaint under para (e) above to the Mayor of the Council.

(g) A Panel constituted in accordance with the Family Absence For Members of Local Authorities (Wales) Regulations 2013 will determine a complaint made under paragraph (e) above.

(h) The Panel may: -

- Confirm the decision of the Mayor of the Council (or Deputy in his or her absence); or
- Substitute its own decision as to the Member attending any meeting or performing any duty.