

FAMILY ABSENCE FOR ELECTED MEMBERS

Reason for this Report

1. To inform the Committee of new legislation on Family Absence for Members and the action the Council is required to take in this regard.

Background

2. Part 2 of the Local Government (Wales) Measure 2011 (“the Measure”) introduces an entitlement to a period of family absence for Members of local authorities, during which a Member is entitled to be absent from authority meetings. The entitlement created by the Measure is subject to Members satisfying conditions prescribed by the Welsh Ministers in regulations.

Issues

3. The Welsh Ministers have made The Family Absence for Members of Local Authorities (Wales) Regulations 2013 (“the Regulations”), under the powers conferred by Part 2 of the Measure. The Regulations will come into force on 5th December 2013.
4. There are five types of family absence to which a Member may be entitled under the Measure, subject to compliance with the Regulations:
 - (i) Maternity absence – for the mother of a child, granted up to a maximum of twenty six weeks;
 - (ii) Newborn absence – for the parent of a child other than the mother, for a period of up to two weeks;
 - (iii) Adopter’s absence – for the adopter of a child, for a period of up to two weeks;
 - (iv) New adoption absence - for the partner of an adopter, for a period of up to two weeks; and
 - (v) Parental absence – for a member who becomes responsible for a child (and does not meet the conditions for newborn absence, adopter’s absence or new adoption absence), for a period of up to three months.

5. The Regulations prescribe the conditions that Members must satisfy to be entitled to a period of family absence, make provisions regarding the duration, start, cancellation and end of a period of family absence, and set out an administrative process for dealing with family absence. The Welsh Ministers have also published Statutory Guidance on Family Absence (“the Guidance” issued under section 30 of the Measure), to which the Council is required to have regard.
6. The administrative process set by the Regulations provides:
 - (i) the Member must give written notice to the Head of Democratic Services of his/her intention to take family absence and the intended start date (and any change or cancellation of the period of absence);
 - (ii) the Head of Democratic Services must keep a record of all notifications and periods of family absence taken and must inform the Chair of Council, the Chair of the Democratic Services Committee, and the leaders of each political group of the authority (the Guidance indicates that the Head of Democratic Services is also free to inform any other persons felt necessary, for example, fellow ward Members);
 - (iii) if the Head of Democratic Services informs the authority that he/she has reasonable grounds to suspect that a Member may not be entitled to the family absence notified, the local authority may cancel or end the family absence (and if the Member then fails to resume duties, the local authority may withhold the Members’ remuneration);
 - (iv) the option for a Member to continue to attend particular meetings or perform particular duties during a period of maternity or parental absence, subject to permission from the Chair of Council (who must inform the political group leaders before granting permission);
 - (v) a requirement for the Council to make provisions regarding the extent of any duties which Members may still be required to perform during a period of family absence;
 - (vi) a requirement for the Council to appoint a Panel comprised of three Members (which cannot include the Chair of Council) to hear and determine complaints from Members, the Panel’s determination being final; and
 - (vii) the right for a Member to complain to the Panel against a decision of the authority that the Member is not entitled to a family absence; and or against a refusal by the Chair of Council to grant permission for the Member to continue to attend particular meetings or perform particular duties whilst on family absence.

7. The Council is required to make standing orders, as soon as reasonably practicable after the Regulations come into force, in respect of the matters set out in sub-paragraphs 6(iv) and (v) above, that is:

- (i) To describe the circumstances in which a Member on maternity or parental leave may continue to perform some duties if so desired.

The Guidance states that this may be 'where the Member has a well known particular interest in a matter of business or if urgent business affecting their local area is being considered'; and

- (ii) To provide whether any duty conferred on Members should be performed during a period of family absence.

The Guidance states that this may 'enable a Member on family absence to be asked to attend a meeting if it might otherwise be inquorate. The standing orders could enable different arrangements to be made for different Members. There might be a particular area of expertise possessed by a Member which would be difficult to replace on a temporary basis, which might suggest a limited commitment could still be expected of a Member in such defined circumstances. However, the effect of any such provision under the standing orders should not be contrary to the purpose of the Measure and the Regulations.'

8. Under the Constitution Committee's terms of reference, the Committee may recommend to Council the adoption or amendment of standing orders (also referred to as 'Procedure Rules'), which are included in Part 4 of the Council's Constitution. Members are invited to make any comments they wish regarding provision to be made in standing orders, including provision in respect of the two matters set out in paragraph 7 above. It should be noted that the standing orders may include other provision relating to family absence, provided this is not contrary to the purpose of the Measure and the Regulations, for example, regarding temporary cover for Members who are on family absence.

9. However, it is suggested that the Committee may wish to inform its consideration of this matter by also seeking views from the Democratic Services Committee, which may have an interest in this matter (although not directly within its terms of reference). It is recommended that the Monitoring Officer be instructed to consult with the Democratic Services Committee and report back to a future meeting of this Committee with recommendations.

10. In considering the appointment of the Panel required by the Regulations (paragraph 6(vi)), Members may wish to consider whether the functions of the Panel may be allocated to a sub-committee of an existing committee, such as the Democratic Services Committee (with any necessary amendments to their Terms of Reference), or whether a separate Panel should be established. It is suggested that Members may also wish to seek the views of the Democratic Services Committee on this issue, and to instruct the Monitoring Officer to consult accordingly and report back to this Committee. Members

should note that the establishment of the Panel (with suitable terms of reference and the appointment of its Members) will need the approval of full Council.

11. Consideration also needs to be given to arrangements for the authority to take decisions to cancel or curtail a period of family absence (sub-paragraph 6(iii)). It is understood this is intended to be a non-executive function (pending confirmation by statutory instrument), which the Council may either reserve to itself or delegate. This question can be properly considered once the Welsh Ministers have legislated to confirm responsibility for this function, and will be included in the Monitoring Officer's next report (referred to in paragraphs 9 & 10 above).

Legal Implications

The relevant legal provisions are set out in the body of the report.

Financial Implications

There are no direct financial implications arising from the recommendations of the report.

Recommendations

The Committee is recommended to:

1. Note the provisions of the Family Absence for Members of Local Authorities (Wales) Regulations 2013, and the statutory obligations imposed on the Council, as set out in paragraphs 3 to 7 (inclusive) of the report;
2. Make any comments considered appropriate regarding the family absence provisions set out in the report, and in particular regarding the provision to be made in standing orders, the establishment of a Panel, and arrangements for the decisions of the authority, as set out in paragraphs 8 to 11 (inclusive); and
3. Instruct the Monitoring Officer to consult with the Democratic Services Committee on the issues set out in paragraphs 8 to 11 (inclusive) of the report, and to report back to a future meeting of this Committee with recommendations on each of these issues.

Marie Rosenthal
County Clerk and Monitoring Officer

Dated: 29th October 2013