

CONSTITUTION COMMITTEE:

19 MARCH 2014

REPORT OF THE MONITORING OFFICER

AGENDA ITEM: 6

FAMILY ABSENCE FOR ELECTED MEMBERS

Reason for this Report

1. To enable the Committee to consider and approve new constitutional arrangements for discharging the Council's responsibilities in respect of Family Absence for Elected Members.

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.
3. The Family Absence for Members of Local Authorities (Wales) Regulations 2013 ("the Regulations") came into force on 5th December 2013. 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.
4. The Constitution Committee considered a report on Family Absence on 6th November 2013, noting the provisions of the legislation and the statutory obligations imposed on the Council in this regard. The Committee resolved to seek any views from the Democratic Services Committee, and instructed the Monitoring Officer to report back to Constitution Committee following such consultation. A report was duly considered by the Democratic Services Committee at its meeting on 11 December 2013. This is the Monitoring Officer's report following that consultation.

Issues

5. The Family Absence Regulations require the Council to adopt Standing Orders securing specific provisions regarding Family Absence; and to establish an Appeals Panel to hear Members' complaints regarding specific Family Absence decisions. There are also specific roles and responsibilities under the Regulations which need to be reflected in the Council's delegations and other relevant parts of the Constitution.

Standing Orders (also referred to as 'Procedure Rules')

6. A draft standing order in respect of Family Absence is set out in **Appendix A** to this report, 'Family Absence Procedure Rules'.
7. Members will note that the draft Standing Order outlines the basic entitlements in respect of Family Absence and the administrative process set by the Measure and the Regulations (Family Absence Procedure Rules 1 to 7 inclusive). There is no statutory requirement for the Standing Orders to include these matters (and the Council has no power to change these provisions), but they are included in the Standing Orders so that Members are made aware of the relevant provisions and in the interests of completeness.
8. The Council is specifically required to make Standing Orders, as soon as reasonably practicable after the Regulations come into force, in respect of the following 2 matters:
 - (i) Securing the option for a Member, who is on maternity or parental leave, to continue to attend particular meetings or perform particular duties, subject to permission from the Chair of Council (Regulations 37 and 38); and
 - (ii) describing the extent of the duties, if any, which remain applicable to Members during a period of family absence (Regulation 39).
9. In respect of the requirements referred to in paragraph 8(i) above, Regulation 37 simply requires the Council to adopt Standing Orders securing the provisions set out in Regulation 38. However, the Guidance indicates that authorities should describe the circumstances in which a Member on maternity or parental leave may continue to perform some duties if so desired; and suggests 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.
10. It is suggested that describing specific circumstances in which Members may continue to undertake duties may be unnecessarily restrictive, and that a Member should be able to continue to perform their duties in whatever circumstances, if they so wish (unless there is some reason they should not do so). The Regulations require the Member to obtain permission from the Chair of Council, and the Chair of Council is required to inform political group leaders before granting permission. It is suggested that it is not necessary to impose any further constraints or limitations on Members who may wish to

continue to perform certain duties whilst on family absence leave. Therefore, the draft Standing Order (Procedure Rule 8) simply sets out the statutory requirements of Regulation 38 in this respect. Members may wish to note that this approach is consistent with the views expressed by the Monitoring Officers group in Wales (Lawyers in Local Government, Wales Branch).

11. In respect of the requirements referred to in paragraph 8(ii) above, the Guidance indicates that Standing Orders 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 defined circumstances. However, the effect of any such provision under the standing orders should not be contrary to the purpose of the Measure and Regulations.'
12. In line with the Guidance, it is suggested that it may be appropriate to request that a Member attend a particular meeting if it is impracticable to arrange temporary cover and the meeting may otherwise be inquorate. The draft Standing Orders make provision accordingly (Procedure Rule 9). It should be noted that, in keeping with the spirit and purpose of the Family Absence legislation, the Standing Orders only allow the Council to request attendance, but not to impose any requirement to this effect.
13. In addition to the Standing Orders provision set out in the paragraph above, it is suggested that it may be appropriate to confirm that Members on family absence remain subject to certain duties imposed by the Members' Code of Conduct. Draft Procedure Rule 10 has been included to this effect.
14. Under the Constitution Committee's terms of reference, the Committee may recommend to Council the adoption or amendment of Standing Orders, which are included in Part 4 of the Council's Constitution.
15. The Committee is invited to approve the draft Family Absence Procedure Rules appended at **Appendix A**, subject to any amendments, and recommend adoption of the Rules to full Council.

Appeals Panel

16. The Council is required to appoint an Appeals Panel, comprised of three Members (who must not include the Chair of Council), to hear and determine Members' complaints in respect of family absence. The Regulations give Members the right to appeal against certain decisions of the Council in respect of family absence (as set out in draft Procedure Rules 7 and 8).
17. Consideration has been given to whether the Appeals Panel functions may be discharged by a sub-committee of an existing committee, such as the Democratic Services Committee, or whether a separate Panel should be established. However, the legal provisions governing the Democratic Services Committee restrict the functions which may be discharged by that

Committee (section 16(1) of the Local Government (Wales) Measure 2011) and do not appear to permit the discharge of family absence functions. Therefore, the recommendation of this report is that a separate Panel should be established, comprising 3 Members, not including the Chair of Council, who may be members of the Democratic Services Committee. The Democratic Services Committee has indicated no objection to this proposal.

18. The draft terms of reference of the Appeals Panel, reflecting the requirements of the Regulations are:

‘To be the Appeals Panel required pursuant to Regulation 36(1) of the Family Absence for Members of Local Authorities (Wales) Regulations 2013 and any amendment thereof; and to discharge all functions of the Panel pursuant to those Regulations.’

19. Members should note that the establishment of the Panel, its terms of reference and the appointment of its Members will need the approval of full Council.

Specific Roles and Delegations

20. The Regulations impose specific roles and responsibilities in respect of the administration of family absence arrangements on the Chair of Council and the Head of Democratic Services. These roles and responsibilities are outlined in the draft Standing Orders appended as Appendix A, and essentially require:

- (i) The Chair of Council – to receive notification from the Head of Democratic Services of any Member taking family absence; and to agree or refuse any request from a Member on maternity or parental absence who wishes to continue to perform specific duties; and
- (ii) The Head of Democratic Services – to keep a record of all notifications and periods of family absence, and inform the specified persons; and to notify the authority if he/she has reasonable grounds to suspect that a Member may not be entitled to the family absence notified (and the Council may then decide to cancel or end the family absence).

21. The responsibilities set out in the paragraph above need to be reflected in amendments to the relevant sections of the Constitution, that is:

- (i) The Chair of Council’s role should be added to the role and functions of the Lord Mayor, in Article 5.1 of the Constitution, as follows:

‘(d) To carry out duties in respect of Members’ Family Absence, as required under the Family Absence for Members of Local Authorities (Wales) Regulations 2013’; and

- (ii) The Head of Democratic Services' role should be reflected in the officer delegations, Constitution Part 3, Section 4E 'Statutory Officers', as follows:
'Head of Democratic Services
HoDS1 [To discharge the statutory role of the Head of Democratic Services pursuant to section 9 of the Local Government (Wales) Measure 2011]; and to carry out duties as required under the Family Absence for Members of Local Authorities (Wales) Regulations 2013'

22. Consideration also needs to be given to arrangements for the authority to take decisions to cancel or curtail a period of family absence following notification of concerns regarding entitlement / eligibility from the Head of Democratic Services. This function has been confirmed as a non-executive function (pursuant to the Local Authorities (Executive Arrangements)(Functions and Responsibilities)(Wales)(Amendment No.2) Regulations 2013). The Council may either reserve this function to itself or delegate the function. The recommendation in this report is that this function should be delegated to the Monitoring Officer. The officer delegations in the Constitution, Part 3, Section 4, will need amendment accordingly, to insert '..and to discharge the functions of the authority in respect of cancellation of family absence pursuant to Regulation 34 of the Family Absence for Members of Local Authorities (Wales) Regulations 2013'.

23. The proposed amendments to the Constitution set out in paragraphs 21 and 22 above require the approval of full Council.

Members' Allowances

24. The Regulations do not deal with the entitlement of Members to receive allowances during family absence, which is a matter for the Independent Remuneration Panel for Wales ('the IRP').

25. The IRP has recently issued a draft supplementary report relating to remuneration in respect of family absence. Key determinations of the draft report include:

- i. Members on family absence are entitled to retain their basic salary;
- ii. A senior salary holder Member taking family absence may continue to receive his/her senior salary if the Council so decides, whether or not a substitute senior role appointment has been made; and
- iii. A Member substituting for a senior salary holder taking family absence will be eligible for a senior salary

26. It is suggested that this matter will require further consideration after the IRP has issued its final report on this matter.

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 approve, subject to the approval of Council:

1. The adoption of the Family Absence Procedure Rules, appended as **Appendix A**, subject to any amendments, to be added to Part 4 of the Constitution;
2. The establishment of a Panel comprising 3 Members of the Democratic Services Committee as set out in paragraph 17, with the terms of reference set out in paragraph 18; and
3. The amendments to the Constitution in respect of the roles and responsibilities of the Lord Mayor (Chair of Council), the Head of Democratic Services and the Monitoring Officer, as set out in paragraphs 21 and 22 of the report.

Marie Rosenthal
County Clerk and Monitoring Officer
13 March 2014

Appendices

Appendix A Family Absence Procedure Rules (draft)

Background Papers

Welsh Assembly Government, Statutory Guidance on Family Absence Report to Constitution Committee, 'Family Absence for Elected Members', 6 November 2013
Report to Democratic Services Committee, 'Family Absence Report', 11 December 2013
Independent Remuneration Panel, Draft Supplementary Report – Family Absence
Lawyers in Local Government, Consultation response – Family Absence Regulations and draft Guidance

DRAFT STANDING ORDERS

FAMILY ABSENCE PROCEDURE RULES

Different Types of Family Absence

1. A Member may be entitled to family absence pursuant to the Local Government (Wales) Measure 2011, subject to compliance with the Family Absence for Members of Local Authorities (Wales) Regulations 2013 (“the Regulations”), as follows:
 - (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.

Prescribed Conditions

2. The Regulations prescribe the conditions that Members must satisfy to be entitled to each type of family absence, make provisions regarding the durations, start, cancellation and end of periods of family absence, and set out the administrative process for dealing with family absences. A copy of the Regulations can be obtained from the Council’s Head of Democratic Services and must be referred to by any Member considering taking family absence.

Requirement for Member to give Written Notice

3. A Member intending to take family absence is required to give written notice to the Head of Democratic Services, specifying the type of family absence the Member intends to take and the intended start date, as well as certain other specified information in respect of particular types of family absence. Any changes to, or cancellation of, family absence must similarly be notified to the Head of Democratic Services. Members should refer to the Regulations for the prescribed information which must be included in the notice, and advice is available in this respect from the Head of Democratic Services.

Records and Notification of Family Absence

4. The Head of Democratic Services will keep a record of all notifications and periods of family absence taken and will inform the Chair of Council, the Chair of the Democratic Services Committee, and the leaders of each political group of the authority. The Head of Democratic Services may also inform any other persons, as he/she considers necessary, for example, fellow ward Members.

Cancellation of Family Absence by Council

5. If the Head of Democratic Services reasonably suspects that a Member may not be entitled to the family absence notified, he/she shall inform the Monitoring Officer. The Monitoring Officer 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.
6. In the event of a decision to cancel family absence, the Head of Democratic Services will give written notice to the Member concerned setting out 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. If the Member then fails to resume duties, the Council may withhold the Member's remuneration and take any other appropriate action.

Members' Right to Appeal Against Cancellation

7. (1) A Member may, within 28 days from being notified of a cancellation of family absence, complain in writing to the Head of Democratic Services regarding the cancellation.

(2) The Head of Democratic Services will refer any complaint duly made regarding cancellation to the Chair of Council (or Presiding Member).

(3) The Member's complaint will be considered by the Family Absence Appeals Panel, which may either confirm the decision of the Monitoring Officer, or substitute its own decision as to the Member's entitlement to family absence in accordance with the Regulations.

(4) The decision of the Panel is final.

Performance of Duties – At Member's request

8. (1) A Member on maternity absence or parental absence may, subject to paragraphs (2) to (6):
 - (a) Attend particular meetings;
 - (b) Attend particular descriptions of meetings;
 - (c) Perform particular duties; or
 - (d) Perform duties of a particular description.

(2) The Member must obtain the permission of the Chair of Council (or Presiding Member) before attending any meeting or performing any duty.

(3) The Chair of Council (or Presiding Member) will inform the leaders of each political group of the Council before granting permission under paragraph (2).

(4) A Member may complain in writing to the Head of Democratic Services regarding a refusal under paragraph (2).

(5) The Head of Democratic Services will refer a complaint under paragraph (4) to the Chair of Council (or Presiding Member).

(6) The Family Absence Appeals Panel (“the Panel”) will determine a complaint made under paragraph (4).

(7) The Panel may:

(a) confirm the decision of the Chair of Council (or Presiding Member) under paragraph (2); or

(b) substitute its own decision as to the Member attending any meeting or performing any duty.

Continuing Duties

9. If a Member is on family absence leave and it would be difficult to replace that Member on a temporary basis, the Chair of Council can request that Member to attend a meeting if it might otherwise be inquorate.

10. A Member on family absence is expected to continue to observe and comply with any duties under the Members’ Code of Conduct which remain applicable, including the duty to not bring the office of Member or the Council into disrepute (Members’ Code, Rule 6(1)(a)), and the duty to not use their position or the resources of the authority improperly or for private advantage (Members’ Code, Rule 7).