

AGENDA ITEM: 9

FAMILY ABSENCE REPORT

REPORT OF THE COUNTY CLERK AND MONITORING OFFICER

Reason for this Report

1. To inform the Committee of new legislation on Family Absence for Members and to seek the views of this Committee on changes to the Council's Constitution.

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 Constitution Committee considered a report on Family Absence for elected Members at their meeting on 6 November 2013. They resolved to instruct the Monitoring Officer to consult with the Democratic Services Committee on the issues set out in paragraphs 8 to 11 (inclusive) of that report, and to report back to a future meeting of the Constitution Committee with recommendations on each of these issues
4. The issues for the Democratic Services Committee to consider are set out in paragraphs 9 – 13 (inclusive of this report)

Issues

5. 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.
6. There are five types of family absence to which a Member may be entitled under the Measure, subject to compliance with the Regulations:

- Maternity absence – for the mother of a child, granted up to a maximum of twenty six weeks;
 - Newborn absence – for the parent of a child other than the mother, for a period of up to two weeks;
 - Adopter's absence – for the adopter of a child, for a period of up to two weeks;
 - New adoption absence - for the partner of an adopter, for a period of up to two weeks; and
 - 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.
7. 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.
8. The administrative process set by the Regulations provides:
- 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);
 - 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);
 - 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);
 - 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);
 - 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;
 - 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

- 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.

9. 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 8(iv) and (v) above, that is:

- 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

- 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.'

10. The Constitution Committee on 6 November 2013 requested the Monitoring Officer to seek views from the Democratic Services Committee on the proposed changes.

11. In particular the views of the Democratic Services Committee are sought:

- regarding the provision to be made in standing orders as set out in paragraph 9:
 - (i) the circumstances in which a Member on maternity or parental leave may continue to perform some duties if so desired;
 - (ii) whether any duty conferred on Members should be performed during a period of family absence;
 - (iii) arrangements for temporary cover for Members who are on family absence; and
 - (iv) to confirm that Members allowances remain payable during any family absence.

- the establishment of a Panel; and
 - arrangements for the decisions of the authority
12. In considering the appointment of the Panel required by the Regulations, the Committee may wish to consider the membership of this Panel and whether it should be comprised of 3 Members of the Democratic Services Committee.
 13. The arrangements for the authority to take decisions to cancel or curtail a period of family absence (paragraph 8) is a non-executive function which the Council may either reserve to itself or delegate. If the Committee recommends delegating this function it may wish to recommend that the Monitoring Officer undertakes this role, as the Democratic Services Committee and the Head of Democratic Services already have other roles within the overall process.

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 5 - 8 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 9 to 13 (inclusive);

Marie Rosenthal
County Clerk and Monitoring Officer
 Dated: 4 December 2013

Background Papers

- Report on Family Absence Constitution Committee 7 November 2013
- Local Government (Wales) Measure 2011