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Llywodraeth Cymru
Welsh Government

Welsh Government Consultation Document

Changes to adoption absence for local authority members

We want your views on proposed changes to adoption absence for local authority members from 2 to 26 weeks

Date of issue: 3 November 2020
Action required: 29 December 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview The Family Absence for Members of Local Authorities (Wales) Regulations 2013 (the regulations) govern adopter's absence (the form of leave taken by an individual adopting a child). The Welsh Government proposes amending the 2013 Regulations so as to extend the period of adopter's absence for members of councils from 2 weeks to 26 weeks and, as far as practicable, to align procedures relating to adopter's absence with those which currently govern maternity absence.

How to respond You can respond to this consultation by completing and returning the consultation response form at the back of this document. The response should be sent to:

Local Government Democracy Team
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Or email:

LGD.DemocracyDiversityRemuneration@gov.wales

Or by completing an [online form](#)

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

<https://www.legislation.gov.uk/wsi/2013/2901/made>

Contact details

For further information, please contact:

Local Government Democracy Team
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Email:

LGD.DemocracyDiversityRemuneration@gov.wales

Also available in Welsh at:

<https://llyw.cymru/absenoldeb-mabwysiadu-i-gynghorwyr-awdurdodau-lleol>

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

Background

1. Creating a more equal Wales, where everyone has the opportunity to participate, reach their full potential and is able to contribute fully to the economy, will enable Wales to be more prosperous and innovative.
2. The Welsh Government is committed to increasing diversity across all aspects of public life. This includes tackling the barriers which prevent an individual's active participation in local democracy through elected office.
3. The Welsh Ministers recognise the difficulties in balancing the demanding role of being a councillor with the personal responsibilities of caring for loved ones. The challenges of the role, the sensitivities of many of the activities undertaken and the increasing expectation of the public that councillors are 'on duty' 24 hours a day, seven days a week can prevent individuals from giving serious consideration to becoming a councillor.
4. Enabling councillors to take time off in a range of circumstances is an important part of the approach taken in Wales. Councillors benefit from taking time off to support their families. Family absence (often referred to as "leave") is considered a fundamental lever in increasing the diversity of those participating in local democracy by enabling individuals to balance the requirements of the important role they play in society with the demands and responsibilities that come with bonding, nurturing and developing relationships with their children.
5. This is why Wales was the first country in the UK to legislate for the introduction of family absence arrangements for councillors.

The current family absence arrangements

6. Part 2 of the Local Government (Wales) Measure 2011 ("the Measure") introduced entitlements to periods of family absence for members of county and county borough councils, during which a member is entitled to be absent from authority meetings.
7. The periods of absence introduced were as follows:
 - Maternity absence 26 weeks
 - Newborn absence 2 weeks
 - Adopters absence 2 weeks
 - New adoption absence 2 weeks
 - Parental absence 3 months
8. The Family Absence for Members of Local Authorities (Wales) Regulations 2013 ("the Regulations") made under Part 2 of the Measure prescribe the conditions to be satisfied for a member to be entitled to a period of family absence and made procedural arrangements in respect of each type of absence.
9. The periods of absence set out above were broadly modelled on the absence provisions for officers within county and county borough councils. The intention

behind this approach was to ensure members and officers had, as far as possible, the same basic absence arrangements.

The Issue

10. With the exception of the maximum period for adopter's absence the regulations remain in step with the arrangements for Officers. However, the basic period of adopter's absence available to Officers is now 26 weeks and therefore the current 2 weeks adopter's absence available to members needs to be changed to 26 weeks to align with the broader Welsh Government policy.

Proposed action

11. For this reason Welsh Ministers intend to amend the 2013 regulations to increase the adopter's absence entitlement from 2 weeks to 26 weeks. This will result in the same levels of maternity and adopter's absence being available under the 2013 regulations.

12. In addition, associated changes to the regulations will:

- Create procedures for allowing a member of a local authority to vary the start date and duration of a period of adopter's absence
- Provide that a period of adopter's absence may start on the day the child is placed with the member of a local authority for adoption or up to 14 days beforehand. A member of a local authority may choose on which of these days their adopter's absence will start.
- Create a procedure for a member of a local authority to bring their adopter's absence to an end
- Prevent multiple periods of adopter's absence being taken in respect of children adopted under the same arrangement.
- Allow individuals taking adopter's leave to continue some duties with the consent of the chair or presiding member of the local authority.

13. The need for parents to bond with and build strong relationships with their biological children has been recognised for many years. For those who decide to adopt children the need to bond and build relationships is of equal importance. Depending on the circumstances of the adoption there can be additional challenges in developing these relationships. These changes put the basic maternity and adopter's absence arrangements on an equal basis. It also ensures alignment between members and Officers.

- **Q1: Do you agree with the proposed increase in the length of adopter's absence for councillors from 2 to 26 weeks to align with similar arrangements for maternity absence?**
-
- **Q2: Do you agree with the changes set out in Paragraph 12 above?**
-
- **Q3 Do you agree the revised statutory guidance within the annex of this document reflects the proposed changes in paragraphs 11 and 12 above?**

- **Q4 If you would like to make any additional comments or observations about the changes proposed as part of this consultation please include them in the box provided below.**

Local Government and Elections (Wales) Bill

14. Section 66 of the Local Government and Elections (Wales) Bill seeks to remove the current limitations on the maximum absence periods from the 2011 Measure and enables these to be set at any level by the regulations. The rationale for this change is to enable the regulations to be updated more easily as policy develops in this area.
15. Therefore the proposals set out in this consultation are subject to the changes in section 66 of the Bill becoming law.

Impact of proposals

16. These changes will give adoptive parent's greater opportunity to take absence to help provide a supportive and nurturing environment for their children. Bonding and strong relationships are a very important part of bringing babies and young people into a new family environment and are critical to the growth and development of the adoptee. It provides consistency between those the absence arrangements for individuals eligible for maternity and adopters absence.

Guidance

There is existing statutory guidance about family absence which was made under section 30 of the Local Government (Wales) Measure 2011.

The guidance will require amendment as a result of the proposed change to family absence arrangements.

A revised set of guidance which contains amendments to reflect the changes set out in paragraphs 11 and 12 above contained in the Annex to this document.

FAMILY ABSENCE

Statutory Guidance made under Section 30 of the Local Government (Wales) Measure 2011

Introduction

1. Part 2 of the Local Government (Wales) Measure 2011 (“the Measure”) introduces an entitlement to a period of family absence for members of county and county borough councils, during which a member is entitled to be absent from authority meetings.

What the Measure requires

2. This document contains statutory guidance issued under section 30 of the Measure. A local authority must have regard to this guidance in exercising its functions under Part 2 of the Measure.
3. Section 23 allows members who are entitled to a period of family absence to be absent from meetings of the authority, including executive meetings where applicable, during periods of family absence, in accord with regulations made under this Part of the Measure. The Measure creates an entitlement to five types of family absence: maternity absence; new-born absence; adopter’s absence; new adoption absence; and parental absence.
4. The Family Absence for Members of Local Authorities (Wales) Regulations 2013 (“the Regulations”) are made under Part 2 of the Measure and prescribe the conditions to be satisfied for a member to be entitled to a period of family absence.
5. A member is entitled to a period of maternity absence where the member satisfies conditions prescribed within the Regulations. The Regulations also include provision concerning the duration, start, bringing to an end and cancellation of any maternity absence. The Regulations restrict the period of maternity absence to a maximum of 26 weeks.
6. New-born absence concerns absence granted to the “parent” of a child other than the mother. The Regulations prescribe conditions relating to the relationship between the member and child required for the member to be entitled to a period of new-born absence. New-born absence is designed to allow a person who satisfies the prescribed conditions to assist in the caring for the child and mother. The Regulations also make provision relating to the length of new-born absence and when it should be taken.

7. Section 26 creates an entitlement to adopter's absence. The Regulations also include provision concerning the duration, start, bringing to an end and cancellation of adopters absence. The Regulations restrict the period of adopter's absence to a maximum of 26 weeks. The Regulations prescribe the conditions to be satisfied, the length of such absence and when it can be taken, subject to the provision that it cannot last more than 26 weeks. Section 27 deals with new adoption absence available to a member who satisfies prescribed conditions as to their relationship to an adopter.
8. Parental absence applies to a member who becomes responsible for a child (who was previously the responsibility of someone else). The Regulations enable a member to be absent on parental absence for a period of up to three months.
9. Section 29 enables regulations to provide for the administrative machinery of any family absence as well as the process for dealing with any complaints of abuse of absence. It also allows regulations to provide for any duties which members may perform during a period of family absence.

Guidance

10. The Measure and Regulations must be read together with this guidance.
11. The introduction of family absence provides members with entitlements to enable members who have babies or become responsible for looking after children to be able to continue as members with recognised, legitimate, absence, in an open fashion, rather than be potentially subject to criticism for not fulfilling their duties as members.
12. Section 8 of the Measure requires local authorities to designate an officer as the authority's Head of Democratic Services (HDS). The Measure provides that the HDS may make arrangements for an officer appointed by them to discharge the functions of the HDS under the Measure. All references to the HDS in this guidance and the Regulations should be taken as including any officer appointed by them to fulfil the duties under the Measure. The Regulations prescribe that the HDS will take the responsibility for dealing with notifications of family absence.
13. This is clearly a potentially delicate area for the HDS. It involves dealing with members during a very important development in their personal lives. The responsibility the HDS will have for keeping records, including the dates applicable to the absence and any suspicion that the family absence entitlement is being abused, will require sensitivity. The HDS should take a flexible approach towards any request to vary the start or finish dates of absence, provided they are within the total allowance. With respect to actions which might result in the withdrawal of the entitlement, there should be a high degree of certainty in the mind of the HDS before proceeding along this course.
14. As stated above, in most circumstances, the HDS must be notified in writing before any period of family absence. In addition, the Regulations contain other notification requirements, such as under the complaint provisions. Notification by way of an e-mail or any other electronic format would satisfy the written requirement in respect of any notification required under the Regulations.

15. Under normal circumstances, the HDS should not request evidence of pregnancy or the expected date of childbirth unless there are grounds for suspicion that the notice given by the member is questionable.
16. New-born absence is aimed to assist partners of mothers by enabling them to take a period of absence during the first 56 days after childbirth.
17. Adopter's absence entitles members to a period of absence of 26 weeks. 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.
18. A member who satisfies prescribed conditions as to their relationship with another person who is adopting a child 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.
19. A member shall be entitled to parental absence if they become responsible for the care of a child under the age of 14. The member must notify the HDS of this responsibility and the HDS must be satisfied that such a responsibility is real and may require supporting evidence.
20. Responsibility for a child for the purposes of Part 5 of the Regulations is not limited to members who are granted parental responsibility for a child as defined in section 3 of the Children Act 1989. It is intended that parental absence would be available to members who become temporarily responsible for the care of a child in addition to members who become the subject of more permanent responsibilities. For example, a member who takes responsibility for the care of a child whilst the parent is temporarily unable to fulfil these responsibilities for reasons such as illness, would be entitled to a period of parental absence.
21. A member may decide to stage parental absence over various periods during the year from when the member became responsible for the child. The member must notify the HDS as to the staging of the periods of absence in advance, although it is not expected that a member inform the HDS of the start date and duration of each and every period of parental absence at the outset. If possible, the member should seek to inform the HDS of the intended periods of absence. However, it is accepted that this may not always be possible and would not afford the necessary degree of flexibility. In which case, as long as the HDS is informed at the outset of the member's general approach to the taking of absence and the HDS is informed in advance of each individual period of absence, the member would be entitled to periods of parental absence.

22. The HDS is required to inform the chair of the local authority, or where a local authority has elected a presiding member, the presiding member of that authority, the chair of the Democratic Services Committee (DSC) and, the leaders of each political group of the authority of any period of family absence in advance of it being taken or at the earliest possible date thereafter. The HDS is free also to inform any other persons felt necessary. For instance, this could include members of the authority representing the same or neighbouring divisions.
23. On receiving information from the HDS that a member may not be entitled to a period of family absence, a local authority may decide to cancel or curtail a member's family absence if it believes that the permitted absence is fraudulent, has been abused or simply that the member is not entitled to a period of family absence. It would be open to an authority in such a situation to decide whether the issue should be referred to their Standards Committee for their consideration.
24. A member may appeal against a decision to withdraw entitlement to family absence. Complaints must be in writing, however, as stated above a complaint in electronic form would satisfy this requirement. The HDS then places the appeal before the chair of the local authority, or where a local authority has elected a presiding member, the presiding member of that authority, who must then place it before a panel of three members appointed by the authority for the purpose (which cannot include the chair or presiding member of the authority).
25. The panel will then determine the complaint. The panel will determine whether or not the member is entitled to a period of family absence under the Regulations. Where the panel determines that the member is entitled to a period of family absence, that member will take a period of family absence in accordance with the Regulations.
26. A period of family absence may have been cancelled by the local authority mid-way through the period of family absence. Having been established to consider a complaint, the panel could then determine that the member is in fact entitled to a period of family absence. In those circumstances, the member will be entitled to the balance of their period of absence set out under the Regulations.
27. Where a panel determines that a member is not entitled to a period of family absence the member will not be eligible to a period of family absence under the Regulations and will be therefore expected to continue their duties as a member.
28. A local authority's standing orders must include provisions describing the circumstances in which a member on maternity, adopter's or parental absence (only) to continue to perform some duties if so desired. This should enable a member on such leave of absence to attend a particular meeting or type of meeting or perform a particular duty or type of duty on receipt of permission granted by the chair of the local authority, or where a local authority has elected a presiding member, the presiding member of that authority. This might be the case, for instance, 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. Before agreeing to such a request, the chair of authority, or where a local authority has elected a presiding member, the presiding member of that authority, must inform the leaders of all political groups on the council. Should there be a dispute, a panel established as above should make the final decision.

29. Standing orders should also provide as to whether any duty conferred on members should be performed during a period of family absence. This might, for instance, 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.
30. It should be noted that the absence of a member for family absence reasons should not trigger any reallocation of representation in accord with political balance. For such calculations, the member should be treated as a full member of the council and therefore any substitution should be open only to a member of the same political group.

Consultation Response Form

Your name:	
Organisation (if applicable):	
Email / telephone number:	
Your address:	

Questions

Q1 Do you agree with the proposed increase in the length of adopter's absence for councillors from 2 to 26 weeks to align with similar arrangements for maternity absence.

Yes / No

Add any comments

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Q2 Do you agree with the changes set out in Paragraph 12 above?

Yes / No

Add any comments

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Q3 Do you agree the revised statutory guidance within the annex of this document reflects the proposed changes in paragraphs 11 and 12 above?

Yes / No

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Q4 If you would like to make any additional comments or observations about the changes proposed as part of this consultation please include them in the box provided below.