

EAST RENFREWSHIRE COUNCIL24 JUNE 2020Report by Deputy Chief ExecutiveFAMILY LEAVE FOR ELECTED MEMBERS**PURPOSE OF REPORT**

1. To seek adoption of the COSLA guidance on Family Leave for Elected Members.

RECOMMENDATION

2. That the Council agree to adopt the COSLA guidance on Family Leave for Elected Members.

REPORT

3. In September 2019 Council Leaders endorsed guidance on Family Leave for Elected Members and agreed that it be circulated to Scottish councils for adoption on a voluntary basis. The guidance relates to leave in the following circumstances: maternity, paternity, shared parental or adoption leave. A copy of the guidance is attached.

4. Officers examined the guidance at the time and concluded, taking account of the situation in East Renfrewshire, that it did not introduce anything that was not already available to Elected Members and that there was no need for the guidance to be adopted.

5. Subsequently, amendment regulations¹ were made by the Scottish Parliament. The purpose of the amendment regulations, which amend the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007, is to support the provisions in the guidance in relation to the payment of an additional Special Responsibility Allowance (SRA) to any Elected Member performing the duties of a councillor who is in receipt of an SRA but is on leave from their Council duties for any of the circumstances set out in the guidance.

6. Paragraph 7 of the amendment regulations states:-

Paragraph (8) applies where a local authority has agreed that any of its councillors can take leave of absence, being a period during which the councillor is not expected by the authority to undertake official duties.

7. Paragraph 8 of the regulations relates to the ability of the Council to pay an additional SRA without removing the SRA of the councillor taking leave of absence. It should be noted that if any councillor is already in receipt of an SRA they cannot be paid an additional SRA when taking over the duties of a councillor who is taking a leave of absence.

8. As the legislation now requires councils to agree that any councillor must take a leave of absence before being able to pay another councillor a SRA, the Council needs to adopt the guidance. Doing so serves 2 purposes. Firstly it allows the Council in future to pay additional SRAs over and above the maximum number of SRAs permitted by the regulations in the

¹ The Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2020

appropriate circumstances. Secondly it sets out the different circumstances when leave of absence can be taken, the length of leave of absence in each case and therefore the length of time an additional SRA can be paid to another councillor taking over their SRA duties.

IMPLICATIONS OF THE PROPOSALS

9. Any financial implications of adopting the guidelines will be minimal as the occasions when someone not already in receipt of an SRA would be required to take over the duties of another councillor in receipt of an SRA due to them being off to take maternity, paternity, shared parental or adoption leave, are very limited. Any absence for any other reason would not lead to an additional SRA being paid.

CONCLUSIONS

10. It does appear that the guidance has been drawn up with larger councils in mind where there are more councillors who do not receive an SRA and where the types of leave referred to in the guidance are more likely to be requested. However it is recognised that not being able to take leave of the type outlined may be a disincentive to many people from standing as a councillor. Adopting the guidelines may assist in removing barriers to participation in the future, and whilst the demographic of the current cohort of Elected Members may make the guidance less relevant at the moment, this may change.

RECOMMENDATION

11. That the Council agree to adopt the COSLA guidance on Family Leave for Elected Members.

Local Government (Access to Information) Act 1985

Background Papers - None

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Family Leave Guidance for Councils

The Family Leave Guidance outlined below was endorsed by Council Leaders in September 2019 for circulation to Scottish Councils for adoption on a voluntary basis. Subsequently guidance was updated in April 2020 to reflect amendments to the Local Government (Scotland) Act 1973.

The term Special Responsibility Allowances (SRA) is used within the document to describe allowances paid to Council Leaders, Civic Head, Senior Councillors, Conveners and Vice Convener etc. where a Councillor receives a higher remuneration due to a specific role undertaken on behalf of the Council.

Introduction

This Guidance sets out some key principles which Local Authorities may wish to adopt to support Elected Members during periods of maternity, paternity, shared parental and adoption leave. **There is no legal right to family leave of any kind for people in elected public office.**

The objective of this guidance is to ensure that insofar as is possible, Elected Members can take appropriate leave at the time of birth or adoption, that both parents are able to take leave, and that reasonable and adequate arrangements are in place to provide cover for portfolio holders and others in receipt of Special Responsibility Allowances (SRA) during any period of leave taken.

This Guidance is to be implemented on a voluntary basis and confers no contractual, nor worker / employment status. The Guidance can be amended or withdrawn at any time. Councillors continue to retain their status as office holders. The rights as set out in this Guidance extend to (1) maternity, paternity, shared parental and adoption leave and (2) pay during maternity, paternity, shared parental and adoption related leave only. Individuals who are employees or workers of the Local Authority will be entitled to any additional rights associated with family leave by virtue of their employment status and associated policies. No such additional rights, over and above what is set out in this Guidance, shall apply to Elected Members and nothing in this Guidance shall render Elected Members as employees or workers.

Improved provision for new parents will contribute towards increasing the diversity of experience, age and background of Local Authority councillors. It will also assist with retaining experienced councillors – particularly women – and making public office more accessible to individuals who might otherwise feel excluded from it.

1. Leave Periods

1.1 Members giving birth are entitled to up to 6 months maternity leave from 28 days before their due date.

1.2 In addition, where the birth is premature, the Member is entitled to take leave during the period between the date of the birth and the due date in addition to the 6 months' period.

1.3 Members shall be entitled to take a maximum of 2 weeks paternity leave if they are the biological father or nominated carer of their partner/spouse following the birth of their child(ren).

1.4 A Member who has made Shared Parental Leave arrangements through their employment is requested to advise the Council of these at the earliest possible opportunity. Every effort will be made to replicate such arrangements in terms of leave from the Council.

1.5 Where both parents are Members leave may be shared up to a maximum of 26 weeks. Special and exceptional arrangements may be made in cases of prematurity.

1.6 A Member who adopts a child through an approved adoption agency shall be entitled to take up to six months' adoption leave from the date of placement.

1.7 Any Member who takes maternity, shared parental or adoption leave retains their legal duty under the Local Government Act 1973 to attend a meeting of the Council within a six-month period unless the Council Meeting agrees to an extended leave of absence prior to the expiration of that six-month period.

1.8 Any Member intending to take maternity, paternity, shared parental or adoption leave will be responsible for ensuring that they comply with the relevant notice requirements of the Council, both in terms of the point at which the leave starts and the point at which they return. (It is recommended that a minimum of 28 days' notice is provided to take leave. A MatB1 form or an adoption matching certificate should be provided when applying for maternity and adoption leave respectively).

1.9 Any Member taking leave should ensure that they respond to reasonable requests for information from the Council as promptly as possible, and that they keep officers and colleagues informed and updated in relation to intended dates of return and requests for extension of leave.

1.10 In the event of an Elected Member taking family-related leave, Councils are encouraged to consider:

- how to ensure there is minimal impact on the relevant ward by arranging, where possible, reasonable and appropriate cover to ensure the needs of constituents continue to be met; and
- providing what additional support may be required to facilitate an Elected Member's return from family related leave to ensure they feel supported and ready to return to the Council.

2. Basic Allowance

2.1 All Members shall continue to receive their Basic Allowance in full whilst on maternity, paternity or adoption leave.

3. Special Responsibility Allowances

3.1 Members entitled to a Special Responsibility Allowance (SRA) shall continue to receive their allowance in full in the case of maternity, paternity, shared parental or adoption leave.

3.2 The payment of SRA, whether to the primary SRA holder or a replacement, during a period of maternity, paternity, shared parental or adoption leave shall continue for a period of six months, or until the date when the Member taking leave is up for election (whichever is soonest). At such a point, the position will be reviewed, and will be subject to a possible extension for a further six-month period.

3.3 Should a Member appointed to replace the Member on maternity, paternity, shared parental or adoption leave already hold a remunerated position, the ordinary rules relating to payment of more than one SRA shall apply.

3.4 Unless the Member taking leave is removed from their post whilst on leave, or unless the Party to which they belong loses control of the Council during their leave period, they shall return at the end of their leave period to the same post, or to an alternative post with equivalent status and remuneration which they held before the leave began.

4. Resigning from Office and Elections

4.1 If a Member decides not to return at the end of their maternity, paternity, shared parental or adoption leave they must notify the Council at the earliest possible opportunity. All allowances will cease from the effective resignation date.

4.2 If an election is held during the Member's maternity, paternity, shared parental or adoption leave and they are not re-elected, or decide not to stand for re-election, their basic allowance and SRA if appropriate will cease from the Monday after the election date when they would technically leave office.

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