

## **Item: 13**

**Policy and Resources Committee: 26 November 2019.**

**Family Leave for Elected Members.**

**Report by Chief Executive.**

### **1. Purpose of Report**

To consider adoption of the guidance issued by COSLA in respect of Family Leave for Elected Members.

### **2. Recommendations**

The Committee is invited to note:

#### **2.1.**

The Family Leave Guidance for Councils, attached as Appendix 1 to this report, setting out key principles which local authorities may wish to adopt to support elected members during periods of maternity, paternity shared parental and adoption leave.

#### **2.2.**

That the Convention of Scottish Local Authorities has endorsed the Family Leave Guidance for adoption by councils on a voluntary basis.

#### **2.3.**

That, although there is no legal right to family leave of any kind for people in elected public office, adoption of the Guidance will ensure a consistent approach across councils for those elected members who wish to remain in office while starting a family and could remove a barrier that deters women and younger people from standing for election.

#### **2.4.**

That adoption of the Guidance would not relieve an Elected Member from their statutory obligation to attend at least one meeting of the Council throughout a period of six consecutive months in the absence of separate approval by the Council.

**It is recommended:**

#### **2.5.**

That the Council adopts the Family Leave Guidance for Councils, attached as Appendix 1 to this report.

## **2.6.**

That, for the purposes of Section 35 of the Local Government (Scotland) Act 1973, the Council approves the absence by an Elected Member from meetings of the Council for a period of six consecutive months while that Elected Member is on Family Leave subject to the Elected Member having given prior intimation to the Chief Executive of their wish not to attend Meetings during such period.

## **3. Background**

### **3.1.**

At the Convention of Scottish Local Authorities (COSLA) Leader's meeting on 27 September 2019, the Family Leave Guidance (the Guidance), attached as Appendix 1 to this report, was endorsed for circulation to Scottish councils for adoption on a voluntary basis.

### **3.2.**

The Guidance was created as part of the work being undertaken by COSLA's Barriers to Elected Office Special Interest Group. The aim of the work is to remove a barrier to standing or re-standing for elected office for those who may wish to start a family and, as a result, to increase the diversity of elected members, a key COSLA priority.

### **3.3**

In terms of local priorities, there is a specific action within the Council's Equality Outcomes 2018-22 that the Council should "prior to an election, review and develop inclusive practices to support participation in the democratic process". Adoption of guidance on family leave for elected members would support this action and the overarching agreed equality outcome.

### **3.4.**

The Guidance is intended to provide a framework to support councils in managing family leave for elected members within the constraints of current legislation.

## **4. Family Leave for Elected Members**

### **4.1.**

Elected Members currently have no legal right to family leave of any kind. The lack of family leave may discourage people from standing for election or prevent existing Elected Members who wish to start a family from continuing office. In particular, this barrier could be impacting upon women who currently make up just 29% of Scottish Councillors.

## **4.2.**

As Elected Members are not employees of local authorities, there is no obligation or power on local authorities to grant or permit elected members to take leave. Rather, the guidance, which has been issued to local authorities for adoption on a voluntary basis, seeks to formalise the basis upon which Elected Members may be absent from their normal duties, within the limits of the existing statutory framework around attendance at meetings and payment of Member allowances.

## **4.3.**

COSLA recognised the limits on flexibility in payment of Special Responsibility Allowances (SRA) to Elected Members who may be taking leave and their replacement in a senior role, given that there is a statutory limit on the number of SRAs that each Council can pay. The Guidance leaves this to the discretion of individual authorities but, in addition to issuing the Family Leave Guidance, COSLA is lobbying the Cabinet Secretary for Finance, Economy and Fair Work for an amendment to the legislation to afford greater flexibility in this regard. Should this lobbying be successful, point 3.1 of the Guidance will be amended and a new version will be issued.

## **4.4.**

Adoption of the Guidance on Family Leave will ensure a consistent approach to those Elected Members who wish to remain in office while starting a family and will remove a barrier that deters women and younger people from standing for election.

## **4.5.**

In terms of Section 35 of the Local Government (Scotland) Act 1973 and Paragraph 1.7 of the Guidance, an Elected Member taking Family Leave shall still be obliged to attend at least one Meeting of the Council throughout a period of six consecutive months, even if that overlaps with a period of Family Leave, unless approval not to attend has been granted by the Council. It is proposed that such prior approval be granted at this Meeting in respect of all cases where an Elected Member is taking Family Leave of six months and has intimated to the Chief Executive that they wish not to attend Meetings during this period.

# **5. Human Resources Implications**

## **5.1.**

One of the potential concerns when this matter was considered at national level was the potential to blur the lines between the status of Elected Members and that of an employee or worker. Legal guidance has been sought by COSLA on this prior to the agreement and issue of the final guidance.

## **5.2.**

The guidance clearly states that the guidance is to be implemented on a voluntary basis and confers no contractual, nor worker / employment status. On this basis officers are content that appropriate steps have been taken to ensure any employment related risks have been minimised.

## **6. Equalities Impact**

An Equality Impact Assessment has been undertaken and is attached as Appendix 2 to this report.

## **7. Corporate Governance**

This report relates to governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

## **8. Financial Implications**

### **8.1.**

Elected Members currently continue to receive their Basic Allowance during periods of absence of up to six consecutive months, and for such longer periods as the Council may determine. This position will not change following adoption of the COSLA Family Leave Guidance.

### **8.2.**

The Guidance gives discretion to the Council to manage payment of any Special Responsibility Allowance during a period of absence within the terms of the Local Governance (Scotland) Act 2004. There is no scope within the annual expenditure limit for Members' allowances to pay more than one special responsibility allowance in respect of a Member who has taken family leave. Accordingly, there are not expected to be any direct financial implications arising as a result of adopting the Guidance.

## **9. Legal Aspects**

### **9.1**

Elected Members are not employees of the Council and have no statutory entitlement to family leave. The voluntary provision of such leave to an Elected Member through adoption of the Guidance would not by itself confer employee status on the Elected Member.

## **9.2.**

Any Elected Member taking family leave would still be obliged to attend at least one meeting of the Council within a six month period. In terms of Section 35 of the Local Government (Scotland) Act 1973, if an Elected Member fails throughout a period of six consecutive months to attend any meeting of the Council, that Elected Member shall, unless the failure was due to some reason approved by the Council, cease to be a Member of the Council.

## **9.3.**

In terms of Section 149 of the Equality Act 2010 the Council has a duty to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. Relevant protected characteristics are defined to include age and gender. Adoption of the Guidance would support the Council's compliance with this duty.

## **10. Contact Officers**

John W Mundell, Interim Chief Executive, extension 2101, Email [chief.executive@orkney.gov.uk](mailto:chief.executive@orkney.gov.uk)

Karen Greaves. Head of Executive Support, extension 2202, Email [karen.greaves@orkney.gov.uk](mailto:karen.greaves@orkney.gov.uk)

## **11. Appendices**

Appendix 1: COSLA Family Leave Guidance for Councils.

Appendix 2: Equality Impact Assessment.



## Family Leave Guidance for Councils

### 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 where this is possible within the constraints of the Local Governance (Scotland) Act 2004 (Remuneration) and amendments thereto. Where this is not possible local arrangements should be made that best support both the Elected Member on leave and their replacement.

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.





## Equality Impact Assessment

The purpose of an Equality Impact Assessment (EqIA) is to improve the work of Orkney Islands Council by making sure it promotes equality and does not discriminate. This assessment records the likely impact of any changes to a function, policy or plan by anticipating the consequences, and making sure that any negative impacts are eliminated or minimised and positive impacts are maximised.

<b>1. Identification of Function, Policy or Plan</b>	
Name of function / policy / plan to be assessed.	COSLA Guidance on Family Leave for Elected Members.
Service / service area responsible.	Chief Executive's Service.
Name of person carrying out the assessment and contact details.	Karen Greaves. <a href="mailto:Karen.greaves@orkney.gov.uk">Karen.greaves@orkney.gov.uk</a> Extension 2202.
Date of assessment.	04 Nov 2019.
Is the function / policy / plan new or existing? (Please indicate also if the service is to be deleted, reduced or changed significantly).	New.

<b>2. Initial Screening</b>	
What are the intended outcomes of the function / policy / plan?	Adoption of COSLA Guidance on Family Leave for Elected Members, which has been issued on a voluntary basis. The aim of the guidance is to clarify the arrangements for Elected Members who need to take maternity, paternity or adoption leave and confirms that they should continue to receive the Basic Allowance during this period. The intended purpose is to encourage more women and younger people to become Councillors and thus develop the diversity of elected representatives.
Is the function / policy / plan strategically important?	Yes.

<p>State who is, or may be affected by this function / policy / plan, and how.</p>	<p>All current and future Elected Members who may wish to take Family Leave. This Guidance will formalise the arrangements for Family Leave.</p>
<p>How have stakeholders been involved in the development of this function / policy / plan?</p>	<p>COSLA's Barriers to Elected Office Special Interest Group of Family Leave have involved stakeholders in consideration of the development of this guidance.</p>
<p>Is there any existing data and / or research relating to equalities issues in this policy area? Please summarise. E.g. consultations, national surveys, performance data, complaints, service user feedback, academic / consultants' reports, benchmarking (see equalities resources on OIC information portal).</p>	<p>COSLA's Barriers to Elected Office Special Interest Group of Family Leave undertook relevant research in developing the guidance. It was found that as elected members have no right to family leave of any kind, this barrier disproportionately impacts women who currently make up just 29% of Scottish Councillors. The COSLA Cross-Party Special Interest Group, in consultation with elected members, identified the absence of formal family leave as a key barrier preventing individuals from standing or re-standing for elected office.</p>
<p>Is there any existing evidence relating to socio-economic disadvantage and inequalities of outcome in this policy area? Please summarise. E.g. For people living in poverty or for people of low income. See <a href="#">The Fairer Scotland Duty Interim Guidance for Public Bodies</a> for further information.</p>	
<p>Could the function / policy have a differential impact on any of the following equality areas?</p>	<p>(Please provide any evidence – positive impacts / benefits, negative impacts and reasons).</p>
<p>1. Race: this includes ethnic or national groups, colour and nationality.</p>	<p>No significant impact identified.</p>
<p>2. Sex: a man or a woman.</p>	<p>Positive impact - although the guidance applies to parents of all genders, the majority of those that take parental leave are women. Formalising the arrangements for leave and confirming that payment of the councillors' Basic Allowance aims to address a key barrier to standing for elected office and should encourage more women to stand for election in local government.  The guidance applies equally to male parents who wish to share leave or take adoption leave</p>

3. Sexual Orientation: whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.	No significant impact identified. Family Leave guidance is inclusive of all members regardless of their sexual orientation.
4. Gender Reassignment: the process of transitioning from one gender to another.	No significant impact identified.
5. Pregnancy and maternity.	Positive impact identified. Adopting the Family Leave guidance gives improved provision for new parents and will help to address a key barrier preventing individuals from standing or re-standing for elected office.
6. Age: people of different ages.	Adoption of the guidance will ensure that a wider demographic of parents of young children will be encouraged to participate in local government.
7. Religion or beliefs or none (atheists).	No significant impact identified.
8. Caring responsibilities.	Adoption of the guidance will ensure that a wider demographic of parents / carers of young children will be encouraged to participate in local government.
9. Care experienced.	No significant impact identified.
10. Marriage and Civil Partnerships.	No significant impact identified.
11. Disability: people with disabilities (whether registered or not).	No significant impact identified.
12. Socio-economic disadvantage.	No significant impact identified.
13. Isles-proofing.	No significant impact identified.

### 3. Impact Assessment

Does the analysis above identify any differential impacts which need to be addressed?	No.
How could you minimise or remove any potential negative impacts?	No negative impacts identified at this stage.
Do you have enough information to make a judgement? If no, what information do you require?	Yes.

<b>4. Conclusions and Planned Action</b>	
Is further work required?	No.
What action is to be taken?	
Who will undertake it?	
When will it be done?	
How will it be monitored? (e.g. through service plans).	Will we seek to monitor uptake of Family Leave.

Signature:



Date: 4 November 2019

Name: Karen Greaves

(BLOCK CAPITALS).

Please sign and date this form, keep one copy and send a copy to HR and Performance. A Word version should also be emailed to HR and Performance at [hrrsupport@orkney.gov.uk](mailto:hrrsupport@orkney.gov.uk)