

Report

Report to:	Executive Committee
Date of Meeting:	4 December 2019
Report by:	Executive Director (Finance and Corporate Resources)

Subject:	Family Leave Guidance for Elected Members
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1. Purpose of Report

1.1. The purpose of the report is to: -

- ◆ allow members to consider the new Elected Members Family Leave Guidance produced by COSLA and to decide whether to adopt it on a voluntary basis within South Lanarkshire Council.

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s): -

- (1) that the new Elected Members Family Leave Guidance produced by COSLA and attached at Appendix 1 be endorsed and referred to the ordinary meeting of South Lanarkshire Council on 26 February 2020 for approval and implementation.

3. Background

3.1 Currently there is no legal right to family leave of any kind for anyone who is elected to public office including Councillors. The lack of family leave may discourage people from standing for election and prevent existing Councillors, who may wish to start a family, from remaining in office. COSLA's Barriers to Elected Office Special Interest Group identified a need to develop family friendly guidance and to formalise family leave.

3.2 In terms of section 35 of the Local Government Act 1973, a Councillor must attend at least one meeting of the Council or one Committee meeting within a six-month period or they will be deemed to have vacated their role and a period of absence under this section can be extended with approval of the Council. Historically, it was viewed that this provided adequate flexibility for family leave as a Councillor could take leave provided that they attended one meeting within a six month period, or if the absence was likely to extend beyond 6 months, the Councillor could seek approval from the Council .

3.3 The Family Leave Guidance attached at Appendix 1 was endorsed at the COSLA leaders meeting on 27th September 2019 for circulation to Scottish Councils for adoption on a voluntary basis.

3.4 The Guidance proposes the following:-

- ◆ Maternity Leave of up to 6 months commencing from 28 days before the due date
- ◆ A maximum of 2 weeks paternity leave for the biological father or nominated carer of their partner/spouse

- ◆ Shared parental leave arrangements to replicate any obtained by the Councillor through their employer
- ◆ Where both parents are Councillors, up to a maximum of 26 weeks leave may be shared between them
- ◆ Up to 6 months adoption leave from the date of placement
- ◆ Councillors on maternity, shared parental or adoption leave must attend one Council/Committee meeting within a 6-month period unless the Council has agreed to an extended leave of absence prior to the expiry of the 6-month period
- ◆ A minimum of 28 days' notice to be provided to take leave
- ◆ All Councillors continue to receive their basic allowance in full during the leave periods
- ◆ Where possible all Councillors continue to receive payment of their Special Responsibility Allowance whilst on maternity, paternity or adoption leave

4. Family Leave Guidance

- 4.1 Elected Members are not employees of the Council, and therefore are not legally entitled to access any of the family leave provisions contained within legislation promoted for employees. There is therefore no legal obligation on the Council to grant or permit Councillors to take leave of this nature.
- 4.2 The Family Leave Guidance attached as Appendix 1 to this report acknowledges that there is no legal right to family leave of any kind for Councillors and that the adoption of the Guidance is on a voluntary basis by the Council. It seeks to formalise the basis upon which Elected Members may be absent from their duties, within the existing statutory framework around attendance at meetings as set out in paragraph 3.2 above. Councillors continue to receive their Basic Allowances during periods of absence of up to six months and for such longer periods as the Council may determine.
- 4.3. The Guidance gives discretion to the Council to manage payment of any Senior Responsibility Allowance during the period of absence. However, if the Council already has the maximum number of senior councillors permitted by legislation, it will be unable to pay an additional allowance to another Councillor to cover the duties of the Councillor in receipt of the SRA who is on family leave, without removing the SRA during this period of absence.
- 4.4. The Adoption of the Guidance by each Council in Scotland will ensure a consistent approach to those elected members that wish to remain in office while starting a family and will remove a barrier that deters women and younger people from standing for election.

5. Employee Implications

- 5.1. There are no employee implications arising from this report as Councillors are not employees of the Council.

6. Financial Implications

- 6.1. There may be financial implications arising from the implementation of the Family Leave Guidance arising from the provision of an additional Senior Responsibility Allowance if permitted by the relevant existing legislation or any future amendment. All costs will be met from within existing budgets.

7. Other Implications (including Environmental and Risk Issues)

- 7.1. There are no risks to the Council in relation to the recommendation contained in this report.
- 7.2. There are no issues in terms of sustainability in relation to the recommendations contained in this report.

8. Equality Impact Assessment and Consultation Arrangements

- 8.1. This report does not introduce any new policy, function or strategy or recommend a change to an existing policy, function or strategy; therefore, no impact assessment is required.
- 8.2. No formal consultation was required.

Paul Manning
Executive Director (Finance and Corporate Resources)

13 November 2019

Link(s) to Council Objectives/Improvement Themes/Values

- ◆ Focussed on people and their needs

Previous References

- ◆ None

List of Background Papers

- ◆ None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:

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Appendix 1

Family Leave Guidance for Councillors

Introduction

This Guidance has been voluntarily adopted by South Lanarkshire Council to support Councillors during periods of maternity, paternity, shared parental and adoption leave. The Council is aware and acknowledges **that there is no legal right to family leave of any kind for people in elected public office.**

The objective of the Guidance is to ensure that insofar as is possible, Councillors 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 has been 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 Councillors and nothing in this Scheme shall render Councillors as employees or workers.

Improved provision for new parents will contribute towards increasing the diversity of experience, age and background of our 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 Councillors 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 Councillor 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 Councillors 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 Councillor 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 Councillors 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 Councillor 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 Councillor 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 Councillor 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 Councillor 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 a Councillor taking family-related leave, the Council shall 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 a Councillor's return from family related leave to ensure they feel supported and ready to return to the Council.

2. Basic Allowance

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

3. Special Responsibility Allowances

- 3.1 Councillors 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. Where this is not possible the Council shall consider how it may best support both the Councillor 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 Councillor 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 Councillor appointed to replace the Councillor on maternity, paternity, and 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 Councillor 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 Councillor decides not to return at the end of their maternity, paternity, and 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 Councillor'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.