

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2013-2014

COUNCIL

26TH FEBRUARY, 2014

**REPORT OF THE DIRECTOR OF LEGAL
AND DEMOCRATIC SERVICES**

Agenda Item No. 11

**Proposed Amendments to
the Council's Constitution –
(1) The Family Absence
for Members of Local
Authorities (Wales)
Regulations 2013
(2) Terms of Reference of
the Service Scrutiny
Committees**

**Author: Ms.Karyl May, Democratic Services Manager
Tel.No.01443-424045**

1. PURPOSE OF THE REPORT

To seek approval for amendments to various parts of the Council's Constitution, to take account of The Family Absence for Members of Local Authorities (Wales) Regulations 2013, which came into force in December, 2013 and amendments to the Terms of Reference of the Service Scrutiny Committees.

2. RECOMMENDATIONS

To approve the following amendments/insertions to the various parts of the Council's Constitution, as shown, to take account of The Family Absence for Members of Local Authorities (Wales) Regulations 2013, which came into force in December, 2013 and the Terms of Reference of the Service Scrutiny Committees and as recommended by the Corporate Governance and Constitution Committee at its meeting held on the 14th February, 2014:

2.1 (1) Part 2 – Articles of the Constitution

Article 5 – Chairing the Council (b) Responsibilities of the Mayor (or in his/her absence the Deputy Mayor)

(vii) To carry out duties as required under The Family Absence for Members of Local Authorities (Wales) Regulations 2013.

(2) **Part 3 – Responsibility for Functions**

Section 2 – Responsibility for Council Functions

Council or Name of Committee	Membership	Non-Executive Functions	Delegation of Functions
<ul style="list-style-type: none"> • N/A 	<p>The Mayor (or in his/her absence the Deputy Mayor)</p>	<p>In accordance with The Family Absence for Members of Local Authorities (Wales) Regulations 2013 (Regulation 34), the Mayor (or in his/her absence the Deputy Mayor) to consider whether to cancel a Member's period of absence that he/she has been given notification of and on reasonable grounds by the Head of Democratic Services.</p>	<p>Head of Democratic Services</p>
<ul style="list-style-type: none"> • Appeals Committee – Family Absence 	<p>3 Members of the Democratic Services Committee (must include Mayor or Deputy Mayor) not the or</p>	<p>In accordance with The Family Absence for Members of Local Authorities (Wales) Regulations 2013 (Regulations 35 and 36):</p> <p>To hear appeals from Members against a decision to withdraw entitlement to family absence.</p>	<p>Head of Democratic Services</p>

		<p>To settle disputes, where a Member, who is on leave of absence would like to attend a particular meeting, type of meeting, or perform a particular duty or type of duty and the Mayor (or in his/her absence the Deputy Mayor) of the Council refuses this request.</p>	
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(3) **Part 4 – Rules of Procedure – Council Rules of Procedure**

(7) Quorum

If a Member is on Family Absence and it would be difficult to replace that Member on a temporary basis, the Mayor (or in his/hr absence the Deputy Mayor) can request that Member to attend a meeting if it might otherwise be inquorate.

(25) Family Absence for Members

25.1 A Member on maternity absence or parental absence may, subject to paragraph 25(2) and (6) below:

- Attend particular meetings
- Attend particular descriptions of meetings
- Perform particular duties; or
- Perform duties of a particular description

25.2 The Member must obtain the permission of the Mayor (or in his/her absence the Deputy Mayor) before attending any meeting or performing any duty.

25.3 The Mayor (or in his/her absence the Deputy Mayor) must inform the Leaders of each political group of the Local Authority before granting permission under paragraph 25.2 above.

25.4 A Member may complain in writing to the Head of Democratic Services regarding a refusal under paragraph 25.2 above.

25.5 The Head of Democratic Services must refer a complaint under paragraph 25.4 above to the Mayor.

25.6 A Panel constituted in accordance with The Family Absence for Members of Local Authorities (Wales) Regulation 2013 must determine a complaint made under paragraph 25.4 above.

25.7 The Panel May:

- Confirm the decision of the Mayor (or in his/her absence the Deputy Mayor) of the Council; or
- Substitute its own decision as to the Member attending any meeting or performing any duty.

(4) Section 4 - Head of Democratic Services

(t) To carry out duties as required under The Family Absence for Members of Local Authorities (Wales) Regulations, 2013.

2.2 To note the contents of the letter of the Independent Remuneration Panel for Wales in respect of the entitlement of Members to receive allowances during family absence.

2.3 That Article 6 paragraph 6.01 of the Terms of Reference of the Scrutiny Committees be amended so that the Museums be removed from within the terms of reference of the Education and Lifelong Learning Scrutiny Committee and that Tourism be removed from within the terms of reference of the Environmental Services Scrutiny Committee and both come within the remit of the Corporate Services Scrutiny Committee.

2.4 That Development Control be deleted from within the terms of reference of the Environmental Services Scrutiny Committee as it already sits within the Corporate Services Scrutiny Committee.

2.5 That the Director, Legal and Democratic Services be given delegated authority to amend the terms of reference of the Service Scrutiny Committees consequent upon changes in Officer responsibilities for functions, and report back such changes to this Committee for information.

3. BACKGROUND

3.1 Members will recall that at the Council meeting held on the 15th January, 2014, it was agreed that the proposed amendments to the Council's Constitution, to take account of The Family Absence for Members of Local Authorities (Wales) Regulations 2013, be considered by the Corporate Governance and Constitution Committee prior to submission to Council for approval.

3.2 At its meeting held on the 14th February, 2014, Members of the Corporate Governance and Constitution Committee gave consideration to the proposed

amendments to take account of The Family Absence for Members of Local Authorities (Wales) Regulations 2013 and also amendments to the Terms of Reference of the Service Scrutiny Committees.

The Family Absence for Members of Local Authorities (Wales) Regulations 2013

3.3 The Local Government (Wales) Measure 2011 makes available to Members of local authorities entitlement to five types of family absence:-

- Maternity Absence – 26 weeks
- New Born Absence – 2 consecutive weeks
- Adopter's Absence – 2 consecutive weeks
- New Adoption Absence – 2 consecutive weeks; and
- Parental Absence – 3 months

3.4 *It is worthy of noting that the provision in the Local Government Act 1972 whereby a Member ceases to be a Member if no meetings are attended for six months (unless absence approved by Council) does not apply to any period of family absence.*

3.5 At the Council meeting on the 15th January, 2014, Members were reminded of the response that was made to the Welsh Government by the deadline of the 14th June, 2013 in respect of the consultation document – The Family Absence for Members of Local Authorities (Wales) Regulations 2013 as agreed by Council on the 8th May, 2013.

3.6 The final version of the regulations has now been published and took effect as from the 5th December, 2013. The final version contains only minor differences from the consultation draft and attached at Appendix 1 is a copy of the regulations.

3.7 For ease of reference and to assist Members in acknowledging the need to amend the Council's Constitution as outlined in the recommendations contained in paragraph 2 of this report, the Regulations are explained in more detail below:

- Regulation 32 requires records of periods of family absence to be maintained by the Authority's Head of Democratic Services for at least 10 years.
- Regulation 33 provides that once the Head of Democratic Services has been informed by a Member that they are taking a period of family absence, the Head of Democratic Services must inform the Mayor (or in his/her absence, the Deputy Mayor), the Chair of the Democratic Services Committee and the Leader of each political group. One change to the Regulations since the draft is that where a Council has a Presiding Member, the Presiding Member must also be informed.
- Regulation 34 places a requirement on the Head of Democratic Services to inform the local authority and provide all relevant information where he/she has reasonable grounds to suspect a

Member is not entitled to the family absence they have given notification of. The local authority may then cancel that Member's period of family absence. **It is suggested that for Rhondda Cynon Taf, the Member decision is delegated to the Mayor (or in his/her absence, the Deputy Mayor) rather than full Council (as shown in recommendation 2.1(2) above).**

- Regulations 35 and 36 contains provisions where if a family absence is cancelled by the authority, the Member affected may complain and a Panel of Members must then be formed to consider that complaint. **It is suggested that for Rhondda Cynon the Panel is to comprise 3 Members of the Democratic Services Committee (not to include the Mayor or Deputy Mayor) (as shown in recommendation 2.1(2) above).**
- Regulations 37 and 39 require local authorities as soon as is reasonably practicable after the coming into force of the regulations to make standing orders covering the matters in Regulations 38 and 39.
- Regulation 38 requires a Member on maternity absence or parental absence to obtain the permission of the Mayor before attending any meeting or performing any duty. **It is suggested that for Rhondda Cynon Taf the Council's Constitution be amended as shown at recommendation 2.1(3) (25.1-25.7).**

3.8 For information, attached at Appendix 2 is a copy of a letter from the Independent Remuneration Panel for Wales, relating to remuneration in respect of Family Absence, which unfortunately was received too late for the Council to make a formal response by the deadline of the 7th February, 2014.

Amendments to the Terms of Reference of the Service Scrutiny Committees

- 3.9 Article 6 of the Council's Constitution relates to the terms of reference of the Overview and Scrutiny Committee and the Service Scrutiny Committees.
- 3.10 The principle behind the terms of reference of the four Service Scrutiny Committees is that they `mirror` the Group Director Officer structure, to ensure optimum use of Officer time and remove the need to attend more than one Committee.
- 3.11 Since the drafting of the article, reconfiguration of the responsibilities for functions have not been reflected in the terms of reference of the appropriate Scrutiny Committees e.g. Development Control now sits within the Remit of the Corporate Services Scrutiny Committee, having previously fallen within the remit of the Environmental Services Scrutiny Committee. Similarly, Museums and Tourism now fall within the remit of the Corporate Services Scrutiny Committee.
- 3.12 It is proposed that I be given delegated powers to amend the terms of reference of the Service Scrutiny Committees, consequent upon changes in Officer responsibility for functions and report back such changes to this Committee for information.

4. CONCLUSION

Taking into consideration the information contained within this report, Members are asked to agree the recommendations as outlined in paragraphs 2.1 to 2.5 above and as recommended by Members of the Corporate Governance and Constitution Committee at its meeting held on the 14th February, 2014.

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Welsh Government

Consultation Document

The Family Absence for Members of Local Authorities (Wales) Regulations 2013 and Statutory Guidance on Family Absence

Date of issue: **22 March 2013**

Action required: Responses by **14 June 2013**

Overview

Subordinate legislation made under the Local Government (Wales) Measure 2011

The Family Absence for Members of Local Authorities (Wales) Regulations 2013

Statutory Guidance on Family Absence.

How to respond

Please submit your comments on any aspect of the Regulations or the Guidance by **14 June 2013** in any of the following ways:

Via the response form on our website:

<http://wales.gov.uk/consultations/localgovernment/?lang=en>

E-mail: LGDTMailbox@wales.gsi.gov.uk

Or post to the address in the contact details below.

Further information and related documents

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

This document has Two Annexes:

1. The draft Family Absence for Members of Local Authorities (Wales) Regulations 2013
2. Draft Family Absence Statutory Guidance

Useful References:

Local Government (Wales) Measure 2011 - <http://www.legislation.gov.uk/mwa/2011/4/contents/enacted>

Contact details

For further information:

Scrutiny, Democracy and Participation Team
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

e-mail: LGDTMailbox@wales.gsi.gov.uk

Tel: 029 2082 6913

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

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. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

The Family Absence for Members of Local Authorities (Wales) Regulations 2013 Statutory Guidance on Family Absence

Purpose of the draft Regulations

The Local Government (Wales) Measure 2011 (“the Measure”) creates an entitlement to five types of family absence for local authority members: maternity absence; newborn absence; adopter’s absence; new adoption absence and paternal absence. These draft Regulations prescribe the conditions that must be satisfied by members to be entitled to family absence. The draft Regulations also make provision for record keeping, cancellation of absence by a local authority, complaints and duties exercisable by members during any period of absence.

Purpose of Statutory Guidance

The purpose of the attached Statutory Guidance is to provide guidance to local authorities in exercising their functions in relation to the rights of members to family absence under part 2 of the Measure and the Regulations.

Legislative Context

Sections 24 to 28 of the Measure entitle members of a local authority to take periods of family absence where prescribed conditions are satisfied. These provisions provide the Welsh Ministers with the power to prescribe these conditions in regulations. These draft Regulations set out the conditions to be satisfied to enable a member to be entitled to a period of family absence.

Section 29 of the Measure provides the Welsh Ministers to make supplemental provision. These draft Regulations make provision, amongst other things, about the extent of the various periods of absence; the cancellation of periods of absence and bringing absence to an early end.

Section 30 of the Measure grants the Welsh Ministers the power to issue statutory guidance. County councils and county borough councils must have regard to this guidance in exercising its functions under part 2 of the Measure and the Regulations.

Extent and application

This subordinate legislation will apply to Wales only.

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please say so in your response.

Draft Order laid before the National Assembly for Wales under section 172(2) of the Local Government (Wales) Measure 2011, for approval by resolution of the National Assembly for Wales.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2013 No. (W.)

**LOCAL GOVERNMENT,
WALES**

**The Family Absence for Members
of Local Authorities (Wales)
Regulations 2013**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of the Local Government (Wales) Measure 2011(1) (“the Measure”) makes available to members of local authorities entitlement to a period of family absence.

The Measure creates an entitlement to five types of family absence: maternity absence; newborn absence; adopter’s absence; new adoption absence and parental absence. The entitlement created by the Measure is subject to members satisfying conditions prescribed by the Welsh Ministers in regulations.

These Regulations prescribe the conditions that members of local authorities must satisfy to be entitled to a period of family absence. The Regulations also make provision, amongst other things, about the extent of the various periods of absence; the cancellation of periods of absence and bringing absence to an end.

These Regulations are divided into six Parts. Parts 1 to 5 deal with the different types of absence. Part 6 makes general provision applicable in relation to all types of family absence.

Part 1 makes provision relating to maternity absence. Regulation 3 prescribes the conditions that a member must satisfy to be entitled to a period of maternity

(1) 2011 nawm 4.

absence. The conditions include notification requirements and, where requested by the head of democratic services, the production of evidence. Part 1 also includes provision for the start of maternity absence, variation of the intended start, duration, bringing to an end and cancellation.

Part 2 makes provision relating to newborn absence. Regulation 10 sets out the conditions as to relationship with a child or the child's mother and responsibility for the upbringing for that child required for a member to be entitled to newborn absence. Part 2 also includes provision for duration of newborn absence, when absence may be taken, cancellation of absence and the start date of a period of newborn absence.

Part 3 makes provision relating to adopter's absence. Regulation 15 prescribes the conditions that a member must satisfy to be entitled to a period of adopter's absence. Part 3 also makes provision for duration of adopter's absence, when absence may be taken, the start date of a period of adopter's absence and cancellation.

Part 4 makes provision relating to new adoption absence. Regulation 21 prescribes the conditions that a member must satisfy to be entitled to a period of new adoption absence. It sets out the relationship requirements between a member and a child's adopter and that the member must have responsibility for the upbringing of a child. Part 4 also makes provision for the duration of new adoption absence, when absence may be taken, cancellation and the start date of a period of new adoption absence.

Part 5 makes provision relating to parental absence. Regulation 27 prescribes the conditions to be satisfied for a member to be entitled to a period of parental absence. The conditions relate to the responsibility for the care of a child. It also sets out the notification requirements and evidence to be produced to the head of democratic services where required. Regulations 24 to 27 provide for the duration of absence, when absence may be taken, cancellation, bringing parental absence to an end and the start date of a period of parental absence.

Part 6 makes provision relating to record keeping, duties to inform, cancellation of family absence by the local authority, complaints and standing orders relating to members whilst taking a period of family absence.

Draft Order laid before the National Assembly for Wales under section 172(2) of the Local Government (Wales) Measure 2011, for approval by resolution of the National Assembly for Wales.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2013 No. (W.)

**LOCAL GOVERNMENT,
WALES**

**The Family Absence for Members
of Local Authorities (Wales)
Regulations 2013**

Made ***

Coming into force ***

The Welsh Ministers, in exercise of the powers conferred by sections 9, 24, 25, 26, 27, 28, 29 and 172 of the Local Government (Wales) Measure 2011(1), make the following Regulations.

In accordance with section 172 of that Measure, a draft of these Regulations was laid before and approved by a resolution of the National Assembly for Wales.

Title and commencement

1.—(1) The title of these Regulations is the Family Absence for Members of Local Authorities (Wales) Regulations 2013.

(2) These Regulations come into force on XX.

General Interpretation

2.—(1) In these Regulations—

“childbirth” (“*geni’r plentyn*”) means the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy;

“expected week of childbirth” (“*yr wythnos y disgwylir geni’r plentyn*”) means the week,

(1) 2011 nawm 4.

beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur;

“the Measure” (“*y Mesur*”) means the Local Government (Wales) Measure 2011; and

“partner” (“*partner*”) means one of a couple whether of the same or opposite sex who live together.

(2) Any reference in these Regulations to a “chair of the local authority” (“*cadeirydd yr awdurdod lleol*”) is a reference to a person elected as chairman by that local authority under section 22 of the Local Government Act 1972⁽¹⁾.

(3) Any reference in these Regulations to “a member” (“*aelod*”) is a reference to a member of a local authority in Wales.

PART 1

Maternity absence

Prescribed conditions

3. For the purposes of section 24(1) of the Measure, the prescribed conditions are that—

- (a) no later than the end of 15 weeks before the expected week of childbirth, or, if that is not reasonably practicable, as soon as is reasonably practicable, the member has given written notice to the head of democratic services of—
 - (i) that member’s pregnancy;
 - (ii) the expected week of childbirth;
 - (iii) the date on which the member intends the maternity absence to start; and
 - (iv) the duration of the period of maternity absence the member intends to take, if less than 26 weeks;
- (b) the member has, if requested to do so by the head of democratic services, provided the head of democratic services with a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth;
- (c) where the member wishes to vary the start of the maternity absence which has been specified under paragraph (a)(iii), the member has given the head of democratic services written notice of the new start date at least one

(1) 1972 c.70.

week before the date specified under paragraph (a)(iii), or at least one week before the new date, whichever is the earlier, or, if that is not reasonably practicable, as soon as is reasonably practicable; and

- (d) where the member wishes to vary the duration of the maternity absence, the member has given the head of democratic services written notice of the new duration at least one week before the expected end of the period of absence in accordance with the duration specified under paragraph (a)(iv), or at least one week before the new intended end of the period of absence, whichever is the earlier, or if that is not reasonably practicable, as soon as is reasonably practicable.

Period of maternity absence

4. The period of maternity absence is 26 weeks, unless the member gives written notice under regulation 3(a)(iv), (d) or 7 that the period of maternity absence will be shorter than 26 weeks.

When maternity absence may be taken

5. Maternity absence may only be taken so as to begin during the period—

- (a) beginning at the start of the eleventh week before the expected week of childbirth; and
 (b) ending on the day after the day on which childbirth occurs.

Member to choose start date of maternity absence

6.—(1) Subject to paragraphs (2) and (3) and regulation 5, a member may choose the date on which their maternity absence is to start.

(2) Where, during the four week period before the start of the expected week of childbirth, a member is absent from a meeting of the authority for a reason wholly or partly attributable to pregnancy, the period of maternity absence starts on the day after the meeting from which the member is absent.

(3) Where a member's maternity absence has not started in accordance with the date notified by a member under regulation 3(a)(iii) when childbirth occurs, that member's maternity absence starts on the day after the day on which childbirth occurs.

(4) Regulations 3(a)(ii), (iii) and (b) do not apply in respect of a member whose absence starts by virtue of paragraph (3).

Bringing a period of maternity absence to an end

7. A member may bring a period of maternity absence to an end earlier than the end of the period which was notified under regulation 3(a)(iv) by notifying the head of democratic services in writing of their intention to do so at least 7 days before their return.

Cancelling maternity absence

8. The circumstances in which a member may cancel a period of maternity absence are that—

- (a) the period of maternity absence has not yet started; and
- (b) the member has notified the head of democratic services in writing of their intention to cancel the absence.

PART 2**Newborn absence****Prescribed conditions**

9.—(1) For the purposes of section 25(1) of the Measure, the prescribed conditions are that the member—

- (a) is either—
 - (i) the child's father and has, or expects to have, responsibility for the upbringing of the child; or
 - (ii) married to, the civil partner or the partner of the child's mother, but is not the child's father and has, or expects to have the main responsibility (apart from any responsibility of the mother) for the upbringing of the child; and
- (b) gives the head of democratic services written notice of the date the member intends the period of newborn absence to start.

(2) A member is to be treated as having satisfied the condition in paragraph (1)(a)(ii) if that member would have satisfied the condition but for the fact that the child's mother has died.

(3) A member is to be treated as having satisfied either of the conditions in paragraph (1)(a) if they would have satisfied the condition but for the fact that the child was stillborn after 24 weeks of pregnancy or has died.

Extent of entitlement to newborn absence

10.—(1) A member's entitlement to newborn absence is two consecutive weeks.

(2) Where more than one child is born as a result of the same pregnancy, a member is entitled to newborn absence only in respect of the first child born.

When newborn absence may be taken

11. Newborn absence may only be taken during the period—

- (a) beginning with the date of childbirth; and
- (b) ending 56 days after that date.

Cancelling newborn absence

12. The circumstances in which a member may cancel a period of newborn absence are that—

- (a) the period of newborn absence has not yet started; and
- (b) the member has notified the head of democratic services in writing of their intention to cancel the absence.

Member to choose start date of newborn absence

13. Provided that the period of newborn absence will come to an end within the period prescribed by regulation 11, a member may choose the date on which their newborn absence is to start.

PART 3**Adopter's absence****Prescribed conditions**

14. For the purposes of section 26(1) of the Measure, the prescribed conditions are that the member—

- (a) is the child's adopter; and
- (b) gives the head of democratic services written notice of the date the member intends the period of adopter's absence to start.

Extent of entitlement to adopter's absence

15. A member's entitlement to adopter's absence is two consecutive weeks.

When adopter's absence may be taken

16. Adopter's absence may only be taken during the period—

- (a) beginning with the date on which the child is placed with the member for adoption; and
- (b) ending 56 days after that date.

Member to choose start date of adopter's absence

17. Provided that the period of adopter's absence will come to an end within the period prescribed by regulation 16, a member may choose the date on which their adopter's absence is to start.

Cancelling adopter's absence

18. The circumstances in which a member may cancel a period of adopter's absence are that—

- (a) the period of adopter's absence has not yet started; and
- (b) the member has notified the head of democratic services in writing of their intention to cancel the absence.

Interpretation of this Part

19. —(1) In this Part—

“adopter” (*“mabwysiadwydd”*) in relation to a child, means a member who has been matched with a child for adoption, or in a case where two members have been matched jointly, whichever of them has elected to be the child's adopter for the purposes of this Part;

“adoption agency” (*“asiantaeth fabwysiadu”*) means a body which may be referred to as an adoption agency by virtue of section 2 of the Adoption and Children Act 2002(1); and

“child” (*“plentyn”*) means a person who is, or when placed with an adopter for adoption was, under the age of eighteen.

(2) For the purposes of this Part a member is matched with a child for adoption when an adoption agency notifies that member of its decision that the member is a suitable adoptive parent for the child, whether individually or jointly with another person.

PART 4

New adoption absence

Prescribed conditions

20. For the purposes of section 27(1) of the Measure, the prescribed conditions are that the member—

(1) 2002 c.38.

- (a) is married to, the civil partner or the partner of the child's adopter;
- (b) has, or expects to have, the main responsibility (apart from the responsibility of the adopter) for the upbringing of the child; and
- (c) gives the head of democratic services written notice of the date the member intends the period of adopter's absence to start.

Extent of entitlement to new adoption absence

21.—(1) A member's entitlement to new adoption absence is two consecutive weeks.

(2) Where more than one child is placed with the member as part of the same arrangement, a member is entitled to new adoption absence only in respect of the first child placed with the member for adoption.

When new adoption absence may be taken

22. New adoption absence may only be taken during the period—

- (a) beginning with the date on which the child is placed with the child's adopter; and
- (b) ending 56 days after that date.

Cancelling new adoption absence

23. The circumstances in which a member may cancel a period of new adoption absence are that—

- (a) the period of new adoption absence has not yet started; and
- (b) the member has notified the head of democratic services in writing of their intention to cancel the absence.

Member to choose start date of new adoption absence

24. Provided that the period of new adoption absence will come to an end within the period prescribed by regulation 22, a member may choose the date on which their new adoption absence is to start.

Interpretation of this Part

25.—(1) In this Part—

“adopter” (“*mabwysiaddd*”) in relation to a child, means a person who has been matched with the child for adoption, or in a case where two people have been matched jointly, whichever of them has elected to be the child's adopter for the purpose of Part 3 of these Regulations;

“adoption agency” (*“asiantaeth fabwysiadu”*) means a body which may be referred to as an adoption agency by virtue of section 2 of the Adoption and Children Act 2002;

“child” (*“plentyn”*) means a person who is, or when placed with an adopter for adoption was, under the age of eighteen;

(2) For the purposes of this Part a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child, either individually or jointly with another person.

PART 5

Parental absence

Prescribed conditions

26. For the purposes of section 28(1) of the Measure, the prescribed conditions are that the member—

- (a) could not satisfy the prescribed conditions under Parts 2 to 4 of these Regulations;
- (b) has, or expects to have, responsibility for the care of a child;
- (c) provides the head of democratic services with written notice of—
 - (i) their intention to take parental absence;
 - (ii) the date on which the member intends the parental absence to start;
 - (iii) the duration of the intended parental absence; and
 - (iv) whether the absence is intended to be taken as a single period or as a series of absences;
- (d) if requested to do so by the head of democratic services, provides the head of democratic services with evidence in relation to the extent of the responsibility for the child; and
- (e) where the parental absence is to be taken as a series of absences, gives the head of democratic services advance written notice of the intended start date and duration of each period of parental absence.

Extent of entitlement to parental absence

27.—(1) A member’s entitlement to parental absence is ninety days.

(2) Parental absence may be taken as a series of periods of absence or as a single period.

When parental absence may be taken

28.—(1) Parental absence may only be taken during the period—

- (a) beginning with the date that the member assumes responsibility for the care of a child under the age of 14; and
- (b) ending one year after that.

Bringing a period of parental absence to an end

29. A member may bring any period of parental absence to an end earlier than that notified under regulation 26(c)(iii) by notifying the head of democratic services in writing of their intention to bring the period of parental absence to an end.

Cancelling a period of parental absence

30. The circumstances in which a member may cancel a period of parental absence are that—

- (a) the period of parental absence has not yet started; and
- (b) the member has notified the head of democratic services in writing of their intention to cancel the period of parental absence.

Member to choose start dates of parental absence

31. Provided the date falls within the period prescribed by regulation 28, a member may choose the date on which any period of parental absence is to start.

PART 6**General****Record keeping**

32.—(1) A local authority's head of democratic services must maintain a record of all—

- (a) notifications made by members of that local authority of periods of family absence; and
- (b) periods of family absence taken by members of that local authority.

(2) A record made under paragraph (1) must be kept by the local authority for at least 10 years from the date it is made.

Duty to inform

33.—(1) Having been notified in accordance with Parts 1 to 5 of these Regulations that a member is taking a period of family absence, the head of democratic services must inform each relevant person as soon as is reasonably practicable of that fact.

(2) In this regulation “relevant person” (“*person perthnasol*”) means—

- (a) the chair of the local authority;
- (b) the chair of the local authority’s Democratic Services Committee; and
- (c) the leader of each political group of the local authority.

Cancellation of family absence by a local authority

34.—(1) Where the head of democratic services has reasonable grounds to suspect that a member, who has provided notification that they are taking a period of family absence, is not entitled to that family absence, the head of democratic services must inform the local authority and provide all relevant information.

(2) Where a member is not entitled to a period of family absence, following the receipt of information under paragraph (1), a local authority may cancel a member’s period of family absence before it begins or bring a period of family absence to an end.

(3) Where a local authority exercises its power under paragraph (2), the head of democratic services for that authority must provide the member with a written notice setting out—

- (a) the decision to cancel or bring to an end a period of family absence; and
- (b) the date from which the member must return from the period of family absence.

(4) Where a member has failed to return from a period of family absence on the date specified in the notice provided under paragraph (3), a local authority may withhold that member’s remuneration.

Complaints

35.—(1) A member may complain in writing to the head of democratic services regarding a decision made under regulation 34(2).

(2) A complaint must be received by the head of democratic services within 28 days of the member being notified under regulation 34(3) of a local authority’s decision under paragraph (2) of that regulation.

(3) The head of democratic services must refer any complaint received within the period specified in paragraph (2) to the chair of the local authority.

The panel

36.—(1) The local authority must appoint a panel to determine a complaint made under regulation 35.

(2) The panel must consist of three members appointed by the local authority.

(3) The chair of the local authority may not be appointed to the panel.

(4) The decision of the panel is final.

Standing orders

37. A local authority must, as soon as is reasonably practicable after the coming into force of these Regulations, make standing orders securing the requirements set out in regulation 38.

38.—(1) A member on maternity absence or parental absence may, subject to paragraphs (2) to (6),—

- (a) attend particular meetings;
- (b) attend particular descriptions of meetings;
- (c) perform particular duties; or
- (d) perform duties of a particular description.

(2) The member must obtain the permission of the chair of the local authority before attending any meeting or performing any duty.

(3) The chair of the local authority must inform the leaders of each political group of the local authority before granting permission to a request under paragraph (2).

(4) A member may complain in writing to the head of democratic services regarding a refusal to a request under paragraph (2).

(5) The head of democratic services must refer a complaint under paragraph (4) to the chair of the local authority.

(6) A panel constituted in accordance with these Regulations must determine a complaint made under paragraph (4).

39. A local authority must, as soon as is reasonably practicable after the coming into force of these Regulations, make provision in standing orders as to the extent of the duties, if any, which remain applicable to members during a period of family absence.

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FAMILY ABSENCE

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

Introduction

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

This is 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.

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; newborn absence; adopter’s absence; new adoption absence; and parental absence.

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.

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, cancellation and end of any maternity absence. The Measure restricts the period of maternity absence to a maximum of 26 weeks.

Newborn 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 newborn absence. Newborn 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 newborn absence and when it should be taken.

Section 26 creates an entitlement to adopter’s absence. The Regulations prescribe the condition to be satisfied, the length of such absence and when it can be taken, subject to the provision that it cannot last more than two weeks. Section 27 deals with new adoption absence available to a member who satisfies prescribed conditions as to their relationship to an adopter.

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.

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

The Measure and Regulations must be read together with this guidance.

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.

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.

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.

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.

Under normal circumstances, the HDS should not be expected to 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.

Newborn absence is aimed to assist partners of mothers by enabling them to take a period of absence during the first 56 days after childbirth.

Adopter's absence entitles members to a period of absence of two 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.

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.

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.

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.

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.

The HDS is required to inform the chair of the local 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.

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.

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 who must then place it before a panel of three members appointed by the authority for the purpose (which cannot include the chair of the authority).

A local authority's standing orders must include provisions describing the circumstances in which a member on maternity 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. 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 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.

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.



DRAFT SUPPLEMENTARY REPORT – FAMILY ABSENCE

To:

Leaders and Chief Executives of County and County Borough Councils

Heads of Democratic/Member Services of County and County Borough Councils

Chief Executive of the Welsh Local Government Association

Dear colleague

Supplementary Report relating to remuneration in respect of Family Absence

1. This constitutes a Supplementary Report of the Independent Remuneration Panel for Wales (the Panel) in accordance with Section 147 of the Local Government Measure (Wales) 2011 (the Measure). It relates to payments made to elected members of County and County Borough Councils who have been granted Family Absence by their respective local authority.

2. In November 2013 the National Assembly for Wales approved the regulations relating to Family Absence for elected members of principal authorities in Wales. The Panel has considered the implications of these regulations on the remuneration of such members who are taking absence from their role as a member under the terms contained therein and has concluded:

3. Generally, a decision taken by a local authority under these regulations which relates to a member who is a basic salary holder is not a matter for the Panel, as the Panel takes the view that the current statutory position relating to the absence of a member (the “six month rule”) coincides with the maximum period of absence set out in the regulations. Therefore a member taking Family Absence would be entitled to retain the basic salary. However, there could be instances where the member concerned has already accumulated absences prior to the commencement of an agreed family absence. The determinations set out below take account of such situations.

4. However, the Panel considers that senior salary holders potentially would be affected by absence taken under the regulations and proposes the following determinations.

Determinations

a) A member is entitled to retain a basic salary when taking family absence under the regulations irrespective of the attendance record prior to the commencement of the family absence.

- b) when a senior salary holder is eligible for family absence, he/she will be able to continue to receive the senior salary for the duration of the absence if the authority so decides whether or not it makes a substitute appointment.
- c) The member substituting for a senior salary holder taking family absence will be eligible for a senior salary.
- d) If the paid substitution results in the authority exceeding the maximum number of senior salaries as set out in the Panel's Annual Report, an addition to the maximum will be allowed for the duration of the substitution. However, this cannot apply to the Isle of Anglesey and Merthyr Tydfil Councils if it would result in the number of senior salaries exceeding fifty percent of the Council's membership as specific Welsh ministerial approval would have to be obtained.
- e) When an authority agrees a substitution for family absence, the Panel must be informed, within 14 days of the date of the decision, of the details including the particular post and the duration of the substitution.
- f) The schedule of remuneration must be amended to reflect the implication of the family absence.

5. Responses to this draft Supplementary Report are required by Friday 7th February 2014.

Yours sincerely,



Richard Penn
Chair