
Report To:	Inverclyde Council	Date:	20 February 2020
Report By:	Head of Legal & Property Services	Report No:	GM/LP/024/20
Contact Officer:	Gerard Malone	Contact No:	01475 712710
Subject:	CoSLA: Family Leave Guidance for Councillors		

1.0 PURPOSE

- 1.1 The purpose of this report is to ask the Council to consider the guidance now issued by CoSLA relative to family leave for Councillors.

2.0 SUMMARY

- 2.1 On 28 January 2020, CoSLA published new Family Leave Guidance for Councillors in Scotland. A special interest group chaired by the CoSLA President has identified the absence of family leave as a key barrier which prevents individuals for standing or re-standing for elected office within Scottish local authorities. As a result, guidance has been issued "Family Leave Guidance for Councillors" for periods of maternity, paternity, shared parental and adoption leave.
- 2.2 The guidance includes recommendations that Councillors on leave continue to receive both their basic and Special Responsibility Allowances in full, where appropriate. It is, however acknowledged that payment of Special Responsibility Allowances is not always possible within the constraints of the current framework for Councillor remuneration and separate proposals are being put forward to the Scottish Government to allow local authorities greater flexibility and decision-making on this aspect for periods of parental leave.
- 2.3 It is critical for the Council to recognise and to continue to affirm that Councillors are not employees of the Council and the guidance on family leave does not in any way suggest or infer that Councillors are employees. There is no legal right whatsoever to family leave of any kind for any persons in elected public office.

3.0 RECOMMENDATIONS

That the Council:

- 3.1 considers CoSLA's "Family Leave Guidance for Councillors" and approves the guidance in principle for consideration and implementation by the Chief Executive in any situation so arising; and
- 3.2 remits it to the Chief Executive in consultation with the Council's Monitoring Officer and Chief Financial Officer, to apply these principles in practice for any applications that may be made and to review the implementation of the guidance from time to time, as accords, with the Leaders of all political groups.

4.0 BACKGROUND

- 4.1 On 28 January 2020, CoSLA published its “Family Leave Guidance for Councillors” and this forms **Appendix 1**.
- 4.2 Following review by a special interest group chaired by the CoSLA President, the absence of family leave was identified as a key barrier which prevents individuals from standing or re-standing for elected office within Scottish local authorities.
- 4.3 The guidance recommends principles for leave for Councillors relative to maternity, paternity, shared parental and adoption leave. It includes recommendations that Councillors on such leave continue to receive both their basic and Special Responsibility Allowances in full, where appropriate.

5.0 FAMILY LEAVE GUIDANCE FOR COUNCILLORS

Leave

- 5.1 The guidance sets out key principles for consideration by the Council to support Elected Members during periods of maternity, paternity, shared parental and adoption leave. It specifically notes that there is no legal right whatsoever to family leave of any kind for persons in elected public office in Scotland.
- 5.2 Specifically, it must be noted that Elected Members are not employees of the Council and the guidance is to be implemented on a voluntary basis by local authorities and it confers no contractual employee status. The guidance can be amended locally at any time or withdrawn completely and no additional rights over and above the voluntary principles as set out in the guidance can apply to Elected Members.
- 5.3 The purpose of the guidance is to address the key issue that the absence of family leave is a key barrier which prevents persons from entering into or re-standing for elected office.
- 5.4 The guidance sets out the general principles relative to six months leave from duties in the situations as set out within the guidance. It also sets out that Members shall be entitled to take a maximum of two weeks paternity leave in the circumstances set out in the guidance. The principles address the issues of shared parental leave in those situations as described in **Appendix 1**. The guidance also applies to adoption leave.
- 5.5 It must be noted that any Member who takes such leave must continue to fulfil their legal duty in terms of the Local Government (Scotland) Act 1973 to attend a meeting of the Council within that six month period in order to maintain their status as an Elected Member. There are provisions for extension of this period, as is currently permitted by legislation, in certain circumstances.

Allowances

- 5.6 The guidance sets out the principle that Members on such leave shall continue to receive their basic allowances in full. It is also suggested as a principle that Members entitled to a Special Responsibility Allowance will continue to receive that allowance in full in the cases of such leave.
- 5.7 The guidance sets out the principle that any Member who is appointed as cover to undertake the special duties of the Member on parental leave will receive the special responsibility allowance appropriate for that role in the period of leave.
- 5.8 However, it is also recognised that the principle of paying remuneration for such cover of duties involves a separate constraint: currently, the Local Governance (Scotland) Act 2004 (Remuneration) Regulations limits both the numbers of Councillors that can receive a Special Responsibility Allowance and the maximum budget for any local authority to do this. This could prevent any local authority from implementing the principles of the guidance during a leave of absence for: (a) a continuity of Special Responsibility Allowance to the Member on

leave; and, (b) cover for duties to another Member. In view of this limited capacity that all local authorities have to manage Special Responsibility Allowances in the event of such leave, it is being proposed that a separate amendment to legislation could allow local authorities to have greater flexibility to manage these allowances for Councillors in the event of family leave to provide better support to the Member on leave and also to remunerate their interim cover.

5.9 Accordingly, if these proposals progress, any altered arrangements arising from the planned parliamentary attention in the coming year and their effects, if any, can be applied for future remuneration years.

6.0 CONCLUSION

6.1 If the Council approves the principles set out in the “Family Leave Guidance for Councillors” it is suggested that the implementation of the general principles be remitted to the Chief Executive in consultation with relevant Officers.

6.2 Within this framework of general principles, there will be a need for review and discussion with political groups and, accordingly, it is suggested that the Chief Executive will review the implementation of the guidance with all political group leaders from time to time, dependent on the numbers of any applications made and also on the overall implementation of the process in the future.

6.3 It is entirely within the Council's discretion to implement the principles of the guidance or to modify any aspect of the guidance as it sees fit.

7.0 IMPLICATIONS

7.1 Finance

The budgets for Councillor remuneration are set yearly and current arrangements provide for limits on the numbers of those Councillors receiving Special Responsibility Allowances and limits on the overall total budget. It is noted that the cover arrangements as set out within the guidance may be receiving separate parliamentary consideration in order to permit greater flexibility in defined circumstances.

Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
To be determined pending any application for leave					

7.2 Legal

The current arrangements are set by regulation through the Local Governance (Scotland) Act 2004 (Remuneration) Regulations and all amendments. It is being proposed that for those Councillors who are granted a period of leave of absence by the local authority the

Regulations may be disapplied in the future so that the limits on the number of Councillors who can receive certain types of remuneration may be changed and thus provide a more flexible provision in certain, specifically defined circumstances. In this way, the proposed change of legislation would allow the Council to continue to remunerate the Councillor who is being granted leave but also pay that time of remuneration to another Councillor for undertaking the duties to which it relates. The legislation will require to be amended before any other arrangements can be implemented by this Council.

7.3 Human Resources

There are no direct HR implications.

7.4 Equalities

Equalities

(a) Has an Equality Impact Assessment been carried out?

	YES
X	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required

It should be noted that the implementation of the guidance seeks to remove a barrier to those persons who may seek to stand for elected office or to re-stand for election.

(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
X	NO

(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
	NO

7.5 Repopulation

There are no direct repopulation implications.

8.0 CONSULTATIONS

8.1 This report has been considered by the Corporate Management Team and is recommended for approval.

9.0 BACKGROUND PAPERS

9.1 None.



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.