
NORTH AYRSHIRE COUNCIL

9 June 2021

North Ayrshire Council

Title: Family Leave for Councillors

Purpose: To agree a scheme for family leave for councillors, and ancillary changes required to bring this into effect

Recommendation: It is recommended that Council agree (a) to introduce Family Leave for Councillors on the terms set out in Appendix 2; (b) agree that in terms of Standing Orders and section 35 of the Local Government (Scotland) Act 1973, failure to attend meetings while on Family Leave is due to a reason approved by the Council; and (c) to amend section 2, paragraph 3(u) of the Scheme of Administration and paragraph 7.2 of the Standing Orders for Meetings to allow Political Groups to appoint a replacement Senior Councillor during the absence of a Senior Councillor on Family Leave, as set out in 2.7 and 2.8.

1. Executive Summary

1.1 This report proposes that Council adopts family leave for councillors, as recommended by COSLA. Family leave includes maternity, paternity, shared parental and adoption leave.

2. Background

2.1 Family Leave Guidance was endorsed by the Convention of Scottish Local Authorities (COSLA) in September 2019 for circulation to Scottish Councils for adoption on a voluntary basis. Subsequent guidance was updated in April 2020 to reflect amendments to the Local Government (Scotland) Act 1973. This guidance is attached at Appendix 1

2.2 Unlike employees, those in elected public office have no right to family or maternity leave. COSLA's proposals build on the work of an earlier working group which examined the barriers to achieving greater diversity of those elected as councillors. Lack of a provision for family leave is an obvious example of such a barrier.

2.3 COSLA's proposals include: -

- A right to 6 months maternity leave from 28 days before the birth (or if the baby is premature, 6 months from the date of birth)

- Two weeks paternity leave if the Member is the biological father or nominated carer
- Six months adoption leave
- During such leave the Member would continue to be paid and any Senior Councillor would also continue to be paid.

2.4 The proposed changes to the Council's Guidance on Members' Salaries, Allowances and Expenses are set out in Appendix 2.

2.5 Section 35 of the Local Government (Scotland) Act 1973, as incorporated into the Council's Standing Orders states that an Elected Member who fails to attend any meetings of the Council, its committees, Joint Committees, Joint Boards or other body as a representative of the Council, throughout a six-month period ceases to be a Member of North Ayrshire Council, unless their non-attendance is due to a reason approved by the Council. It is possible that the absence of a Member on family leave could trigger this provision. To deal with this, it is proposed Council agree that the absence of a Member on family leave is a reason approved by Council in terms of section 35.

2.6 In relation to Members who are Senior Councillors, our Senior Councillor roles would almost certainly require to be covered during a 6-month absence. Helpfully, the Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2020 now provides that where councillors are allowed to be absent on family leave, such councillors shall not be included in the calculation of the financial limits for councillors. In other words, during such absence, Council can appoint another Member as a Senior Councillor to cover their absence.

2.7 It is proposed to allow the absent Member's Political Group to nominate an interim replacement Senior Councillor. To give effect to this, it is recommended that section 2, paragraph 3(u) (matters reserved to Council) of the Scheme of Administration is amended as follows (changes in bold)

"(u) The appointment, nomination and removal of Members and the nomination and removal of Chairs and Vice-Chairs of any Committee unless expressly provided in this Scheme. All subject to where any appointed or nominated Member is a Member of a Group within the Council, then when such member **is on Family Leave or** resigns from a Committee or the Integration Joint Board, any replacement may be nominated by the Group notifying the Chief Executive. At least ten Clear Working Days' notice is required before the change is implemented;"

2.8 A similar provision appears in paragraph 7.2 of the Standing Orders for Meetings and would also be amended as follows: -

" 7.2 Where any appointed or nominated Member is a Member of a political group within the Council, then when such member **is on Family Leave or** resigns from a Committee or the Integration Joint Board, any replacement may be nominated by the political group notifying the Chief Executive. At least 10 Clear Working Days' notice is required before the change is implemented."

3. Proposals

- 3.1 It is recommended that Council agree (a) to introduce Family Leave for Councillors on the terms set out in Appendix 2; (b) agree that in terms of Standing Orders and section 35 of the Local Government (Scotland) Act 1973, failure to attend meetings while on Family Leave is due to a reason approved by the Council; and (c) to amend section 2, paragraph 3(u) of the Scheme of Administration and paragraph 7.2 of the Standing Orders for Meetings to allow Political Groups to appoint a replacement Senior Councillor during the absence of a Senior Councillor on Family Leave, as set out in 2.7 and 2.8.

4. Implications/Socio-economic Duty

Financial

- 4.1 The only financial implication is where a replacement Senior Councillor was appointed during the absence on family leave of another Senior Councillor.

Human Resources

- 4.2 While those elected to public office are not employees, introduction of a scheme for family leave helps remove one of the perceived barriers to becoming an elected member.

Legal

- 4.3 There are no legal implications. This does not change the legal status of elected members.

Equality/Socio-economic

- 4.4 Allowing family leave has positive benefits in terms of supporting those with the protected characteristic of maternity to become a councillor and to balance that role with family life. It also supports the European Convention on Human Rights right to family life.

Environmental and Sustainability

- 4.5 None.

Key Priorities

- 4.6 Effective support for councillors supports effective governance and decision making which in turn supports all the key priorities

Community Wealth Building

- 4.7 There are no implications.

5. Consultation

- 5.1 The proposals are in line with the COSLA recommended guidance, which was subject to extensive consultation, and followed from a previous COSLA multi-member working group.

Craig Hatton
Chief Executive

For further information please contact Andrew Fraser, Head of Democratic Services, on 01294 324125.

Background Papers



Family Leave Guidance for Councils

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

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

Introduction

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

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

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

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

1. Leave Periods

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

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

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

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

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

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

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

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

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

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

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

2. Basic Allowance

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

3. Special Responsibility Allowances

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

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

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

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

4. Resigning from Office and Elections

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

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

Appendix 2

1- FAMILY LEAVE

This Guidance sets out key principles to support Elected Members during periods of family leave which includes 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.**

1.1 Leave Periods

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

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).

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

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.

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.

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.

Any Member intending to take maternity, paternity, shared parental or adoption leave will be responsible to ensure that a minimum of 28 days' notice is provided to Member Services both in terms of the point at which the leave starts and the point at which they return. A MatB1 form or an adoption matching certificate should be provided when applying for maternity and adoption leave respectively.

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.

In the event of an Elected Member taking family-related leave, they will liaise with Member Services 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
- what additional support may be required to facilitate their return from family related leave to ensure they feel supported and ready to return to the Council.

1.2 Basic Allowance

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

1.3 Senior Councillors

Members entitled to a Senior Councillor remuneration (SCR) shall continue to receive their remuneration in full in the case of maternity, paternity, shared parental or adoption leave.

The payment of SCR, whether to the primary SCR 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.

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 SCR shall apply.

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.

1.4 Resigning from Office and Elections

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 remuneration will cease from the effective resignation date.

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 remuneration will cease from the Monday after the election date when they would technically leave office.