

ABERDEEN CITY COUNCIL

COMMITTEE	Council
DATE	9 December 2019
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Family Leave for Elected Members
REPORT NUMBER	GOV/19/429
DIRECTOR	N/A
CHIEF OFFICER	Fraser Bell (Chief Officer – Governance)
REPORT AUTHOR	Mark Masson
TERMS OF REFERENCE	Introduction 6

1. PURPOSE OF REPORT

- 1.1 This report provides details of guidance which was endorsed by COSLA (Convention of Scottish Local Authorities) Leaders and issued to Scottish Councils to consider adopting which would support Elected Members during periods of maternity, paternity, shared parental and adoption leave.

2. RECOMMENDATION(S)

That Council:-

- 2.1 agrees to adopt COSLA's "Family Leave Guidance for Councils", as appended to this report.

3. BACKGROUND

- 3.1 At the COSLA Leaders' meeting on 27th September 2019, the "Family Leave Guidance for Councils" was endorsed by Leaders for circulation to Scottish Councils for adoption on a voluntary basis.
- 3.2 This Guidance had been created as part of the work being undertaken by COSLA's 'Barriers to Elected Office Special Interest Group on Family Leave'. The aim of this work had been to remove a barrier to standing or re-standing for elected office for those who may wish to start a family and, as a result, to increase the diversity of elected members - a key COSLA priority.
- 3.3 This Guidance had also been repeatedly sought by member Councils and elected members and provides an initial framework to support Councils in managing family leave for Councillors within the constraints of current legislation.
- 3.4 The Councillors' Code of Conduct highlights that there is a general exclusion to the requirement for members to declare an interest "in relation to matters affecting councillors' remuneration, allowances; expenses, support services and pension...". This is found in section 5.18(1)(iii) of the Code.

3.5 Main Issues of the Guidance

- 3.5.1 At present there is no legal right to family leave of any kind for people in elected public office.
- 3.5.2 The objective of the 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.
- 3.5.3 Members giving birth would be entitled to up to 6 months maternity leave from 28 days before their due date.
- 3.5.4 Members would 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).
- 3.5.5 A Member who made Shared Parental Leave arrangements through their employment would be requested to advise the Council of these at the earliest possible opportunity. Every effort would be made to replicate such arrangements in terms of leave from the Council.
- 3.5.6 All Members would continue to receive their Basic Allowance in full whilst on maternity, paternity or adoption leave.
- 3.5.7 If an election was held during the Member's maternity, paternity, shared parental or adoption leave and they were not re-elected, or they decided not to stand for re-election, their basic allowance and SRA if appropriate would cease from the Monday after the election date when they would technically leave office.
- 3.5.8 In the third paragraph of the introduction section of the Guidance on page one, it states "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". COSLA advise that this sentence is simply intended to contrast the position of employees or workers with that of elected members. As members will be aware, section 31A of the Local Government (Scotland) Act 1973 provides that a person elected a member of a local authority who is the holder of any paid office or employment is disqualified from remaining a member of the authority unless they resign from that office or employment no later than the day after their election.

3.6 Council Staff Maternity/Paternity Entitlement (for reference purpose only)

- 3.6.1 Employees are entitled to up to 52 weeks maternity leave (out of which a compulsory 2-week period must be taken after the birth). The earliest the maternity leave can start is the beginning of the 11th week before the expected week of childbirth.

- 3.6.2 Paternity leave is available to a baby's father or the partner/nominated carer of the expectant mother at or around the time of birth/placement of child or surrogacy birth. Leave can be taken as one week or two consecutive weeks but cannot be taken in odd days and must be taken within 56 days of the birth (or if the child is born earlier than the expected date, between the birth and 56 days from the expected week of birth).
- 3.6.3 There are different Paternity entitlements for Teachers. Details can be found on the Council's Intranet Zone.

3.7 Implementation of the Guidance

- 3.7.1 Elected Members on family leave are to continue to receive their allowance as normal, therefore there are no implications for the HR Service Centre in terms of processing/payment transactions (with this new provision not being legislative and there being no statutory payments involved).
- 3.7.2 Elected Members should contact the Service Centre to let them know if there were to be any acting up cases to Senior Councillor roles to provide cover for a member on family leave, with this notification done in the normal way. It is worth noting that any decision to appoint to a Senior Councillor role (e.g. interim Convener) would be taken at Full Council and colleagues would be alerted to acting up cases via the Council Decision Sheet.
- 3.7.3 There would be no requirement to update any HR or Payroll systems.

4. FINANCIAL IMPLICATIONS

- 4.1 There will only be a financial impact on the Council where the Member who covers for another's maternity, paternity or adoption leave effectively acts up as a result.
- 4.2 The remuneration of councillors is regulated by the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007 as amended. The Regulations provide for the grading of councillors for the purpose of remuneration arrangements, as either the Leader of the Council, the Lord Provost, Senior Councillor or Councillor. A Senior Councillor is a councillor who holds a significant position of responsibility in the council's political management structure.
- 4.3 The salary that is paid to the Leader of the Council is set out in the Regulations. For 2019/20, the salary of the Leader of Aberdeen City Council is £40,765. The Regulations permit the Council to remunerate one Lord Provost and sets out the maximum salary that may be paid. Council policy is to pay at the national maximum, £30,575.
- 4.4 The Regulations also set out the remuneration that may be paid to Senior Councillors. The maximum yearly amount that may be paid to a Senior Councillor is 75 per cent of the total yearly amount payable to the Leader of the

Council. Council practice is to pay each of the five Committee Conveners 75 per cent of the total yearly amount payable to the Leader of the Council, £30,575, with the remaining Senior Councillors receiving 75 per cent of that sum, £22,930. As a result, the five Committee Conveners receive a Special Responsibility Allowance (SRA) of £7,645, being the difference between the two salaries.

4.5 All other councillors receive a yearly salary of £17,470.

4.6 The following table shows the cost to the Council in various scenarios. All assume that the maximum leave is taken and that there are no elections held during this time. All salaries have been based on the 2019/20 amounts quoted above:

Councillor acting up as	Senior Councillor	Senior Councillor with SRA
	£	£
Maternity/Adoption Leave (6 months)	2,730	6,553
Paternity Leave (2 weeks)	210	504

Senior Councillor acting up as	Senior Councillor with SRA
	£
Maternity/Adoption Leave (6 months)	3,823
Paternity Leave (2 weeks)	294

4.7 The Regulations do not make provision for Members taking leave. There are restrictions on the remuneration of the Lord Provost and Council Leader. The Council cannot pay more than one Member the allowance for either the Lord Provost or Council Leader. It is also not possible to split such an allowance between two or more Members. As such, if the recipient of either of these allowances takes family leave, they will continue to receive the allowance and the Member providing cover will not receive the allowance.

4.8 It should be borne in mind that the total yearly amount payable by the Council for remuneration of all of its Senior Councillors cannot exceed £456,416 and that no member can be paid more than one allowance. For this Council, the maximum number of Senior Councillors is 19. This needs to be adhered to when determining cover arrangements. At present there are 16 Senior Councillors being paid a total of £405,105.

4.9 Any additional financial impact to the Council, as a result of any cover arrangements, will need to be managed in line with existing budgets.

5. LEGAL IMPLICATIONS

- 5.1 The Local Government (Scotland) Act 1973 provides the legal foundation for the operation of the Council and the role of Elected Members. This Act does not entitle Elected Members to leave and does not make any provisions for Elected Members to take leave. This Guidance is recommended to be voluntarily adopted by Aberdeen City Council. It does not replace the statutory foundation of the Elected Member's role and does not confer any contractual, worker or employment status
- 5.2 As such, any Elected Member on leave will remain in the same legal position as any other Elected Member. In particular, Elected Members on leave should be aware that they retain the legal duty under the Act to attend a meeting of the Council within a six-month period unless the Council agrees to an extended leave of absence prior to the expiration of that six-month period.
- 5.3 Elected Members who take family leave will also remain subject to the Councillors' Code of Conduct for the duration of their leave.

6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Financial	The main financial risk to the Council as a result of implementing this Guidance would be managing an increased cost pressure on budgets.	M	Ongoing monitoring of budgets to ensure all costs are known and can be met from existing budgets.
Legal	There is a risk that the total paid to all Senior Councillors exceeds the maximum set out in the Regulations.	L	Prior to action being taken there would require to be an assessment of the legal implications
Employee	No Risk	N/A	
Customer	No significant or unusual risks	N/A	
Environment	No Risk	N/A	

Technology	No Risk	N/A	
Reputational	No significant or unusual risks	N/A	

7. OUTCOMES

The proposals in this report have no impact on the Local Outcome Improvement Plan or the Design Principles of the Target Operating Model.

8. IMPACT ASSESSMENTS

Assessment	Outcome
Equality & Human Rights Impact Assessment	EHRIA required
Data Protection Impact Assessment	Not required
Duty of Due Regard / Fairer Scotland Duty	Not applicable

9. BACKGROUND PAPERS

9.1 COSLA's "Family Leave Guidance for Councils"

10. APPENDICES

10.1 COSLA's "Family Leave Guidance for Councils"

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