



## **PARTNERSHIP & RESOURCES POLICY DEVELOPMENT & SCRUTINY PANEL**

### **FAMILY LEAVE PROVISIONS – ELECTED MEMBERS**

#### **REPORT BY GOVERNANCE MANAGER AND HEAD OF CORPORATE SERVICES**

##### **A. PURPOSE OF REPORT**

To consider the implementation of COSLA Guidance on Family Leave for Elected Members and related resources that may be made available to members

##### **B. RECOMMENDATIONS**

1. To note the COSLA Guidance on Family Leave for Elected Members circulated to Scottish Councils (Appendix 1)
2. To note that there are legislative obstacles to its implementation as it stands and that COSLA Leaders agreed on 27th September 2019 to lobby for legislative change
3. To consider the council's approach to possible implementation of that Guidance and the additional resources that may be made available to elected members to help meet the same objectives as the COSLA Guidance with a view to informing a further report to the Panel with a proposed Scheme or Protocol (Appendix 2)

##### **C SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	Being honest, open and accountable, providing equality of opportunities, making best use of our resources
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	No legal right to family leave currently exists for people in elected office.  Local Government (Scotland) Act 1973; Local Governance (Scotland) Act 2004; Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007 ("the remuneration rules")
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	None
<b>IV</b>	<b>Impact on performance and performance Indicators</b>	None

<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	None
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	None
<b>VII</b>	<b>PDSP consideration</b>	Ongoing
<b>VIII</b>	<b>Other Consultations</b>	COSLA policy development team

## **D TERMS OF REPORT**

### **1 Background**

- 1.1 There is currently no legal right to family leave of any kind for people in elected public office. On 27 September 2019, Leaders discussed guidance on that issue with a view to increasing the diversity of experience, age and background of councillors by removing barriers to participating in local government and public office. It aims to set out key principles to support elected members during periods of maternity, paternity, shared parental and adoption leave. The Family Leave Guidance appended to this report (Appendix 1) was endorsed for circulation to Scottish councils for adoption on a voluntary basis. This paper summaries the Guidance and its implications for the council and members and considers additional resources and assistance that might be made available to members with a view to meeting the same aims as the COSLA Guidance.
- 1.2 The COSLA Guidance has been drafted with reference to the statutory leave provisions for employees but deliberately does not completely mirror those provisions. The limiting of the leave to 6 months was proposed with the requirement in mind that elected members have a legal duty to attend at least one qualifying meeting in a period of six months.
- 1.3 Members should note that references in the Guidance to the now defunct “Special Responsibility Allowances (SRA)” should be taken as references to Senior Councillor Payments. The Guidance also inaccurately refers to payments continuing to be made until a date after members cease to be a councillor. Any right to any remuneration whatsoever as a councillor, whilst on leave or not, only exists when someone is a councillor. Payments due to councillors cannot be made to anyone after they cease to be councillors.
- 1.4 The leave and associated pay provisions covered in the Guidance are summarised in the tables below.

1.5	Maternity Leave	Up to 6 months leave from 28 days before due date
	Premature Birth	An extension to maternity leave equivalent to the period between the date of birth and the due date
	Paternity Leave	Up to 2 weeks leave for the father or nominated carer of the mother
	Shared Parental	Up to 6 months shared parental leave where maternity leave is appropriately curtailed. Leave is limited to 6 months in total

Leave	even where both parents are elected members
Adoption Leave	Up to 6 months leave from the date of placement

1.6	Basic Member Allowance	Payment in full while member is on family leave
	Senior Councillor Payments	Payment in full where possible within constraints of relevant legislation

1.7 There are operational and practical consideration attached to some of these types of leave:-

- Premature Birth - COSLA guidance states that '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. The guidance does not define premature birth but premature birth is defined by the NHS as a birth that occurs before the 37th week of pregnancy. With that in mind the, it would be regarded as appropriate in the circumstances for the council to adopt the NHS definition of "premature"
- Shared Parental Leave (SPL) - COSLA guidance also states that where a member has made shared parental leave arrangements through their employment, 'every effort will be made to replicate such arrangements'. Entitlement to shared parental leave for employees could extend to a maximum of 50 weeks; however it appears that the intention of the guidance for members is to limit such leave to 26 weeks (in line with the provisions for maternity leave). In seeking further clarification on applying this element of the guidance, COSLA has acknowledged the complexity of SPL for both employees to understand and for employers to administrate. As such a decision has been taken by COSLA not to provide any further detail at this stage and instead to include it as part of a review of the ongoing development of the guidance. COSLA also point to the fact that the UK Government is currently holding a consultation on family related leave and therefore consider it would be helpful to await the outcome of that process to see what changes may be made to SPL before reviewing their own guidance further
- Notification Requirements - While the guidance recommends that a minimum of 28 days' notice is provided to take leave, it allows for the council to determine the necessary notification requirements for leave arrangements. It would be proposed however, that the council adopt the recommended minimum 28 days' notice. Relevant application forms will also need to be developed for the purpose of requesting leave. Application forms will need to be accompanied by relevant evidence including a MATB1 form for maternity leave, an adoption certificate for adoption leave and confirmation of the curtailment of maternity leave for shared parental leave

## 2 Duties whilst on leave

2.1 In brief summary, councillor duties include dealing with constituents' enquiries; representing their collective and individual interests; attending council, committee and other internal meetings; attending at outside bodies and representing the council where appointed; and participating in the policy-making and scrutiny functions of council and its committees as ordinary member, Chair, Executive Councillor, Leader or Provost. The

Guidance does not state which duties might be excused during any leave period. The position in relation to taking leave from this range of duties is as follows.

- 2.2 Only an elected member can, with the full range of powers and duties of a councillor, deal with constituents' enquiries and represent their collective and individual interests. With multi-member wards, there should always be at least one other ward member available during a period of absence. Constituents may choose to approach another member instead. A member could arrange for another councillor to attend surgeries and represent and pursue constituents' interests during a period of leave. That would require legal steps to permit the sharing of constituents' personal data with another member or members.
- 2.3 In relation to committee and PDSP meetings, Standing Orders permit the attendance of substitutes for almost all meetings. For those, a member on leave can ask for another councillor to attend. The bodies where substitutes are not allowed are Development Management Committee, Local Review Body, Asset Transfer Committee, Asset Transfer Review Committee, Employee Appeals Committee and Local Area Committees. It is possible for replacement members to be appointed at meetings of full council and that could be attended to when notice is given of the start of a leave period.
- 2.4 Substitutes are not possible at meetings of full council and only members present (physically or, subject to conditions, remotely) may vote. Councils are generally finely balanced in political terms and the absence of a member on leave may have a significant impact on decisions taken in their absence. However, even if a councillor has taken a period of leave there is nothing to prevent them nevertheless carrying out some of their duties such as attending and voting at full council meetings.
- 2.5 The guidance does refer to cover being provided for portfolio holders and those receiving senior councillor payments. It does not say anything about the positions of Council Leader and Provost (which carry their own additional remuneration). It does not deal with positions which carry additional responsibility but no senior councillor payment (e.g., this council's Deputy Provost or Chair of Performance Committee).
- 2.6 Attendance at outside bodies could be addressed through the attendance of a substitute (subject to the rules of the outside body concerned). Alternatively, formal replacements could be appointed and that carries the risk that on return the appointment may not be restored.
- 2.7 The constraints which relate to the provision of cover during a leave period for the duties described above are:-
  - Finding another willing member to provide assistance, especially so for independent members
  - Complying with legal rules on data sharing between councillors
  - Standing Orders which disallow substitutes at certain committees
  - Requiring council agreement to the appointment of temporary replacements and the return to the pre-leave appointments on termination of the leave period
  - Guaranteeing the return to the pre-leave appointments on termination of the leave period

- Not voting at meetings of full council
- Legal rules requiring attendance at a qualifying council meeting within any rolling period of six months

### **3 Remuneration whilst on leave**

- 3.1 The basic councillor remuneration is guaranteed by legislation and will still be paid during any period of absence or leave and regardless of the range of duties being carried out, or not. Payment during leave becomes more problematic in relation to senior councillor payments and payments for the Provost and Council Leader. Councillors can only be remunerated in accordance with the statutory remuneration rules.
- 3.2 Legislation permits this council to allocate up to 14 senior councillor payments (not counting the Leader or Provost). Senior Councillors should hold a significant position of responsibility in the council's political management structure, for example, a chair of a major committee, a portfolio holder, the leader of a significant opposition group. They do not all have to be paid the same amount. The maximum payment for this council is £26,208. The total of all senior councillor payments must not be more than £305,746. Currently the council has allocated 12 such payments. All receive the same payment at a level that means the available fund is, in practical terms, exhausted. Continuing a senior councillor payment during a period of leave is possible and would be the default position. Making a senior councillor payment to another member standing in would only be possible:-
- If there were senior councillor places available and money left to allocate, which would depend on council in effect establishing a reserve to be utilised if and when circumstances arise
  - If council made temporary changes at a council meeting to allow that to be done by, for example, reducing senior councillor payments
  - If the member taking leave were not paid during the period of leave, which runs counter to the aims of the Guidance
- 3.3 The Guidance suggests an *ad hoc* approach but that provides no guarantees, especially if there were more than one senior councillor taking leave at the same time. Arrangements that are clear, consistent and certain are preferable but very hard to achieve.
- 3.4 Legislation gives a defined payment to a Provost and a defined payment to a Council Leader. For those payments to be made the recipient must hold the relevant position. The only way that someone standing in for either post during a period of leave could be paid would be as a senior councillor.
- 3.5 The constraints which relate to the provision of cover during a leave period for the duties described above are:-
- Legal rules in relation to the number and overall value of senior councillor payments
  - Legal rules relating to remuneration of Council Leader

- Legal rules relating to the remuneration of Provost
- The requirement for decisions of full council to change existing arrangements for these payments
- The requirement for decisions of full council to reinstate the pre-leave position on termination of a period of leave
- Guaranteeing the return to the pre-leave appointments on termination of the leave period

#### **4 Other assistance**

4.1 Officers have considered if other policies and resources currently available to officers could be made available to members, in keeping with the stated aims of the Guidance. These have been identified for consideration.

#### **4.2 Special Leave**

At the discretion of the Depute Chief Executive or nominated officer, council employees may be granted paid special leave in circumstances relating to:

- Planned health care of a young child – in the first 5 years of a child's life, up to five working days paid leave in order to accompany the child to post-natal care clinic(s) or to visit a medical practitioner for the purposes of preventative medicine (e.g., inoculations)
- Care of an ill dependant - up to five working days paid leave and up to ten working days unpaid leave in any 12 month period where the dependant is reliant upon the day-to-day care of an employee.
- Care of a seriously ill dependant – up to 12 months unpaid leave.
- Bereavement – up to five working days paid leave taking account of the circumstances which justify leave to attend the funeral, the requirement for an employee to make funeral arrangements and the requirement for an employee to travel over long distances.

#### **4.3 Surrogacy Leave**

Provisions for surrogacy leave are only in place for Teaching staff by application of the National Terms and Conditions for Teachers. Surrogacy leave for Teachers mirrors Maternity and Adoption leave provisions.

#### **4.4 Employee Assistance Programme**

Council employees have access by self-referral or management referral to an Employee Assistance Programme which offers services in relation to an extensive list of issues including:

- stress, anxiety and depression
- alcoholism
- addiction and dependency
- bullying and harassment

- traumatic incident support
- bereavement

Employee assistance is provided initially by means of a telephone consultation which can be followed up by a face-to-face consultation or series of appointments based on clinical need. Time off for appointments is provided to employees as appropriate. There would be no requirement for contractual amendment in order to add Elected Members as a staffing group with access to the Employee Assistance Programme.

#### 4.5 Physiotherapy Services

Access to Physiotherapy services is available to council employees by management referral only. An initial telephone consultation will determine whether there is a need for a face-to-face consultation or perhaps alternatively an online exercise programme. Time off for appointments is provided to employees as appropriate.

Should this provision be extended to Elected Members, an officer responsible for management referral would need to be identified. As with the Employee Assistance Programme, there would be no need for contractual amendment in order to add Elected Members as a staffing group for management referral to physiotherapy services.

#### 4.6 Lone worker and personal safety

Members already have access to health and safety advice in relation to personal safety and lone working and to electronic lone worker safety devices.

### 5 **Next steps**

- 5.1 The Panel is invited to discuss and comment on the issues that should be covered in a scheme or protocol with a view to meeting the aims of the Guidance. Taking views into account wherever possible, officers will prepare a draft scheme or protocol, consult with appropriate members and return to the panel with a draft for comment and later presentation for decision. the issues for inclusion are summarised in Appendix 2.

### E. **CONCLUSION**

The suggestion by COSLA has much to commend it and may help encourage participation as councillors by individuals who may otherwise have been unable or reluctant to do so. The guidance does however have gaps that require to be filled, it raises problems which it does not entirely address and it does not extend beyond family leave provisions. The introduction of a council scheme or protocol covering the issues in this report should help further the stated aims of the COSLA Guidance.

### F. **BACKGROUND REFERENCES**

Family Leave Guidance for Councils – COSLA

- Appendices / Attachments:
1. Family Leave Guidance for Councils – COSLA
  2. Summary of issues for consideration

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