

DATA LABEL: PUBLIC



## **COUNCIL EXECUTIVE**

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

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

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

To present draft Guidance on Family Leave for Elected Members and related resources that may be made available to members

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

It is recommended that Council Executive:-

1. Note the updated Guidance on Family Leave for Elected Members circulated to Scottish Councils (Appendix 1)
2. Approve the proposed draft Family Leave Scheme for Elected Members to provide a mechanism for Elected Members to access family leave provisions, including the additional provision for surrogacy leave which goes beyond the COSLA guidance.
3. To note the additional provisions not specifically referenced in the scheme, the reasons for that and how Elected Members may access such provisions.
4. To note that if the Scheme is adopted a report will be required to full council to recommend changes to Standing Orders for the Regulation of Meetings and the Scheme of Administration, and that changes to the Scheme of Delegations and the Scheme of Elected Member Remuneration, Allowances and Reimbursement of Expenses can be sought at the same time.

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

<b>I Council Values</b>	Being honest, open and accountable, providing equality of opportunities, making best use of our resources
<b>II 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>	The Scheme of Delegations will be amended to include responsibility for administering the Family Leave Scheme
<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>	Costs arising will be absorbed into existing budgets
<b>VII</b>	<b>PDSP consideration</b>	Partnership and Resources Policy Development and Scrutiny Panel 18 September 2020
<b>VIII</b>	<b>Other Consultations</b>	COSLA policy development team

## **D TERMS OF REPORT**

### **D.1 Background**

On 27 September 2019, Council Leaders endorsed Family Leave Guidance 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 subsequently updated in April 2020 was circulated to Scottish councils for adoption on a voluntary basis. The updated Guidance is in Appendix 1.

Following discussion at PDSP on 7 February 2020 to consider the adoption and implementation of such Family Leave provisions, a draft Family Leave Scheme for Elected Members (Appendix 2) has been developed to provide Elected Members with a mechanism to access the leave provisions outlined in the COSLA guidance.

### **D.2 Family Leave Scheme for Elected Members**

While there is no legal right to family leave of any kind for people in elected public office, the objective of the scheme is to ensure that as far as 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 Senior Councillor payments during any period of leave taken.

The provisions of this guidance confer no contractual or worker/employment status and can be amended or withdrawn at any time. Councillors continue to retain their status as office holders.

As proposed in the COSLA guidance leave has been limited to 6 months 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.

The leave provisions covered by the proposed scheme are summarised in the table below:

Type of Leave	Provision
Maternity Leave	Up to 6 months (26 weeks) leave from 28 days before the expected due date.  In the event of premature birth (before the 37 <sup>th</sup> week of pregnancy), maternity leave may be extended by a period equivalent to the period between the date of birth and the expected due date.
Paternity Leave	Up to 2 weeks leave for the father or nominated carer of the mother.
Shared Parental Leave	Up to 6 months (26 weeks) shared parental leave where maternity leave is appropriately curtailed. Leave is limited to 6 months (26 weeks) in total even where both parents are elected members.
Adoption Leave	Up to 6 months (26 weeks) leave from the date of placement.
Surrogacy Leave	Up to 6 months (26 weeks) leave from the date of placement or from a fixed date up to 14 days before the expected date of placement.

Surrogacy Leave is not included in the COSLA guidance but it was felt appropriate to include surrogacy leave as a provision for Elected Members to allow those becoming parents by means of a surrogate access to the same provisions as other new parents. The provisions of surrogacy leave will largely mirror those of maternity leave. Where an Elected Member acts as a surrogate, the Elected Member will be entitled to maternity leave provisions.

### D.3 Pay Provisions

The basic councillor remuneration is guaranteed by legislation and all members will continue to receive their basic allowance in full while on maternity, paternity, shared parental, adoption or surrogacy leave.

The challenges to continuity of senior councillor payments as presented in the report to PDSP on 7<sup>th</sup> February have been addressed with effect from 1 April 2020 by changes to the remuneration rules, referred to in the updated COSLA guidance. Elected Members entitled to a Senior Councillor Payment, and Provosts and Council Leaders, will continue to receive their additional pay during a period of maternity, paternity, shared parental, adoption or surrogacy leave for a period of up to six months, or until the date when the member taking the leave stands for re-election, whichever date is sooner. If re-elected, the position will be reviewed and may, where appropriate, be extended to allow the member to remain on leave for the remainder of the 6 month period with the appropriate remuneration.

An Elected Member appointed to replace the Senior Councillor on maternity, paternity shared parental, adoption or surrogacy leave will also receive the relevant senior councillor payment until the return of the Member on leave or until that Member stands for re-election, whichever date is sooner.

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 senior councillor payment shall apply.

#### **D.4 Member Responsibilities During Leave**

Any member taking a period of maternity, paternity, shared parental, adoption or surrogacy leave retains their legal duty under the Local Government (Scotland) Act 1973 to attend a qualifying meeting within a six-month period unless the reason for the failure to attend is accepted by the council. Attendance at outside bodies to which members have been appointed by the council count as qualifying meetings. It is therefore not felt to be an onerous task for members on leave to avoid such a period of absence from meetings.

Arrangements should be made prior to a period of leave for other duties to ensure there is minimal impact on the relevant ward. This may include arranging for another councillor to attend surgeries to represent and pursue constituents' interests, or arranging substitutes for committee meetings as permitted by council standing orders. In making such arrangements consideration must be taken of data sharing legislation in relation to constituents' personal information.

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, 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.

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 from carrying out some of their duties such as attending and voting at full council meetings.

Attending council meetings or undertaking other duties whilst on leave will not affect the period of leave which has been agreed or bring it to an end prematurely. Similarly, any time spent on duties during the period of leave will not extend the period of leave beyond the maximum period.

#### **D.5 Additional provisions for the benefit of members**

With the exception of surrogacy leave, the additional provisions currently extended to employees of the council, and as considered in the February report to PDSP, have not been included in the Elected Members Family Leave Scheme. They fall out with the COSLA Guidance. Those provisions however are further addressed below.

##### Special Leave

It is considered that leave extended to employees of the council for the purposes of the planned health care of a young child, care of an ill dependant and bereavement are all short term (limited to five working days) and could be accommodated by Elected Members through the management of their workload and diary commitments without the need for specific leave provisions.

Leave to care for a seriously ill dependant could be extended to an employee of the council for up to 12 months however this is unpaid leave and it is considered that it would not be possible to adopt such provisions for Elected Members.

### Employee Assistance Programme

The Employee Assistance Programme (EAP) is a telephone based counselling service which is available to staff 24 hours a day, 7 days a week. As there would be no requirement for contractual amendment to allow Elected Members access to the EAP, it is proposed that this provision be extended to Elected Members.

To ensure access via self-referral Elected Members would need to be added as a staffing group for the purposes of recharging.

Elected Members would need to be informed of this provision and arrangements for accessing the services of the EAP but it would not be necessary to include this provision in the Family Leave Scheme.

### Physiotherapy Services

It is considered appropriate to extend access to physiotherapy services to Elected Members, however access to this service is by management referral only. It is therefore necessary to identify an officer responsible for management referral and it is proposed that this role be undertaken by an officer delegated by the Head of Corporate Services who will have overall responsibility for the administration of the new scheme.

As with the Employee Assistance Programme, there would be no need for contractual amendment however Elected Members would need to be added as a staffing group for the purposes of recharging.

Elected Members would need to be informed of this provision and arrangements for accessing the physiotherapy services but it would not be necessary to include this provision in the Family Leave Scheme.

Further information on how to access the Employee Assistance Programme and Physiotherapy Services is contained in appendix 3.

## **D.6 Changes to Standing Orders, etc.**

Amendments will be needed to Standing Orders for the Regulation of meetings and other internal rules and procedures, as follows:-

- The definitions in Standing Order 1 will be amended to add “Acting Executive Councillor”, “Acting Provost” and “Acting Council Leader”. The amended definitions and underlying procedures will require the member taking leave to make a nomination, to communicate that to the Clerk to the Council and then for that to be communicated off-line to members and confirmed at the earliest available meeting of council
- Standing Order 12 (minutes) will be amended to require an absence or apology of a member on leave under the proposed scheme to be noted in those terms, and, if that is done, the reason for non-attendance will be deemed to have been accepted by the council for the purposes of the six-month absence rule
- The Scheme of Administration shall be amended to include relevant references to those in “acting” positions, and, where necessary and competent, to clarify if the chair will be taken by the Vice-Chair or the member acting up

- The Scheme of Delegations will be amended to add the administration of the new scheme to the responsibilities of the Head of Corporate Services
- The Scheme of Elected Member Remuneration, Allowances and Reimbursement of Expenses will be amended to reflect the new legal provisions and the council's adoption of the new scheme. The annual Publication of Elected Members Remuneration, Expenses and Allowance Information will include information about its use and will show any additional sums paid to "acting" members

The proposed changes to Standing Orders for the Regulation of Meetings and the Scheme of Administration can only be made by full council. The adoption of the scheme and approval of the other recommendations can be competently done by Council Executive.

## **E. CONCLUSION**

The proposed Family Leave Scheme for Elected Members supports COSLA aims to encourage participation as councillors by individuals who may otherwise have been unable or reluctant to do so.

Proposals to arrange access for Elected Members to the provisions of the Employee Assistance Programme and Physiotherapy Services will further support elected members in office.

## **F. BACKGROUND REFERENCES**

Family Leave Guidance for Councils – COSLA

Appendices / Attachments:   1. Family Leave Guidance for Councils – COSLA  
  2. Draft Family Leave Scheme for Elected Members  
  3. EAP and Physiotherapy Services – Elected Member Access

James Millar, Governance Manager, [james.millar@westlothian.gov.uk](mailto:james.millar@westlothian.gov.uk), 01506 281613;  
Julie Whitelaw, Head of Corporate Services, [julie.whitelaw@westlothian.gov.uk](mailto:julie.whitelaw@westlothian.gov.uk), 01506 281626

6 October 2020



## 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.



## **FAMILY LEAVE SCHEME FOR ELECTED MEMBERS**

### **1. Introduction**

- 1.1 While 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 as far as 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 Senior Councillor payments during any period of leave taken.
- 1.2 The provisions of this guidance confer no contractual or worker/employment status and can be amended or withdrawn at any time. Councillors continue to retain their status as office holders.

### **2. Leave Provisions**

- 2.1 The provisions of this guidance extend to Maternity, Paternity, Shared Parental, Adoption and Surrogacy Leave only as detailed below:

<b>Type of Leave</b>	<b>Provision</b>
Maternity Leave	<p>Up to 6 months (26 weeks) leave from 28 days before the expected due date.</p> <p>In the event of premature birth (before the 37<sup>th</sup> week of pregnancy), maternity leave may be extended by a period equivalent to the period between the date of birth and the expected due date.</p> <p>In the event of a stillbirth or death of a child after 24 weeks of pregnancy, the Elected Member will retain the entitlement to Maternity Leave.</p>
Paternity Leave	<p>Up to 2 weeks leave for the father or nominated carer of the mother.</p>
Shared Parental Leave	<p>Up to 6 months (26 weeks) shared parental leave where maternity leave is appropriately curtailed. Only any unused statutory maternity leave will be available to be taken as shared parental leave up to a maximum of 6 months (26 weeks). Leave is limited to 6 months (26 weeks) in total even where both parents are elected members.</p>
Adoption Leave	<p>Up to 6 months (26 weeks) leave from the date of placement.</p>

	Where a couple jointly adopt a child or children, they must decide which partner will take leave as the main carer. The Elected Member will only be granted adoption leave under these provisions if their partner is not also taking a period of adoption leave.
Surrogacy Leave	Up to 6 months (26 weeks) leave from the date of placement or from a fixed date up to 14 days before the expected date of placement.

### 3. Pay Provisions

- 3.1 All members will continue to receive their basic remuneration in full while on maternity, paternity, shared parental, adoption or surrogacy leave.
- 3.2 Members entitled to a Senior Councillor Payment and the Provost and Council Leader will continue to receive their additional remuneration during a period of maternity, paternity, shared parental, adoption or surrogacy leave for a period of up to six months, or until the date when the member taking the leave stands for re-election, whichever date is sooner. At such a point, the position will be reviewed and may, where appropriate, be extended by council to allow the member re-elected to remain on leave for the remainder of the 6 month period with the appropriate additional remuneration.

### 4. Notice Requirements

- 4.1 A minimum of 4 weeks notice is required prior to a Member taking maternity, paternity, shared parental, adoption or surrogacy leave. The Elected Member Family Leave Notification form can be used for this purpose.
- 4.2 Notification must be accompanied by the following certification as appropriate:

Type of Leave	Certification Required
Maternity Leave	Maternity Certificate (MATB1)
Adoption Leave	Matching Certificate
Shared Parental Leave	Confirmation of the curtailment of maternity leave.
Surrogacy Leave	Parental Order and copy of the Maternity Certificate (MATB1)

### 5. Member Responsibilities during Leave

- 5.1 Any member taking a period of maternity, paternity, shared parental, adoption or surrogacy leave retains their legal duty under the Local Government (Scotland) Act 1973 to attend a qualifying meeting of the Council or an outside body within a six-month period unless the reason for non-attendance is accepted by the council. Absence whilst on family leave taken under this Scheme will be deemed to be an acceptable reason for non-attendance.
- 5.2 Arrangements should be made prior to a period of leave for other duties to ensure there is minimal impact on the relevant ward. This may include arranging for another councillor to attend surgeries to represent and pursue constituents' interests, or

arranging substitutes for committee meetings as permitted by council standing orders. In making such arrangements consideration must be taken of data sharing legislation in relation to constituents' personal information.

- 5.3 Members on maternity, paternity, shared parental, surrogacy or adoption leave may choose to attend council meetings or undertake other duties during their period of leave. Doing so will not affect the period of leave which has been agreed or bring it to an end prematurely. Similarly, any time spent on duties during the period of leave will not extend the period of leave beyond the maximum period.

#### **6.1 Senior Councillor Substitution**

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 senior councillor payment shall apply.

Members appointed to replace the Member on maternity, paternity, shared parental or adoption leave will continue to receive the additional remuneration until the return of the Member on leave or until that Member stands for re-election, whichever date is sooner.

#### **7. Return from Leave**

- 7.1 Unless the Member taking leave is removed from their post whilst on leave they will 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.
- 7.2 If a Member decides not to return at the end of their leave and so to resign as a councillor they must notify the council in writing with at least 4 weeks' notice. All allowances will cease from the effective resignation date.
- 7.3 If an election is held during a Member's leave and they are not re-elected, or decide not to stand for re-election, their basic allowance and senior councillor payment, if appropriate, will cease from the date they cease to be a councillor.

#### **8. Administration and Review**

- 8.1 The Head of Corporate Services is responsible for the administration of the Scheme.
- 8.2 The Scheme shall be reported to the statutory first meeting of full council after each local government election for re-adoption as part of the approval of the Scheme of elected Member Remuneration, Allowances and Reimbursement of Expenses.



## **EMPLOYEE ASSISTANCE PROGRAMME AND PHYSIOTHERAPY SERVICES**

### **ELECTED MEMBER ACCESS**

#### **Employee Assistance Programme**

You can self-refer for employee assistance services by calling Help EAP on 0800 0285 148. This helpline service is free and available 24 hours a day, 365 days per year and is highly confidential. No report is provided to the council and all consultations remain strictly private.

Further information on the services available through the employee assistance programme can be accessed [here](#).

#### **Physiotherapy Services**

Physiotherapy Services are provided by Connect Health Ltd. You cannot self-refer for physiotherapy, services must be accessed via the Human Resources Manager by emailing [Lesley.henderson@westlothian.gov.uk](mailto:Lesley.henderson@westlothian.gov.uk) who will complete the necessary paperwork. You will then be required to call Connect Health on 0330 1245 741 where you will speak with a trained physiotherapist.

The physiotherapist will triage you to the most appropriate intervention which may include a face to face appointment. Normally, physiotherapy sessions are held at Strathbrock Partnership Centre in Broxburn. The Human Resources Manager will receive initial, interim and discharge reports from the physiotherapist following your consultation.

You will be given a total of 4 treatment sessions including treatment/consultation but excluding telephone consultation. If the Physiotherapist recommends further sessions, authorisation will be required from the Human Resources Manager although this will not be unduly withheld. There is no limit on how many times you can access this service, however should you fail to attend or cancel with less than 48 working hours on two or more occasions, your right to access these services will be withdrawn for a 6 month period.