

Explanatory Memorandum to the Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by the Department for Local Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021. I am satisfied the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government
02 February 2021

PART 1

1. Description

The Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 None

3. Legislative background

Local Government (Wales) Measure 2011 (the Measure)

3.1 Part 2 of the Measure introduced a new entitlement to family absence for councillors subject to conditions prescribed in regulations to be made by the Welsh Ministers. The provisions of the Measure limited the maximum period of absence that could be specified in the regulations for each of the five types of family absence: maternity absence; new born absence; adopter's absence; new adoption absence and parental absence.

The Family Absence for members of Local Authorities (Wales) Regulations 2013 ('the 2013 regulations')

3.2 The entitlement created by the Measure is subject to Members satisfying conditions prescribed by the Welsh Ministers in regulations. These conditions were subsequently set out in the 2013 regulations which came into force on 5th December 2013. The conditions in regards to adopters leave are that the member is the child's adopter and they are required to give the head of democratic services written notice of the date they intend the adopter's absence to start.

3.3 In relation to the maximum absence periods, the regulations mirror the limits contained in the Measure.

Local Government and Elections (Wales) Act 2021 (the Act)

3.4 Section 61 of the Act removed the limitations on the maximum absence periods from the Measure, enabling these to be set at any level through regulations.

The Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021 (the regulations)

3.5 These regulations amend the 2013 regulations and increase the period of adopter's absence from two to 26 weeks. They also, where practicable, bring the provisions governing adopter's absence into alignment with the arrangements for maternity absence.

4. Purpose and intended effect of the legislation

4.1 The Regulations amend the 2013 regulations to increase adopter's absence entitlement from 2 weeks to 26 weeks. This will result in the same periods of maternity and adopter's absence being available under the 2013 regulations.

4.2 The regulations also make a number of changes to put in place for adopter's leave similar arrangements to those already in operation regarding maternity leave. Specifically, the regulations:

- Regulation 2(2) substitutes a new regulation 14 which prescribes conditions a member must satisfy in order to be eligible for adopter's absence and procedures for varying the start date and duration of absence.
- Regulation 2(3) substitutes a new regulation 15 which provides that the period of adopter's absence is 26 weeks (subject to a member giving notice under the new regulation 14) and makes provision about the period of absence in situations where more than one child is adopted as part of the same arrangement.
- Regulation 2(4) substitutes a new regulation 16 which prescribes the period within which adopter's absence must start.
- Regulation 2(5) substitutes a new regulation 17 which provides that, subject to the new regulation 16 a member may choose the date on which adopter's absence starts.
- Regulation 2(6) inserts a new regulation 17A which prescribes how a member may bring a period of adopter's absence to an end.
- Regulation 2(7) amends regulation 38(1) so as to apply to adopter's absence the same procedure for determining whether a member may undertake certain duties during their adopter's absence as applies to members wishing to undertake certain duties on maternity absence

5. Consultation

5.1 The Welsh Government undertook a public consultation about the changes contained within these regulations during the period 3 November 2020 to 29 December 2020. In light of on-going requests from principal councils and the Welsh Local Government Association for the regulations to be brought up to date, a shortened consultation period was agreed with stakeholders. A total of 27 responses were received. Of these responses 8, were from individual members of the public, 16 were from councillors or

representatives of councils, two were received from other organisations with the remaining responses submitted anonymously.

- Question 1 - Participants were asked whether they agree with the proposed increase in the length of adopter's absence for councillors from 2 to 26 weeks to align with similar arrangements for maternity absence.

There was 100% support for the proposed increase.

- Question 2 – Participants were asked whether they agreed with the detailed changes set out in paragraph 12 of the consultation document. There was 100% support for the detailed changes.
- Question 3 – Participants were asked whether the revised statutory guidance included within with consultation document reflected the proposed changes.

16 (88.89%) respondents agreed the revised statutory guidance reflected the proposed changes set out in the consultation. Some concern was raised by a small number of respondents about paragraph 17 of the revised guidance. They suggested one aspect of the guidance be re-worded to provide greater clarity. This matter is being given further consideration, but does not require any changes to the regulations as drafted.

6. Regulatory Impact Assessment (RIA)

Options

Two options have been considered, these are:

- Option 1 – Do nothing and do not make the regulations
- Option 2 – Make the regulations

Costs and Benefits

Option 1 – Do nothing and do not make the regulations

This is the baseline option and as such, there are no additional costs or benefits associated with this option. Doing nothing, however, would prevent local authorities from putting in place arrangements to align the periods of absence available for biological and non-biological parents.

Option 2 – Make the regulations

The regulations are not expected to have a significant financial impact. Data on StatsWales¹ shows there were between 300 and 400 adoptions of looked after children in Wales during each year between 2014 and 2019. The total number of council members in Wales is 1,254. Given the total working age population in Wales is approximately 1.9 million and assuming that council members do not have a significantly greater propensity to adopt than members of the general population, this suggests that the number of council members who adopt a child in any given year is likely to be very small and potentially zero. The regulations are not expected to change this.

The latest annual report from the Independent Remuneration Panel for Wales (IRPW)² states that an elected member is entitled to receive their basic salary during a period of family absence and that a senior salary holder should continue to receive that salary when taking family absence. The report also states that it is for the individual Council to decide whether to make a substitute appointment to cover for any senior salary holder taking family absence and whether to pay that substitute appointee a senior salary. There will be an additional cost if a council makes a substitute appointment and chooses to pay the member a senior salary. It is considered more likely that a paid substitute appointment would be made if the period of adopter's absence is 26 weeks rather than two weeks.

Based on the salary figures in the IRPW report, if a senior salary holder were to take 26 weeks adopters absence then the additional salary paid to a substitute appointee to cover this period would not be expected to exceed £20,000. There would also be a small administrative cost for the Council to notify the IRPW of the paid substitution and to amend its schedule of remuneration.

The regulations will enable members of county and county borough councils, who adopt children, to benefit from the same level of absence as members of local authorities who give birth to a child. This will enable biological and adoptive parents to take the same amount of family absence to enable them to provide a supportive and nurturing environment for their children in the early stages of developing relationships and bonding. This is an important equality and diversity reform for local elected members.

Competition Assessment

The regulations are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

¹ <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/Adoptions/adoptionsoflookedafterchildrenduringyearending31march-by-age-gender>

² <https://gov.wales/sites/default/files/publications/2020-02/annual-report-2020-to-2021.pdf>