

Draft Order laid before the National Assembly for Wales under section 172(2) of the Local Government (Wales) Measure 2011, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2013 No. (W.)

**LOCAL GOVERNMENT,
WALES**

**The Family Absence for Members
of Local Authorities (Wales)
Regulations 2013**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of the Local Government (Wales) Measure 2011⁽¹⁾ (“the Measure”) makes available to members of local authorities entitlement to a period of family absence.

The Measure creates an entitlement to five types of family absence: maternity absence; newborn absence; adopter’s absence; new adoption absence and parental absence. The entitlement created by the Measure is subject to members satisfying conditions prescribed by the Welsh Ministers in regulations.

These Regulations prescribe the conditions that members of local authorities must satisfy to be entitled to a period of family absence. The Regulations also make provision, amongst other things, about the extent of the various periods of absence; the cancellation of periods of absence and bringing absence to an end.

These Regulations are divided into six Parts. Parts 1 to 5 deal with the different types of absence. Part 6 makes general provision applicable in relation to all types of family absence.

Part 1 makes provision relating to maternity absence. Regulation 3 prescribes the conditions that a member must satisfy to be entitled to a period of maternity

(1) 2011 nawm 4.

absence. The conditions include notification requirements and, where requested by the head of democratic services, the production of evidence. Part 1 also includes provision for the start of maternity absence, variation of the intended start, duration, bringing to an end and cancellation.

Part 2 makes provision relating to newborn absence. Regulation 9 sets out the conditions as to relationship with a child or the child's mother and responsibility for the upbringing for that child required for a member to be entitled to newborn absence. Part 2 also includes provision for duration of newborn absence, when absence may be taken, cancellation of absence and the start date of a period of newborn absence.

Part 3 makes provision relating to adopter's absence. Regulation 14 prescribes the conditions that a member must satisfy to be entitled to a period of adopter's absence. Part 3 also makes provision for duration of adopter's absence, when absence may be taken, the start date of a period of adopter's absence and cancellation.

Part 4 makes provision relating to new adoption absence. Regulation 20 prescribes the conditions that a member must satisfy to be entitled to a period of new adoption absence. It sets out the relationship requirements between a member and a child's adopter and that the member must have responsibility for the upbringing of a child. Part 4 also makes provision for the duration of new adoption absence, when absence may be taken, cancellation and the start date of a period of new adoption absence.

Part 5 makes provision relating to parental absence. Regulation 26 prescribes the conditions to be satisfied for a member to be entitled to a period of parental absence. The conditions relate to the responsibility for the care of a child. It also sets out the notification requirements and evidence to be produced to the head of democratic services where required. Regulations 27 to 31 provide for the duration of absence, when absence may be taken, cancellation, bringing parental absence to an end and the start date of a period of parental absence.

Part 6 makes provision relating to record keeping, duties to inform, cancellation of family absence by the local authority, complaints and standing orders relating to members whilst taking a period of family absence.

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Made

Coming into force

5 December 2013

The Welsh Ministers, in exercise of the powers conferred by sections 9, 24, 25, 26, 27, 28, 29 and 172 of the Local Government (Wales) Measure 2011⁽¹⁾, make the following Regulations.

In accordance with section 172 of that Measure, a draft of these Regulations was laid before and approved by a resolution of the National Assembly for Wales.

Title and commencement

1.—(1) The title of these Regulations is the Family Absence for Members of Local Authorities (Wales) Regulations 2013.

(2) These Regulations come into force on 5 December 2013.

General Interpretation

2.—(1) In these Regulations—

“childbirth” (“*geni’r plentyn*”) means the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy;

⁽¹⁾ 2011 nawm 4.

“expected week of childbirth” (“*yr wythnos y disgwylir geni’r plentyn*”) means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur;

“the Measure” (“*y Mesur*”) means the Local Government (Wales) Measure 2011; and

“partner” (“*partner*”) means one of a couple whether of the same or opposite sex who live together.

(2) Any reference in these Regulations to a “chair of the local authority” (“*cadeirydd yr awdurdod lleol*”) is a reference to a person elected as chairman by that local authority under section 22 of the Local Government Act 1972⁽¹⁾.

(3) Any reference in these Regulations to “a member” (“*aelod*”) is a reference to a member of a local authority in Wales.

(4) Any reference in these Regulations to “a presiding member of a local authority” (“*aelod llywyddol awdurdod lleol*”) is a reference to a person elected as presiding member by that local authority under section 24A of the Local Government Act 1972⁽²⁾.

PART 1

Maternity absence

Prescribed conditions

3. For the purposes of section 24(1) of the Measure, the prescribed conditions are that—

- (a) no later than the end of 15 weeks before the expected week of childbirth, or, if that is not reasonably practicable, as soon as is reasonably practicable, the member has given written notice to the head of democratic services of—
 - (i) that member’s pregnancy;
 - (ii) the expected week of childbirth;
 - (iii) the date on which the member intends the maternity absence to start; and
 - (iv) the duration of the period of maternity absence the member intends to take, if less than 26 weeks;

(1) 1972 c.70.

(2) Inserted by section 51 of the Local Government (Democracy) (Wales) Act 2013 (2013 anaw 4).

- (b) the member has, if requested to do so by the head of democratic services, provided the head of democratic services with a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth;
- (c) where the member wishes to vary the start of the maternity absence which has been specified under paragraph (a)(iii), the member has given the head of democratic services written notice of the new start date at least one week before the date specified under paragraph (a)(iii), or at least one week before the new date, whichever is the earlier, or, if that is not reasonably practicable, as soon as is reasonably practicable; and
- (d) where the member wishes to vary the duration of the maternity absence, the member has given the head of democratic services written notice of the new duration at least one week before the expected end of the period of absence in accordance with the duration specified under paragraph (a)(iv), or at least one week before the new intended end of the period of absence, whichever is the earlier, or if that is not reasonably practicable, as soon as is reasonably practicable.

Period of maternity absence

4. The period of maternity absence is 26 weeks, unless the member gives written notice under regulation 3(a)(iv), (d) or 7 that the period of maternity absence will be shorter than 26 weeks.

When maternity absence may be taken

5. Maternity absence may only be taken so as to begin during the period—

- (a) beginning at the start of the eleventh week before the expected week of childbirth; and
- (b) ending on the day after the day on which childbirth occurs.

Member to choose start date of maternity absence

6.—(1) Subject to paragraphs (2) and (3) and regulation 5, a member may choose the date on which their maternity absence is to start.

(2) Where, during the four week period before the start of the expected week of childbirth, a member is absent from a meeting of the authority for a reason wholly or partly attributable to pregnancy, the period of maternity absence starts on the day after the meeting from which the member is absent.

(3) Where a member's maternity absence has not started in accordance with the date notified by a member under regulation 3(a)(iii) when childbirth occurs, that member's maternity absence starts on the day after the day on which childbirth occurs.

(4) Regulations 3(a)(ii), (iii) and (b) do not apply in respect of a member whose absence starts by virtue of paragraph (3).

Bringing a period of maternity absence to an end

7. A member may bring a period of maternity absence to an end earlier than the end of the period set out in regulation 4, which was notified under regulation 3(a)(iv) or varied under regulation 3(d) by notifying the head of democratic services in writing of their intention to do so at least 7 days before their return.

Cancelling maternity absence

8. The circumstances in which a member may cancel a period of maternity absence are that—

- (a) the period of maternity absence has not yet started; and
- (b) the member has notified the head of democratic services in writing of their intention to cancel the absence.

PART 2

Newborn absence

Prescribed conditions

9.—(1) For the purposes of section 25(1) of the Measure, the prescribed conditions are that the member—

- (a) is either—
 - (i) the child's father and has, or expects to have, responsibility for the upbringing of the child; or
 - (ii) married to, the civil partner or the partner of the child's mother, but is not the child's father and has, or expects to have the main responsibility (apart from any responsibility of the mother) for the upbringing of the child; and
- (b) gives the head of democratic services written notice of the date the member intends the period of newborn absence to start.

(2) A member is to be treated as having satisfied the condition in paragraph (1)(a)(ii) if that member would

have satisfied the condition but for the fact that the child's mother has died.

(3) A member is to be treated as having satisfied either of the conditions in paragraph (1)(a) if they would have satisfied the condition but for the fact that the child was stillborn after 24 weeks of pregnancy or has died.

Extent of entitlement to newborn absence

10.—(1) A member's entitlement to newborn absence is two consecutive weeks.

(2) Where more than one child is born as a result of the same pregnancy, a member is entitled to newborn absence only in respect of the first child born.

When newborn absence may be taken

11. Newborn absence may only be taken during the period—

- (a) beginning with the date of childbirth; and
- (b) ending 56 days after that date.

Cancelling newborn absence

12. The circumstances in which a member may cancel a period of newborn absence are that—

- (a) the period of newborn absence has not yet started; and
- (b) the member has notified the head of democratic services in writing of their intention to cancel the absence.

Member to choose start date of newborn absence

13. Provided that the period of newborn absence will come to an end within the period prescribed by regulation 11, a member may choose the date on which their newborn absence is to start.

PART 3

Adopter's absence

Prescribed conditions

14. For the purposes of section 26(1) of the Measure, the prescribed conditions are that the member—

- (a) is the child's adopter; and
- (b) gives the head of democratic services written notice of the date the member intends the period of adopter's absence to start.

Extent of entitlement to adopter's absence

15. A member's entitlement to adopter's absence is two consecutive weeks.

When adopter's absence may be taken

16. Adopter's absence may only be taken during the period—

- (a) beginning with the date on which the child is placed with the member for adoption; and
- (b) ending 56 days after that date.

Member to choose start date of adopter's absence

17. Provided that the period of adopter's absence will come to an end within the period prescribed by regulation 16, a member may choose the date on which their adopter's absence is to start.

Cancelling adopter's absence

18. The circumstances in which a member may cancel a period of adopter's absence are that—

- (a) the period of adopter's absence has not yet started; and
- (b) the member has notified the head of democratic services in writing of their intention to cancel the absence.

Interpretation of this Part

19. —(1) In this Part—

“adopter” (*“mabwysiadwydd”*) in relation to a child, means a member who has been matched with a child for adoption, or in a case where two members have been matched jointly, whichever of them has elected to be the child's adopter for the purposes of this Part;

“adoption agency” (*“asiantaeth fabwysiadu”*) means a body which may be referred to as an adoption agency by virtue of section 2 of the Adoption and Children Act 2002(1); and

“child” (*“plentyn”*) means a person who is, or when placed with an adopter for adoption was, under the age of eighteen.

(2) For the purposes of this Part a member is matched with a child for adoption when an adoption agency notifies that member of its decision that the member is a suitable adoptive parent for the child, whether individually or jointly with another person.

(1) 2002 c.38.

PART 4

New adoption absence

Prescribed conditions

20. For the purposes of section 27(1) of the Measure, the prescribed conditions are that the member—

- (a) is married to, the civil partner or the partner of the child's adopter;
- (b) has, or expects to have, the main responsibility (apart from the responsibility of the adopter) for the upbringing of the child; and
- (c) gives the head of democratic services written notice of the date the member intends the period of adopter's absence to start.

Extent of entitlement to new adoption absence

21.—(1) A member's entitlement to new adoption absence is two consecutive weeks.

(2) Where more than one child is placed with the member as part of the same arrangement, a member is entitled to new adoption absence only in respect of the first child placed with the member for adoption.

When new adoption absence may be taken

22. New adoption absence may only be taken during the period—

- (a) beginning with the date on which the child is placed with the child's adopter; and
- (b) ending 56 days after that date.

Cancelling new adoption absence

23. The circumstances in which a member may cancel a period of new adoption absence are that—

- (a) the period of new adoption absence has not yet started; and
- (b) the member has notified the head of democratic services in writing of their intention to cancel the absence.

Member to choose start date of new adoption absence

24. Provided that the period of new adoption absence will come to an end within the period prescribed by regulation 22, a member may choose the date on which their new adoption absence is to start.

Interpretation of this Part

25.—(1) In this Part—

“adopter” (*“mabwysiadydd”*) in relation to a child, means a person who has been matched with the child for adoption, or in a case where two people have been matched jointly, whichever of them has elected to be the child’s adopter for the purpose of Part 3 of these Regulations;

“adoption agency” (*“asiantaeth fabwysiadu”*) means a body which may be referred to as an adoption agency by virtue of section 2 of the Adoption and Children Act 2002;

“child” (*“plentyn”*) means a person who is, or when placed with an adopter for adoption was, under the age of eighteen;

(2) For the purposes of this Part a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child, either individually or jointly with another person.

PART 5

Parental absence

Prescribed conditions

26. For the purposes of section 28(1) of the Measure, the prescribed conditions are that the member—

- (a) could not satisfy the prescribed conditions under Parts 2 to 4 of these Regulations;
- (b) has, or expects to have, responsibility for the care of a child;
- (c) provides the head of democratic services with written notice of—
 - (i) their intention to take parental absence;
 - (ii) the date on which the member intends the parental absence to start;
 - (iii) the duration of the intended parental absence; and
 - (iv) whether the absence is intended to be taken as a single period or as a series of absences;
- (d) if requested to do so by the head of democratic services, provides the head of democratic services with evidence in relation to the extent of the responsibility for the child; and
- (e) where the parental absence is to be taken as a series of absences, gives the head of democratic services advance written notice of

the intended start date and duration of each period of parental absence.

Extent of entitlement to parental absence

27.—(1) A member's entitlement to parental absence is three months.

(2) Parental absence may be taken as a series of periods of absence or as a single period.

When parental absence may be taken

28. Parental absence may only be taken during the period—

- (a) beginning with the date that the member assumes responsibility for the care of a child under the age of 14; and
- (b) ending one year after that.

Bringing a period of parental absence to an end

29. A member may bring any period of parental absence to an end earlier than that notified under regulation 26(c)(iii) by notifying the head of democratic services in writing of their intention to bring the period of parental absence to an end.

Cancelling a period of parental absence

30. The circumstances in which a member may cancel a period of parental absence are that—

- (a) the period of parental absence has not yet started; and
- (b) the member has notified the head of democratic services in writing of their intention to cancel the period of parental absence.

Member to choose start dates of parental absence

31. Provided the date falls within the period prescribed by regulation 28, a member may choose the date on which any period of parental absence is to start.

PART 6

General

Record keeping

32.—(1) A local authority's head of democratic services must maintain a record of all—

- (a) notifications made by members of that local authority of periods of family absence; and
- (b) periods of family absence taken by members of that local authority.

(2) A record made under paragraph (1) must be kept by the local authority for at least 10 years from the date it is made.

Duty to inform

33.—(1) Having been notified in accordance with Parts 1 to 5 of these Regulations that a member is taking a period of family absence, the head of democratic services must inform each relevant person as soon as is reasonably practicable of that fact.

(2) In this regulation “relevant person” (*“person perthnasol”*) means—

- (a) the chair of the local authority, or where a local authority has elected a presiding member, the presiding member of that local authority;
- (b) the chair of the local authority’s Democratic Services Committee; and
- (c) the leader of each political group of the local authority.

Cancellation of family absence by a local authority

34.—(1) Where the head of democratic services has reasonable grounds to suspect that a member, who has provided notification that they are taking a period of family absence, is not entitled to that family absence, the head of democratic services must inform the local authority and provide all relevant information.

(2) Where a member is not entitled to a period of family absence, following the receipt of information under paragraph (1), a local authority may cancel a member’s period of family absence before it begins or bring a period of family absence to an end.

(3) Where a local authority exercises its power under paragraph (2), the head of democratic services for that authority must provide the member with a written notice setting out—

- (a) the decision to cancel or bring to an end a period of family absence; and
- (b) the date from which the member must return from the period of family absence.

(4) Where a member has failed to return from a period of family absence on the date specified in the notice provided under paragraph (3), a local authority may withhold that member’s remuneration.

Complaints

35.—(1) A member may complain in writing to the head of democratic services regarding a decision made under regulation 34(2).

(2) A complaint must be received by the head of democratic services within 28 days of the member being notified under regulation 34(3) of a local authority's decision under paragraph (2) of that regulation.

(3) The head of democratic services must refer any complaint received within the period specified in paragraph (2) to the chair of the local authority or where a local authority has elected a presiding member, to the presiding member.

The panel

36.—(1) The local authority must appoint a panel to determine a complaint made under regulation 35.

(2) The panel must consist of three members appointed by the local authority.

(3) Neither the chair of the local authority nor the presiding member of a local authority may be appointed to the panel.

(4) The panel may—

- (a) confirm a local authority's decision made under regulation 34(2); or
- (b) substitute its own decision as to the member's entitlement to a period of family absence in accordance with these Regulations.

(5) The decision of the panel is final.

Standing orders

37. A local authority must, as soon as is reasonably practicable after the coming into force of these Regulations, make standing orders securing the requirements set out in regulation 38.

38.—(1) A member on maternity absence or parental absence may, subject to paragraphs (2) to (6),—

- (a) attend particular meetings;
- (b) attend particular descriptions of meetings;
- (c) perform particular duties; or
- (d) perform duties of a particular description.

(2) The member must obtain the permission of the chair of the local authority, or where a local authority has elected a presiding member, the presiding member, before attending any meeting or performing any duty.

(3) The chair of the local authority, or where a local authority has elected a presiding member, the presiding member, must inform the leaders of each

political group of the local authority before granting permission under paragraph (2).

(4) A member may complain in writing to the head of democratic services regarding a refusal under paragraph (2).

(5) The head of democratic services must refer a complaint under paragraph (4) to the chair of the local authority, or where a local authority has elected a presiding member, to the presiding member.

(6) A panel constituted in accordance with these Regulations must determine a complaint made under paragraph (4).

(7) The panel may—

- (a) confirm the decision of the chair of the local authority, or where a local authority has elected a presiding member, the decision of the presiding member, under paragraph (2); or
- (b) substitute its own decision as to the member attending any meeting or performing any duty.

39. A local authority must, as soon as is reasonably practicable after the coming into force of these Regulations, make provision in standing orders as to the extent of the duties, if any, which remain applicable to members during a period of family absence.