

Meeting of:	<b>Council</b>
Date of Meeting:	<b>Monday, 26 July 2021</b>
Relevant Scrutiny Committee:	Corporate Performance and Resources
Report Title:	Review of the Council's Constitution
Purpose of Report:	To seek Council approval and amend the Council's Constitution in regard to the following: <ul style="list-style-type: none"> <li>• An additional officer delegation;</li> <li>• To amend Section 4, Family Absence Provisions for Members</li> </ul>
Report Owner:	Debbie Marles, Monitoring Officer / Head of Legal and Democratic Services
Responsible Officer:	Jeff Rees, Head of Democratic Services
Elected Member and Officer Consultation:	This report does not require consultation to be undertaken
Policy Framework:	This is a matter for decision by Full Council
Executive Summary:	<ul style="list-style-type: none"> <li>• To seek Council approval for an additional officer delegation within the Council's Constitution to be granted in relation to the confirmation of Article 4 Notices to prevent development and / or demolition that may otherwise be permitted development.</li> <li>• To seek Council approval to amend the current Family Absence Provisions as set out in Section 4 of the Council's Constitution following the introduction of the Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021 which came into force on 1<sup>st</sup> April, 2021. The revised Procedure is attached at Appendix A.</li> </ul>

## **Recommendations**

1. T H A T the change to the relevant officer delegation as set out below be approved and the Council's Constitution be amended accordingly:

Head of Legal and Democratic Services in consultation with Head of Regeneration and Planning or Operational (Planning and Building Control) –

“To confirm an Article 4 Notice served to prevent development and / or demolition that may otherwise be permitted development.”

2. T H A T the revised Procedure Rules in respect of Family Absence for Members of Local Authorities attached at Appendix A to the report be approved and adopted and that Section 4 of the Council's Constitution be amended accordingly.

## **Reasons for Recommendations**

1. To update the officer delegation scheme to reflect an additional responsibility relating to Article 4 Notices served by the Council.
2. To reflect the introduction of the Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021 from 1<sup>st</sup> April, 2021.

## **1. Background**

- 1.1 The Constitution remains under review on an ongoing basis. Under Section 2.4 of the Constitution the Monitoring Officer has a duty to monitor and review the operation of the Constitution to ensure that the aims and principles contained therein are given full effect.
- 1.2 Section 2.62 of the Constitution provides for any changes considered by the Monitoring Officer to be required to be made to remove any inconsistency, ambiguity or typographical correct to be made in a report to the next Full Council meeting for information.
- 1.3 The Welsh Government have made the Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021. These Regulations amend the Family Absence for Members of Local Authorities (Wales) Regulations 2013. This increases the adoption absence period for Local Authority Members from 2 to 26 weeks.

## **2. Key Issues for Consideration**

- 2.1 Under Section 25 of the Constitution – Officer Delegations:

Currently the Head of Regeneration and Planning, Operational Manager (Planning and Building Control) and, only where indicated, Principal Planning Officers have delegated powers “To serve an Article 4 Notice to prevent development and / or demolition that may otherwise be permitted development”.

- 2.2** It is proposed to add an additional delegated power to the Head of Legal and Democratic Services in consultation with the Head of Regeneration and Planning or Operational Manager (Planning and Building Control) to enable the following:  
“To confirm an Article 4 Notice served to prevent development and / or demolition that may otherwise be permitted development.
- 2.3** Section 4 of the Council’s Constitution sets out arrangements in regard to Family Absence.
- 2.4** The Family Absence for Members of Local Authorities (Wales) Regulations 2013 (the Regulations) govern an adopter’s absence (the form of leave taken by an individual adopting a child). The Welsh Government has amended the 2013 Regulations so as to extend the period of adopter’s absence for elected Members of Councils from 2 weeks to 26 weeks. Section 61(4) of the Local Government and Elections (Wales) Act 2021 omits Section 26(3) of the Local Government (Wales) Measure 2011, which removes the limit of adopter’s absence that may be specified in the above Regulations.
- 2.5** The Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021 introduces a number of changes:
- Prescribes conditions that a Member must satisfy in order to qualify for adopter’s absence and provisions about how the duration of such absence or the date on which such absence may start;
  - Extends adopter’s absence for a period up to 26 weeks;
  - Provisions when the period of such absence may start and additional provisions which allow a Member to choose when their adopter’s absence is to start;
  - Provisions on how a Member can bring the adopter’s absence to an end earlier than the end of the period specified in the relevant Regulation;
  - Provisions to amend the 2013 Regulations so that it applies to adopter’s absence and as a result, a Member of a Local Authority may attend meetings and perform duties in accordance with the Regulation (2)(7) of the Amended 2021 Regulations.
- 2.6** Council is therefore requested to approve the revised Procedure Rules in respect of Family Absence for Members of Local Authorities attached at Appendix A to the report be approved and adopted and that Section 4 of the Council’s Constitution be amended accordingly.

### **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

- 3.1** The Officer Delegation directly contributes to the long term future by ensuring that the Council’s Constitution continues to operate with full effect.

- 3.2 The Officer Delegation also contributes to the prevention of the Constitution becoming obsolete or non-effective in achieving its aims and principles.
- 3.3 By increasing the current adoption absence allowance from 2 weeks to 26 weeks, it is envisaged that this will reduce an obstacle which might otherwise deter an individual from seeking elected office.

## **4. Resources and Legal Considerations**

### **Financial**

- 4.1 There are no financial implications as a direct result of this report.

### **Employment**

- 4.2 There are no employment implications as a direct result of this report.

### **Legal (Including Equalities)**

- 4.3 The Council is required to comply with the Local Government Act 2000 and subordinate legislation in the drawing up and subsequent operation of the Constitution.
- 4.4 To comply with the requirements of the Local Government and Elections (Wales) Act 2021 and the Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021.
- 4.5 The Welsh Government has made the changes as part of its commitment to increasing diversity across all aspects of public life.

## **5. Background Papers**

Council's Constitution.

## 4.30 **Family Absence for Members**

### Different Types of Family Absence

4.30.1 A Member may be entitled to family absence pursuant to the Local Government (Wales) Measure 2011, subject to compliance with the Family Absence for Members of Local Authorities (Wales) Regulations 2013 (“the Regulations”), as amended by the Family Absence for Members of Local Authorities (Wales) (Amendment) Regulations 2021, as follows:

- (a) Maternity absence – for the mother of a child, granted up to a maximum of twenty six weeks;
- (b) Newborn absence – for the parent of a child other than the mother, for a period of up to two weeks;
- (c) Adopter’s absence – for the adopter of a child, for a period of up to twenty six weeks;
- (d) New adoption absence - for the partner of an adopter, for a period of up to two weeks; and
- (e) Parental absence – for a Member who becomes responsible for a child (and does not meet the conditions for newborn absence, adopter’s absence or new adoption absence), for a period of up to three months.

### 4.30.2 Prescribed Conditions

The Regulations prescribe the conditions that Members must satisfy to be entitled to each type of family absence, make provisions regarding the durations, start, cancellation and end of periods of family absence, and set out the administrative process for dealing with family absences. A copy of the Regulations can be obtained from the Council’s Head of Democratic Services and must be referred to by any Member considering taking family absence.

### 4.30.3 Requirement for Member to give Written Notice

A Member intending to take family absence is required to give written notice to the Head of Democratic Services, specifying the type of family absence the Member intends to take and the intended start date, as well as certain other specified information in respect of particular types of family absence. Any changes to, or cancellation of, family absence must similarly be notified to the Head of Democratic Services. Members should refer to the Regulations for the prescribed information which must be included in the notice, and advice is available in this respect from the Head of Democratic Services.

#### 4.30.4 Records and Notification of Family Absence

The Head of Democratic Services will keep a record of all notifications and periods of family absence taken and will inform the Mayor, the Chair of the Democratic Services Committee, and the leaders of each political group, and other recognised group, of the authority. The Head of Democratic Services may also inform any other persons, as he / she considers necessary, for example, fellow ward Members.

#### 4.30.5 Cancellation of Family Absence by Council

4.30.5.1 If the Head of Democratic Services reasonably suspects that a Member may not be entitled to the family absence notified, he / she shall inform the Monitoring Officer. The Monitoring Officer may cancel or end a Member's family absence if he / she is of the view that the Member is not entitled to such absence in accordance with the Regulations.

4.30.5.2 In the event of a decision to cancel family absence, the Head of Democratic Services will give written notice to the Member concerned setting out the decision to cancel or bring to an end the period of family absence, and the date from which the Member must return from family absence. If the Member then fails to resume duties, the Council may withhold the Member's remuneration and take any other appropriate action.

#### 4.30.6 Members' Right to Appeal against Cancellation

- (a) A Member may, within 28 days from being notified of a cancellation of family absence, complain in writing to the Head of Democratic Services regarding the cancellation.
- (b) The Head of Democratic Services will refer any complaint duly made regarding cancellation to the Mayor (or in his / her absence the Deputy Mayor).
- (c) The Member's complaint will be considered by a Panel constituted in accordance with the Family Absence for Members of Local Authorities (Wales Regulations 2013), which may either confirm the decision of the Monitoring Officer, or substitute its own decision as to the Member's entitlement to family absence in accordance with the Regulations.
- (d) The decision of the Panel is final.

#### 4.30.7 Performance of Duties – At Member's Request

4.30.7.1 A Member on maternity absence or parental absence may, subject to paragraphs 4.30.7.2 to 4.30.7.6:

- (a) Attend particular meetings;
  - (b) Attend particular descriptions of meetings;
  - (c) Perform particular duties; or
  - (d) Perform duties of a particular description.
- 4.30.7.2 The Member must obtain the permission of the Mayor (or in his/ her absence the Deputy Mayor) before attending any meeting or performing any duty.
- 4.30.7.3 The Mayor (or in his / her absence the Deputy Mayor) will inform the leaders of each political group of the Council before granting permission under paragraph 4.30.7.2.
- 4.30.7.4 A Member may complain in writing to the Head of Democratic Services regarding a refusal under paragraph 4.30.7.2.
- 4.30.7.5 The Head of Democratic Services will refer a complaint under paragraph 4.30.7.4 to the Mayor (or in his / her absence the Deputy Mayor) .
- 4.30.7.6 A Panel constituted in accordance with the Family Absence for Members of Local Authorities (Wales Regulations 2013) will determine a complaint made under paragraph 4.30.7.4.
- 4.30.7.7 The Panel may:
- (a) confirm the decision of the Mayor (or in his / her absence the Deputy Mayor) under paragraph (2); or
  - (b) substitute its own decision as to the Member attending any meeting or performing any duty.

#### 4.30.8 Continuing Duties

- 4.30.8.1 If a Member is on family absence leave and it would be difficult to replace that Member on a temporary basis, the Chair of Council can request that Member to attend a meeting if it might otherwise be inquorate.
- 4.30.8.2 A Member on family absence is expected to continue to observe and comply with any duties under the Members' Code of Conduct which remain applicable, including the duty to not bring the office of Member or the Council into disrepute and the duty to not use their position or the resources of the authority improperly or for private

advantage (paragraphs 18.2.6. and 18.2.8 of Members' Code of Conduct, Council's Constitution).

#### 4.30.9 Members' Allowances

In accordance with the determinations of the Independent Remuneration Panel for Wales, a Member on family absence is entitled, for the duration of the absence, to retain a basic salary and any senior salary for which the Member is eligible.