



LG 09/2022

22 December 2022

Maternity Leave for Elected Members / Temporary Substitutes

Local Government (Maternity Protection and Other Measures for Members of Local Authorities) Act 2022

Dear Chief Executive,

I am directed by the Minister for Housing, Local Government and Heritage to bring to your attention the provisions of the Local Government (Maternity Protection and Other Measures for Members of Local Authorities) Act 2022 (“the Act”) which was recently enacted (signed into law by the President on 21st December 2022).

Local Government (Maternity Protection and Other Measures for Members of Local Authorities) Act 2022.

The Act gives legislative effect to Government commitments to establish, for the first time, an entitlement of maternity leave to local authority elected members, equivalent to the current entitlement for employees under the Maternity Protection Act 1994 (as amended). The Act also provides for the possibility of the appointment by co-option of an individual as a temporary substitute for a councillor that takes maternity leave under the Maternity Protection Act 1994, or is absent due to illness or in good faith for another reason under Section 18 of the Local Government Act 2001 (as amended).

In parallel, as part of a wider package of maternity related supports for elected members, Government has approved that an allowance for secretarial/administrative supports similar to that available to female Oireachtas members will be introduced for councillors who are availing of (or are eligible to avail of) maternity leave. Regulations providing for this allowance are currently being finalised and will issue in early January, together with accompanying directions for local authorities. These regulations will bring supports available for councillors into line with similar supports currently available for Dáil members.

Rationale for introduction of legislation.

The absence of formal maternity leave and equally importantly maternity supports to complement such leave are perceived obstacles to the participation of women in local government. This Act addresses these obstacles, in an inclusive and supportive manner. It is envisaged that this will help to ensure that through these provisions to support women who wish to take maternity leave, current and future councillors will be more fully representative of the constituents they serve, but also that



the role of the councillor is accessible, sustainable and ensures that elected members are more fully representative of the constituents they serve.

We must also ensure that Councillors are facilitated in taking the leave and under no undue pressure to return to work prematurely. In this context, it is hoped that a precedent will be set by the councillors who avail of maternity leave when it becomes available and encourage the next generation of women to get involved in local government.

Amendment to the Maternity Protection Act 2004

Local authority elected members are office holders rather than employees. The relevant extant legislation for maternity leave, as set out in the Maternity Protection Act 1994 is applicable to employees, rather than office holders and this is where the difficulty arose.

The purpose of the Local Government (Maternity Protection and Other Measures for Local Authority Members) Act 2022 is to ensure that councillors may avail of statutory maternity leave. The amendment to Section 2 of the Maternity Protection Act 1994 deems councillors to be employees for the purposes of the 1994 Act only.

In this context, the Act sets out specifically where certain provisions of the Maternity Protection Act 1994 do not apply to local authority elected members. Sections 23, 24, 25, 26, 27 and 28 the Maternity Protection Act 1994, which relate, among other matters, to the avoidance of certain purported terminations of employment, the extension of certain notices of termination of employment or of certain suspensions, provisions regarding periods of probation, training and apprenticeship, etc., shall not apply in the case of local authority elected members.

Similarly, Part V of the Maternity Protection Act 1994 (as amended), which relates to the resolution of disputes, shall not apply in the case of local authority elected members.

Section 18 of the Local Government Act 2001

Up to now, to avail of a period of absence following the birth of a child, a councillor had to rely on Section 18 of the Local Government Act 2001.

The provisions of the new Act mean that a female councillor will no longer need to avail of a council resolution under Section 18 to avail of maternity leave and will allow for the introduction of formal maternity leave for elected members.

Provision of a temporary substitute

The provision allowing for a temporary substitute is an effort to address situations where councillors might feel pressure to turn up to important votes or debates or fulfil their community representative role, even though they might prefer to be at home looking after their new baby and/or recovering themselves.

To ensure equality and fairness, Government also agreed to extend this temporary substitute option to all councillors who are absent due to illness or other good faith reason, i.e. under Section 18 of the Local Government Act 2001.

The Act provides that the member causing the temporary absence would have an appropriate input in the nomination of the temporary substitute. Although mindful that the appointment by co-option



of a temporary substitute would prevent the under representation of the local electoral area at issue, availing of this possibility remains the choice of the elected member causing the absence and a requirement to have a temporary substitute is not imposed on the member.

The temporary substitution will come to an end either when the member who is absent resumes their role, when their term of office ends or if a casual vacancy occurs (in which case the terms of Section 19 of the Local Government Act 2001 would be applicable).

Temporary Substitute - Legislative amendment to the Local Government Act 2001

The Act provides, by way of the insertion of a new section **19A into the Local Government Act 2001**, for the possibility of the appointment by co-option of an individual as a temporary substitute for an elected member who:

- a) takes a period of maternity leave under the Maternity Protection Act 1994, or
- b) who is absent due to illness or in good faith for another reason under Section 18 of the Local Government Act 2001.

This new section provides that the absence of the member on maternity leave or who is absent due to illness or in good faith for another reason may be filled by a temporary substitute using a process of co-option similar to that provided for in the existing Section 19 of the Local Government Act 2001.

A person who is nominated as a temporary substitute in either scenario a) or b) above, will receive the representational payment, annual expenses allowance and local representational allowance for the period that they remain in office.

Restrictions of roles/duties while on maternity leave

Eligibility for the payment of maternity benefit is dependent on satisfying the qualifying conditions for the maternity benefit scheme. Section 50 of the Social Welfare Consolidated Act 2005 allows the Minister to make Regulations¹ to provide for disqualification from receiving maternity benefit in certain circumstances (including where such an elected member engages in insurable self-employment / undertaking her duties as a councillor).

To this end, elected members who have decided to take maternity leave should not continue to perform their role as an elected member for the duration of the period of their maternity leave.

Continuation of Representation Payment / Allowances.

A councillor who is absent for 6 months will continue to receive the full amount of his or her *Representational Payment*. Thereafter this payment will be reduced by 50% for absences of 6 to 12 months' duration. A councillor who is absent for more than 12 months will not receive any further payments regardless of the reason for the absence.

This mirrors the current situation where an elected member is on extended absence under the Local Government Act 2001, as amended.

Annual expenses allowance - this is an allowance to offset expenses incurred; it is not intended as an income. A member must attend at least 80% of relevant local authority meetings to receive the full

¹ Regulation 35 of S.I. 142 of 2007 (as amended by regulation 5 of S.I. 222 of 2007) is attached at Appendix 1



amount of his or her annual expenses allowance (including council meetings, special meetings, municipal district meetings, committee meetings, etc.). There may therefore be some reduction in the tax-free Annual Expenses Allowance when a councillor takes maternity leave or is absent due to illness or in good faith for another reason under Section 18 of the Local Government Act 2001

Similarly, there may also be some reduction in the recently introduced vouched expenses payment, i.e. the Local Representational Allowance, as councillors must attend 50% of official meetings to receive the full amount of this allowance.

Administrative Support Package

As part of the package of supports seen as essential to allow councillors to take a maternity absence, there is a necessity for administrative supports for female councillors while availing of maternity absences. Having regard to equity of approach, access to an administrative support allowance will be made available to:

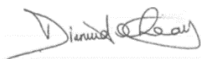
1. a member of a local authority who is absent due to maternity leave (and has not co-opted a temporary substitute), or
2. a member of a local authority who has given birth, but opts not to avail of maternity leave.

It is expected that supporting statutory regulations, together with accompanying directions to local authorities, will issue early in the New Year setting out the details of the administrative support package.

Any queries in respect of this circular or the provisions of the Local Government (Maternity Protection and Other Measures for Local Authority Members) Act 2022 can be directed to Mr. Brendan Buggy, Local Government Governance and Elected Members at brendan.buggy@housing.gov.ie

You are requested to bring this circular to the attention of all elected members in your local authority.

Yours sincerely,



Diarmuid O'Leary

Principal

Local Government Governance and Elected Members Section.

For the attention of: chief executives and elected members

Cc: AILG, LAMA

