

New Council Constitutions: Guidance on Regulation for Local Authority Allowances

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Front cover

New Council Constitutions: Local leadership, local choice

Guidance on Consolidated Regulations for Local Authority Allowances

July 2003

Office of the Deputy Prime Minister: London

Office of the Deputy Prime Minister
Eland House
Bressenden Place
London SW1E 5DU

Telephone: 020 7944 3000

Web site: www.odpm.gov.uk

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Introduction

This Guidance is issued to English county councils, English district councils, London borough councils, the Council of the Isles of Scilly, fire authorities constituted by a combination scheme under the Fire Services Act 1947, joint authorities established by Part IV of the Local Government Act 1985, the London Fire and Emergency Planning Authority, the Broads Authority, the conservation boards of areas of outstanding natural beauty and the National Park authorities. The guidance also refers in part to the Association of London Government. Paragraphs 91 to 105 apply to parish councils in England.

The Guidance deals with:

- the payment of allowances to members of these authorities under the Local Government and Housing Act 1989 and the Local Government Act 2000
- the payment of allowances to non-members serving on committees of authorities
- the establishment and maintenance of independent remuneration panels.

This guidance contains a combination of description of the main statutory provisions, statutory guidance (under section 18(5A) of the Local Government and Housing Act 1989, "the 1989 Act") to which local authorities must have regard and non-statutory guidance.

The statutory guidance to which local authorities must have regard is presented in maroon text with a "tick" in the left hand margin to distinguish it from the descriptive text and non-statutory guidance. This guidance supersedes our guidance *New Council Constitutions - Guidance on Members' Allowances for Local Authorities in England* issued by DETR in April 2001.

Main statutory provisions

1. Section 18 of the 1989 Act, as amended by section 99 of the Local Government Act 2000 ("the 2000 Act"), makes provision in relation to basic, special responsibility and childcare and dependants' carers' allowances for members of local authorities. The Secretary of State can make regulations under this section requiring local authorities to make a scheme of allowances for their members and to establish and maintain a panel to make recommendations to the council about the scheme.
2. Section 100 of the 2000 Act allows the Secretary of State to make provision in relation to travel and subsistence allowance for members of local authorities and an allowance for non councillors who are members of a council's committee or sub-committee. This includes the amendment or repeal of provisions of sections 173 to 178 of the Local Government Act 1972.
3. The Local Authorities (Members' Allowances)(England) Regulations 2003 ("the Regulations") have been made under these provisions. These have recently been amended to change the dates by which local authorities must comply with the regulations. This Guidance deals with the regulations as so amended. The Regulations provide that it is for each local authority to decide its scheme and the amounts to be paid under that scheme.

Councils are required to establish and maintain an independent remuneration panel which will broadly have the functions of providing the local authority with advice on its scheme, the amounts to be paid and the pensionability of allowances where relevant. Local authorities must have regard to this advice.

4. The approach, therefore, is one where questions as to the amounts payable to members are matters for local determination. In this way, councils can take full account of their particular circumstances, including the precise form of their new constitution, and be directly accountable to their electorate. This accountability is sharpened through each council being advised on its own allowances scheme by a local panel whose members are required to be independent.

5. Local authorities must include in their scheme of allowances a basic allowance, payable to all members, and may include provision for the payment of special responsibility allowances and a dependants' carers' allowance. By virtue of section 100 of the 2000 Act, the Local Authorities (Members' Allowances) (England) Regulations 2003 allow the inclusion of a travel and subsistence and a co-optees' allowance within an allowances scheme. These allowances are also discretionary. Under the Regulations, made under s99 of the Local Government Act 2000, authorities may make provision in their schemes for the eligibility of members for pensions under the Local Government Pension Scheme.

Consolidation of Regulations

6. The 2003 Regulations broadly:

- replicate the previous provisions for allowance schemes contained in the following Regulations, which are now revoked:
 - the Local Authorities (Members' Allowances) Regulations 1991 as amended and
 - the Local Authorities (Members' Allowances) (England) Regulations 2001.

The 2003 Regulations in addition make the following changes:

- bring travel and subsistence allowances within the overall scheme, and for these to be subject to recommendations of the local panel rather than subject to limits imposed by the Secretary of State
- introduce a co-optees' allowance
- allow the ALG to pay a special responsibility allowance to its members, subject to the recommendations of an independent remuneration panel
- allow the conservation boards of areas of outstanding natural beauty and combined fire authorities, to make their own schemes of allowances
- allow waste disposal authorities, and joint boards upon which other authorities are represented, to pay travel and subsistence allowances
- allow authorities to cease payment to members who have been suspended or partially suspended from their duties, and to make provision for the repayment of allowances
- allow authorities to backdate allowances to the beginning of the financial year in which they are paid, and to make annual adjustments by means of an index, subject to the recommendations of the independent panel
- make provision for independent remuneration panels to make binding decisions on which councillors may be eligible for pensions
- allow parish councils to pay a parish basic allowance and travel and subsistence allowances to members
- enable parish remuneration panels to make recommendations on allowances paid by parish councils
- removing the option for parish councillors of claiming financial loss allowance
- require secondary authorities to have regard to the recommendations of the panels of those authorities which make nominations to the secondary authority.

What allowances can be paid?

7. In summary, the allowances which are or may be payable to members of local authorities are as follows:

- basic allowance
- special responsibility allowance
- dependants' carers' allowance
- travelling and subsistence allowance.

8. The new co-optees' allowance may be payable to co-opted and appointed members of principal councils and non-elected members of other bodies appointed or nominated by a principal council.

Basic allowance

9. Each local authority must make provision in its scheme of allowances for a basic, flat rate allowance payable to all members of the authority. The allowance must be the same for each member. The allowance may be paid in a lump sum, or in instalments through the year.

10. Basic allowance is intended to recognise the time commitment of all councillors, including such inevitable calls on their time as meetings with officers and constituents and attendance at political group meetings. It is also intended to cover incidental costs such as the use of their homes.

Special responsibility allowance

11. Each local authority may also make provision in its scheme for the payment of special responsibility allowances for those councillors who have significant responsibilities. Special responsibility allowance may be payable for duties which fall within the following categories:

- acting as leader or deputy leader of a political group
- membership of the executive, where an authority is operating executive arrangements
- presiding at meetings of a committee, sub-committee, or joint committee
- representing the authority at meetings of another body
- membership of a committee or sub-committee which meets with exceptional frequency or for exceptionally long periods
- acting as a spokesperson for a political group on a committee or sub-committee
- membership of an adoption appeals panel or panel dealing with licensing or controlling any activity
- any other activities in relation to the discharge of the authority's functions as to require equal or greater effort of the member than any of the activities listed above.

12. A scheme must also specify the amounts of allowance to be paid for each such responsibility.

13. Where one political group is in control, and where an authority has decided to pay special responsibility allowances, the authority must make provision for the payment of a special responsibility allowance to at least one member of a minority group.

14. The Association of London Government will also be able to pay special responsibility allowances to those councillors who perform senior roles on it and who are also councillors of London borough councils.

Dependants' carers' allowance

15. A scheme of allowances may also include the payment of a dependants' carers' allowance to those councillors who incur expenditure for the care of children or other dependants whilst undertaking particular duties. These duties are specified in the Regulations and are as follows:

- a meeting of the executive

- a meeting of a committee of the executive
- a meeting of the authority
- a meeting of a committee or sub-committee of the authority
- a meeting of some other body to which the authority make appointments or nominations, or
- a meeting of a committee or sub-committee of a body to which the authority make appointments or nominations
- a meeting which has **both** been authorised by the authority, a committee, or subcommittee of the authority or a joint committee of the authority and one or more other authorities, or a sub-committee of a joint committee **and** to which representatives of more than one political group have been invited (if the authority is divided into several political groups) or to which two or more councillors have been invited (if the authority is not divided into political groups)
- a meeting of a local authority association of which the authority is a member
- duties undertaken on behalf of the authority in pursuance of any standing order requiring a member or members to be present while tender documents are opened
- duties undertaken on behalf of the authority in connection with the discharge of any function of the authority conferred by or under any enactment and empowering or requiring the authority to inspect or authorise the inspection of premises
- duties undertaken on behalf of the authority in connection with arrangements made by the authority for the attendance of pupils at a school approved for the purposes of section 342 of the Education Act 1996
- any other duty approved by the authority in connection with discharging the duties of the authority or its committees or sub-committees.

Travelling and subsistence allowance

16. Each local authority may also make provision in its scheme for the payment of a travelling and subsistence allowance to its members, including co-opted members.

17. This may include provision for the payment of an allowance for those members who travel by bicycle or other non-motorised transport.

18. The Regulations also allows for waste disposal authorities and joint boards on which authorities are represented to pay a travelling and subsistence allowance to its members.

19. The Regulations provide that travelling and subsistence allowances may be paid for:

- a meeting of the executive
- a meeting of a committee of the executive
- a meeting of the authority
- a meeting of a committee or sub-committee of the authority
- a meeting of some other body to which the authority make appointments or nominations
- a meeting of a committee or sub-committee of a body to which the authority make appointments or nominations

- a meeting which has both been authorised by the authority, a committee, or subcommittee of the authority or a joint committee of the authority and one or more other authorities, or a sub-committee of a joint committee and to which representatives of more than one political group have been invited (if the authority is divided into several political groups) or to which two or more councillors have been invited (if the authority is not divided into political groups)
- a meeting of a local authority association of which the authority is a member
- duties undertaken on behalf of the authority in pursuance of any standing order requiring a member or members to be present while tender documents are opened
- duties undertaken on behalf of the authority in connection with the discharge of any function of the authority conferred by or under any enactment and empowering or requiring the authority to inspect or authorise the inspection of premises
- duties undertaken on behalf of the authority in connection with arrangements made by the authority for the attendance of pupils at a school approved for the purposes of section 342 of the Education Act 1996
- any other duty approved by the authority in connection with discharging the duties of the authority or its committees or sub-committees.

Co-optees' allowance

20. Each local authority may also make provision in its scheme for the payment of a co-optees' allowance, for attendance at conferences and meetings, to any co-opted and appointed members of a council's committees or sub-committees.

21. The co-optees' allowance will in general be an annual allowance, and it may vary from one co-opted member to another. Authorities have the ability to pay a proportion of the annual allowance in proportion to part of the year for which a member of a relevant committee or sub-committee serves on that committee or sub-committee.

22. Where either a co-opted or an appointed member is appointed chair of the committee on which they are co-opted or appointed, the co-optees' allowance they receive must be of an amount no less than the equivalent special responsibility allowances being made available to chairs of equivalent committees of the council.

Withholding Allowances

23. Certain allowances may be withheld as a result of full or partial suspension of a member of an authority. Where authorities would like to provide for this option, they should include provision for withdrawal of allowances in their schemes. An authority may provide in its scheme for the repayment of any allowances which have been paid in respect of a period during which a member has been suspended.

24. Where a councillor is fully or partially suspended from their duties, their basic allowance may be fully or partly withheld.

25. Travel and subsistence allowances maybe withheld where a councillor has been suspended from duties or responsibilities which attracted these allowances.

26. Where a councillor is fully or partially suspended from any duties or responsibilities which attract special responsibility allowance, those allowances may be withheld by the authority.

27. Co-optees' allowance may also be withheld where a co-optee is partially or fully suspended from their duties.

28. Dependants' carers' allowance may not be withheld from councillors.

Backdating of Allowances

29. When a scheme of allowances is amended, an authority may choose to apply the amendment retrospectively to the beginning of the financial year in which the amendment is made.
30. Where a councillor takes on duties entitling them to a different level of allowances (e.g. where a councillor is appointed to the executive, and thus entitled to special responsibility allowance), the new level of allowances may be applied retrospectively to the time at which the circumstances changed.
31. Independent remuneration panels may make recommendations, where relevant, as to whether the payments on which they have made a recommendation may be backdated. Authorities will be required to have regard to these recommendations.

Annual Adjustments of Allowance levels

32. A scheme of allowances may make provision for an annual adjustment of allowances to be ascertained by reference to an index as may be specified by the authority and contained in the scheme. The scheme must be publicised each year, whether or not it has been amended.
33. Where the only change made to a scheme is that caused by the annual impact of an index contained within that scheme, the scheme shall not be deemed to have been amended, and thus an authority will not have to seek a recommendation from its independent remuneration panel.
34. Where a panel makes a recommendation that allowance levels should be determined according to an index, it should also make a recommendation as to how long the index should run before reconsideration. In any case, an index may not run for more than four years before a further recommendation on it is sought from an independent remuneration panel.

Forgoing allowances

35. A scheme must provide that a person may forgo all or part of any allowances to which they are entitled. To do this they must give notice in writing to the proper officer of the authority.

The independent remuneration panel

36. District, County and London Borough councils must establish and maintain an independent remuneration panel. The purpose of this panel is to make recommendations to the authority, or authorities in the case of a joint panel, about the allowances to be paid to members. In the case of a panel established by the Association of London Government (ALG), such a panel will make recommendations about the allowances to be paid to members in any London borough councils.

37. Independent remuneration panels will make recommendations about the level of basic allowance for all members, the level of special responsibility allowances and to whom they should be paid, and on whether dependants' carers' allowance, travel and subsistence allowances and co-optees' allowance should be paid, and the levels of these allowances.

38. Any further reference, up to paragraph 65, to "the panel" will include a joint panel or a panel established by the ALG. Any further reference to "the appointing authority" will include appointing authorities in circumstances where a panel has been appointed by two or more local authorities, or, for a panel established by the ALG, to any London borough councils to whom that panel is making recommendations.

Setting up of an independent remuneration panel

39. The 2003 Regulations provide that where an independent remuneration panel was set up, under the Local Authorities (Members' Allowances) Regulations 2001, it shall continue to operate providing recommendations to the relevant authority. If the composition of the panel does not comply with the 2003 Regulations the authority must ensure that it does so by 30 November 2003. Where an authority does not currently have a panel, it must set one up by the same date.

40. Two or more local authorities are able under the Regulations to establish and maintain a joint independent remuneration panel to advise them on their schemes.

41. Such a panel must make separate recommendations to the appointing authorities. Local authorities should consider whether establishing such a joint panel would be an appropriate and cost effective arrangement in their local circumstances. In particular, where councils are considering a joint panel they will need to ensure that it would command public confidence in the areas of the local authorities concerned.

42. The 2003 Regulations also provide that the ALG may establish and maintain an independent remuneration panel to make recommendations to any London borough councils on their allowances schemes. Where the ALG has established such a panel to make recommendations to London borough councils, and where a particular London borough council chooses to have regard to these recommendations, it is not required to establish its own panel (or joint panel).

Other authorities

43. The 2003 Regulations provide that certain authorities must have regard to the recommendations of an independent remuneration panel of the authority by which its members are nominated. These authorities are a combined fire authority, joint authority established by the Local Government Act 1985, the Broads Authority, a National Park Authority or the conservation board of an area of outstanding natural beauty. While the panel of the nominating authority or authorities will not make a specific recommendation in relation to the secondary authority, having regard to the recommendation it makes about the nominating authority's allowances will provide some guidance for the secondary authority when making its own scheme.

Appointment of the panel

44. The Regulations require that independent remuneration panels have at least three members.

45. A local authority will need to consider the appropriate size for its panel to discharge its functions effectively given the particular local circumstances. Councils should avoid unduly large panels which would be unable to be an effective and publicly accountable source of clear recommendations.
46. The members of the independent remuneration panel cannot be members of any local authority in respect of which that panel makes recommendations. Anyone who would be disqualified from being an elected member of a local authority (see section 80 of the Local Government Act 1972 and sections 79 and 83(ii) of the Local Government Act 2000) is also disqualified from being a member of an independent panel.
47. The members of the independent remuneration panel cannot also be members of a committee or a sub-committee of an authority in respect of which the panel makes recommendations. This includes co-opted members.
48. The 2003 Regulations do not specify how a local authority may go about finding members of its remuneration panel. A local authority will need to consider carefully and plan its appointments process having regard to this guidance and the need to ensure that this process commands public confidence throughout all the communities in the local authority's area.
49. The council should adopt an appointments process which it considers is best able to result in the membership of its independent remuneration panel being truly independent, well qualified to discharge the functions of the panel and representative of the diversity of the communities in the local authority's area.
50. Local authorities may wish to advertise for candidates in local papers or may wish to ask particular stakeholders, e.g. the voluntary sector or the local business community, if they wish to put forward candidates. Councils may consider it best to use a combination of advertising and inviting the putting forward of candidates. In all cases the local authority will need to ensure that its appointment process is open to public scrutiny.
51. A local authority should give very serious consideration not only to ensuring the independence of its independent remuneration panel but also the public perception of this independence. To maintain the credibility of its panel a local authority will need to consider the extent to which some, if not all, of its panel members are recognisable members of the local community. Political appointments, and appointments which are made through friendship or any other personal association of any members of the council should always be avoided.
52. Local authorities should consider very carefully the extent of any candidate's connections to a political party and whether these are such as to risk the effective discharge of the panel's functions were the candidate to be appointed.
53. In appointing its panel, a local authority should consider candidates' knowledge of local government and the way it works although lack of familiarity with the functions of councils should not be a bar to appointment.
54. The local authority will need to consider whether to appoint one member of the independent remuneration panel as chair, or whether to allow the panel itself to decide which of its member will act as chair.
55. The local authority will need to consider the term of office of members of the panel. The panel will be required to make recommendations to the Council whenever the Council decides to, within the limits of the law, either revoke or amend its current scheme. The panel may become more effective as its knowledge and understanding of members' allowances is increased.
56. Accordingly local authorities may wish to consider appointing members of the panel for a term of office of several years, perhaps 3-5 years. Local authorities may also wish to consider phasing appointments to ensure that there is always one member of the panel who has some experience. Transitionally, on setting up the independent remuneration panel this would need different periods of office. This could be achieved by differing lengths of appointment.

A local authority will also need to consider the relationship between appointment dates and the electoral cycle and the benefits of continuity in the panel's membership.

57. Local authorities will wish to ensure that the terms and conditions of appointment of members of the independent remuneration panel include provision for circumstances where the local authority may wish to remove a discredited member from the panel. For example, a member of the panel may become discredited due to being found guilty of a criminal offence. The local authority will wish to ensure that this provision to change panel members is not itself abused for political or vexatious ends.

58. The time commitment of members of the panel will vary but it is likely that members will need to meet on a number of occasions when determining their recommendations for a new annual scheme. Local authorities will need to consider the likely time commitment they expect and should make this clear to candidates before appointments are made.

59. The 2003 Regulations provide that the local authority is able to pay allowances to panel members. These allowances are a matter for the local authority to determine. The local authority should tell prospective panel members about these allowances before they are appointed.

60. The local authority should provide the panel with appropriate administrative support.

The work of the panel

61. The regulations provide for independent remuneration panels to have the following functions:

- to make recommendations to the authority as to the amount of basic allowance that should be payable to its elected members
- to make recommendations to the authority about the responsibilities or duties which should lead to the payment of a special responsibility allowance and as to the amount of such an allowance
- to make recommendations to the authority about the duties for which a travelling and subsistence allowance can be paid and as to the amount of this allowance
- to make recommendations as to the amount of co-optees' allowance
- to make recommendations as to whether the authority's allowances scheme should include an allowance in respect of the expenses of arranging for the care of children and dependants and if it does make such a recommendation, the amount of this allowance and the means by which it is determined
- to make recommendations on whether any allowance should be backdated to the beginning of a financial year in the event of the scheme being amended
- to make recommendations as to whether annual adjustments of allowance levels may be made by reference to an index, and, if so, for how long such a measure should run
- to make recommendations as to which members of an authority are to be entitled to pensions in accordance with a scheme made under section 7 of the Superannuation Act 1972
- as to treating basic allowance and special responsibility allowance as amounts in respect of which such pensions are payable.

62. The local authority will need to ensure that the panel is clear about its remit and the timetable in which it is working. The local authority will need to provide the panel with information about the roles of councillors in the authority and the way in which the authority operates and discharges its functions. The panel will need information about the business of the council.

63. The panel will need to have regard to this information. In addition, the panel may itself consider recent research on the role of councillors, or perhaps seek information about the work of other independent remuneration panels.

64. The council should provide the panel with the necessary resources to do this where it so chooses and should also provide the panel with copies of this guidance.

65. The independent remuneration panel will need to take into account this Guidance, in particular the factors highlighted in paragraphs 67-81 below, when making its recommendations to the council.

Making a scheme of allowances

66. In making the scheme of allowances a council should have regard to factors and issues in paragraphs 67-81 below.

Basic allowance

67. Paragraph 10 details the sorts of things basic allowance is intended to cover. Having established what local councillors do, and the hours which are devoted to these tasks the local authorities will need to take a view on the rate at which, and the number of hours for which, councillors ought to be remunerated.

68. It is important that some element of the work of members continues to be voluntary - that some hours are not remunerated. This must be balanced against the need to ensure that financial loss is not suffered by elected members, and further to ensure that, despite the input required, people are encouraged to come forward as elected members and that their service to the community is retained.

69. The local authority may wish to agree a rate for remuneration. They may choose to be guided by the LGA daily rate which is based on the national (male) median white-collar wage.

Alternatively they may wish to look at local and regional wage rates as these may seem more appropriate as measures for the allowances paid to members of its community. Local authorities may also wish to consider the allowances and remuneration which is paid to other members of the voluntary sector e.g. members of local health trusts.

Special responsibility allowance

70. Special responsibility allowance (SRA) may be paid to those members of the council who have significant additional responsibilities, over and above the generally accepted duties of a councillor. These special responsibilities must be related to the discharge of the authority's functions.

71. The Regulations do not limit the number of special responsibility allowances which may be paid, nor do the regulations prohibit the payment of more than one special responsibility allowance to any one member.

72. However, these are important considerations for local authorities. If the majority of members of a council receive a special responsibility allowance the local electorate may rightly question whether this was justified. Local authorities will wish to consider very carefully the additional roles of members and the significance of these roles, both in terms of responsibility and real time commitment before deciding which will warrant the payment of a special responsibility allowance.

73. It does not necessarily follow that a particular responsibility which is vested to a particular member is a significant additional responsibility for which a special responsibility allowance should be paid. Local authorities will need to consider such particular responsibilities very carefully. Whilst such responsibilities may be unique to a particular member it may be that all or most members have some such responsibility to varying degrees. Such duties may not lead to a significant extra workload for any one particular member above another. These sorts of responsibilities should be recognised as a time commitment to council work which is acknowledged within the basic allowance and not responsibilities for which a special responsibility allowance should be recommended.

74. In addition, any particular local authority will need to look carefully at the nature of its constitution when determining its scheme. New arrangements will mean that there are inevitable changes in the positions of responsibility on the Council, both in terms of number and workload.

Some councillors will be spending significantly more of their time on council duties than has ever previously been the case. On the other hand, changes in the traditional committee structure will mean that there are far fewer committees and, as a consequence, fewer councillors engaged as chairs and vice-chairs of numerous committees.

75. In a case where a local authority has agreed that the holder of the chair of its overview and scrutiny committees should be rotated that local authority will need to assure itself of the additional responsibilities of the temporary chairs before determining what allowances to recommend.

76. Having determined which duties should be acknowledged as significant additional responsibilities, the local authority will need to consider the levels of special responsibility allowance which are attached to each post. A good starting point in determining special responsibility allowances may be to agree the allowance which should be attached to the most time consuming post on the Council (this maybe the elected mayor or the leader) and pro rata downwards for the other roles which it has agreed ought to receive an extra allowance. One way of calculating special responsibility allowances may be to take the agreed level of basic allowance and recommend a multiple of this allowance as an appropriate special responsibility allowance for either the elected mayor or the leader.

Dependants' carers' allowance

77. The panel may recommend that such an allowance is made available to elected members of the authority. It may also recommend a level for this allowance.

78. Local authorities will wish to consider whether this allowance should be set at an hourly rate which may vary depending on the sort of care which has been required. They may wish to consider whether the allowance should be subject to a maximum cap or alternatively, whether the allowances paid will be equal to the costs incurred.

Travel and subsistence allowance

79. The panel may recommend that allowances are made available to members in respect of travelling and subsistence. It may recommend which duties shall attract travel and subsistence allowances, and the levels of any such allowance.

80. Panels should consider a level of allowance which might be reasonably expected to cover a member's travel and subsistence costs. The panel may recommend, for example a system of direct invoicing or an annual or monthly allowance designed to cover all travel or subsistence within a particular period. In making their recommendation, the panel should take into account the need for a system which can operate efficiently and cost-effectively.

Co-optees' allowance

81. The panel may recommend payments for those who serve on the committees or subcommittees of an authority but who are not members of an authority. It may also make a recommendation as to the level of such an allowance. In doing so it may wish to consider the degree of time and effort put in by co-optees. Some element of the contribution made by co-optees should be voluntary. However, consideration should be given for the need to encourage non-councillors to give their services to local government, and to ensuring that co-optees are not financially disadvantaged by their civic activity.

Publicity

82. The 2003 Regulations place certain duties on local authorities in connection with publicising the recommendations made by their independent remuneration panel, their scheme of allowances and the actual allowances paid to members in any given year.

83. The regulations require that as soon as reasonably practicable after receiving a report from their panel which sets out the panels recommendations, local authorities must ensure that copies of the report are available for inspection at their principal office at all reasonable hours. Local authorities

must also, as soon as reasonably practicable after they receive the report publish a notice in at least one newspaper circulating in their area which:

- states that the authority have received recommendations from an independent panel about their scheme of allowances
- states that copies of the report detailing the panels recommendations are available for inspection at their principal office at all reasonable hours
- states the address of their principal office
- describes the main features of the panel's recommendations including the amounts of allowances the panel has recommended should be payable to elected members.

84. The 2003 Regulations also require that members of the public may take copies of the panel's report on payment of such reasonable fee as the local authority may determine.

85. In respect of a local authority's scheme of allowances the regulations require that as soon as reasonably practicable after determining a scheme of allowances, local authorities must ensure that copies of the scheme are available for inspection at their principal office at all reasonable hours. Local authorities must also, as soon as reasonably practicable after determining the scheme publish a notice in at least one newspaper circulating in their area which:

- states that the authority has adopted a scheme of allowances and the period for which that scheme has effect
- states that copies of the scheme are available for inspection their principal office at all reasonable hours
- states the address of their principal office
- describes the main features of the scheme including the amounts of allowances payable to elected members under the scheme
- states that in determining the scheme the authority had regard to the recommendations of an independent remuneration panel
- describes the main features of the panel's recommendations including the amounts of allowances the panel has recommended should be payable to their elected members.
- describes any responsibilities or duties in the scheme which would merit the payment of special responsibility allowance and travelling and subsistence allowance.

Local authorities must ensure that such a notice is published every 12 months even if the scheme has not been amended since the last notice.

86. The 2003 Regulations also require that members of the public may take copies of the scheme on payment of such reasonable fee as the local authority may determine.

87. The final publicity requirement in the regulations is that as soon as reasonably practicable after the end of a year to which a scheme relates, local authorities must make arrangements for the publication in their area of the total sum paid by it to each member in respect of basic, special responsibility, travelling and subsistence, co-optees' and dependants' carers' allowances.

88. All these publicity requirements are statutory minimum requirements. Local authorities should publicise more widely the report from their panel, their scheme of allowances and the sums paid to each member. This should include, where possible, publishing this information on their web site and in the council's own newspaper (where they have one). Local authorities may also wish to consider including in their notice some detail about the responsibilities of elected members and the duties and time commitment which the basic allowance is intended to remunerate.

Transitional Provisions

89. An authority must amend its scheme of allowances or, where it does not currently have a scheme, establish one, by 31 December 2003. It may do so before this date. If it chooses it may backdate any amendments to the coming into force of the 2003 regulations.

Allowances for Chair and Vice Chair of Principal Councils

90. In addition to the provisions in the Regulations there are provisions for the payment of allowances in the Local Government Act 1972. A principal council may pay the chair and vice chair an allowance which it thinks reasonable for the purpose of meeting the expenses of those offices (s3(5), and s5(4), of the Local Government Act 1972). This is often known as 'civic dignitaries allowance'.

Allowances for Members of Parish Councils

Parish basic allowance

91. Parish councils may choose to pay their members an allowance, known as 'parish basic allowance', to recognise the time and effort they put into their parish duties. There is no obligation on parish councils to pay such allowances. Each parish council may make an allowance available to its chair only, or to each of its members. Where all members receive an allowance, the amount payable to the chair may be different to that paid to other members, but otherwise the amount paid to each member must be the same. Parish basic allowance is a discretionary allowance. It may be paid in a lump sum, or at intervals throughout the year.

92. If a parish council wishes to pay a basic allowance, it should have regard to a recommendation from its parish remuneration panel. This is a panel set up to make recommendations to parishes in its area. The membership of a parish remuneration panel will be the same as the independent remuneration panel of the district or county council within whose area the parish is situated. The panel will make a recommendation as to whom basic allowance should be paid, and the level of the allowance.

Travel and subsistence allowances

93. A parish council may also pay its members allowances in respect of travel and subsistence. These are discretionary allowances. They may be paid in respect of travel and subsistence both inside and outside the boundary of the parish. Allowances for travel may include allowances for travel by non-motorised transport, such as a bicycle.

94. Travel and subsistence allowances may only be paid for travel and subsistence in respect of:

- a meeting of the authority
- a meeting of a committee or sub-committee of the authority
- a meeting of some other body to which the authority make appointments or nominations
- a meeting of a committee or sub-committee of a body to which the authority make appointments or nominations
- duties undertaken on behalf of the authority in pursuance of any standing order requiring a member or members to be present while tender documents are opened.
- a meeting of a local authority association of which the authority is a member
- duties undertaken on behalf of the authority in connection with the discharge of any function of the authority conferred by or under any enactment and empowering or requiring the authority to inspect or authorise the inspection of premises

- any other duty approved by the authority in connection with discharging the duties of the authority or its committees or sub-committees.

95. If it wishes to pay travel and subsistence allowances, a parish council must consult its parish remuneration panel. The panel will make a recommendation as to the level of allowances, and the duties in respect of which they should be paid.

Withdrawal of allowances

96. A parish council may make provisions so that where a member is suspended or partially suspended from their duties, all or part of any allowances can be withheld. They may also provide that any allowances already paid in respect of a period for which a member has been suspended must be repaid.

Forgoing allowances

97. A parish councillor may choose not to receive all or part of any allowance to which they would otherwise be entitled. To do so they must give written notice to the proper officer of the parish council.

Financial loss allowance

98. The 2003 Regulations remove the option of authorities to allow parish councillors a financial loss allowance under section 173 of the Local Government Act 1972. Parish councillors can instead be paid the parish basic allowance and travel and subsistence allowances to remunerate them for their duties on the council.

Publicity

99. Parish councils are required to publicise their allowances in a notice or notices conspicuous in their area. These notices must remain in place for at least 14 days. In addition, they must make a record of the allowances they have paid available for inspection at reasonable notice. They must provide copies of this record on request, and may charge a reasonable fee for this. Parishes must also publish details of the parish remuneration panel reports. Again, these are minimum requirements, and parish councils may wish to go further in making local people aware of their allowances scheme and payment levels. For example they may wish to circulate details of their allowances in the parish newsletter, if they have one, place them on a web site, or publish them in one or more local newspapers.

Parish remuneration panels

100. When they pay allowances parish councils should have regard to the recommendations of a parish remuneration panel. This panel is set up by a district or county council within whose area a parish council is situated and is referred to as the 'responsible' authority. Where a parish council is one of a group of parish councils established under s11 of the Local Government Act 1972, and which are not wholly situated within one district or county council, its responsible authority will be the authority within which the majority of the electors for the group of parishes live.

101. A parish remuneration panel may be established by a responsible authority. Alternatively, two or more responsible authorities may jointly form a parish remuneration panel. In considering whether to jointly establish a parish remuneration panel, responsible authorities should consider whether it would be appropriate and cost effective, taking into account local circumstances. Responsible authorities should also consider whether the joint parish remuneration panel would command public confidence within the parishes for which it made recommendations.

102. The membership of a parish remuneration panel will be the same as the independent remuneration panel of the responsible authority or authorities. However, where any member of the responsible authority's panel is also a member of a parish in respect of which the parish remuneration panel may make a recommendation they should not be a member of the parish remuneration panel.

Any parish councils for which a parish remuneration panel makes recommendations will contribute an equal share towards the running costs of the panel.

103. A parish remuneration panel can make recommendations as to allowances of the parishes situated within the area of the responsible authority or authorities. It may make a single recommendation applying to all the parishes within that area, or can make individual recommendations for each parish. It will make recommendations as to whether parish basic allowance should be available to all members of the parish council, or only to the chair. It will also make recommendations as to the duties for which travel and subsistence allowance may be claimed.

104. The panel will also make a recommendation as to the amounts of parish basic and travel and subsistence allowances. These recommendations will be expressed in terms of a cash figure. The level of parish basic allowance will also be expressed as a percentage of the amount recommended by the independent remuneration panel of the responsible authority for the allowances of that responsible authority. The percentage may be any figure up to and including 100%.

Transitional provisions

105. Parish councils, if they choose, will be able to pay parish basic allowance once they have had regard to a recommendation of their parish remuneration panel. Until 31 December 2003, they will retain the option of being able to pay attendance and financial loss allowances under the Local Government Act 1972. However, they may not pay both parish basic allowance and attendance or financial loss allowance in respect of the same duties or period of time. From 31 December 2003, sections 173-5 of the Local Government Act 1972 will be disapplied in respect of parish councils. As such, if they wish to pay allowances after that time they will only be able to do so under these Regulations.

Tax and National Insurance treatment of Local Government Councillors' and Civic Dignitaries' allowances and expenses

Taxation of Members' Allowances and Expenses

Introduction

106. This part provides general guidance on the tax treatment of members' allowances. It covers:

- the relevant tax rules
- which allowances are taxable
- the treatment of expenses incurred by a member carrying out approved duties which are reimbursed by the authority
- what tax relief is available for expenses that the authority does not reimburse.

There is also a short section covering civic dignitaries.

For information covering National Insurance liability on members' allowances and expenses see paragraph 146 onwards.

This guidance is not binding and does not affect any member's right of appeal. Nor is it a full statement of the law as it applies to members' allowances and expenses. Members should refer to the relevant legislation where appropriate. Alternatively they can contact their tax office, who will be able to help.

The tax charge

107. For tax purposes council members and civic dignitaries are treated in the same way as any other individual who holds an office or is an employee. Earnings received from an office or employment are chargeable to income tax as employment income. PAYE arrangements apply to these earnings as they do to any other employment. 'Earnings' has a wide meaning - it includes salaries, fees, wages and any other profits received from an office or employment. It also includes allowances paid to cover expenses incurred in carrying out the duties of an office or employment, unless these allowances do no more than reimburse expenses actually incurred and which are deductible for tax purposes.

Relief for expenses

108. Under the employment income expenses rules (Section 336 - 339 Income Tax (Earnings and Pensions) Act 2003, (ITEPA 2003)), local government councillors and civic dignitaries can get a tax deduction for:

- travelling expenses necessarily incurred in the performance of the duties of their office
- other travelling expenses which relate to their necessary attendance at a temporary workplace
- any other expenses which are incurred wholly, exclusively and necessarily in the performance of their official duties but note that expenses for travel in a person's own vehicle are dealt with under separate rules and that actual mileage expenses are not deductible. See paragraph 126(viii) below.

109. These rules include a series of conditions that vary for each type of expenditure. The conditions are:

- in all cases the expenditure must actually be incurred. So, for example, if a councillor or civic dignitary is away overnight on council business but finds it more convenient to stay with friends rather than incur hotel bills, there may be no expenditure to set against any allowance received so no deduction would be due

- travelling expenses necessarily incurred in performing the duties of the office are limited to expenses during necessary travel on members' business, for example travelling between the local authority offices and a place the member needs to visit on local government business
- a temporary workplace is a place the member only attends occasionally to carry out duties, or attends for a limited duration (defined as not more than 40% of working time over a period not exceeding 24 months) or a temporary purpose. The travel expenses to be deducted under this heading are the expenses of travelling between the members' home and the temporary workplace
- for expenses other than expenses of travel to a temporary workplace the expenditure must be incurred in the performance of the individual's duties. This means that, to be deductible, the expense must be incurred in actually carrying out the duties of the office. It is not sufficient that an expense is simply relevant to, or incurred in connection with, the duties of the office. In particular, no expense will be allowable which merely puts the office holder in a position to perform the duties of that office
- also for expenses other than those of travel to a temporary workplace the expenditure must be such that any holder of the office would be necessarily obliged to incur it. The fact that an office holder is encouraged, expected or required to incur a particular expense is not conclusive evidence that it is 'necessarily' incurred. Also, the expense must stem from the requirements of the job itself, not from the personal circumstances of the office holder. Strictly, the 'necessity test' will be satisfied if (and only if) each and every person holding the office would have to incur the expenditure
- expenditure on anything other than travel must also be incurred wholly and exclusively in the performance of the office holder's duties. For example, it may be necessary for a councillor to use a home telephone in the performance of his or her duties - but where the same facility is available to be used also for personal calls, the rental costs are not incurred exclusively in the performance of duties so no deduction is due (see paragraph 126(iii) below).

In addition, a deduction may only be given to the extent that the expense incurred does not exceed the earnings of the relevant office. If, for a particular year of assessment, there are insufficient earnings from the office to cover the expense claimed, no deduction can be given against any other income, including income from other offices or employments.

Similarly, where a councillor has renounced allowances to which he or she would otherwise be entitled, no expenses may be claimed as a deduction.

Members' Allowances which provide Remuneration

Councillors on main and 'secondary' authorities

110. Allowances taxable as employment income include the following:

- Basic allowance
- Special responsibility allowance
- Dependants' Carers' Allowance
- Co-Optees' Allowance

Parish, town and community councillors

111. The Parish Basic Allowance is taxable as employment income.

Non-councillors

112. The tax rules for Co-Optees' Allowance and Parish Basic Allowance to non-councillors are the same as for parish, town and community councillors set out in paragraphs 110 & 111 above.

Renunciation

113. Renunciation of allowances which provide remuneration will mean that there will be no liability to income tax, but it will also mean that no expenses can be claimed as a deduction (see paragraph 125) and may affect entitlement to social security benefits.

Travel and subsistence allowances

114. As elected representatives, councillors are accepted as normally having two places of work - at the council offices and in their electoral area. Often councillors need to use their own homes to see constituents. Where a councillor does use his or her own home to undertake representative duties on behalf of the council, an allowance paid for travel between home and the council offices or some other place on council business is included in the calculation under the rules described at paragraph 126(viii) below.

115. If it is not necessary for a councillor routinely to see constituents at home, any allowance paid for travel between home and the council offices will be taxable in the normal way. The fact that a councillor chooses to do some work at home - for example reading council papers or completing correspondence - does not make that home a distinct place of work for the purpose of claiming tax relief on travel expenses. However, an allowance paid for travel between home and any place that is a temporary workplace will also be included in the calculation at paragraph 126(viii) below.

116. For non-councillors, any allowance paid for travel between home and the council offices will be taxable unless he or she can show that home is itself a place of work in the real sense for that office - that is to say any holder of that office is necessarily obliged to perform substantive duties there.

117. For the treatment of mileage allowances paid for travel on council business generally, see paragraph 126(viii) below.

118. Day subsistence allowances are taxable unless they are paid in respect of the extra expense of subsistence incurred as a consequence of travel on council business away from the council offices.

119. Overnight subsistence allowances are not taxable provided there is no element of profit. A profit could arise, for example, if someone travelling on council business stays overnight with friends or relatives rather than in a hotel.

Dispensations

120. A 'dispensation' is a notice given by an Inspector of Taxes to an employer if the Inspector is satisfied that expense allowances paid or benefits provided by the employer would be fully matched by an expenses deduction, with the result that no tax liability arises. A dispensation relieves the employer of the need to report details of the particular expenses payments or benefits provided to the Revenue or to the employee or office-holder. And the employee or office-holder need not show them in his or her tax return if they get one.

121. The dispensation does not exempt from tax items upon which the taxpayer would otherwise be taxed. The aim is to eliminate unnecessary administrative burdens where no tax will be due, not to reduce the tax paid. Dispensations are reviewed from time to time and can be revoked. More advice on dispensations and an application form can be obtained from any Tax Office.

122. Dispensations are not appropriate for 'round sum' expenses allowances. But where an allowance is clearly intended to do no more than reimburse expenses actually incurred in carrying out the employee's or office-holder's duties, and the expense was incurred only because of the office or employment, the Inspector may be prepared to authorise payment of the allowance without deducting PAYE. Before doing this, the Inspector will need to be satisfied, however, that the allowance is at a reasonable scale and is clearly intended to do no more than reimburse expenses actually incurred.

123. Mileage expenses payments cannot be included in a dispensation.

124. Whenever there is no dispensation in operation authorities should consider whether or not PAYE should be applied to the allowances they pay. The Inspector will give guidance on this point.

Relief for expenses

125. Where an authority does not reimburse all expenditure incurred, members may claim the excess as a deduction from the earnings that they receive from the authority, provided the expenses satisfy the rules in paragraphs 108 and 109 above. No deduction can be claimed:

- where entitlement to all allowances has been renounced (see paragraph 113)
- where a member could use services provided by the authority, for example, postage or stationery but incurs expenses because he or she chooses not to do so
- for expenses incurred for political purposes, for example electioneering
- for expenses incurred on the cost of newspapers, books and periodicals of general interest. (Where however a magazine or journal is obtained by a member because he or she subscribes to a professional body or learned society which is approved under Section 344 ITEPA 2003 and the activities of this body are relevant to his or her work as a member a deduction may be given for the subscription)
- for donations to charity (unless these are made under a payroll giving scheme or by way of gift aid).

126. Typical deductible expenses which may be claimed include:

(i) Travelling expenses

(a) By public transport - Where the expenditure incurred is not covered by an allowance for which the authority has a dispensation.

(b) By car - Members who use their own cars in the performance of their duties are normally paid an allowance to cover their costs. There are special rules covering these at paragraph vii below.

(ii) Postage and stationery

The actual costs wholly, exclusively and necessarily incurred in the performance of the duties as a councillor for which no allowance can be obtained from the authority.

(iii) Telephone

The cost of calls made wholly, exclusively and necessarily in the performance of duties as a member. No deduction can be given for any part of the rental of the telephone unless no private use is made of it. Any claim should be reduced by any non-taxable reimbursement made by the authority. Where that reimbursement covers the cost of the official calls no claim should be made.

(iv) Secretarial assistance

The costs of secretarial assistance incurred wholly, exclusively and necessarily in the performance of council duties, where such assistance is not provided by the authority.

Any amounts claimed must be reasonable in relation to the member's allowances and to the assistance given. The Inspector may want to see supporting evidence for the claim.

(v) Hire of rooms

Where money is spent on the hire of rooms for 'surgeries' or public meetings, e.g. objections to planning applications. A claim cannot be allowed in respect of the hire of rooms for party political purposes.

(vi) Household expenses

Where additional household expenses are incurred (light, fuel etc.) relating to those parts of members' homes that are set aside solely for use for duties as members, the Revenue will accept a standard deduction of £135 per year (an amount agreed between the Association of Councillors and Inland Revenue Head Office) to cover this. Members claiming more than this amount will have to show the additional amount is fully justified by reference to the expenses deduction rules explained in paragraphs 108 and 109.

From 6 April 2003 members working at home under homeworking arrangements with the local authority can be paid a tax-free allowance to reimburse the additional household expenses incurred while working at home. Up to £2 per week can be paid without any evidence of the actual amount of additional expense. Larger amounts can be paid if evidence can be provided to show that the amounts paid are a reasonable estimate of additional costs.

Members who do not receive an allowance are not entitled to deduct an equivalent amount except for those who are entitled to the standard deduction of £135. In these cases members should restrict the deduction by any amount received from the local authority, so that a member receiving £2 per week is entitled to deduct a further £31 from earnings.

(vii) Mileage expenses for members using their own vehicles for business travel

The following rules apply from 6 April 2002 and cater for all kinds of mileage expenses. The previous rules, including the Fixed Profit Car Scheme, no longer apply.

Actual expenses (including loan interest and capital allowances) can no longer be claimed.

'Business travel' is travel of the type described in paragraph 108 (fuller details can be found in Inland Revenue booklet 490, Employee Travel).

Members who use their own vehicles for business travel are normally paid an allowance to cover their costs. Normally, these payments are based on an amount per mile for the mileage travelled on council business but they can also be in the form of a lump sum or periodic payment. However they are paid, all Mileage

Allowance Payments (amounts paid to an employee or office holder for expenses related to the use by that person for business travel of their own vehicle) are treated in the same way.

Members can receive up to a tax-free "approved amount" when using their own vehicles for business travel. These payments are known as Approved Mileage Allowance Payments, or AMAPs.

The AMAPs amount is calculated by multiplying the number of business miles in each kind of vehicle by a statutory rate in pence per mile. The rates are:

These rates apply until changed by law as part of the Budget process. Any changes will also be announced on the Inland Revenue web site (www.inlandrevenue.gov.uk).

Employers do not need to send the Inland Revenue details of tax-free AMAPs, though they need to keep sufficient records to show that the payments qualified for exemption. Any amount in excess of the AMAPs amount is taxable and should be reported on form P9D or P11D; if members receive less than that amount, they are entitled to Mileage Allowance Relief.

Further details about AMAPs and the taxation of motor mileage allowances generally can be found in the Revenue leaflet IR124 'Using your own vehicle for work' and CWG2, 'Employer's Further Guide to PAYE and NICs'.

For NICs, a new statutory scheme for dealing with NICs liability on motoring expenses was also introduced on 6 April 2002. See paragraph 152 for more information.

(viii) Other expenses

Members with other expenses not covered by the above should Itemise them on their Tax Return. The Revenue may require evidence and details of the expenditure.

Kind of vehicle	Rate per mile
Car or van	40p for the first 10,000 miles
	25p after that
Motor cycle	24p (all miles)
Cycle	20p (all miles)

Other points concerning a member's tax affairs

Provision of benefits in kind

127. If a member receives payments (including all allowances whether or not tax is paid on them) and benefits together totalling £8,500 a year or more (before any deduction for expenses) details must be reported to the Inspector on Form P11D. A copy of the details should be given to the member. (Any member who is in this position and who receives facilities from the council other than in cash should contact the local Inspector for advice.)

128. No tax charge arises on the provision of office accommodation, secretarial assistance, stationery or other facilities of a similar nature at an authority's premises. If the authority provides supplies or services for use at the member's home, no tax charge arises if the sole reason for providing them is to enable a member to perform their duties and any use for private purposes is not significant. If these conditions are not met, full details need to be provided to the Inland Revenue on forms P11D, with a copy provided to members, because a tax liability may arise.

129. Where an authority provides computer equipment for the member to perform his duties at home, the first £500 of the benefit charge is exempt from tax.

130. If an authority paid for a member to have a telephone installed at home any cash reimbursement for installation or any subsequent rental payments should be subjected to PAYE. If it is impossible to apply PAYE, for example because the authority pays British Telecom directly, the authority must give details to the Revenue after the end of each tax year. The member will then have to pay tax on the amount paid by the authority. Where an authority pays for broadband Internet connection to a member's home solely for work purposes, under a package where there is no separate billing or record of access calls, and

- no breakdown is possible between authority and private calls, and
- where private use is not significant the connection costs are exempt from tax.

Operation of PAYE

131. Tax is collected under the PAYE system. The amount of tax deducted by the authority depends on the code number issued by each member's own tax office. It is open to any councillor to ask to have the PAYE code number adjusted to take into account expenses which are deductible for tax purposes. If the Inspector is satisfied with the estimate provided, the code number for the year will be revised and the matter finalised after the end of the tax year when the accurate information will be available. How this works depends on whether or not the member receives a tax return (see paragraphs 127 and 128).

These arrangements apply, for example to:

- the basic allowance

- special responsibility allowance
- dependants' Carers' Allowance
- Co-Optees' Allowance
- any allowances payable to councillors in their capacity as civic dignitaries.

Procedure at the end of the tax year

132. Members who receive tax returns should include figures for all their income on their Self-Assessment tax return. They will also include all claims they wish to make.

133. They should send their completed tax return back to their tax office by 30 September after the end of the tax year if:

- they want the Inland Revenue to calculate their tax bill for them and/or
- they wish tax (below £2000) to be collected through next year's PAYE code where practicable.

134. The deadline for sending back their tax return is 31 January after the end of the tax year.

135. The Inland Revenue will make any repayment due. If there is tax to pay, the member should pay it by 31 January after the end of the tax year.

136. Members who do not receive tax returns will have their tax checked by the Inland Revenue in the traditional way. They should send any claims to their tax office after the end of the tax year as now.

Further information

137. If members have any questions about the taxation treatment of their allowances they should contact their Tax Office. Council Treasurers' Departments are usually in a position to answer routine questions and to seek advice on a member's behalf.

Civic dignitaries

138. Like councillors, civic dignitaries are office-holders and the same tax principles apply to their allowances and expenses. In particular, to qualify for relief expenditure must meet the conditions of Sections 336 to 339 ITEPA 2003 - explained in paragraphs 108 and 109 above. The following paragraphs set out how the rules apply to particular circumstances affecting civic dignitaries.

Clothing

139. Expenditure on ordinary clothing worn at work is not incurred wholly and exclusively in the performance of the duties. Consequently no deduction can be given for expenditure by civic dignitaries on ordinary clothing.

140. Exceptionally, a deduction can be given for expenditure on clothing which is recognisably a uniform or part of a uniform and the office holder is required, as part of the duties of that office to wear it. A useful test is whether someone wearing the clothing would be recognisable in the street as wearing the uniform of that particular office - just as a uniform identifies, say, nurses or policemen. Expenditure on, for example, maintenance of a mayor's regalia would normally, therefore, qualify for a deduction.

Donations

141. If a civic dignitary is given an allowance and the freedom to spend that allowance largely as he or she sees fit, it is extremely unlikely that any such expenditure would be deductible.

There would be an element of personal choice - and so expenditure would not be 'necessarily' incurred. This would apply to charitable donations as much as to any other use to which the money was put.

142. The tax position may, however, be different if there is a special fund set on one side, out of which agreed charitable donations are made. In these circumstances, when the funds are dealt with by the civic dignitary in a fiduciary capacity, there may be no tax consequences.

Each case will, however, depend on the precise arrangements in force.

Entertainment

143. If a civic dignitary is given an entertainment allowance which he or she has freedom to spend in any way he or she sees fit, the allowance is assessable to tax as part of the earnings of the office - except to the extent that the expenditure met out of the allowance qualifies for a deduction. Only entertaining expenses which are incurred wholly, exclusively and necessarily in the performance of the office holder's civic duties will qualify. No deduction is due for the cost of entertaining which is incurred primarily for personal or political reasons even if some civic business happens to be discussed.

144. As with donations, the tax position may be different if there is a special fund set on one side out of which entertainment is paid for in accordance with the council's wishes as to the amounts spent and persons to be entertained.

Conclusion

145. Local authorities sometimes ask how their systems can be structured so that no tax liability arises for their civic dignitaries in respect of expenses payments made to them. The paragraphs above should indicate that a system which in practice pays within the AMAPs amount for travelling expenses and provides for reimbursement only of those expenses deductible under the rules described in paragraphs 108 and 109 is unlikely to give rise to tax consequences. In addition, it is likely that a dispensation (see paragraphs 120-124 above) could be agreed with respect to such a system - eliminating reporting requirements.'

Members' Allowances and National Insurance contributions (NICs)

Introduction

146. As they are for tax purposes, members (councillors and non-councillors) are treated as employees. They are liable to pay National Insurance contributions as employed earners when they receive remuneration allowances at or above the threshold for contributions.

147. Where allowances are paid at different intervals, the earnings period for the assessment of National Insurance contributions is the shortest interval at which any allowance is paid. For example, if the agreement between the local authority and the member is:

- that a Basic allowance will be paid monthly
- that a special responsibility allowance will be paid quarterly
- that dependants' carers' allowance will be paid annually the earnings period is monthly. Class 1 National Insurance contributions would be due if the total earnings in any tax month reached the monthly threshold for contributions.

148. Members above statutory pension age (65 for men and 60 for women) are not liable for contributions on their allowances. But the authority (or whoever pays the allowances) is liable to pay the employer's contribution. For further details, the leaflet CA01 "National Insurance for employees" will be helpful.

If you have more than one job

149. Members with other employment can apply to defer payment of contributions if they expect to pay the annual maximum in that employment. This does not affect the employer's liability to pay contributions at the appropriate time. For further details see leaflet CA01.

General expenses

150. In some circumstances expenses which are paid or reimbursed by an employer can be disregarded when calculating National Insurance contributions. If an employer makes a payment in respect of specific and identifiable expenses which are actually incurred by a member in carrying out his duties they can be disregarded. Members may have to produce receipts or other evidence of their expenses to confirm the amount which can be disregarded. But if the expense payment is covered for tax by a dispensation notice then it will automatically be accepted that the amount can also be disregarded when calculating National Insurance contributions. Unlike the tax position, no relief is available in respect of National Insurance contributions if the employee has borne the cost themselves without reimbursement by the employer.

151. The sort of expenses which may be able to be disregarded include the following:

- Travelling expenses
 - by public transport. The reimbursement of travel costs incurred in connection with business journeys can be disregarded for National Insurance contributions purposes
 - by car. See the guidance at paragraphs 152 - 154 below.
- Postage and stationery. The actual costs incurred in carrying out the duties can be disregarded if reimbursed by the employer.
- Telephone costs. Reimbursement of the cost of calls made in carrying out the duties can be disregarded but any reimbursement of rental costs will attract a liability for National Insurance contributions unless the telephone is available exclusively for business use.

Any payment toward the cost of private calls cannot be disregarded.

- Secretarial assistance. The cost of secretarial assistance incurred in respect of carrying out the duties of the employment which is reimbursed by the employer where such assistance is not provided directly, can be disregarded for National Insurance contribution purposes.
- Hire of rooms. The reimbursement of the cost of hiring rooms to hold 'surgeries' or public meetings in connection with their duties can be disregarded.
- Household expenses. Where a councillor is reimbursed for additional household expenses (heating, lighting, etc.) incurred in relation to parts of the home set aside for use solely in carrying out the duties of the employment, the amounts can be disregarded when calculating National Insurance contributions. In line with the tax treatment of such additional costs, from 6 April 2003 £2 per week can be disregarded without evidence being produced. Higher amounts can only be disregarded if there is evidence that the higher figure has actually been incurred.

Motoring expenses

152. Since 6 April 2002, there has been a new statutory scheme for dealing with NICs liability on motoring expenses incurred by employees who use their own vehicles for business travel. There is a maximum amount that may be paid to employees, in respect of all business motoring expenses they incur for the use of their privately owned car, without incurring a NICs liability.

153. The NICs scheme is aligned as far as possible with the Approved Mileage Allowance Payments (AMAPs) scheme for tax, but there are some differences between the two schemes.

For example the mileage rate used for cars and vans to calculate the maximum amount employers can pay free from NICs liability is the higher of the two rates at paragraph 126(viii) above, irrespective of the number of business miles travelled by the employee.

154. Further guidance about the NICs motoring expenses scheme can be found in the Revenue leaflet IR124 'Using your own vehicle for work' and CWG2, 'Employer's Further Guide to PAYE and NICs'.

Benefits

155. Where a member receives payments (including all allowances whether or not tax is paid on them) and benefits together totalling £8,500 a year or more the authority may have to pay Class 1A NICs on any benefit they provide. Further guidance can be found in the Inland Revenue booklet CWG5.

156. Members requiring further advice on which expenses or payments in kind may be disregarded should contact their local tax office.

Allowances and expenses paid to civic dignitaries

157. Civic dignitaries are elected office holders, and, like councillors, they are therefore employees for National Insurance contributions purposes. There will be a liability to pay Class 1 National Insurance contributions if they receive earnings above the level of the earnings threshold. The following paragraphs explain how certain types of expense payments made to civic dignitaries are treated for National Insurance contributions purposes.

Clothing

158. If a civic dignitary receives an expense payment for ordinary clothing the amount involved is not a business expense, as it is not incurred in carrying out the employment. It cannot be disregarded when calculating National Insurance contributions.

159. If the payment relates to a uniform or part of a uniform which is required for the purposes of the employment, the amount involved can be disregarded because it will be an expense incurred in

carrying out the employment. This would apply, for example, in respect of a payment for a mayoral gown or similar regalia - and the cost of its upkeep (repairs and laundering).

Donations

160. If a civic dignitary receives an expenses payment/allowance for a series of itemised, charitable donations or gifts, the amount can be disregarded when calculating National Insurance contributions if the donations or gifts are made on the employer's behalf and details are kept of the donations and gifts.

Entertainment

161. If a civic dignitary receives an expenses payment/allowance for private entertainment, the amount involved cannot be disregarded when calculating National Insurance contributions.

If the payment is for a business function where the costs are supported by itemised bills, the amount can be disregarded as a business expense because it will be incurred in carrying out the duties of the employment. This will apply, for example, where the mayor has receipts for the amount spent on a business lunch hosted for visiting officials.

This guidance is intended to assist local authorities in their application of the Local Authorities (Members' Allowances) (England) Regulations 2001. It provides advice about the allowances which can be paid to elected members, the appointment of independent remuneration panels and the requirements for the publication of details about members' allowances. It contains a combination of description of the main statutory provisions, statutory guidance to which local authorities must have regard and non-statutory guidance.