

November 2007

COUNCILLORS' ALLOWANCES

Introduction

1. The Local Authorities (Members' Allowances) (England) Regulations 2003 (SI.2003/1021) came into force on 1st May 2003. The regulations apply to local authorities in England only and substantially change the system that previously existed.
2. When the regulations were first introduced they applied to elected members only and not to those who were co-opted onto committees. However, the regulations were amended in 2004 (by virtue of The Local Authorities (Members' Allowances) (England) (Amendments) Regulations 2004 (SI.2004/2596) so that some of the provisions relate to co-opted members. However, the only practical consequence of the amendments related to a period ending on the 2 November 2004 and, consequently, the amendments are not discussed further in this Note.

Background

3. Previously, sections 173 to 178 of the Local Government Act 1972 as amended, and the regulations made thereunder, set out the rules for the payment of allowances to members of parish and town councils. These broadly dealt with attendance allowance and financial loss allowance (s.173), travelling allowance and subsistence allowance (s.174), allowances for attending conferences and meetings (s.175), the payment of expenses of official and courtesy visits (s.176) and supplementary provisions (s.177 and s.178).
4. S.173 to s.175 and s.176(1)(a) and (2) ceased to apply on 31 December 2003 and hence the supplementary provisions relevant to those sections also fell. S.176(1)(b) remains in force. This provides for a council to defray any expenses incurred in the

reception and entertainment by way of official courtesy of distinguished persons visiting the area of the authority.

5. Under this system, allowances were paid to councillors for performing an approved duty outside the parish or town. No allowances were paid for attendance at a meeting of the council, its committees or sub committees or for any other approved duty within the parish or town. Travel and subsistence under the new regulations can be paid for travel and subsistence within the parish as well as outside of it.

The New System

6. The new regulations are split into 6 Parts. Part 5 deals specifically with parish (and town) councils. Part 4 deals with Independent Remuneration Panels and Part 6 with transitional provisions and it is these 3 Parts with which we are chiefly concerned and upon which this Legal Topic Note will concentrate.

Part 4 – Independent Remuneration Panels

7. An **independent remuneration panel** has to be established by each authority and for the purposes of Part 4, unless otherwise specified, an authority means a district council, a county council and a London borough council. The panel consists of at least 3 members, none of whom is also a member of an authority in respect of which it makes recommendations or a member of a committee or sub committee of such an authority or is disqualified from being or becoming a member of an authority.
8. The parish or town council has to make reference, as will be explained, to a **parish remuneration panel**. A parish remuneration panel will consist of those persons who are also members of the independent remuneration panel but cannot consist of parish or town councillors of councils in respect of which recommendations are to be made.

Part 5 – Parish Councils

Parish Basic Allowance – Regulation 25

9. A parish or town council is able to pay a parish basic allowance for each year to its chairman only or to each of its elected members (regulation 25). The amount payable to the chairman may differ from that of other members (i.e. a higher sum

could be paid because of the extra duties that may be required of the chairman) but otherwise the sum shall be the same for each member.

10. The allowance is not a salary. It is a figure, which is calculated to cover the expenses, which are normally associated with the basic duties of being a local councillor. Travelling and subsistence allowances are treated separately (see below). There is no set figure and no doubt the figures will differ from region to region for a variety of reasons. This is an entirely new approach to the first tier membership and will be a very new concept to many members, although it does bring first tier councillors into line with their colleagues in other authorities.

What to do after setting the level of parish basic allowance?

11. As soon as reasonably practical after setting the levels at which the allowance is to be paid and to whom, the council must arrange for the publication in a conspicuous place for a period of at least 14 days within the area of the council, a notice containing the following information -
 - a) any recommendation in respect of parish basic allowance made by the parish remuneration panel;
 - b) the level or levels at which the authority has decided to pay parish basic allowance and to which members it is to be paid; and
 - c) a statement that in reaching the decision, regard was had to the recommendation of the parish remuneration panel.
12. The regulations also require a notice to be published when the report of the parish remuneration panel is made to the council (see below). It may be possible for the two separate requirements to be satisfied by the publication of one notice with the proviso that it contains all of the required information and timescales allow it to be dealt with in this manner.
13. The council has to keep a copy of the information referred to in the notice available for public inspection on reasonable notice.

Parish Travelling and Subsistence Allowance – Regulation 26

14. The council may pay to both elected and co-opted members allowances in respect of travelling and subsistence, including an allowance in respect of travel by bicycle

or other non motorised form of transport, undertaken or incurred in connection with the performance of any duty within the following categories -

- a) the attendance at a meeting of the council or of any committee or sub committee of the council, or of any body to which the council makes appointments or nominations or of any committee or sub committee of such a body;
- b) the attendance at a meeting of any association of authorities of which the council is a member;
- c) the performance of duties in connection with a tender process;
- d) the performance of any duty which requires the inspection of any premises;
- e) the carrying out of any other duty approved by the council, or any duty of a class so approved, or in connection with, the discharge of the functions of the authority or of any of its committees or sub committees.

Recommendations

15. Where a parish or town council proposes to pay the parish basic allowance, in setting the level of that allowance, it must have regard to the recommendations which have been made in respect of it by the parish remuneration panel in accordance with reg.28. The same requirement is not specified within reg.26 and so on face value, it would appear that the council can set the level of travelling and subsistence allowance without reference to the panel. However, the implication must be that, and the regulations do later refer to, the view of the parish remuneration panel being taken into account.

Parish Remuneration Panel – Regulation 27

16. Regulation 27 states that a parish remuneration panel **may** be established by a responsible authority which is defined as a district or unitary authority. It is therefore feasible that in some areas parish panels will not be set up as there is no duty to do so, rather a power. Of course, the implication is that the panel is established when a request to do so is made by an appropriate parish or town council. The process of making such a request is not specified within the regulations and again, how this is achieved in practice will differ around the country.
17. The expenses of the parish panel are to be met equally by those parish and town councils in respect of which recommendations are made (reg. 27(4)). Although the

regulations are again less than specific on this, it may be assumed that the cost is spread between those local councils that actually make a request.

18. When convened, a parish remuneration panel will produce a report making recommendations as to -
 - a) the amount of parish basic allowance payable to members of the parish or town council (the council must take this into account in setting the agreed level);
 - b) the amount of travelling and subsistence allowance payable ;
 - c) whether the parish basic allowance should be payable only to the chairman of the council or to all of the members;
 - d) if to be paid to all members whether the level to be paid to the chairman should be higher and if so, what that higher figure should be;
 - e) the responsibilities or duties in respect of which members should receive the travelling and subsistence allowance.

19. A copy of this report is sent to each council about which recommendations have been made.

Levels of Allowances – Regulation 29

20. In making its recommendations, the parish remuneration panel can apply the same level to all the local councils for which it was established or else recommend different levels for different councils.

21. The parish panel shall express its recommendation as to the level of parish basic allowance both as a percentage of the sum that the independent remuneration panel has recommended for the tier above (this figure can be 100 per cent) and as a monetary figure.

What to do after receiving the recommendation? – Regulations 30 and 31

22. As soon as is reasonably practicable after receiving the report from the parish remuneration panel, the council must -
 - a) ensure that copies are available for public inspection on reasonable notice;
 - b) publish a notice in a conspicuous place for a period of at least 14 days which:

- i. states that it has received the recommendation
- ii. describes the main recommendations and specifies the recommended amounts of each allowance and
- iii. states that copies of the panel's report are available for inspection upon giving reasonable notice and give details of how a request to inspect should be given.

23. A reasonable fee can be charged for the provision of a copy of the report.
24. The council is required to maintain records of payments made in respect of the allowances specifying the name of the recipient and the nature of the allowance. These records can be inspected by any local government elector for the parish or town without payment of a fee upon giving reasonable notice. Copies must be provided if so requested and a reasonable fee can again be charged.
25. At the end of a year (which means any period of 12 months ending on 31 March in any year), the council must publish a notice in a conspicuous place for a period of at least 14 days stating the total amount that it has paid for the parish basic allowance and for the parish travelling and subsistence allowance.

Election to Forgo an Allowance – Regulation 32

26. A member is able to elect in writing to the clerk that he or she wishes to forgo all or any part of their entitlement to the above allowances.

Recovery of Payments Made – Regulation 25(8)

27. The regulations provide for the recovery of allowances already paid to a member where for example, that member has been disqualified for a period of time following a complaint being made to the Standards Board for England.

Chairman's Allowance ([s.15\(5\) LGA 1972](#))

28. This section has not been repealed by the new regulations and can still be used to make the customary payment to meet the costs associated with the position of chairman. This may be particularly useful to councils who simply wish to continue with the practice of making the payment without the need to refer to the parish remuneration panel.

Dependants' Carer's Allowance

28. Parish and town councillors are not entitled to claim this allowance under the regulations and yet it is available under the new regulations, for example, to those district councillors with dependant children.

Tax Implications

29. When paying participation allowances to elected members, local councils are obliged by law to deduct income tax. The HM Revenue & Customs treats all councillors of all tiers equally and so local councillors will be subject to tax provisions in the same way as tiers above. There may also be similar considerations with regard to travel and subsistence allowance in certain circumstances. A guide to the Pay As You Earn (PAYE) implications is attached as an appendix to this Legal Topic Note and further training on this can be obtained through County Associations.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
11	Celebrations and Similar Events	Sets out how chairmen may use their allowance in respect of celebratory events

Appendix 1: Paying participation allowances to councillors: What to do about Pay As You Earn (PAYE)

When paying participation allowances to elected councillors local councils are obliged by law to deduct income tax, where appropriate, under the PAYE system. As a First Tier council you will not normally have to consider National Insurance Contributions, as the allowances are likely to be below the lower earnings limit of £102.00 per week. (This figure applies for 2011-12).

Opening a PAYE record

If your council has no PAYE record (sometimes referred to as a PAYE scheme) the first step is to contact the HM Revenue & Customs to arrange for a PAYE record to be opened. To do this telephone the **New Employers Helpline** on **0845 60 70 143** and say it is likely you will have to deduct tax.

The HM Revenue & Customs will open a PAYE record and within a short time you will receive separately through the post

- a 'New Employer's Starter Pack';
- a note advising you of;
 - your PAYE reference number
 - the name and address of your local HM Revenue & Customs office for most correspondence
 - the Accounts Office reference number for tax payments

The Starter Pack will include everything you need to make a start. (Some of the information will not apply to local councils. Simply put to one side anything that you think does not apply to you.)

Guidance and Help

The Starter Pack contains guidance in plain English about what you have to do and how to do it. The pack also contains a CD-ROM www.hmrc.gov.uk if you prefer to see the guidance 'on screen'. You can also visit the Employers Website: go to and click on 'Employers'.

If you need to speak to someone for help ring the **New Employers Helpline** on **0845 60 70 143**.

If you need to see someone for help contact your County Association of Local Councils to see about attending one of the presentations given by representatives of the Inland Revenue's Business Support Teams (BSTs) on the operation of PAYE and NICs. These presentations are designed specifically for people who have to operate a payroll for the first time. If you cannot attend one of these presentations but would like the help of the BSTs, they can be contacted through the New Employers Helpline or via the website at www.hmrc.gov.uk/bst/index.htm. The services provided by the BSTs are free of charge. Depending on the demand, specific presentations may be provided at regional, sub-regional or County Area.

What to do before paying participation allowances to councillors

All the forms and guidance mentioned here are in the Starter Pack and are freely available through the Employers order line **0845 7646-646**.

To operate PAYE on allowances paid to councillors you will need a PAYE code number for each councillor. To obtain an initial code number you must ask each councillor to complete the first section of form P46 and then follow the guidance provided in booklet P49 'Paying someone for the first time'. There is also help in Employer's Help Book E13 'Day to day payroll'.

When completed send the form P46 to your local HM Revenue & Customs office. That office will correspond with the councillor and then notify you (and the councillor) of the correct PAYE code to be used. There is information on tax codes in booklet P49.

Paying participation allowances and operating PAYE

Booklet P49 gives guidance on using a tax code and the Deductions Working Sheet, form P11. Help Book E13 'Day to day payroll' also gives guidance. Don't forget that you can ring the New Employer's Helpline on 0845 60 70 143 if you get stuck.

Paying tax deducted to the HM Revenue & Customs

Booklet P49 tells you about paying deductions over to the HM Revenue & Customs. Employers who deduct less than £1,500 for each Income tax month can opt to pay quarterly. If you have nothing at all to pay for a particular period send a 'NIL' payslip to the HM Revenue & Customs Accounts office.

What about travelling and subsistence and other expenses?

The position depends upon whether these expenses payments are taxable. Generally speaking the HM Revenue & Customs would expect you to apply PAYE only if you pay any of your councillors a round sum allowance or reimburse their private expenditure.

So far as payments in respect of expenditure on council business are concerned, if the total amount of all allowances and expenses paid to an individual councillor comes to more than £8500 for the year, they must be reported on form P11D unless there is a dispensation in place. If they come to £8,500 or less, no report is needed.

More information about the tax treatment of allowances and expenses and about dispensations is set out in the attached annex.

At the end of the tax year

After the end of the tax year (5 April) you have to complete an Employer's Annual Return. This summarises the pay and tax details of each councillor where tax was deducted during the year. The Return will be sent to you automatically. Full guidance is available to help you with this.

Councillors who leave

If a councillor in receipt of participation allowances ceases to hold office, you must:

- complete form P45 (see help Book E13 "Day to day payroll")
- send Part 1 to your HM Revenue & Customs office
- give the remaining parts to the councillor

Forms order online

If you start to run out of forms you can easily order more from the Employer's order line by Internet, fax or phone. The Order form in the Starter Pack tells you what to do.

Appendix 2: Tax treatment of councillor's allowances and expenses

Participation Allowances

These allowances are treated as income arising from the councillor's office (the equivalent of a person's employment) and they are taxable under the PAYE system. The allowances are liable to National Insurance Contributions (NICs). However the NIC's earnings threshold (the equivalent of £139 per week for 2011-12) means it is unlikely any NICs will be due.

Travel and Subsistence Expenses

There are special tax rules for travel and subsistence allowances. They are not taxable if

- the expenses were *necessarily* incurred in the performance of the duties of the employment, or
- they relate to the employee's attendance at a place of work, and
- they are not expenses of private travel or ordinary commuting.

It is accepted that councillors normally have two places of work – at home and where the council usually holds its meetings. This means, for example, that travelling allowances are not taxable if they are paid for travel:

- between home and the council's office (provided the councillor does undertake duties on behalf of the council at home) or
- between the council's office and some other place on council business.

Travelling and subsistence payments will normally qualify for a dispensation (see below).

Incidental Expenses

There is no tax liability where an authority reimburses the costs of incidental expenses such as postage or telephone calls (but not telephone rentals) and these are incurred wholly,

exclusively and necessarily in the performance of the councillor's duties. Such payments will normally qualify for a dispensation (see below).

Dispensations for Expenses

All expenses payments **reimbursed** to a councillor have to be declared to the HM Revenue & Customs on form P11D if the participation allowance and other payments total £8,500 or more in a year.

Where the expenses are **qualifying** expenses and the amounts involved do not include an element of profit, the local HM Revenue & Customs office can give you a dispensation which frees you from the need to declare the amounts on form P11D. The councillor at the same time is relieved of the need to declare the expenses on his/her tax return.

If it looks like you may have to complete form P11D you should if possible obtain a dispensation from your local HM Revenue & Customs office.

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