

EXTRACT FROM LGIU BOOKLET - COUNCILLORS' TAX  
AND BENEFITS

# 1. Introduction to this guide

## 1.1 Introduction

Councillors are elected as representatives of the people and the communities in which they live. They come from a wide variety of backgrounds with differing economic and social circumstances, so there is no such person as an average councillor. Some councillors may be unemployed, retired or have a long term illness or disability. Other councillors (or their partners) may claim means-tested benefits. Many will be employed either part-time or full-time.

Whatever your individual circumstances, it is important for you to understand how the duties you perform or the payments you receive as a councillor can affect your rights to social security benefits and your income tax liability.

This guide provides an introduction to the rules for both social security and income tax. It explains which allowances are taxable and how being a councillor can affect the benefits which you or your partner claim. We hope the information provided here will help you to avoid problems with your benefits or being asked to pay more tax than you need to.

The rules on both income tax and social security can be complex and detailed. This guide only provides information about the basic rules and principles that affect your rights to benefits and your income tax liability.

If you are having a particular problem with tax or benefits, you may need more detailed information and advice than this guide can offer. Extra information about individual benefits can be found in the welfare benefit handbooks listed in Appendix 1.

You may, however, also need to seek specialist advice, for example, from your council's welfare rights unit, a local advice centre, law centre, citizen's advice bureau or your tax office. The LGiU is unable to offer an advisory service to individual councillors.

## 1.2 Using this guide

This guide focuses on how being a councillor affects your tax or particular benefits. It explains the basic rules for individual benefits, such as Income Support, Incapacity Benefit and Jobseeker's Allowance and then the implications or special rules for councillors. If you want to know more about a particular benefit, you can consult one of the handbooks listed in Appendix 1.

Wherever possible, we have tried to explain the rules in plain English and avoided using jargon or quoting a lot of legislation or case law. However, we have referred to some of the most important parts of the legislation and case law in the text.

Appendix 2 also provides information on the more significant pieces of legislation and guidance which have been relied on for the advice on benefits in this guide. You may find the references in Appendix 2 useful to quote if you are having particular problems or challenging a benefit decision, but seek advice as well.

One cause of confusion is that allowance is a term used in official literature to describe payments from the council, social security benefits or tax-free income. We have tried to minimise the risk of confusion by being consistent when referring to different allowances.

Attendance allowance used to be paid by councils for specific duties but has now been abolished and replaced by the flat rate basic allowance and special responsibility allowance. However, your social security or tax office may still ask you how much you get in attendance allowances.

Attendance Allowance is also a social security benefit paid by the Department for Work and Pensions (DWP) to disabled people who have substantial needs for care or supervision. We refer to this as DWP Attendance Allowance.

Personal income tax allowance is the amount of tax free income which each of us is entitled to for the financial year and is referred to as tax allowance.

## 1.3 Modernising local government

Modernising local government is one of the government's aims. The Local Government Act 2000 required councils to adopt new decision making structures with a separation of executive roles from those of overview and scrutiny.

At the same time, the Act required councils to establish independent remuneration panels to recommend the level of payments to be made to councillors.

Councils can now pay a flat rate basic allowance to all councillors. They may also pay a special responsibility allowance where appropriate, a childcare and dependant carer's allowance, a travel and subsistence allowance and a co-optee's allowance.

Authorities are not obliged to accept and implement their panel's recommendations, but the ability to tailor schemes according to local circumstances has led to a wide variety in the levels and types of allowances being paid to elected members in England.

This system of members' allowances is seen as necessary to support the changing role of councillors and to attract and retain a broad range of people as councillors.

## 1.4 Payments for being a councillor

Councillors may now have to take responsibility for a wide range of decisions. Being a councillor is time consuming, often demanding and pressurised and subject to a lot of media scrutiny.

Yet the level of payments for councillors can still be less than the amounts paid to other people with similar responsibilities. Although people do not become councillors for financial

reward, the payment of appropriate allowances is widely seen as important if councils are to attract and retain people who are genuinely representative of the communities they serve.

### Role of remuneration panels

Councils are now required to establish independent remuneration panels by the Local Government Act 2000.

Their role is to provide a report to the council covering:

- the amount of basic allowance that should be paid to all councillors
- the duties of councillors that should be subject to a special responsibility allowance and the amount
- whether a childcare and dependant carer's allowance should be available to councillors and if so the amount
- the duties for which a travelling and subsistence allowance should be paid and the amount
- the amount of any co-optee's allowance
- which, if any, councillors should be eligible for membership of the Local Government Pension Scheme (LGPS)
- whether allowances should be increased annually by reference to an index.

Two or more councils may establish an independent remuneration panel and a single panel has been established for Wales, Scotland and by London Councils.

Any decision by a council to amend its remuneration scheme must have regard to the recommendations of the remuneration panel.

Although councils are not legally obliged to adopt their recommendations, they may find themselves subject to adverse media coverage if they do not do so.

## Types of payments

Councillors may receive a number of different payments from the council, which are treated differently for benefit and income tax purposes. These are outlined below.

- Basic allowance

This is a flat rate allowance that must be paid to all councillors either by instalments or as a lump sum.

It is counted as earnings for benefit purposes and taxable income for income tax purposes less any expenses which are wholly, exclusively and necessarily incurred in carrying out council and constituency duties.

A special rule means that expenses only have to be reasonably incurred for Incapacity Benefit purposes.

- Special responsibility allowance

Each council may pay a special responsibility allowance to those councillors who they consider have significant responsibilities. This can be paid as a lump sum or in instalments.

The council, acting on the report of the independent remuneration panel, must identify the special responsibility for which the allowance is to be paid and the amount of the allowance to be paid for them.

Special responsibility allowance is treated in exactly the same way as the basic allowance for benefit and income tax purposes.

- Childcare and dependant carer's allowance

Councils now have a discretionary power to pay a childcare and dependant carer's allowance to those councillors who incur expenditure for the care of their children or dependant relatives whilst undertaking various duties as a councillor.

It is treated as earnings or income for benefit purposes less any expenses actually incurred and taxable income for income tax purposes.

- Travelling and other expenses

Councils also have the power to reimburse councillors for travelling and other expenses incurred on council duties.

These should not be treated as earnings or income for benefit purposes or taxable income for income tax purposes unless it is considered a profit element is included. There are special rules for travel in your own vehicle on council business. These are covered in detail on page 8.

- Pensions

Councils are allowed by the Local Government Act 2000 to provide a pension for councillors.

The independent review panel are able to recommend which councillors should be eligible for membership of the LGPS and to determine whether this should be based on their basic or on their basic and special responsibility allowances.

In Wales, a single independent remuneration panel for all Welsh councils has recommended that all councillors are eligible for membership of the LGPS on both their basic and special responsibility allowances.

The LGiU believes that all councillors should be able to join the pension scheme.

- Co-optee's allowance

Councils may also pay an allowance for the whole or part of the year to any co-opted or appointed member of a committee or sub-committee.

Any co-optee's allowance should be treated in the same way as the basic allowance for tax and benefit purposes.

## **Effects on social security benefits and income tax**

The basic allowance and any special responsibility allowance, co-optee's allowance or childcare and dependant carer's allowance you receive count as earnings for benefit purposes and taxable income for income tax purposes.

Any profit element from the other allowances could also be counted as earnings or taxable income by Her Majesty's Revenue and Customs (HMRC). You should therefore declare all this income on your tax return and to each office where you claim benefits or tax credits.

The current system of councillors' allowances has given local authorities considerable discretion to decide how much and which allowances to pay. This has resulted in wide variations in the type and levels of councillors' allowances paid in different parts of the country. More and more authorities are now paying quite substantial flat rate basic allowances of up to £13,000 a year.

Many have introduced a cabinet system of local government and where this has been introduced some cabinet members may receive an additional special responsibility allowance of up to £40,000-£50,000 a year. Others continue to pay much lower allowances.

These variations make it difficult for both HMRC and the DWP to treat councillors consistently across the country. They both have

problems judging whether particular payments are earnings or expenses and therefore what effect they have on tax or benefits.

Over the past 10 years, the government has been clear that it wishes to encourage people with a wide range of backgrounds, experiences and skills to serve as councillors. The LGiU supports this aim and believes it would make local democracy more representative if more people on benefits were to become councillors.

However, the way that payments from the council affect councillors who claim benefits has serious implications. Newly elected councillors to authorities who pay high flat-rate basic allowances will probably find they lose entitlement to means-tested benefits. Councillors in other authorities may find they keep very little of their allowances on top of their benefits.

In these authorities, councillors, in effect, cover the costs of carrying out their duties from their benefits. Unemployed councillors and those on Incapacity Benefit in recent years have found it more difficult to remain on benefits while they are a councillor.

Recent benefit changes, far from addressing these problems, have further disadvantaged councillors on some benefits. The LGiU has made a number of representations to government ministers on these issues.

The problems facing councillors on benefits cannot be overcome without further changes to the system of councillors' allowances or to the benefit system itself.

In the meantime, we hope that this guide will enable councillors to know their rights and get their full benefit entitlement and maximum tax allowances.