

NOTICE OF MEETING

EXTRAORDINARY FULL COUNCIL

From: The Mayor of Haringey Council - Councillor Sheila Peacock
To: Councillors of Haringey Council

Dear Sir/Madam

A meeting of the Council of the London Borough of Haringey will be held at the Civic Centre High Road, Wood Green N22, and 8LE on Tuesday 26th November at 7.30pm to transact the following business.

Agenda

In accordance with Part 4 - section A [4.2] of the Constitution, it being an extraordinary meeting of the Council no other business shall be considered other than those items stated on the Summons. Any tabled items will only relate to those shown on the Summons.

Quorum: 15

1. FILMING AT MEETINGS

Please note this meeting may be filmed or recorded by the Council for live or subsequent broadcast via the Council's internet site or by anyone attending the meeting using any communication method. Although we ask members of the public recording, filming or reporting on the meeting not to include the public seating areas, members of the public attending the meeting should be aware that we cannot guarantee that they will not be filmed or recorded by others attending the meeting. Members of the public participating in the meeting (e.g. making deputations, asking questions, making oral protests) should be aware that they are likely to be filmed, recorded or reported on. By entering the meeting room and using the public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings.

The Chair of the meeting has the discretion to terminate or suspend filming or recording, if in his or her opinion continuation of the filming, recording or reporting would disrupt or prejudice the proceedings, infringe the rights of any individual, or may lead to the breach of a legal obligation by the Council.

2. TO RECEIVE APOLOGIES FOR ABSENCE

3. DECLARATIONS OF INTEREST

A member with a disclosable pecuniary interest or a prejudicial interest in a matter who attends a meeting of the authority at which the matter is considered:

- (i) must disclose the interest at the start of the meeting or when the interest becomes apparent, and
- (ii) may not participate in any discussion or vote on the matter and must withdraw from the meeting room.

A member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Register of Members' Interests or the subject of a pending notification must notify the Monitoring Officer of the interest within 28 days of the disclosure.

Disclosable pecuniary interests, personal interests and prejudicial interests are defined at Paragraphs 5-7 and Appendix A of the Members' Code of Conduct

4. TO RECEIVE THE REPORT OF THE CHIEF EXECUTIVE

5. TO RECEIVE THE REPORT OF THE MONITORING OFFICER AND HEAD OF LEGAL SERVICES

6. TO MAKE APPOINTMENTS TO OUTSIDE BODIES (PAGES 1 - 2)

7. TO CONSIDER REQUESTS TO RECEIVE DEPUTATIONS AND, IF APPROVED, TO RECEIVE THEM

Council Standing Order 4.4 states that *Rule 11 shall apply to extraordinary meetings, but deputations will only be received where its purpose is related to an item of business on the summons.*

8. TO RECEIVE REPORTS FROM THE FOLLOWING BODIES

- a) The Standards Committee
- b) Cabinet
- c) Corporate Committee

9. REPORT FROM STANDARDS COMMITTEE REPORTING UP CHANGES TO THE CONSTITUTION RELATING TO: THE FINANCIAL REGULATIONS, COUNCIL STANDING ORDERS AND MEMBERS CODE OF CONDUCT (PAGES 3 - 254)

10. CABINET REPORT ON ADDITIONAL HOUSING REVENUE ACCOUNT SPEND ON NEW BUILD PROPERTIES AND TEMPORARY ACCOMMODATION ACQUISITIONS. (PAGES 255 - 264)

- 11. CORPORATE COMMITTEE REPORT TREASURY MANAGEMENT
2018/19 OUTTURN, (PAGES 265 - 280)**
- 12. APPROVAL OF COUNCIL TAX REDUCTION SCHEME FOR 2020/21
(PAGES 281 - 526)**
- 13. DOCKLESS BICYCLES - PAN LONDON BYLAW (PAGES 527 - 536)**

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Monday, 18 November 2019

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Report for: Full Council, 26 November 2019

Title: Appointment to Outside Bodies

Report author: Acting Democratic Services and Scrutiny Manager – Ayshe Simsek - 0208 489 2929

Ward(s) affected: N/A

**Report for Key/
Non Key Decision:** Non-Key

1. Describe the issue under consideration

To agree a change in Cabinet representatives on Newable (formerly Greater London Enterprise) until appointments are due for renewal in May 2020.

2. Cabinet Member Introduction

N/A

3. Recommendations

For Full Council to agree:

- 3.1 That the Cabinet Member for Local Investment and Economic Growth replaces the Cabinet Member for Finance and Strategic Regeneration as the Council's Cabinet representative on Newable (formerly Greater London Enterprise) until appointments to outside bodies are due for renewal in May 2020.

4. Reasons for decision

- 4.1 The Cabinet Member for Finance and Strategic Regeneration was appointed as the Council's Cabinet representative on Newable at the Annual Meeting of the Council in May 2019. Following attendance at these outside body meetings, it became clear that the attendance of the Cabinet Member for Local Investment and Economic Growth was more suited to the role because the Cabinet Member portfolio includes business engagement.
- 4.2 Under the Local Government and Housing Act 1989 and the Local Government (Committees and Political Groups) Regulations 1990, Council Committees should be proportionate as far as possible in accordance with the Council's political balance. This is not affected by this change, as both Members are from the same political group.

5. Background information

- 5.1 As set out at Article 4.02 (o) at Part 2 of the Council's Constitution, and at paragraph 1 (o) of Part 3 Section B of the Constitution (Responsibilities and Functions) only the Council may make changes to outside bodies.

6. Contribution to strategic outcomes

N/A

7. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and Procurement

The changes recommended in this report will have no direct financial implications.

Legal

This report was prepared with the contribution of the Monitoring Officer.

Equality

N/A

8. Use of Appendices

None

9. Local Government (Access to Information) Act 1985

a. Haringey Council's Constitution

REPORT OF STANDARDS COMMITTEE

FULL COUNCIL 26 November 2019

Chair of Standards Committee – Cllr Felicia Opoku

INTRODUCTION

The Committee met on the 14th of October 2019 and considered three reports outlining proposed changes to the Council Constitution. These were concerning:

1. The Council's Financial Regulations - Part 4 Section I
2. Associated amendment at Part 4, Section E, Budget and Policy Framework
3. Part 5 Section A – Members' Code of Conduct – Part 1
4. Part 5 Section A – Members' Code of Conduct – Part 2
5. Council Procedure rules - Part 4 Section A
6. Committee Procedure Rules – Part 4 Section B

SUMMARY OF CONSIDERATIONS

FINANCIAL REGULATIONS UPDATE

We considered this report which proposed updates to the Council's Financial Regulations, and the Budget and Policy Framework Procedure Rules. We noted that it was good practice to regularly review and update the constitution generally, the financial regulations section of the constitution was last reviewed in 2014. The changes proposed were made to ensure that:

- the rules and processes by which decisions are made governing the management the Council's financial affairs are clearly set out;
- effective financial controls are maintained;
- Procedures enable efficient open, accountable and decision making.

We carefully considered each individual proposed change to the financial regulations section of the Constitution.

In response to our questions we were provided the following information:

- Regarding the raising of limits for debt write offs at the ALMO (Homes for Haringey), the Council had not consulted the ALMO or its Director in the reviewing of the proposed figures but had instead researched other boroughs constitutions to ensure the Council was in line with practice at other authorities. It was noted the working group that proposed the new limits involved the Head of Finance who has operational dealings with the ALMO.
- Officers confirmed '*to take ownership for*' at paragraph 5.24 would be amended to state '*to take responsibility for*'. We considered this would better reflect the requirement for managers.

- Only budget adjustments over £250,000 were reported to Cabinet, this was due to a clause in the Haringey Constitution. However, it was noted that other Councils had different limits for this, with some differing greatly to Haringey.
- Any '*other housing income*' referenced in 8.14 included any income of any sort.
- We raised concern regarding Cabinet Member involvement in debts that were written off due to the potential personalised nature of these decisions and the difficult position this could place a councillor in who had both interaction with the community due to their ward role and then with officers in taking forward their policy decision making role. We were advised this would only take place upon the advice of the Chief Executive of the ALMO and the Section 151 Officer. When Officers reviewed other councils' practice in write offs, it was found some did not include councillors in this process. We requested information on how many of the debts owed to the ALMO were over £25,000 were written off. Going forward, Officers suggested this could be kept under review and the issue returned to in 12 months, with the role of councillors in the process also considered.
- The Cabinet Member responsible for the ALMO write offs was the Cabinet Member responsible for Finance as they were responsible for the finance portfolio and had regular dealings with the Section 151 Officer, who would advise, (alongside the Chief Executive of the ALMO) whether any debts should be written off.
- We expressed concern that the specific reference to '*Cabinet Member for Finance*' could cause difficulties if there was to be any change in the name of the Cabinet Member responsible for finance. Officers confirmed this could be amended to reflect whoever was responsible for the finance portfolio, rather than listing a specific title. We were reassured by the Legal Officer that the Monitoring Officer had the authority to make minor amendments to the Constitution, which could be used to reflect title changes.

We agreed to:

- Change '*to take ownership for*' at paragraph 5.24 to state '*to take responsibility for*'.
- Change '*Cabinet Member for Finance*' at 8.14 to read "*cabinet member responsible for the finance portfolio*".
- Keep the debt write off under review with Officers to bring an update report in approximately 12 months' time, to include information on the total number of debt write offs over £25,000, and to consider the role of councillors in debt write off, in light of the Committees concerns above.

REVIEW OF ETHICAL STANDARDS

We considered proposed changes to the Council's Constitution, in relation to the Member code of Conduct. These were in accordance with recommendations made by the national Committee on Standards in Public Life in its report on Local Government Ethical Standards. We noted the following

- The report included changes that could be made by the Committee which did not require legislation changes.

- There were recommendations to include a more detailed prohibition on bullying and harassment in the Members Code of Conduct, and to regularly review the Code of Conduct each year.
- A recommendation that the Monitoring Officer meet regularly with political group leaders or group whips to discuss standard issues, the Labour Chief Whip had suggested this be formalised as a quarterly meeting and this had been communicated to the Monitoring Officer. We further recommended this meeting takes place.

At 'Part 5, Section A, Protocol - Complaints against Members, Paragraph 3', the Council currently had two independent persons. We agreed that a reference be included to the Council having two Independent Persons.

The Independent Person had also suggested in an email to amend the wording of 3.2 (ii) to remove '*decided to*' so that it read '*the Hearing Sub-Committee before it makes its decision on an allegation which it was investigating*'. We agreed to this change but requested this be checked with the Independent Person to ensure it reflected the change they sought.

We made the following observations and agreed changes to the report:

- Where reference was made to the Monitoring Officer in 'Part 5, Section A, Protocol - Complaints against Members', Officers would look for suitable wording to include reference to the Deputy Monitoring Officer, who would deputise when the Monitoring Officer had recused themselves.
- In reference to the definition of bullying and harassment at 'Part 5, Section A, Member Code of Conduct, Paragraph 3.2 (b) (i) and (ii)' this was likely referenced from previous best practice guidance. The Committee agreed '*may be*' be removed after both bullying and harassment and reworded to state "*...includes conduct such as...*"
- Rewording 3.2 (b) to state "*bully or harass any person through any means*"
- Revising 3.2 (b) (iii) to read '*examples of bullying or harassment include, but not limited to*'.
- It was suggested including reference to social media and electronic communications at 3.2 (b) (iii), as there was concern this section could be considered too generic. We consequently agreed the wording was broad enough to cover social media and electronic communications without specifically stating so. We agreed to add '*including*' before touching at bullet point 7, and to include '*making lewd or sexual remarks*' to the list under '*unwelcome sexual advances*'.
- With regards to the understanding the value of a gift and whether it met the threshold of £25, the Chair suggested that, if councillors were unsure, they should declare any gift or hospitality. This would avoid any later confusion.
- It was suggested 'Part 5, Section A, Member Code of Conduct' be consistent where reference was made to Members and co-opted members. We asked officers to explore the option to add co-opted members declarations on the same page as Members on the Council's website and would also clarify the Council's position on publishing Independent Persons details and any conflicts of interest

- We suggested adding a clear definition of what specifically 'Independent' meant in relation to the Independent Person.

CHANGES TO COUNCIL STANDING ORDERS AND COUNCIL PROTOCOL

We considered proposed changes to the Council and Committee standing orders, including Full Council protocol.

We noted the updates were mainly concerned with strengthening existing procedural rules and encouraging public participation in the democratic process.

Regarding Full Council Protocol and the debate item, we noted the following suggestions:

- Removing the Haringey Debate
- Keeping the debate item and reducing the time allocated to 45 minutes in total.
- The Mayor and Leaders of both political groups choosing and advertising a proposed debate item to community groups/ organisations in the borough and inviting representations to the meetings on the chosen item.

We discussed the option of community groups being given the choice to put forward deputations for Full Council and how this would work in practice. We further considered the suggested change to the start time of Full Council, with the option of finishing at 21:30 suggested.

We agreed that any suggested changes to the Full Council Protocol be considered by the Leaders of the Political Groups and be reported back to our next meeting in January.

We agreed adding to the Standing Orders for Full Council at 10.7 '*...relevant to the original question*'.

We asked that where written responses were agreed in relation to the Oral questions, they could be included at that following meeting's report pack or minutes, to resolve the issue.

WE RECOMMEND TO FULL COUNCIL:

1. To approve the changes to the Financial Regulations Part 4 Section I and associated amendment at Part 4, Section E, Budget and Policy Framework Procedure Rules set out in track changes at Appendix 2 and Appendix 3.
2. To note the best practice points and recommendations in the report on Local Government Ethical Standards from the Committee on Standards in Public Life set out at Appendix 5.

3. To approve the amendments to the Constitution - Part 5 Section A – Members' Code of Conduct – Part 1 set out in track changes Appendix 6.
4. Part 5 Section A – Members' Code of Conduct – Part 2 – Process for handling complaints set out in track changes Appendix 7.
5. To approve amendments and additions to Council Procedure Rules as set out in track changes at Appendix 9.
6. To approve amendments to the Committee Procedure rules as set out in track changes at Appendix 10.

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Report for: Standards Committee 14 October 2019

Title: Financial Regulations Update

Report authorised by: Jon Warlow, Director of Finance (S151 Officer)

Lead Officer: Thomas Skeen, Head of Pensions, Treasury & Chief Accountant
thomas.skeen@haringey.gov.uk 020 8489 1341

Ward(s) affected: N/A

Report for Key/
Non Key Decision: Non Key decision

1. Describe the issue under consideration

- 1.1. To update the Council's Financial Regulations, and the Budget and Policy Framework Procedure Rules which form a part of the Council's constitution.

2. Cabinet Member Introduction

- 2.1. Not applicable.

3. Recommendations

- 3.1. That Standards Committee recommend Full Council: approve the changes to the Financial Regulations Part 4 Section I (Appendix 2) and associated amendment at Part 4, Section E, Budget and Policy Framework Procedure Rules at paragraph 7.1 (Appendix 3)"

4. Reason for Decision

- 4.1. The proposed changes to the Constitution are to ensure that:
 - the rules and processes by which decisions are made governing the management the Council's financial affairs are clearly set out;
 - effective financial controls are maintained;
 - procedures enable efficient open, accountable and decision making.

5. Other options considered

- 5.1. Leaving the Financial Regulations as they stand was considered, however there is a need to ensure that clear and effective financial procedures and controls are in place. As to the minor changes to the Financial Procedure Regulations no other alternatives were considered as the changes are required to either provide clarity or to reflect changes to legislation, the name of some Council Committees, the management structure, and Council documents.

6. Background information

- 6.1. It is good practice to regularly review and update the constitution generally, the financial regulations section of the constitution was last reviewed in 2014. In reviewing the financial regulations, it was noted that change would be required to the Budget and Policy Framework Procedure Rules in order for the two documents to remain consistent. Only one change is proposed to this document, which is detailed later in this report.
- 6.2. Senior officers from the council's finance, legal, audit and debt management teams have reviewed the Council's current financial regulations in order to update these. The current financial regulations and the changes proposed by this report are shown in Appendix 1 as a 'tracked changes' version in order for members to review what is proposed to change in the document. Appendix 2 presents a 'clean' version of the new proposed document, as this would be proposed to be published in the constitution with all the changes incorporated.
- 6.3. One change is proposed to the Budget and Policy Framework Procedure Rules, this is detailed in paragraph 6.4.2 below, and a proposed amended version of this document is appended at Appendix 3.
- 6.4. The review of the financial regulations has highlighted a number of minor amendments required, such as:
- Changes to post titles where these have changed;
 - Changes to the titles of key documents;
 - Changes to the titles of Council committees;
 - Updates to include new legislation passed since 2014;
 - Using gender neutral pronouns for individuals named in the document, e.g. 'they' instead of 'he' or 'she';
 - Minor amendments to wording to improve the clarity of the document;
- 6.5. The review of the financial regulations also included some more substantive changes or enhancements to the document, and these are detailed individually below:

- 6.5.1. Paragraph 5.24 has been expanded upon with the below paragraph added to clarify and enhance the description of budget holder responsibilities:

‘to take ownership for all aspects of the financial management of the service(s) which they are responsible for, including managing, controlling and recording all expenditure and income;’

- 6.5.2. The review of the financial regulations highlighted that the Council’s definition of ‘virement’ required updating. ‘Virement’ is defined in the Council’s Budget and Policy Framework Procedure Rules (Part 4 Section E). It was therefore necessary to also include this document within the scope of the review. The Council currently defines ‘Virement’ as per the below (Part 4 Section E, para 7.1):

“Virement” is the ability to meet increased expenditure or reduced income under one expenditure vote from savings in another expenditure vote or from increased income. The Council’s rules on virement are set out in the Financial Regulations set out in the Constitution.’

- 6.5.3. In order to update the terminology used in this definition, and indeed to make this definition more specific, finance officers therefore recommend that this definition in the Budget and Policy Framework Procedure Rules is updated to read as follows:

“Virement” is a transfer of a budget for direct spend by the Council, which is required due to a policy change or re-prioritisation of resources between services. The Council’s rules on virement are set out in the Financial Regulations set out in the Constitution.’

- 6.5.4. In reviewing the virements section of the Financial Regulations, officers recommend updating and expanding paragraph 5.28 to give further detail and to draw the distinction between a ‘virement’ (per the above definition), and a ‘budget adjustment’ which does not represent a change in policy or re-prioritisation and may be required for technical reasons. The proposed wording also includes a time frame in which reporting to cabinet should take place. The current and proposed reading of this paragraph are presented below.

Current reading:

'The Section 151 Officer may authorise virements between service areas for technical reasons, e.g. central support cost allocation, capital charges such as depreciation, FRS17 adjustments. Such adjustments will be reported in the budget monitoring reports to Cabinet.'

Proposed reading:

'The Section 151 Officer may authorise any budget adjustments between or within service areas or capital schemes, required for technical reasons and which do not fall into the below mentioned revenue or capital virement definitions. For example the Section 151 Officer may authorise central support cost allocation, capital charges such as depreciation, IAS19 pension adjustments, or to reflect the enactment of previous decision making. Such adjustments over £250k will be reported in the budget monitoring reports to Cabinet within 3 months of them taking place.'

6.5.5. Paragraphs 5.31 and 5.32 in the Financial Regulations specify particular limits for different types of virements. In reviewing the Financial Regulations, officers included consideration of the content of constitutions of other boroughs: it was noted that the virement limits in other constitutions were generally higher than those in Haringey's constitution, and some of these did not provide for executive (political) approval. Officers do not recommend that the current limits in Haringey's constitution are increased. Paragraphs 5.31 and 5.32 have been reworded to maintain consistency with the definition of virements mentioned above.

6.5.6. The sections in the Financial Regulations which details the role of internal audit has been expanded upon with a new paragraph added: 5.45:

'Internal audit is an independent and objective appraisal function established by the authority for reviewing the system of internal control. It examines, evaluates, and reports on the adequacy of internal control. It does this by objectively reviewing and advising management upon the effectiveness of their systems of internal control. It aims to provide assurance on the design and operation of internal controls and provide constructive and positive advice on control improvement and risk management.'

6.5.7. The section in the Financial Regulations which details Preventing Fraud and Corruption has been similarly expanded upon with new paragraphs 7.12 – 7.14 added:

7.12. *The Council will not tolerate fraud and corruption in the administration of its responsibilities, whether from inside or outside the Council.*

7.13. *The Council's expectation of propriety and accountability is that members and officers at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and good practices.*

7.14. *The Council also expects that individuals and organisations (e.g. suppliers, contractors, and service providers) with which it comes into contact will act towards the Council with integrity and without thought or actions involving fraud and corruption.*

6.5.8. In reviewing other constitutions, officers noted that the debt write off limits specified in paragraphs 8.14 and 8.15 of the Financial Regulations are also low when compared to other boroughs. The current content of these paragraphs is copied below for ease:

8.14. *Arrears of housing rents and other housing income administered by the ALMO (Homes for Haringey) may be written off in accordance with procedure notes issued by the **Section 151 Officer** with the below authorities:*

- a) up to £100, the approval of **Chief Executive of the ALMO** and reported to the **Section 151 Officer**.*
- b) £100 and up to £25,000, the approval of the **Section 151 Officer** upon the advice of the **Chief Executive of the ALMO**.*
- c) £25,000 or above, the approval of the **Cabinet Member for Resources** upon the advice of the **Chief Executive of the ALMO** and the **Section 151 Officer**.*

The ALMO shall keep a record of all such sums written off.

8.15. *All other debts which remain unpaid may be written off in accordance with the below authorities:*

- a) Up to £25,000 on the approval of the **Section 151 Officer** upon the advice of the relevant Director;*

- b) £25,000 or above on the approval of the Cabinet Member for Resources upon the advice of the relevant Director and the Section 151 Officer.

Corporate Finance shall keep a record of all such sums written off.

- 8.16. All debts written off will be reported in summary to the **Cabinet** in the regular budget monitoring reports.

6.5.9. Of the other borough constitutions examined, it was noted that generally the limits specified within these were higher (for example a limit of £200k where Haringey has £25k currently), and also some boroughs did not require the involvement of the executive to write off debt, this was a delegation only to officers. In reviewing and considering this, officers recommend the below changes:

- That the first level of debt write-off for the ALMO be increased to £1,000
- That an additional lower level write-off provision be included for debts up to £1,000 for the Council
- That the £25,000 limit for write offs be increased to £50,000

6.5.10. The proposed revised reading of these two paragraphs is copied below:

8.14. *Arrears of housing rents and other housing income administered by the ALMO (Homes for Haringey) may be written off in accordance with procedure notes issued by the **Section 151 Officer** with the below authorities for individual debt accounts:*

- a) *up to and including £1,000, the approval of **Chief Executive of the ALMO** and reported to the **Section 151 Officer**.*
- b) *Over £1,000 and up to and including £50,000, on the approval of the **Section 151 Officer** upon the advice of the **Chief Executive of the ALMO**.*
- c) *Over £50,000, on the approval of the **Cabinet Member for Finance** upon the advice of the **Chief Executive of the ALMO** and the **Section 151 Officer**.*

The ALMO shall keep a record of all such sums written off.

8.15. *All other individual debt accounts which remain unpaid may be written off in accordance with the below authorities:*

- a) up to and including £1,000, the approval of relevant **Director** and reported to the **Section 151 Officer**.
- b) Over £1,000 and up to and including £50,000, on the approval of the **Section 151 Officer** upon the advice of the relevant **Director**;
- c) Over £50,000, on the approval of the **Cabinet Member for Finance** upon the advice of the relevant **Director** and the **Section 151 Officer**.

Corporate Finance shall keep a record of all such sums written off.

- 8.16. All debts written off will be reported in summary to the **Cabinet** in the regular budget monitoring reports.

7. Contribution to Strategic Outcomes

- 7.1. None.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and Procurement

- 8.1. The financial regulations are one of the Council's core governance documents, these must be kept under regular review to ensure they remain current, changes to these must be carefully scrutinised by Officers from a variety of Council disciplines, and members.

Legal

- 8.2. Section 9P Local Government Act 2000 requires the Council to prepare and keep up to date a Constitution. By virtue of section 5 of the Local Government and Housing Act 1989 the Monitoring Officer is responsible for the operation of the Council's Constitution. This includes monitoring and reviewing the operation of the Constitution to ensure that its aims and principles are given full effect, and matters of interpretation of the Constitution's Rules and Procedures as necessary.

- 8.3. The Assistant Director of Corporate Governance confirms that the changes are required to comply with the Council's statutory responsibility to keep the Constitution up-to-date and ensure that the rules and process by which decisions are made in relation to the management of the Council's financial affairs are clearly set out.

Equalities

8.4. There are no equalities issues arising from this report.

9. Use of Appendices

Appendix 1 – tracked changes proposed version of Financial Regulations

Appendix 2 – clean proposed version of Financial Regulations

Appendix 3 – proposed version of Budget and Policy Framework
Procedure Rules

10. Local Government (Access to Information) Act 1985

10.1. Not applicable.

Part Four, Section I

Financial Regulations

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PART 4 – RULES OF PROCEDURE – **DRAFT VERSION FOR 2019 UPDATE**
Section I – Financial Regulations

Part 1 - Status of Financial Regulations

1. Status

- 1.1. Our Financial Regulations provide the framework for managing the Council's financial affairs and for resources that the Council or its employees manage on behalf of others. They apply to every **Councillor** and **Officer** of the Council and to the ALMO in respect of debt write off.
- 1.2. All Members and staff have a general responsibility for taking reasonable action to provide for the security of the assets under their control and for ensuring that the use of these resources is legal, is properly authorised, provides value for money and achieves best value.
- 1.3. The regulations identify the financial responsibilities of:
 - the **full Council**;
 - the **Cabinet**;
 - the **Overview and Scrutiny Committee**;
 - the **Head of the Paid Service (Chief Executive)**;
 - the **Monitoring Officer (Assistant Director of Corporate Governance)**;
 - the **Section 151 Officer (~~interim Chief Finance Officer~~Director of Finance also known as Chief Finance Officer)** and **Directors**;
 - **Budget Holders** within service areas.
- 1.4. The **Section 151 Officer (~~Chief Finance Officer~~)** is responsible for maintaining a continuous review of these Financial Regulations and submitting any additions or changes necessary to **full Council** for approval in accordance with article 15.03(a) of the Constitution.
- 1.5. The **Section 151 Officer** is responsible for issuing advice and guidance to underpin these Financial Regulations that **Councillors, Officers and others acting on behalf of the Council** are required to follow. This advice and guidance will generally be based on CIPFA Standards of Professional Practice, which are available on www.cipfa.org.uk.
- 1.6. The **Section 151 Officer** is also responsible for reporting, where appropriate, breaches of these Financial Regulations to the **Council** and/or to the **Cabinet Members**.
- 1.7. These Financial Regulations are supported, where appropriate, by detailed procedure notes, setting out how these Financial Regulations will be implemented.

PART 4 – RULES OF PROCEDURE – **DRAFT VERSION FOR 2019 UPDATE**
Section I – Financial Regulations

- 1.8. **Directors** are responsible for ensuring that all staff in their service areas are aware of the existence and content of the Council's Financial Regulations and other internal regulatory documents and that they comply with them.
- 1.9. It is a disciplinary offence to breach these Financial Regulations. A breach of these regulations should be reported to the **Section 151 Officer** as soon as is practicable to do so.
- 1.10. All staff are required to conduct themselves to the highest standards. The involvement of staff in any form of bribery, corruption, fraud or deception will not be tolerated.
- 1.11. For any aspect of finance relating to schools **the Haringey's Scheme for Financing Schools-Schools Financial Regulations**, which are designed to give detailed assistance to schools, should be referred to.

2. Recording delegations

- 2.1. **Directors** should maintain written records where financial decision making has been delegated to members of their staff, including seconded or temporary staff. Where decisions have been delegated or devolved to other responsible officers references to **Directors** in the regulations should be read as referring to them.

3. Financial Control Framework

- 3.1. The financial administration framework of the Council is organised in accordance with Section 151 of the Local Government Act 1972, requiring that every Local Authority in England and Wales should 'make arrangements for the proper administration of their financial affairs and shall secure that one of their Officers has responsibility for the administration of those affairs.' The framework comprises:
 - **Constitution:** The principal rules governing the Council's affairs, including financial affairs, and the delegation of authority to **Councillors** and **Officers**;
 - **Financial Regulations:** This document is part of the Constitution, created by the Council;
 - The **Scheme of Financial Delegation** and specific delegations by **Directors** to officers in their service area;
 - **Contract Standing Orders**;
 - **Guide to Procurement**;
 - **Medium Term Financial PlanStrategy (MTFS).**

4. Devolution of Financial Management and Accounting

- 4.1. The Council seeks to unite operational and financial responsibility to empower managers to give them the tools to deliver high quality services. Part of that empowerment is to give them control of the resources needed to deliver the service so that they can plan and use these resources to obtain the maximum benefit for the service.
- 4.2. The Council also needs to balance responsibilities with accountability and protection for Officers so that they know their authorisation levels and the limit to those authorities.

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Part 2 – Financial Management

5. Financial Management (including virement rules)

Introduction

- 5.1. Financial management covers all financial accountabilities in relation to the running of the Council, including the policy framework and budget. The Financial Regulations are not an exhaustive document and proper financial management should be applied in all circumstances even if not specifically referred to.

The Full Council and the Cabinet

- 5.2. The **full Council** is responsible for adopting the Council's Constitution and Members' code of conduct and for approving the policy framework and budget within which the **Cabinet** operates. It is also responsible for approving and monitoring compliance with the Council's overall framework of accountability and control. The framework is set out in this Constitution. The **full Council** is also responsible for monitoring compliance with the agreed policy and related **Cabinet** decisions.
- 5.3. The **Leader** has powers to take any decision, including a key decision, which the **Cabinet** could have taken. This is set out in Part 3 Section C of the Council Constitution. When **Members** take decisions on reports, the reports must comply with the Protocol for Decision-making in Part 5 Section D and this must include the provision of the **Chief Finance Officer's** comments on the financial implications.
- 5.4. The **Cabinet** is responsible for proposing the policy framework and budget to the **full Council** and for discharging Executive functions in accordance with the policy framework and budget.
- 5.5. **Cabinet** decisions can be delegated, in accordance with the delegation arrangements set out in Part 3 of this Constitution.

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Committees of the Council

Overview and Scrutiny Committee

- 5.6. The **Overview and Scrutiny Committee** is responsible for scrutinising key decisions (decisions of the **Cabinet, the Leader, or Cabinet members**) before or after they have been implemented and for holding the **executive** (the **Cabinet, the Leader and Cabinet members**) to account. The **Overview and Scrutiny Committee** is also responsible for making recommendations on future policy options and for reviewing the general policy and service delivery of the Council.

Corporate Committee

- 5.7. The **Corporate Committee** is established by the **full Council**. It has right of access, through the officer acting as Chief Internal Auditor (currently the Head of Audit and Risk Management) from time to time, to all the information it considers necessary and can consult directly with internal and external auditors. The **Corporate Committee** is responsible for reviewing the external auditor's reports and the Annual Audit and Inspection Letter and internal audit's annual report. The **Corporate Committee** also monitors responses to audit reports.

Standards Committee

- 5.8. The **Standards Committee** is established by the **full Council** and is responsible for promoting and maintaining high standards of conduct amongst **Councillors** as Members. In particular, it is responsible for advising the Council on the adoption and revision of the Members' code of conduct, for monitoring the operation of the code, and for recommending proposals for any changes to the Constitution to full Council for approval.

The Pensions Committee and Board

- 5.9. **The Pensions Committee and Board** acts as the quasi-trustee of the Local Government Pension Scheme (**LGPS**) for the Council.

Alexandra Palace and Park Board

- 5.10. Alexandra Palace and Park Board is a Committee of the Council with responsibility for discharging a specific statutory charity trustee role. It has its own Financial Regulations and governance but is, nonetheless, subject overall to the Section 151 Officer who has responsibility for its financial affairs. It is also subject to charities law and accounting practice.

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The Statutory officers

Head of Paid Service (Chief Executive)

- 5.11. The **Chief Executive** as Head of Paid Service is responsible, in relation to these Financial Regulations, for the corporate and overall strategic management of the Council as a whole. The **Chief Executive** must report to and provide information for the **Cabinet**, the **full Council**, the **Overview and Scrutiny Committee** and **other committees**.
- 5.12. The **Chief Executive** is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation. The **Chief Executive** is also responsible, together with the **Monitoring Officer**, for the system of record keeping in relation to all the **full Council's** decisions.

Monitoring Officer (Assistant Director of Corporate Governance)

- 5.13. The **Monitoring Officer** is responsible, in relation to these Financial Regulations, for promoting and maintaining high standards of financial conduct and therefore provides support to the **Standards Committee**. The **Monitoring Officer** is also responsible for reporting any actual or potential breaches of the law or maladministration to the **full Council** and/or to the **Cabinet**.
- 5.14. The **Monitoring Officer** (together with the **Section 151 Officer**) is responsible for advising the **Cabinet** or the **full Council** about whether a decision is likely to be considered contrary to, or not wholly in accordance with the budget. Actions that may be 'contrary to the budget' include:
- (a) initiating a new policy;
 - (b) committing expenditure in future years above the budget level;
 - (c) incurring inter-service area transfers above virement limits; and
 - (d) causing the total expenditure financed from Council tax, grants and corporately held reserves to increase.
- 5.15. The **Monitoring Officer** is responsible for maintaining an up-to-date Constitution.

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The Section 151 Officer (interim Chief Finance Officer)

5.16. The **Section 151 Officer** has statutory duties in relation to the financial administration and stewardship of the Council. This statutory responsibility cannot be overridden. The statutory duties arise from:

- (a) Section 151 of the Local Government Act 1972;
- (b) The Local Government Finance Act 1988;
- (c) The Local Government and Housing Act 1989;
- (d) The Accounts and Audit (England) Regulations 2011;
- (e) The Local Government Act 2003**
- (f) The Accounts and Audit Regulations 2015;**
- (e)(g) The Local Audit and Accountability Act 2014**

5.17. The **Section 151 Officer** is responsible, in relation to these regulations for:

- (a) the proper administration of the Council's financial affairs, including the determination of the appropriate staffing level to ensure proper administration;
- (b) setting and monitoring compliance with financial management standards;
- (c) ensuring these Financial Regulations are fit for purpose and proposing any necessary amendments;
- (d) advising on the corporate financial position and on the key financial controls necessary to secure sound financial management;
- (e) providing financial information;
- (f) preparing the revenue budget and capital programme;
- (g) treasury management;
- (h) internal audit;
- (i) anti-fraud;
- (j) risk management; and
- (k) insurance.

5.18. The **Section 151 Officer** may from time to time delegate responsibility to a Head of Finance or other officer reporting to them**him**, as the **Section 151 Officer** deems appropriate.

5.19. Section 114 of the Local Government Finance Act 1988 requires the **Section 151 Officer** to report to the **full Council**, the **Cabinet** and external auditor if the Council or one of its officers:

- (a) has made, or is about to make, a decision which involves incurring unlawful expenditure;

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- (b) has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficit to the Council; or
- (c) is about to make an unlawful entry in the Council's accounts.

Section 114 of the 1988 Act also requires:

- (a) the **Section 151 Officer** to nominate a properly qualified member of staff to deputise should ~~he or she~~ they be unable to perform the duties under Section 114 personally. ~~This is currently the Head of Finance~~; and
- (b) the Council to provide the **Section 151 Officer** with sufficient staff, accommodation and other resources, including legal advice where this is necessary, to carry out the duties under Section 114.

5.20. The Section 151 Officer will:

- (a) respond to annual expenditure proposals submitted by the following bodies (if applicable):-

Greater London Authority
London Pension Fund Authority
Lee Valley Regional Park Authority
North London Waste Authority
London Councils
Greater London Magistrates Courts Authority
Environment Agency

- (b) Consult with Ratepayers in accordance with Section 65 of the Local Government Finance Act 1992;
- (c) Authorise redundancy and early termination costs in relation to officers of the Council;
- (d) Authorise redundancy and early termination costs in relation to education staff giving consideration to the Education Act 2002.

Directors

5.21. **Directors** are responsible for the financial affairs of their service area including any financial staff, processes and systems. They must equally report financial issues to the **Section 151 Officer**. The responsibilities include:

- (a) ensuring that **Cabinet** Members are advised of the financial implications of all proposals and that the financial implications have been agreed by the **Section 151 Officer** including:
 - Non-Domestic Rating Discretionary Rate Relief;
 - the annual review of the Council Tax Reduction Scheme;

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- (b) ensuring compliance with Contract Standing Orders;
- (c) leading the production of revenue and capital programme budgets for their service area as appropriate and ensuring all plans have appropriate and necessary approved budgetary provision in place;
- (d) ensuring that detailed plans and realistic prudent profiled budgets exist for the delivery of the Medium Term Financial **Plan-Strategy** and to report variances and forecast outturn adverse or favourable variances immediately **when they** exist;
- (e) control of income and expenditure within the approved budget and ensuring that expenditure is not incurred without an appropriately approved budget in place;
- (f) reporting known and potential variances from the service area cash limit in excess of £100,000 to the **Section 151 Officer**, through the formal budget management procedures;
- (g) providing appropriate financial information to the **Section 151 Officer** and their respective teams in a timely, accurate and appropriate form and level of detail. e.g. to permit final accounts to be prepared at year end **as necessary**, in accordance with appropriate **legislation**, **accounting codes of practice as necessary** and the Council's accounting procedure notes;
- (h) appointing budget holders for all areas of their own budget;
- (i) monitoring performance levels with budget performance in accordance with published timescales;
- (j) adherence to the budget management procedures contained within service area Schemes of Financial Delegation including virement management;
- (k) ensuring records, systems and appropriate financial controls are up to date and available for audit. Any loss or deficiencies are to be reported to the **Section 151 Officer** immediately;
- (l) actively seeking additional income or savings opportunities, including grant and new financing opportunities, and reporting them to the **Section 151 Officer**. All grant applications are to be notified to the **Section 151 Officer** prior to submission, to consider any potential future resourcing issues and incorporate into the Grant Register which will be maintained by Corporate Finance;
- (m) ensuring that the necessary systems and controls are in place to ensure that all the Council's cash is paid into its bank accounts quickly and efficiently;
- (n) ensuring all assets are appropriately protected, accounted for and reconciled. Any significant loss of stock or concerns should be reported to the **Section 151 Officer** immediately;
- (o) advise the **Section 151 Officer** and/or the **Head of Audit and Risk Management** of any fraudulent activity and other losses through error

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and mismanagement by any party connected with or employed by the Council.

- (p) liaise with the **Head of Audit & Risk Management** in agreeing the annual audit plan of the service area. To report to the **Section 151 Officer** any concerns where an audit is considered necessary but is not being undertaken.
- (q) ensure that appropriate timely arrangements are in place to sign off the financial implications of all reports including comments from the **Section 151 Officer** where appropriate, prior to their submission to the full Council, Cabinet, a Committee, Council Management Teams or other bodies within and external to the Council.
- (r) ensure that all appropriate financial controls and systems are in place where not specified above, in particular adequate separation of duties and accurate and timely reconciliations.
- (s) report to the **Section 151 officer** any other matter of financial significance.

5.22. It is the responsibility of **Directors** to consult with the **Section 151 Officer** and seek approval on any matter liable to affect the Council's finances materially, before any commitments are incurred.

5.23. **Directors and Budget Holders** are supported in the completion of their financial responsibilities by a **Head of Finance** or another suitably senior finance officer whose post title may vary from this. Heads of Finance are part of the Corporate Finance service area and report directly to the **Section 151 Officer**. They have a link, therefore, to the **Section 151 Officer** and a functional relationship to their **Directors**.

Budget Holders

5.24. The **Budget Holder** is responsible for the management of the budget for which he/she is allocated by the **Director**. The responsibilities of the role include:

(a) to take responsibility for all aspects of the financial management of the service(s) which they are responsible for, including managing, controlling and recording all expenditure and income;

(a)(b) leading the production of revenue and capital programme budgets for the service area ensuring all plans have appropriate and necessary budget provision;

(b)(c) ensuring plans and realistic prudent profiled budgets exist for the delivery of the Medium Term Financial Plan-Strategy and to report year

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- to date variances and forecast outturn adverse or favourable variances on the financial management system immediately **when** they exist;
- ~~(e)~~(d) ensuring that appropriate financial controls exist and are maintained properly within the service area and report on any deficiencies to **Directors**;
- ~~(d)~~(e) providing appropriate financial information to **Directors** and their respective teams in a timely, accurate and appropriate form and level of detail;
- ~~(e)~~(f) actively seeking additional income or savings opportunities, including grant and new financing opportunities, and reporting to **Directors**;
- ~~(f)~~(g) ensuring that appropriate financial controls and systems exist, are applied within the service area and report on any deficiencies to **Directors**;
- ~~(g)~~(h) ensuring that the appropriate financial controls are in place to ensure that all the Council's cash is paid into its bank accounts quickly and efficiently;
- ~~(h)~~(i) ensuring value for money is obtained for the whole Council when undertaking any procurement activity;
- ~~(i)~~(j) reconciling all cash received by the service area on a regular basis (at least monthly);
- ~~(j)~~(k) ensuring all monies due to the council are recorded accurately and recovered promptly; and
- ~~(k)~~(l) ensuring that all accounts payable are settled within 30 days unless special terms have been agreed by the **Section 151 Officer**.

5.25. The **Budget Holder** should report to **Directors**:

- (a) any unlawful or inappropriate expenditure immediately it is realised that it is about to take place or has taken place;
- (b) any area where a loss or deficiency is about to occur;
- (c) budget variances by forecasting all variations on the financial management system;
- (d) any occasions where the overall service budget is projected to be overspent or where any individual budget (cost centre) is projected to be overspent by more than £50,000;
- (e) any concerns as regards the slow or non-banking of cash immediately;
- (f) any significant loss of stock or concerns immediately; and
- (g) any other matter of financial significance.

5.26. The **Budget Holder** should:

- a) advise the **Section 151 Officer** and/or the **Head of Audit and Risk Management** of any fraudulent activity and other losses through error

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and mismanagement by any party connected with or employed by the Council;

- b) ensure that all financial implications of all reports are agreed and approved with **Directors** and the Section 151 Officer prior to their submission to the **full Council, Cabinet**, a Committee, Council Management Teams or other bodies within and external to the Council.

Other Financial Accountabilities

Virements – Revenue and Capital

5.27. The Council controls approved budgets and transfers of budgetary provision representing policy change (i.e. virements) giving consideration to gross expenditure and income, net expenditure and service area cash limits.

5.28. The **Section 151 Officer** may authorise virements any budget adjustments between or within service areas or capital schemes, required for technical reasons and which do not fall into the below mentioned revenue or capital virement definitions. For example, the Section 151 Officer may authorise for technical reasons, e.g. central support cost allocation, capital charges such as depreciation, FRS17 IAS19 pension adjustments, or to reflect the enactment of previous decision making. Such adjustments over £250k will be reported in the budget monitoring reports to Cabinet within 3 months of them taking place.

5.29. **Directors** must submit appropriately completed virement pro-formas to Corporate Finance for formal ratification and subsequent adjustment of approved cash limits.

5.30. All virements must be recorded on the Council's main accounting system.

Virements – Revenue

5.31. All changes in gross expenditure and/or income budgets, between or within service areas A policy change/re-prioritisation of resources between services relating to direct spend and excluding internal charges. These are to be approved as a virement in accordance with the below thresholds:

- (a) Up to £100,000 by the relevant **Director(s)**, and reported to the relevant **Head of Finance**;
- (b) £100,000 up to £250,000 by the **Section 151 Officer** following referral from the relevant **Director(s)** and where it has been determined by the **Section 151 Officer** that there is no change to Council policy;

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- (c) £100,000 and above involving a policy change; or any other virement of £250,000 and above, by the **Cabinet**.

Virements – Capital

5.32. ~~All changes in gross expenditure and/or income budgets within service areas, including additions, A policy change/re-prioritisation of resources between capital schemes relating to direct spend and excluding internal charges. These~~ are to be approved as a virement in accordance with the below thresholds:

- (a) Up to £250,000 by the **Section 151 Officer** following referral from the relevant **Director(s)**;
- (b) £250,000 and above, by the **Cabinet**

5.32A **Any policy changes or re-prioritisation** between service areas are to be approved by Cabinet and are a Key Decision in accordance with Part 5 Section C of the Constitution

Treatment of year-end balances

5.33. The **Section 151 Officer** will consider requests to carry forward underspends at year-end before approval by the **Cabinet**. The **Section 151 Officer** will also consider whether any overspends at the year-end on service budgets should be carried forward before approval by the **Cabinet**.

Accounting policies

5.34. The **Section 151 Officer** is responsible for selecting accounting policies and ensuring that they are applied consistently. The **Directors** are responsible for adhering to these policies.

Accounting records, procedures and returns

5.35. The **Section 151 Officer** is responsible for determining the accounting procedures and records for the Council and has a duty to ensure accounting procedures meet statutory duties. Such procedures may include procedures and timetables for the preparation of the budget and the Council's financial statements. **Directors** have a responsibility to:

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- (a) comply with the procedures and timetables determined by the **Section 151 Officer**;
- (b) regularly monitor, reconcile and clear the control accounts;
- (c) supply information to comply with statutory timetables;
- (d) complete grant claims etc. by due dates; and
- (e) retain appropriate financial records as required by the **Section 151 Officer**.

The Annual Statement of Accounts

5.36. The **Section 151 Officer** is responsible for ensuring that the annual statement of accounts is prepared in accordance with the *Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice* (CIPFA/LASAAC). The **Section 151 Officer** has the authority to make such amendments to the treatment of the Council's transactions as are in the overall interest of the Council including the optimisation of the capital financing position and the management of earmarked reserves. The **Corporate Committee and Pensions Committee and Board** are responsible for approving their respective parts of the annual statement of accounts.

5.37. Each **Director**:

- (a) has a responsibility to supply budget monitoring information on time.
- (b) are accountable for the income and expenditure in their budgets and for the service area budgets.
- (c) must supply required information and produce appropriate documents on time as requested by the **Section 151 Officer**.
- (d) need to protect against the risks of creating contingent liabilities and to keep the **Section 151 Officer** informed of any new contingent liabilities or contingent assets as they arise.

Bribery, Corruption and Financial Irregularities

5.38. All employees shall conduct themselves to the highest standards. Any employee involved in bribery, corruption, fraud or deception will be subject to disciplinary action and in certain circumstances criminal prosecutions.

5.39. It is a criminal offence for any person to use their position with the Council to accept or ask for any gift, reward or other advantage from work done in an official capacity. In addition such acts seriously undermine the public image of the Authority and its staff. As a result the Council will discipline staff on the grounds of gross misconduct if they breach this regulation.

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Financial Irregularities

- 5.40. Staff must act with absolute honesty when dealing with the assets of the Council, and any other assets for which the Council is responsible. The Council will rigorously enforce sanctions laid down in the **Employee Code of Conduct Disciplinary Code of Practice** if staff are found to have acted dishonestly. The Code gives examples of financial irregularities that are considered to be gross misconduct.
- 5.41. All staff must ensure that any irregularity or suspected irregularity involving Council funds, property or any other assets for which the Council is responsible is reported immediately to the **Head of Audit and Risk Management**. This also applies to the misuse of computer passwords, misuse of information obtained in any other way, the deliberate malicious damage to information assets and the disclosure to unauthorised individuals of information obtained by their use.
- 5.42. The Council has an approved Anti-Fraud and Corruption Policy and Fraud Response Plan which set out the Council's expectations in relation to standards of behaviour and how it will respond in cases where fraud is suspected. The Anti-Fraud and Corruption Policy is supported by the Council's Whistleblowing Policy, which sets out how the Council will support anyone who wishes to report cases where they suspect fraud.
- 5.43. The **Head of Audit and Risk Management** will decide how such matters should be investigated. Service officers should not undertake any investigation or interview those involved unless prior agreement has been given by the **Head of Audit and Risk Management**.

The Role of Internal Audit

- 5.44. The statutory responsibility for internal audit derives from the **Section 151 Officer's** responsibilities under the 1972 Local Government Act, the Local Government Finance Act 1988 and the specific duties detailed in the Accounts and Audit (England) Regulations 2011. In accordance with these and the Auditing Practices Board guidelines the **Head of Audit and Risk Management** will provide a continuous audit of the accounting, financial and other operations of the Authority.

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~~5.44~~5.45. Internal audit is an independent and objective appraisal function established by the authority for reviewing the system of internal control. It examines, evaluates, and reports on the adequacy of internal control. It does this by objectively reviewing and advising management upon the effectiveness of their systems of internal control. It aims to provide assurance on the design and operation of internal controls and provide constructive and positive advice on control improvement and risk management.

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~~5.45.5.46.~~ The **Head of Audit and Risk Management** has authority to:

- (a) enter at any time all Council premises or land;
- (b) have unrestricted access to all records, **personnel, documents, assets and correspondence relating to any financial and other transactions that the auditors consider necessary for the purpose of their work;**
- (c) remove and/or secure any computer equipment, record, document, and correspondence of the Council as considered necessary;
- (d) require and receive such explanations as s/he considers necessary concerning any matter being examined; and
- (e) obtain from Council employees cash, stores or any other property owned, hired, leased or borrowed by the Authority.

~~5.46.5.47.~~ The decision to report financial irregularities to the Police shall be made by the **Head of Audit and Risk Management**. Where employees are involved, the **Head of Audit and Risk Management** will inform the **Chief Executive** and appropriate **Directors**.

~~5.47.5.48.~~ The **Head of Audit and Risk Management** has authority to report to any body of the Council matters which are considered to adversely affect the efficient/proper use of the Council's resources.

Unofficial Funds

~~5.48.5.49.~~ The **Section 151 Officer** shall be notified of any funds arising from unofficial sources, including school funds, and shall approve audit and accounting arrangements for these funds:

- (a) that come under the control of any **Committee, Sub-Committee or Panel** of the Council;
- (b) where a member of staff is involved as a result of their employment with the Authority.

6. Financial Planning

Introduction

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6.1. **Full Council** is responsible for agreeing the Council's policy framework and budget, which will be proposed by the **Cabinet**. The Council uses the the Council Plan as its framework for determining priorities and is delivered through the business planning process. In terms of financial planning, the key elements are:

- (a) the medium term financial **planstrategy**;
- (b) the budget; and
- (c) the capital programme.

Policy framework

6.2. The **full Council** is responsible for approving the policy framework and budget. The policy framework comprises the statutory plans and strategies set out in the Constitution and the budget. Pensions Committee **and Board** approves the policy framework for the Pension Fund; namely the **Investment Strategy Statement (including responsible investment policies) and, Funding Strategy Statement, the Statement of Investment Principles and Responsible Investment policy.**

Preparation of the Council Plan

6.3. The **Assistant Director for Corporate Programme Office and Chief Information Officer is responsible** ~~Council will for producing produce an updated Council Borough Plan every four yearsannually~~ and reporting this to the **Cabinet** for consideration before its submission to the **full Council** for approval.

Budgeting

Budget format

6.4. The general format of the budget will be proposed by the **Cabinet** and approved by the **full Council** on the advice of the **Section 151 Officer**. The draft budget should include allocation to different services and projects, proposed taxation levels, adequacy of the proposed financial reserves and contingency funds.

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Budget preparation

- 6.5. The **Section 151 Officer** is responsible for ensuring that a revenue budget is prepared on an annual basis and a financial plan over three years for consideration by the **Cabinet**, before submission to the **full Council**. The **Section 151 Officer** also has responsibility to confirm budget pressures, robustness of estimates and adequacy of reserves in accordance with Section 25 of the Local Government Act 2003. The **full Council** may amend the budget or ask the **Cabinet** to reconsider it before approving it.
- 6.6. It is the responsibility of **Directors** to ensure that realistic budget estimates reflecting agreed service plans are submitted to the **Cabinet** and that these estimates are prepared in line with guidance issued by the **Cabinet**, through the **Section 151 Officer**. The Budget risk is managed through the Council's budget management process in which the variances are analysed and decisions made accordingly.

Budget management and control

- 6.7. The **Section 151 Officer** is responsible for providing appropriate financial information to enable budgets to be monitored effectively. The **Section 151 Officer** must monitor and control expenditure against budget allocations and report to the **Cabinet** on the overall position on a regular basis. There will be a monthly budget management process determined by the **Section 151 Officer**. Any decision to alter or increase any of the existing services of the Council in such a way as may result in a material-increase in the expenditure to be provided for in the budget for the current and future financial years will be subject to the approval of the **Cabinet**.

Resource allocation

- 6.8. The **Section 151 Officer** is responsible for developing and maintaining a resource allocation process that ensures due consideration of the full Council's policy framework.

Preparation of the capital programme

- 6.11. The **Section 151 Officer** is responsible for ensuring:
- (a) the preparation of the Council's medium-term capital programme on an annual basis, for consideration by the **Cabinet** before submission to **full Council**;
 - (b) that the Council's Capital Strategy is kept up-to-date;

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- (c) financial monitoring of the capital programme;
 - (d) the Capital Programme is managed flexibly and to make adjustments to the phasing of approved projects within the limits of available capital resources;
 - (e) preparation of an Asset Management Plan;
 - (f) value for money objectives are met;
 - (g) adherence to CIPFA Prudential guidelines;
 - (h) adherence to the Council's Treasury Management Strategy Statement;
 - (i) maximisation of external funding opportunities; and
 - (j) financial appraisal/evaluation of proposed capital schemes and options.
- 6.12. The medium-term capital programme models income and expenditure and resource requirements (both internal and external financing) over a minimum of three years and is reviewed and updated at least annually.
- 6.13. The Capital Strategy sets out strategic guidance on the Council's approach to capital investment. It provides clear objectives and priorities which are informed by overall corporate and service objectives, the Haringey community and other stakeholders including central government.
- 6.14. Capital expenditure will only be incurred when the appropriate **Directors** and **Section 151 Officer** have jointly reported the financial implications to the **Cabinet** for approval. All such reports requesting financial provision must be supported by a professionally prepared estimate of the costs of the project. Once financial approval has been obtained the specifications and assumptions upon which the written appraisal of costs was based cannot be substantially altered without the further approval of the **Cabinet**.

Guidelines

- 6.15. Guidelines on budget preparation may be issued to **Members** and **Directors** by the **Cabinet** following agreement with the **Section 151 Officer**. The guidelines will take account of:
- (a) legal requirements;
 - (b) medium-term planning prospects;
 - (c) available resources;
 - (d) spending pressures;
 - (e) best value/value for money and other relevant government guidelines;
 - (f) other internal policy documents; and
 - (g) cross-cutting issues (where relevant).

Maintenance of Reserves

- 6.16. It is the responsibility of the **Section 151 Officer** to advise the **Cabinet** and the **full Council** on prudent levels of general reserves for the Council. When fixing the level of reserves an assessment is made of the key financial risks facing the Council.

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7. Risk Management and Control of Resources

Introduction

- 7.1. It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant operational risks to the Council. This should include the proactive participation of all those associated with planning and delivering services. The effective identification and management of risks is a responsibility that sits with all **Directors**

Risk Management

- 7.2. The **Corporate Committee** is responsible for approving the Council's risk management policy statement and strategy and for reviewing the effectiveness of risk management. The **Section 151 Officer** is responsible for and has delegated authority to ensure that proper insurance exists where appropriate.
- 7.3. The **Monitoring Officer** is responsible for preparing the Council's risk management policy statement and for promoting it throughout the Council.
- 7.4. At a service area level **Directors** should ensure that the Council's risk management strategy is complied with. The Management of Risk Policy and Strategy specifies that **Directors** must align the assessment of their risks and the actions to manage these to the Council's business planning processes. This must be done so that the Council is able to identify any significant risks that could jeopardise delivery of business plans in the following year and for which appropriate actions will need to be taken.

Internal control

- 7.5. Internal control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the Council's assets and interests are safeguarded. The Council prepares an Annual Governance Statement each year. **Directors** have a role to provide assurances to support the production of the Annual Governance Statement and to maintain appropriate systems of governance and internal control.

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- 7.6. The **Section 151 Officer** is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with the statutory and other authorities that govern their use.
- 7.7. It is the responsibility of **Directors** to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency, propriety, regularity and effectiveness and for achieving their financial performance targets.

Audit requirements

- 7.8. The Accounts and Audit ~~(England)~~ Regulations ~~2011-2015~~ require every local authority to maintain an adequate and effective internal audit. The rights of the internal audit function are set out in Regulation ~~65~~.
- 7.9. ~~The Audit Commission~~ Public Sector Audit Appointments Ltd is responsible for appointing external auditors to each local authority. The basic duties of the external auditor are governed by section 15 of the Local Government Finance Act 1982, as amended by section ~~5-20 of the Local Audit and Accountability Act 2014~~ of the Audit Commission Act 1998.
- 7.10. The Council may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenues and Customs who have statutory rights of access.

Preventing fraud and corruption

- 7.11. The **Monitoring Officer** is responsible for the development and maintenance of an anti-fraud and anti-corruption policy. **Directors** shall notify the **Head of Audit and Risk Management** immediately of any suspected fraud, theft or misuse of the authority's assets or resources. Further guidance can be found in the Haringey Anti-fraud and Corruption ~~Strategy Policy and Strategy~~ (which includes the Council's and the Whistleblowing Policy).
- 7.12. The Council will not tolerate fraud and corruption in the administration of its responsibilities, whether from inside or outside the Council.
- 7.13. The Council's expectation of propriety and accountability is that members and officers at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and good practices.

7.14. The Council also expects that individuals and organisations (e.g. suppliers, contractors, and service providers) with which it comes into contact will act towards the Council with integrity and without thought or actions involving fraud and corruption.

Assets

~~7.11.~~**7.15.** Directors should ensure that records and assets are properly maintained and securely held. They should also ensure that contingency plans for the security of assets and continuity of service in the event of disaster or system failure are in place. Any disposal of any asset no longer required by the Council shall be for the best available consideration. Inventories of the Council's assets, other than stores, must be kept by the **Budget Holder** concerned. The inventories must be in a form approved by, and include the items defined by, the **Section 151 Officer**. Any write off of stocks must be in accordance with the Council's stock write off policy.

Treasury Management

~~7.12.~~**7.16.** The Council has adopted the Code of Practice contained within The Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes (CIPFA, **2014**~~2017~~). The Council will create and maintain, as cornerstones for effective treasury management:

- (a) a Treasury Management Strategy Statement (TMSS) which states the Council's policies, objectives and approach to risk management with respect to its treasury management activities;
- (b) suitable treasury management practices setting out how the Council will achieve those policies and objectives and prescribing how it will manage and control its treasury management activities;
- (c) the TMSS and treasury management practices will follow the recommendations in Sections 6 and 7 of the CIPFA Code of Practice. They may be subject to amendment where necessary to reflect the particular circumstances of Haringey Council but will not deviate materially from the Code's key principles.

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- 7.17 The **Corporate Committee** will formulate the TMSS and amendments to it. The Cabinet Member for Finance will be consulted on the draft TMSS because of the budget implications. The **Overview and Scrutiny Committee** will scrutinise the draft TMSS annually before its adoption by **full Council**. The **full Council** is responsible for approving and adopting the TMSS setting out the matters detailed in The Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes (CIPFA, **2011-2017**). The **Section 151 Officer** has delegated authority for implementing and monitoring the TMSS. The Council sets its TMSS in line with the indicators required under the Prudential Code for Capital Finance in Local Authorities introduced by CIPFA 1 April 2004 and subsequently revised in **2011-2017**.
- 7.18 All decisions on borrowing, investment, leasing or financing shall be delegated to the **Section 151 Officer**, who is required to act in accordance with the TMSS and The Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes (CIPFA, **2011-2017**).
- 7.19 The **Section 151 Officer** is responsible for reporting to the **Corporate Committee** each quarter, or as near as practicable, on the implementation and regular monitoring of the treasury management policies and practices and on the exercise of his/her delegated treasury management powers.
- 7.20 The **Section 151 Officer** is responsible for consulting the Cabinet Member for Finance on the **annual and** mid-year monitoring reports and an out-turn report after the close of the year concerning treasury management policies and practices before these reports are considered by the **Corporate Committee** and **full Council**.

Arrangements for Cash and Banking

7.21. All money in the hands of the Council is controlled by the officer designated for the purposes of section 151 of the Local Government Act 1972, in the Council's case the **Section 151 Officer** and save as allowed in the Financial Regulations for Schools where, in any case, arrangements shall be made for the **Section 151 Officer** to be able to exercise control upon the withdrawal of delegation or otherwise, no officer other than the **Section 151 Officer** **(or those officers to whom the S151 Officer has granted delegated authority to)** may:

- (a) open a bank or credit/purchase card account ;
- (b) agree to or sanction the arrangements for the handling of any liquid resource, cash or instrument of payment;
- (c) make payments, save through imprest accounts; or

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(d) authorise direct debits.

7.22. The **Section 151 Officer** makes imprest advances to certain officers for giving out petty cash disbursements on behalf of the Council. The value of any advance is subject to the agreement of the **Section 151 Officer**. The officer named as responsible for each imprest is accountable for the full value of the sum advanced at any time. Imprest accounts must be operated in accordance with the procedures set down by the **Section 151 Officer**. Detailed imprest account procedure rules are available from Corporate Procurement Division.

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Amenity, Trust and Other Unofficial Funds

- 7.23. Funds held by the Council on behalf of other bodies or persons must be dealt with in accordance with procedures set down by the **Section 151 Officer**. **Directors** must ensure such funds are held securely and in such a way that they can be identified, accounted for and reconciled, at any time, separately from Council monies. **Directors** are accountable for the appropriate expenditure from such funds or repayment thereof.

Staffing

- 7.24. **Full Council** is responsible for determining how officer support for Executive and non-Executive roles within the Council will be organised.
- 7.25. The Head of Paid Service (**Chief Executive**) is responsible for providing overall management to staff. The **Chief Executive** is also responsible for ensuring that there is proper use of the evaluation or other agreed systems for determining the remuneration of a job.
- 7.26. **Directors** are responsible for controlling total staff numbers by:
- (a) advising the **Cabinet** on the budget necessary in any given year to cover estimated staffing levels;
 - (b) adjusting the staffing to a level that can be funded within approved budget provision, varying the provision as necessary within that constraint in order to meet changing operational needs; and
 - (c) the proper use of appointment procedures.

8. Systems and Procedures

General

- 8.1. The **Section 151 Officer** is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any changes made by **Directors** to the existing financial systems or the establishment of new systems must be approved by the **Section 151 Officer**. However, **Directors** are responsible for the proper operation of financial processes in their own service area in line with overall procedures set by the Council and the **Section 151 Officer**.
- 8.2. Any changes to agreed procedure notes by **Directors** to meet their own specific service needs should be agreed with the **Section 151 Officer**.

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- 8.4. **Directors** should ensure that their staff receive relevant financial training that has been approved by the **Section 151 Officer**.
- 8.5. **Directors** must ensure that staff are aware of their responsibilities under data protection, freedom of information legislation and the Computer Misuse Act.
- 8.6. **Directors** must ensure that proper business continuity planning is in place for the delivery of financial services in the event of any incident that affects systems.

Income and expenditure

- 8.7. It is the responsibility of **Directors** to ensure that a proper scheme of delegation in respect of financial matters has been established within their area and is operating effectively. The **Section 151 Officer's** Scheme of Financial Delegation provides detailed procedures for:
 - (a) expenditure;
 - (b) income including grants, fees & charges, cash and banking;
 - (c) control of assets, stocks and stores;
 - (d) human resources.

Payments to employees and members

- 8.8. The **Section 151 Officer** should approve any amendments to the approval processes for the payment of all salaries, wages, pensions, compensation, other emoluments and any ex-gratia payments. **Directors** and **Business Unit Heads** must supply such certificates relating to the employment of staff as the **Section 151 Officer** deems necessary. **The Assistant Director for Head of Human Resources** is responsible for all payments of salaries and wages to all staff, including payments for overtime, and for payment of allowances to Members.

Taxation

- 8.9. The **Section 151 Officer** (and the **Assistant Director for Head of Human Resources**) for PAYE and NI) are responsible for advising **Directors**, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the Council. **Directors** should discuss with the **Section 151 Officer** potential tax implications of any new initiatives. **Directors** have a responsibility for the proper application of tax rules as advised.

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- 8.10. **Directors** are responsible for ensuring that the appropriate controls and procedures are operated within the relevant service area in relation to taxation issues.
- 8.11. The **Section 151 Officer (and the Assistant Director for Head of Human Resources)** for PAYE and NI) are responsible for maintaining the Council's tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate.
- 8.12. **All staff and Councillors** should adhere to VAT rules & regulations and also guidance issued by the **Section 151 Officer**.

Trading accounts/business units

- 8.13. It is the responsibility of the **Section 151 Officer** to advise on the establishment and operation of trading accounts and business units. **Directors** have a responsibility to advise the **Section 151 Officer** on any plans to utilise trading arrangements.

Debt Write Off

- 8.14. Arrears of housing rents and other housing income administered by the ALMO (Homes for Haringey) may be written off in accordance with procedure notes issued by the **Section 151 Officer** with the below authorities, applying to individual debt accounts:

- a) up to and including £1,000, the approval of **Chief Executive of the ALMO** and reported to the **Section 151 Officer**.
- b) Over £1,000 and up and including to £25,000, on the approval of the **Section 151 Officer** upon the advice of the **Chief Executive of the ALMO**.
- c) Over £25,000 or above, on the approval of the **Cabinet Member with responsibility for Resources-Finance** upon the advice of the **Chief Executive of the ALMO** and the **Section 151 Officer**.

The ALMO shall keep a record of all such sums written off.

- 8.15. All other individual debt accounts which remain unpaid may be written off in accordance with the below authorities:

- a) up to and including £1,000, the approval of relevant **Director** and reported to the **Section 151 Officer**.

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- a) Over £1,000 and Up to and including £25,000 on the approval of the **Section 151 Officer** upon the advice of the relevant **Director**;
b) Over £25,000 or above on the approval of the **Cabinet Member with responsibility for Resources-Finance** upon the advice of the relevant **Director** and the **Section 151 Officer**.

Corporate Finance shall keep a record of all such sums written off.

- 8.16. All debts written off will be reported in summary to the **Cabinet** in the regular budget monitoring reports.
- 8.17. It is important that Council income is maximised and therefore to ensure that systems and procedures are in place to collect income promptly and to minimise the level of any bad debts.

Procedure Notes

- 8.18. From time to time the **Section 151 Officer** may issue procedure notes pursuant to these Financial Regulations or his statutory duties or otherwise. Failure to comply with a lawful instruction is a disciplinary offence.

9. External Arrangements

Introduction

- 9.1. The Council provides a distinctive Leadership role for the community and brings together the contributions of the various stakeholders. It must also act to achieve the promotion or improvement of the economic, social or environmental well-being of its area.
- 9.2. The Council works closely with other agencies and private service providers. Other Government funding streams also provide additional resources to enable the Authority to deliver services to the local community.

Partnerships

- 9.3. The **Cabinet** is responsible for approving delegations, including frameworks for partnerships. The **Cabinet** is the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.

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- 9.4. The **Cabinet** can delegate functions – including those relating to partnerships to officers. These are set out in the scheme of delegation that forms part of the Council's Constitution. Where functions are delegated, the **Cabinet** remains accountable for them to the **full Council**.
- 9.5. The Head of the Paid Service (**Chief Executive**) represents the Council on partnership and external bodies, in accordance with the scheme of delegation.
- 9.6. The **Section 151 Officer** is responsible for promoting and maintaining the same high standards of conduct with regard to financial administration in partnerships that apply throughout the Council.
- 9.7. The **Section 151 Officer** must ensure that the accounting arrangements to be adopted relating to partnerships, pooled budgets and joint ventures are satisfactory.
- 9.8. The **Monitoring Officer** must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies. **He or she/They** must ensure that the risks have been fully appraised before agreements are entered into with external bodies.
- 9.9. **Directors** are responsible for ensuring that appropriate approvals both internal and external are obtained before any negotiations are concluded in relation to work with external bodies.

External Funding

- 9.10. The **Section 151 Officer** is responsible for ensuring that all funding noted by external bodies is received and properly recorded in the Council's accounts.

Work for Third Parties

- 9.11. The **Cabinet** is responsible for approving the contractual arrangements for any work for third parties or external bodies. Advice should be obtained from the **Section 151 Officer** and the **Monitoring Officer** before entering into a contract for supply to others.

10. Retention of Records

- 10.1 Records held locally in establishments shall be retained in accordance with the approved guidance, which in turn must meet the Council's standards.

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- 10.2 **Directors and Budget holders** shall be responsible for ensuring that financial records are carefully and systematically filed and retained for inspection by the **Section 151 Officer** or agencies (e.g. HM Revenue & Customs) in line with the approved local management information schemes that meets relevant statutory requirements.
- 10.3 The list is not exhaustive and, where there is uncertainty, the advice of the **Section 151 Officer** and the Council's **Assistant Director of Corporate Governance** must be sought. Periods referred to are in addition to the current year of account, which ends at the conclusion of the annual external audit of the Council's accounts (i.e. 30 September following the end of the financial year).
- 10.4 The **Section 151 Officer** or his representative shall have access to documents as deemed necessary.
- 10.5 The information governance framework assists services to meet the requirements of the Data Protection Act, the Freedom of Information Act and other statutory requirements.

Part Four, Section E

Budget & Policy Framework

Procedure Rules

BUDGET AND POLICY FRAMEWORK PROCEDURE RULES

1. The framework for Cabinet decisions

- 1.1 The Council will be responsible for the adoption of the budget and policy framework as set out in Article 4 of this constitution. Once the framework is in place, it will be the responsibility of the Cabinet to implement it.

2. Process for developing the framework

The process by which the budget and policy framework shall be developed is:

- 2.1 Each year the relevant Director and relevant Cabinet Members will in their joint report to the Overview and Scrutiny Committee on potential issues for Committees work programmes include any matters which form part of the Budget and Policy Framework, which will require adoption in the coming year.
- 2.2 If the Overview and Scrutiny Committee or a Scrutiny Review Panel wishes to include the matter into the work programme the relevant Director will ensure that the Committee is consulted in good time to enable the Committee's views to be considered by the Cabinet or Cabinet Member prior to firm proposals being submitted to the Council. In the event that the Overview and Scrutiny Committee or Scrutiny Review Panel chooses to consider a report which forms part of the Budget and Policy Framework then its views shall be included in the report submitted to the Cabinet or Cabinet Member who shall take them into account in drawing up firm proposals for submission to the Council. The report to Council will reflect the comments made by Overview and Scrutiny Committee consultees and the Cabinet's response.
- 2.3 Once the Cabinet or relevant Cabinet Member has approved the firm proposals, the Cabinet will recommend the proposals to Full Council for approval or decision at the earliest opportunity.
- 2.4 In reaching a decision, the Council may adopt the Cabinet's/Cabinet Member's proposals, amend them, refer them back to the Cabinet for further consideration, or, substitute its own proposals in their place.

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Section E – Budget and Policy Framework Procedure Rules

- 2.5 If it accepts the recommendation of the Cabinet/Cabinet Member without amendment, or the Leader of the Council on behalf of the Cabinet or the Cabinet Member supports the amended recommendation the Council may make a decision which has immediate effect. Otherwise, it may only make an in-principle decision. In either case, the decision will be made on the basis of a simple majority of votes cast at the meeting. The decision will be publicised.
- 2.6 An in-principle decision will automatically become effective on the expiry of 5 working days from the date of the Council's decision, unless the Leader informs the proper officer in writing within the period of 5 working days that he/she objects to the decision becoming effective and provides reasons why. If the Leader informs the proper officer that he/she has no objection it shall become effective upon receipt of such notice.
- 2.7 In that case, the proper officer will call a Council meeting to take place within a further 10 working days. The Council will be required to re-consider its decision and the Leader's written submission. The Council may:
- (i) approve the Cabinet's/Cabinet Member's recommendation by a simple majority of votes cast at the meeting; or
 - (ii) approve a different decision which does not accord with the recommendation of the Cabinet/Cabinet Member's by a simple majority.
- 2.8 The decision shall then be made public and shall be implemented immediately;
- 2.9 The decision of the Council is final. The Leader may not ask for this or any decision to the same effect to be reconsidered for a further 6 months

3. Decisions outside the budget or policy framework

- 3.1 Subject to the provisions of paragraph 5 (urgent decisions outside the budget or policy framework), the Leader, the Cabinet, Committees of the Cabinet, individual members of the Cabinet and any officers, or joint arrangements discharging Cabinet functions may only take decisions which are in line with the budget and policy framework. If any of these bodies or persons wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by the Council, then that decision may only be taken by the Council, subject to 3.2 and 3.3 below.
- 3.2 If the Leader, the Cabinet, Committees of the Cabinet, individual members of the Cabinet and any officers, or joint arrangements discharging Cabinet functions want to make such a decision, they shall

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take advice from the Monitoring Officer and the Chief Finance Officer as to whether the decision they want to make would be contrary to or not wholly in accordance with the budget. If the advice of either of these officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 shall apply.

3.3 Council may either:

- (a) endorse a decision or proposal of the Cabinet decision taker as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
- (b) amend the budget framework or policy concerned to encompass the decision or proposal of the decision taker responsible for that Cabinet function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
- (c) where the Council accepts that the decision or proposal is contrary to the policy framework or contrary to, or not wholly in accordance with the budget, and does not amend the existing framework to accommodate it, require the decision taker to reconsider the matter in accordance with the advice of either the Monitoring Officer/ Chief Finance Officer and refer it back to the Cabinet. The decision taker must reconsider within 7 working days of the Council meeting. Whatever decision the Cabinet takes at that meeting is final, bearing in mind that a decision taken outside the policy or budget framework will be unlawful.

4. Urgent Decisions

4.1 Where the Director is of the opinion that a relevant decision should be made urgently in order to prevent or reduce the risk of damage to persons or property or to the interests of the Authority, and that the urgency of the matter is such that it is not practicable to complete the Executive decision-making process set out above or to comply with the Access to Information Procedure Rules at Part 4 of the Constitution, the decision may be deemed “urgent”:

- (a) In order for a decision to be deemed urgent, the “General Exception” or “Special Urgency” procedures set in the Access to Information Procedure Rules must be followed.
- (b) the Director shall use their best endeavours, as far as the urgency of the matter permits, to consult those persons whom

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Section E – Budget and Policy Framework Procedure Rules

- he/she would have been required to consult had the full Executive decision-making process been followed; and
- c) the decision-making body shall have the power to take that relevant decision, notwithstanding that the full procedure has not been followed;
 - d) These urgency procedures should only be used in cases of genuine urgency and should not be abused, for example, in attempting to put right failures in forward planning.

5. Urgent decisions outside the budget or policy framework

- 5.1 The Leader, the Cabinet, Committees of the Cabinet, individual Members of the Cabinet and any officers, or joint arrangements discharging Cabinet functions may take a decision which is contrary to the Council's policy framework or contrary to or not wholly in accordance with the budget approved by Full Council if the decision is a matter of urgency. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interest and it is not practical to convene a quorate meeting of the full Council within the Access to Information Procedure Rules.
- 5.2 The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is urgent for the purposes of rule 18 of the Call-In Procedure Rules at Part 4 Section H of the Constitution, and therefore not subject to call-in.
- 5.3 In order for a decision to be deemed urgent, the Chair of the Overview and Scrutiny Committee must agree that the decision is both reasonable in all circumstances and that it should be treated as a matter of urgency. In the absence or unavailability of the Chair the consent of the Deputy-Chair of the Overview and Scrutiny Committee is required. In the absence of both, the consent of the Mayor shall be required.
- 5.4 The reasons why it is not practical to convene a quorate meeting of full Council and the consent to the decision being taken as a matter of urgency must be noted on the record of the decision.
- 5.5 Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- 5.6 Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.

6. Calculation of Budget Requirement

PART FOUR – RULES OF PROCEDURE

Section E – Budget and Policy Framework Procedure Rules

- 6.1 Subject to paragraph 6.5 where, before 11 March in any financial year, the Cabinet submits to Council for its consideration in relation to the following financial year:
- a) estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in accordance with any of sections 32 to 37 or 43 to 49 of the Local Government Finance Act 1992 (the calculation of budget requirements);
 - b) estimates of the amounts to be used for purposes of such a calculation; or
 - c) estimates of such a calculation.
- 6.2 Before the Council makes a calculation (whether originally or by way of substitute) in accordance with any of the sections referred to in paragraph 6.1, it must inform the Leader of any objections that it has to the Cabinet's estimates or amounts and must give to him instructions requiring the Cabinet to reconsider, in the light of those objections, those estimates and amounts in accordance with the authority's requirements.
- 6.3 Where the Council gives instructions in accordance with paragraph 6.2, it must specify a period of at least 5 working days beginning on the day after the date on which the Leader receives the instructions on behalf of the Cabinet within which the Leader may:
- a) submit a revision of the estimates or amounts as amended by the Cabinet ("revised estimates or amounts"), which have been reconsidered in accordance with the Council's requirements, with the Cabinet's reasons for any amendments made to the estimates or amounts, to the Council for the Council's consideration; or
 - b) inform the Council of any disagreement that the Cabinet has with any of the Council's objections and the Cabinet's reasons for any such disagreement.
- 6.4 When the period specified by the Council, referred to in paragraph 6.3 has expired, the Council must, when making calculations (whether originally or by way of substitute), in accordance with the sections referred to in paragraph 6.1a), take into account:
- (a) any amendments to the estimates or amounts that are included in any revised estimates or amounts;
 - (b) the Cabinet's reasons for those amendments;
 - (c) any disagreement that the Cabinet has with any of the Council's objectives; and

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- (d) the Cabinet's reasons for that disagreement, that the Leader submitted to the Council, or informed the Council of, within the period specified.
- 6.5 Paragraphs 6.1 to 6.4 (inclusive) shall not apply in relation to calculations or substitute calculations that an authority is required to make in accordance with section 52I or 52T of the Local Government Finance Act 1992.

7. Virement

- 7.1 ~~“Virement is the ability to meet increased expenditure or reduced income under one expenditure vote from savings in another expenditure vote or from increased income.”~~ **“Virement” is a transfer of a budget for direct spend by the Council, which is required due to a policy change or re-prioritisation of resources between services.** The Council's rules on virement are set out in the Financial Regulations set out in the Constitution.

8. In-year changes to policy framework

- 8.1 Subject to the provisions of section 5 (urgent decisions outside the budget and policy framework) the responsibility for agreeing the budget and policy framework lies with the Council, and decisions by the Leader, the Cabinet, individual members of the Cabinet and any officers, or joint arrangements discharging Cabinet functions must be in line with it. No changes to any policy and strategy which make up the policy framework may be made by the Leader, the Cabinet, individual members of the Cabinet and any officers, or joint arrangements discharging Cabinet functions except where the Council has agreed this at the time of agreeing the budget or relevant policy or strategy.

Report for: Standards Committee, 14th October 2019

Title: Review of Ethical Standards

Report

Authorised by: Bernie Ryan, Assistant Director of Corporate Governance and Monitoring Officer

Lead Officer: **Gina Clarke, Principal Lawyer (Employment, Education & Corporate)** gina.clarke@haringey.gov.uk
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Ward(s) affected: N/A

Report for Key/

Non Key Decision: Non key

1. Describe the issue under consideration

This report proposes changes to the Council's Constitution in accordance with recommendations made by the national Committee on Standards in Public Life in its report on Local Government Ethical Standards.

2. Cabinet Member Introduction

N/A

3. Recommendations

3.1. That the Committee recommend full Council:

- a) Note the best practice points and recommendations in the report on Local Government Ethical Standards from the Committee on Standards in Public Life (Appendix 3).
- b) Agree the following amended versions of the Constitution:
 - (i) Part 5 Section A – Members' Code of Conduct – pt 1 (Appendix 1).
 - (ii) Part 5 Section A – Members' Code of Conduct – pt 2 – Process for handling complaints (Appendix 2).

The proposed amendments are summarised and explained at paragraphs 4.1 to 4.29 below.

4. Reasons for decision

- 4.1. Many of the best practice points contained in the report on Local Government Ethical Standards ("the Report") are already in place at the Council and so do not require any action.
- 4.2. The points requiring action are outlined below, with reasons. All seek to improve ethical standards and transparency.

Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

- 4.3. The Report stated that most allegations of breaches of local authority codes of conduct related to allegations of bullying and harassment. Accordingly, it was considered important to ensure such matters were covered effectively. By offering clear definitions and examples it will be easier to adjudicate with consistency on whether or not the code has been breached.
- 4.4. The Council's existing Code of Conduct already prohibits bullying but does not go into the level of detail recommended in the Report. Accordingly, changes are proposed. The proposed definitions and examples are taken from the Report on Local Government Ethical Standards.

Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

- 4.5. The Report noted that compliance with standards investigations is an important aspect of ethical conduct. It is important for members to show appropriate respect for the process and that the process is not subject to disruption or abuse that wastes public money and time. Accordingly, it was considered appropriate to include these obligations within codes of conduct.
- 4.6. The Council's existing Code of Conduct already contains a similar provision requiring members to co-operate fully and honestly with any scrutiny appropriate to their office. However, it is proposed to amend this to explicitly include any formal standards investigations. There is not currently an express prohibition on trivial or malicious allegations as it is proposed to amend the Code of Conduct to include this.

Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

- 4.7. The Report observed that some local authorities had adopted a minimal code of conduct that were not adapted to the needs and context of the organisation. Regular reviews would help to ensure codes of conduct remain relevant and effective.

- 4.8. The Council's existing Code of Conduct already contains many of the recommendations made in the report and has been regularly reviewed. The most recent amendments were made on 24 July 2017. In line with the Report, it will be reviewed annually in the future and views will be sought as appropriate.

An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

- 4.9. The Report noted that codes of conduct are central to upholding high standards in public life. Therefore, they must not be inaccessible on a local authority's website or as an annex to an authority's constitution.
- 4.10. The Council's Code of Conduct is currently accessible on the Council's website but provided as part of the Constitution. Accordingly, officers will ensure the Code of Conduct can be easily located on the website without having to first refer to the Constitution as a whole.

Local authorities should update their gifts and hospitality register at least once per quarter.

- 4.11. The Report stated that the accessibility and timeliness of local authority members updating their registers of interests varies widely. Some registers were not updated for long periods. This is undesirable because independent oversight and inspection is important to maintaining high ethical standards and local authorities should facilitate this by ensuring registers are accessible and up to date.
- 4.12. At the Council, Members' registers of gifts and hospitality are currently updated every 3-6 months. Members are sent their existing registers and asked to review them and communicate any changes. In the future, this will be done at least once every 3 months and the relevant page on the Council's website will be amended to make it clear that this is the case.
- 4.13. The Report also recommends that the Government require (by way of an updated model code of conduct) local authorities to record gifts and hospitality received by members over a value of £50, or totalling £100 over a year from a single source. This is to provide consistency with the £50 threshold for registering donations during election campaigns (by virtue of section 71A and schedule 2A paragraph 4 of the Representation of the People Act 1983). At the Council, the threshold for recording gifts and hospitality was set at £25 following full Council's consideration of a recommendation of the Standards Committee on 24th July 2017.

Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

- 4.14. The Report noted that openness and transparency are important safeguards to holding those in public office to account. Accordingly, decisions on formal

investigations should be published and include sufficient information to enable the decision to be understood.

- 4.15. At present, decision notices are published on the website. However, it is recommended that the Council's Process for Handling Complaints be amended to specify what the decision notice should include and explicitly require publication on the Council's website.

A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

- 4.16. The Report noted the importance and varied nature of the role of monitoring officer. It also recognised the potential for a conflict of interest given that the monitoring officer has a professional relationship with members, providing procedural and legal advice to enable them to pursue their objectives. Accordingly, it is considered important for there to be procedures in place to address any conflicts of interest.

- 4.17. Steps are already taken at the Council to address any conflicts of interest. However, it is proposed that the Council's Process for Handling Complaints be amended to make it clear that any potential conflicts of interest should be raised at an early stage and to give examples of the steps that may be taken to address them. For example, in addition to the above suggestion in the report, it may be appropriate for the deputy monitoring officer to undertake the investigation.

Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

- 4.18. The Report notes that some local authorities have set up separate bodies without offering sufficient clarity as to their involvement. It notes the importance of separate bodies practising ongoing assurance, oversight and transparency, in-keeping with the local authority's own governance principles.

- 4.19. The Council's existing separate bodies, namely Homes for Haringey and the Alexandra Park and Palace Charitable trust, already publish their reports and associated papers. This will continue to be the case and will be done for any further separate bodies that are set up.

- 4.20. The Council currently includes the separate bodies in its statement of accounts, but does not refer to them within the annual governance statement. Therefore, they will be included within the annual governance statement in the future.

Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

- 4.21. The Report recognises the importance of a healthy organisational culture, characterised by the timely, fair and accurate identification by senior leadership

of opportunities for development and occasions for discipline of those who are in danger of breaching the rules. It also recognised the important role to be played by political parties in showing leadership and maintaining an ethical culture.

- 4.22. The Report states that the informal resolution of emerging issues is ideal and senior officers should work with group leaders and whips to this end. However, naturally, where there is a serious issue or formal complaint, the formal standards processes should be followed with the necessary checks and transparency.
- 4.23. These recommendations are already in place at the Council and will continue to be implemented in the future, to support the other, formal changes to the Code of Conduct and Process for Handling Complaints.

Local authorities should have access to at least two Independent Persons. A legal indemnity should be provided to Independent Persons if their views or advice are disclosed. An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

- 4.24. The Council is required to appoint at least one Independent Person as part of its arrangements for dealing with allegations of a breach of the Code of Conduct by virtue of section 28(7) of the Localism Act 2011.
- 4.25. The Report noted that local authorities use Independent Persons in different ways. Some authorities will, in any given case, have one Independent Person offer a view to members or complainants, and another to offer a view to the local authority, so as not to be in a position where they may be forced to prejudge the merit of an allegation. Other authorities will consult with one Independent Person on whether to undertake a formal investigation, and another to advise on that investigation.
- 4.26. The Council currently has two Independent Persons and will continue to look to have at least two in the future. Therefore, no changes are proposed in this regard.
- 4.27. The Report highlights that the view of Independent Persons have recently been disclosed pursuant to the Freedom of Information Act 2000. It expresses concern that an Independent Person may not automatically enjoy an indemnity if a member or member of the public were to take legal action against them, in the way that an officer or member would. Accordingly, it recommends that local authorities should take steps to provide an indemnity to Independent Persons.
- 4.28. Officers have confirmed with the Council's insurer that Independent Persons would be covered by the existing policy in place. Therefore, no further action is proposed on this point.
- 4.29. The Report states that Independent Persons should be seen primarily as impartial advisors to local authorities on code of conduct allegations. It notes that many monitoring officers appreciate the impartial view they can offer but that not all local authorities make good use of their Independent Person. Accordingly, the Report recommends that local authorities do so, as set out above.

- 4.30. In practice, an Independent Person is already consulted on such matters at the Council. However, it is proposed to amend the Process for Handling Complaints to formalise this important role.

5. Alternative options considered

- 5.1. It would be open to the Committee to do nothing. However, this is not recommended.
- 5.2. This is because it is important that the Council acts in accordance with best practice when it comes to ethical governance. The proposed amendments will provide clarity and ensure the Council's ethical governance processes are transparent, readily understood by members, officers and the public, and thereby promote confidence in the Council.

6. Background information

- 6.1. Standards for England (formerly the Standards Board) was previously responsible for drawing up an England-wide code of conduct for councillors, registering pecuniary interests and dealing with allegations of breaches of the code of conduct. This included imposing sanctions on councillors, which could include suspending them from office.
- 6.2. Changes were made by the Localism Act 2011 and took effect in April 2012. Standards for England was abolished and local authorities were required to adopt local codes of conduct based on the seven 'Nolan principles' of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Allegations were to be investigated locally but the power to suspend councillors for breaches of the code of conduct was removed.
- 6.3. Following these changes, the Standards Committee considered the legislative changes and options in 2011 and 2012, and the Council decided to maintain many of the provisions from the former England-wide code of conduct on 21st May 2012. The code of conduct has since been reviewed but the changes have been comparatively minor.
- 6.4. The Report has been published in 2019 following a wide-ranging consultation. The review covered all local authorities in England. 319 written submissions were received from a range of local authorities, stakeholder organisations, officers, councillors and members of the public. Two roundtable seminars were held, one with monitoring officers, clerks and independent persons, and one with academics and think tanks. 30 individual stakeholder meetings were held and five local authorities were visited.
- 6.5. The Report made recommendations for local authorities, as outlined in this report. It also made recommendations to other bodies such as the Government and the Local Government Association. These include giving local authorities the power to suspend members without allowances for up to 6 months (which would require legislation) and creating a national model code of conduct for local authorities. Such recommendations have not yet been implemented. However,

the position will be monitored by officers to ensure the Council's code of conduct remains up to date.

7. Contribution to strategic outcomes

- 7.1. The Council's Constitution supports the governance of the Council and its decision-making, thereby assisting the Council to meet its strategic outcomes.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance

- 8.1. Any training needs that may rise will be contained within the Democratic Services budget

Procurement

- 8.2. None.

Legal

- 8.3. By virtue of section 27 of the Localism Act 2011, the Council is required to promote and maintain high standards of conduct by members and co-opted members and to adopt a code dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity.
- 8.4. By virtue of section 28 of the Localism Act 2011, a code of conduct must be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 8.5. The Council may revise its existing code of conduct under section 28(5) of the Localism Act 2011.
- 8.6. The Council's Code of Conduct and Process for handling complaints form part of the Constitution. Only full Council may make changes to the Constitution by virtue of Part Three Section B – Responsibility for functions: Full Council and Non-Executive Bodies, section 1, paragraph 1(a).
- 8.7. There have not yet been any legislative changes associated with the report on Local Government Ethical Standards from the Committee on Standards in Public Life. However, the Report recommended that associated legislative changes be made in the future. This will be monitored to ensure the Council's Code of Conduct and Process for handling complaints remain up to date.
- 8.8. Legal comments are included in the body of the report where appropriate.

Equality

- 8.9. No equalities directly arise from this report.

9. Use of Appendices

- 9.1. Appendix 1: Part 5 Section A – Members’ Code of Conduct – pt 1.
- 9.2. Appendix 2: Part 5 Section A – Members’ Code of Conduct – pt 2 – Process for handling complaints.
- 9.3. Appendix 3: Report on Local Government Ethical Standards from the Committee on Standards in Public Life.

10. Local Government (Access to Information) Act 1985

- 10.1. The Council’s Constitution, which can be found at:
<https://www.minutes.haringey.gov.uk/ieListDocuments.aspx?CIId=873&MId=7972&info=1&MD=Constitution>
- 10.2. Report for the Standards Committee, 20th December 2011: The Localism Act 2011 – The Amended Standards Regime, which can be found at:
<https://www.minutes.haringey.gov.uk/documents/s24540/2011%2012%2020%20Agenda%20itemReport%20to%20Update%20Standards%20Committee%20Localism%20Act.pdf>
- 10.3. Report for the Standards Committee, 22nd March 2012: Ethical framework, which can be found at:
<https://www.minutes.haringey.gov.uk/documents/s25661/Signed%20report%20The%20Ethical%20Framework%20220312.pdf>
- 10.4. Report for Full Council, 21st May 2012: Ethical Framework, which can be found at:
<https://www.minutes.haringey.gov.uk/documents/s26243/The%20Ethical%20Framework%20report%20signed%20report.pdf>
- 10.5. Minutes of the Standards Committee Meeting, 6th July 2017: Proposed Changes to the Council’s Constitution, which can be found here:
<http://www.minutes.haringey.gov.uk/documents/g8198/Printed%20minutes%2006th-Jul-2017%2019.00%20Standards%20Committee.pdf?T=1>
- 10.6. Report for Full Council, 24th July 2017: Constitutional Changes, which can be found at:
<http://www.minutes.haringey.gov.uk/documents/s95118/Standards%20report%20to%20Full%20Council%20Constitution%20changes%20-%2024%20July%202017.pdf>

Local Government Ethical Standards

**A Review by the
Committee on
Standards in Public Life**

**Committee on
Standards in
Public Life**

January 2019





Local Government Ethical Standards

Committee on Standards in Public Life

Chair: Lord Evans of Weardale KCB DL

January 2019





The Seven Principles of Public Life

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.



Dear Prime Minister,

I am pleased to present the 20th report of the Committee on Standards in Public Life, on the subject of ethical standards in local government.

The Committee has had a long-standing interest in local government, which was the subject of its third report, and which it has considered a number of times since then. This review was not prompted by any specific allegations of misconduct, but rather to assure ourselves that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.

Local government impacts the lives of citizens every day, providing essential services to those it serves. Its decisions directly affect the quality of life of local people. High standards of conduct in local government are needed to demonstrate that those decisions are taken in the public interest and to maintain public confidence.

It is clear that the vast majority of councillors and officers want to maintain the highest standards of conduct in their own authority. We have, however, identified some specific areas of concern. A minority of councillors engage in bullying or harassment, or other highly disruptive behaviour, and a small number of parish councils give rise to a disproportionate number of complaints about poor behaviour.

We have also identified a number of risks in the sector: the current rules around conflicts of interest, gifts, and hospitality are inadequate; and the increased complexity of local government decision-making is putting governance under strain.

The challenge is to maintain a system which serves the best instincts of councillors, whilst addressing unacceptable behaviour by a minority, and guarding against potential corporate standards risks.

It is clear from the evidence we have received that the benefits of devolved arrangements should be retained, but that more robust safeguards are needed to strengthen a locally determined system. We are also clear that all local authorities need to develop and maintain an organisational culture which is supportive of high ethical standards. A system which is solely punitive is not desirable or effective; but in an environment with limited external regulation, councils need the appropriate mechanisms in place to address problems when they arise.

Our recommendations would enable councillors to be held to account effectively and would enhance the fairness and transparency of the standards process. Introducing a power of suspension and a model code of conduct will enable councillors to be held to account for the most serious or repeated breaches and support officers to address such behaviour, including in parish councils. Strengthening the role of the Independent Person and introducing a right of



appeal for suspended councillors will enhance the impartiality and fairness of the process, which is vital to ensure that councillors are protected from malicious or unfounded complaints. Greater transparency on how complaints are assessed and decided in a system which is currently too reliant on internal party discipline will also provide a safeguard against opaque decision-making and provide reassurance to the public.

A number of these recommendations involve legislative change which we believe the government should implement. We have also identified 'best practice' for local authorities, which represents a benchmark for ethical practice which we expect that any authority can and should implement.

It is clear to us that local government in England has the willingness and capacity to uphold the highest standards of conduct; our recommendations and best practice will enable them to do so.

I commend the report to you.

Lord Evans of Weardale
Chair, Committee on Standards in Public Life





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Executive summary

Local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life.

High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct. There is, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of councillors.

We are also concerned about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making.

Giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. We have considered whether there is a need for a centralised body to govern and adjudicate on standards. We have concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local

authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and to specific groups of public office-holders. We recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which we expect could be implemented more swiftly. Our best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We will review the implementation of our best practice in 2020.

Codes of conduct

Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. There is considerable variation in the length, quality and clarity of codes of conduct. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. Many codes of conduct fail to address adequately important areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.



There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. The scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.

Declaring and managing interests

The current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The current requirements for registering interests should be updated to include categories of non-pecuniary interests. The current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.

Investigations and safeguards

Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. A local authority should maintain a standards committee. This committee may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically-motivated, malicious, or unfounded allegations of misconduct. The Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent

Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

Sanctions

The current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, lacks the necessary independence and transparency to play the central role in a standards system. The current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

Local authorities should therefore be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.

The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.



Town and parish councils

Principal authorities have responsibility for undertaking formal investigations of code breaches by parish councillors. This should remain the case. This responsibility, however, can be a disproportionate burden for principal authorities. Parish councils should be required to adopt the code of their principal authority (or the new model code), and a principal authority's decision on sanctions for a parish councillor should be binding. Monitoring Officers should be provided with adequate training, corporate support and resources to undertake their role in providing support on standards issues to parish councils, including in undertaking investigations and recommending sanctions. Clerks should also hold an appropriate qualification to support them to uphold governance within their parish council.

Supporting officers

The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts. We have concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

Councils' corporate arrangements

At a time of rapid change in local government, decision-making in local councils is getting more complex, with increased commercial activity and partnership working. This complexity risks putting governance under strain. Local authorities setting up separate bodies risk a governance 'illusion', and should

take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.

Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture.

Leadership and culture

An ethical culture requires leadership. Given the multi-faceted nature of local government, leadership is needed from a range of individuals and groups: an authority's standards committee, the Chief Executive, political group leaders, and the chair of the council.

Political groups have an important role to play in maintaining an ethical culture. They should be seen as a semi-formal institution sitting between direct advice from officers and formal processes by the council, rather than a parallel system to the local authority's standards processes. Political groups should set clear expectations of behaviour by their members, and senior officers should maintain effective relationships with political groups, working with them informally to resolve standards issues where appropriate.

The aim of a standards system is ultimately to maintain an ethical culture and ethical practice. An ethical culture starts with tone. Whilst there will always be robust disagreement in a political arena, the tone of engagement should be civil and constructive. Expected standards of behaviour should be embedded through effective induction and ongoing training. Political groups should require their members to attend code of conduct training provided by a local authority, and this should also be



written into national party model group rules. Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all councillors and who is professionally supported by the Chief Executive.

An ethical culture will be an open culture. Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision-making processes. Whilst local press can play an important role in scrutinising local government, openness must be facilitated by authorities' own processes and practices.



List of recommendations

Number	Recommendation	Responsible body
1	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association
2	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government
3	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government
4	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.	Government
5	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government
6	Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.	Government



Number	Recommendation	Responsible body
7	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter”.	Government
8	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government
9	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government
10	A local authority should only be able to suspend a councillor where the authority’s Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.	Government
11	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.	Government / all local authorities
12	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.	Government
13	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government



Number	Recommendation	Responsible body
14	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.	Government
15	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government
17	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government
18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government
19	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish councils
20	Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.	Government
21	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.	Government
22	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government



Number	Recommendation	Responsible body
23	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	Government
24	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government
25	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.	Political groups National political parties
26	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association



List of best practice

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Best practice 7: Local authorities should have access to at least two Independent Persons.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.



Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.



Introduction

The Committee on Standards in Public Life (the Committee) was established in 1994 by the then Prime Minister, and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles.¹

The Committee has had a long-standing interest in local government, which was the subject of its third report in 1997, and which it has considered on a number of occasions since then. Since we last reviewed standards arrangements in local government, the Committee has maintained a watching brief, and has received regular correspondence relating to local government. Our other recent reviews have also received evidence relevant to the maintenance of standards in local government. This review was not prompted, however, by any specific allegations of misconduct or council failure, but rather to review the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011.

The terms of reference for our review were to:

1. Examine the structures, processes and practices in local government in England for:

- a. Maintaining codes of conduct for local councillors
- b. Investigating alleged breaches fairly and with due process
- c. Enforcing codes and imposing sanctions for misconduct
- d. Declaring interests and managing conflicts of interest
- e. Whistleblowing

2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government

3. Make any recommendations for how they can be improved

4. Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation

¹ <https://www.gov.uk/government/publications/the-7-principles-of-public-life>



Our review covered all local authorities in England, of which there are 353 principal authorities, with 18,111 councillors in 2013, and an estimated 10,000 parish councils in England, with around 80,000 parish councillors. We did not take evidence relating to Combined Authorities, metro mayors, or the Mayor of London and so do not address these areas of local government in this report.

The Committee's remit does not extend to the devolved administrations of the UK, and so our review does not cover local government standards outside England, although we have considered the role, remit, and work of the standards bodies in Scotland, Wales, and Northern Ireland for comparative purposes.

As part of this review, we received 319 written submissions to our consultation, from a range of local authorities, representative bodies, stakeholder organisations, officers, councillors, and members of the public. We held two roundtable seminars; one with Monitoring Officers, clerks and Independent Persons, and one with academics and think tanks. We held 30 individual stakeholder meetings. We also visited five local authorities across different regions of England and tiers of local government speaking to councillors, officers, county associations, Independent Persons, and representatives from town and parish councils.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and specific groups of public office holders. Our best practice for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We intend to review the implementation of our best practice in 2020.

The Committee wishes to thank all those who gave evidence to the review, including those local authorities who hosted a visit by the Committee, and in particular Jonathan Goolden of Wilkin Chapman LLP for his support and advice throughout.



Chapter 1: Overview of standards

Is there a standards problem in local government?

The evidence we have received does not reveal a widespread standards problem within local government. Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct.

However, there is clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. We have also heard evidence of persistent or repeated misconduct by a minority of councillors.

This misconduct occurs at both principal authority level and at parish or town council level. Our evidence suggests, however, a high volume of complaints arising from a small number of town and parish councils (we refer to both as 'parish councils' for clarity). Under the current arrangements, where principal authorities are responsible for investigating and deciding on allegations of misconduct at parish level, these complaints can take up a disproportionate amount of officer time and are likely to be more difficult to address than complaints at principal authority level.

There is currently no requirement for principal authorities or town and parish councils to collect or report data on the volume of formal complaints they receive, but evidence we received indicates that the number varies widely between local authorities.

We received evidence that for parish councils, around 60% of councils had had no complaints, or only one complaint since the Localism Act 2011 came into force, and

around 10% had had four or more complaints. Of councils that had received complaints, 83% said complaints had been made about disrespectful behaviour, 63% about bullying and 31% about disruptive behaviour.²

Throughout this review, we have evaluated the system for upholding high ethical standards in local government as it currently works in practice, to see how far it reflects the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Across the 353 principal authorities in England, where responsibility for ethical standards rests with each individual authority, there is a variety of practice. But there are some common concerns.

At a time of rapid change in local government, not least in response to austerity measures, decision-making in local authorities is getting tougher and more complex. Increased freedoms to work with partners from a variety of sectors runs the risk of putting governance under strain. The importance of ensuring selflessness and integrity by reporting conflicts of interest and eradicating undue influence, in a system which is becoming less transparent and less accountable, is more important than ever. A lack of regulation only heightens the risk of things going badly wrong.

The political landscape is also changing. As we explore in chapter 4, party group discipline is an important ingredient in addressing misconduct, but in some councils the increase in independent members and groups causes additional concerns. The public expect their local representatives to be open and transparent, but it is clear that the increased use of social media has to be handled with

2 Hoey Ainscough Associates survey for Society of Local Council Clerks, based on 801 responses from Clerks across England and Wales



care and where necessary properly monitored and checked. Many councils told us of ways in which they were trying to address this, often after having had multiple complaints.

The pressures increase to conduct political debate and decision-making at pace, and there can be frustration with formal procedures to handle complaints which are judged to be too cumbersome, bureaucratic or lengthy. Informality has its place, but must be balanced by the safeguard of formal due process, especially for more serious matters. We heard from councillors how important it is for them to have proper procedures, with an appropriate level of independence and objectivity, to protect them from political mischief or worse.

Local authorities are clearly aware of these issues and are tackling them. But officers need appropriate support, especially those officers in parish councils who often work alone. They are developing best practice and understand what works, and they are working together across professional networks to share their experiences. Councillors themselves have confidence in the system and confidence in themselves to ensure high standards. But throughout this review we heard for the need for greater consistency in codes of conduct and for greater enforceable sanctions for serious and repeated breaches.

Such concerns and risks suggest that the current arrangements should be clarified and strengthened to ensure a robust, effective, and comprehensive system. We set out in this report how we believe local government can be supported to achieve this.

The current system

The current system has a number of checks and balances built in to safeguard against poor ethical standards and protect against impropriety.

Each principal authority operates within its constitution. This creates a governance framework to ensure good administration and decision-making which includes, for example, the separation of the duties of officers and members, accountability to full council, and scrutiny and audit processes. These arrangements are overseen by the officers of the council, and particularly by the three senior statutory officers: the Head of Paid Service (Chief Executive), the Chief Finance Officer (sometimes referred to as the Section 151 Officer) and the Monitoring Officer. The leader of the council and other key members also have an important leadership role to play.

Under section 27 of the Localism Act 2011 each local authority must adopt a code of conduct against which councillors' conduct may be assessed. This code, when viewed as a whole, should reflect the Seven Principles of Public Life. A local authority must also make appropriate provision for councillors to register pecuniary and non-pecuniary interests. Any allegations of misconduct are usually considered in the first instance by the Monitoring Officer, a statutory officer of the council who has responsibility for standards and governance (or by their deputy). If the Monitoring Officer considers that there needs to be a formal investigation, this may be undertaken by the Monitoring Officer themselves, a deputy, or by an external investigator.

As a check on the impartiality of the decision-making process, the council must seek and take into account the view of an Independent Person (appointed by the council) before a decision is made on an alleged breach that has been subject to a formal investigation. A decision can be made by the Monitoring Officer, but many councils maintain a standards committee to make decisions on allegations or to review decisions taken by the Monitoring Officer. The authority may impose



a sanction - which cannot include suspension or disqualification - but may be an apology, training, censure, or withdrawal of certain facilities or access to council buildings. There are, however, no means of enforcing sanctions where it requires positive action by the councillor, for example, an apology or training.

Outside the formal standards procedures in a principal authority, party discipline can also be brought to bear. Most councillors will be members of a political group, and also often a national political party. A political group may follow its own procedures to advise members about their behaviour, remove councillors from committees, suspend them from the group, or remove them from positions to which they have been appointed by the group. A national political party may also follow its own procedures and suspend or expel a councillor from the party. These processes may be undertaken in consultation with the Monitoring Officer or other senior officers, or under the group or party's own initiative.

Within the statutory framework, principal authorities have discretion to develop their own standards procedures according to their own needs and resources. For example, some authorities give a more significant role to their Monitoring Officer and only involve a standards committee or Independent Person in the case of a formal investigation, others make extensive use of party discipline to resolve standards issues informally, and some authorities involve Independent Persons and standards committee members in a range of activities aimed at upholding ethical conduct and ethical decision-making within the authority. This means that authorities' standards arrangements, whilst they have commonalities, can in practice be implemented very differently. We discuss these different approaches throughout this report.



Developments leading to the current framework for local government ethical standards

Much of the framework for local government standards which has been in place since 1997 has been a direct or indirect result of the Committee's recommendations.

Since we first considered local government standards in 1997, the sector has moved from a largely unregulated standards regime to a highly centralised system under the Standards Board, which was subsequently reformed in the mid-2000s and finally abolished in 2012, giving way to the highly devolved system which is currently in place.

1997 The Committee's third report, *Standards of Conduct in Local Government in England, Scotland and Wales* (1997), made a range of recommendations to improve ethical standards in local government. These included a requirement for local authorities to adopt a code of conduct based on general principles, the creation of public registers of interests, and rules on councillors declaring both pecuniary and non-pecuniary interests and withdrawing from discussion or voting where appropriate. Codes of conduct would be enforced by local standards committees with powers to suspend councillors, with tribunals in England, Wales, and Scotland to hear appeals.

1998 The Committee's recommendations were considered in detail by the incoming government in *Modernising local government: a new ethical framework* (1998), published by what was then the Department for Environment, Transport, and the Regions. The response, though agreeing with a number of recommendations, went well beyond what the Committee recommended, and proposed the creation of the Standards Board for England, which would investigate and adjudicate on all complaints about councillors except for those which were trivial or technical. The government held that leaving determination to local standards committees "[...] risks that allegations are not handled with that degree of objectivity or fairness" that the government considered an essential principle of the system.³ The Secretary of State issued a model code of conduct, containing provisions which were required to be included in local codes of conduct, and the Standards Board for England advised councils at the time not to include additional provisions in their codes.

³ Department for Environment, Transport and the Regions (1998), *Modernising local government: a new ethical framework*



2005 In the Committee's 10th report, *Getting the balance right* (2005), the Committee accepted that the standards framework had improved since 1997. However, it criticised the centralised method for handling complaints and argued that, both on proportionality grounds and in order to embed an ethical culture in individual local authorities, the framework should move to locally-based arrangements for all but the most serious cases. It argued for substantial reform of, but not the abolition of, the Standards Board.

2007 Responding to the Committee's 10th report, the government agreed that the Standards Board should become a more strategic regulator, and accepted that there were benefits "[...] in moving towards the promotion of more locally-based decision making in conduct issues, which would encourage local ownership of standards within local authorities". The Standards Board became 'Standards for England' and its role and relationship to local standards committees was altered accordingly by the Local Government and Public Involvement in Health Act 2007, with local authorities given the power to determine all but the most serious allegations. The Standards Committee (England) Regulations 2008 gave standards committees the ability to suspend councillors for up to six months following the finding of a breach.



2010 In 2010, the coalition government proposed significant reform of the local government standards regime, centred on the abolition of Standards for England, which ministers described as “[...] bureaucratic standards arrangements...which so often led to petty or politically motivated complaints”.⁴ The government proposed devolving responsibility for standards to individual local authorities, though without the ability to suspend or disqualify councillors. The initial proposals did not require councils to adopt a code of conduct, nor to have an independent check on deciding breaches.

The Committee welcomed responsibility for standards being held at a local level, noting that this was what it had originally recommended in 1997. However, the then Chair of the Committee, Sir Christopher Kelly KCB, expressed concerns that “[...] the proposals go well beyond the abolition of Standards for England. They involve the abolition of the national code of conduct for local authority members and remove the obligation on local authorities to maintain standards committees, chaired by independent people, to monitor standards and sanction aberrant behaviour. In future it appears that the only way of sanctioning poor behaviour between elections will be the criminal law or appeals to the ombudsman where someone’s interests are directly affected by a decision.”⁵

In response, the government included in the Localism Act 2011 a requirement for councils to adopt a code of conduct which, when viewed as a whole, was: consistent with the Seven Principles of Public Life; required the views of an Independent Person to be sought and taken into account when deciding on breaches of the code of conduct; and put a requirement for pecuniary interests to be registered and declared on the face of the Bill, which passed into law in November 2011.

4 Letter from Bob Neill MP to all local authority leaders, 28 June 2012, Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5657/2169997.pdf

5 “Public confidence in local government standards is at risk”, Committee on Standards in Public Life Press Notice, 14 September 2010



Responsibility for standards

Whilst we consider each element of the standards process within this report, we have also considered the system as a whole; in particular, the question of where responsibility for standards in local government should lie – whether locally or with a national, centralised body. Any system needs to be able to support and protect councillors, officers, and members of the public.

There are clear benefits to local authorities having responsibility for ethical standards.

First, ownership of ethical standards – local responsibility for ethical standards ensures that the application and implementation of the Seven Principles of Public Life in local government is fully ‘owned’ by the sector. Ethical standards should not be seen as something that can be outsourced to another organisation; a highly centralised system for codes of conduct, investigations and sanctions risks implying that maintaining an ethical culture is somebody else’s responsibility. The evidence we received strongly indicates that local authorities want to keep responsibility for setting standards, based on the Seven Principles, and maintaining an ethical culture in their own authorities; and want to be given the tools and resources to do so.

Second, flexibility – our evidence suggests that flexibility is a major strength of the current standards arrangements. Local government involves working in close proximity. A system which is overly formal, as a centralised system would tend to be, can actually inhibit high ethical standards as it precludes light-touch, informal action to address potential issues at an early stage, and to resolve them in a way which takes account of the culture and needs of the authority and its existing working relationships.

Third, reduction in vexatious complaints – the evidence we have seen also suggests that the vexatious and politically-motivated complaints that existed under the centralised regime, prior to 2011, and about which we expressed concern in 2005, have significantly reduced.

We have carefully considered the arguments in favour of a centralised body responsible for overseeing standards in local government, as is the case for example in the devolved administrations of the UK.

The obvious benefit would be that it would improve consistency of standards across England. We have considered in particular the argument that members of the public in one area of the country will have the same expectations of the standards upheld by local councillors as members of the public in another area of the country. We suggest, however, that it is possible in general to enhance consistency without centralisation.

We have also considered how increased centralisation may make the process of setting codes, and investigating and deciding upon standards breaches, more independent and objective. It is important that there is independent input and oversight in any standards system, not least to provide councillors with support and adequate protection from unwarranted politically motivated allegations or unfair treatment, and to maintain the confidence of the public. The evidence we received suggests that it is possible to strengthen independent safeguards – through strengthening the role of independent members on standards committees and the Independent Person – within a framework of local responsibility for maintaining standards.



Overall, we do not favour a return to a centralised system and recommend that responsibility for ethical standards should remain with local authorities. While consistency and an independent element are important aspects of the standards framework, the recommendations we make throughout this report would enhance the consistency of standards across England and increase the independence of the relevant processes, whilst retaining local authorities' ownership of ethical standards and the flexibility this allows.



Chapter 2:

Codes of conduct and interests

Clear, relevant, and proportionate codes of conduct are central to maintaining ethical standards in public life. Codes of conduct were identified by the Committee as one of the essential ‘strands’ in maintaining ethical standards in public life in its first report in 1995, at a time when many public sector organisations did not have them.

Codes of conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

As we stated in our 2013 report, *Standards Matter*:

Organisations need their ethical principles to be elaborated in codes which contextualise and expand on their practical implications. Holders of public office can then be clear what is expected of them, particularly in grey areas where the application of principles may not be self-evident.⁶

Currently, local authorities have a statutory duty to adopt a code of conduct which, when viewed as a whole, is consistent with the Seven Principles of Public Life, and which includes provisions for registering and declaring pecuniary and non-pecuniary interests.

The intention was not that the Seven Principles could be treated as if a self-contained code, but instead that the principles should be used to underpin a well-drafted, practical and locally-relevant guide to behaviour.

As part of our evidence-gathering, we reviewed a sample of 20 principal authority codes of conduct. We have also drawn on the evidence received through our public consultation, visits and roundtables.

Variation, consistency, and clarity

There is considerable variation in local authority codes of conduct. Some of this is straightforward variation in structure and wording, but there is also considerable variation in length, breadth, clarity and detail.

We heard evidence that variation between codes, even where the codes do not differ in quality, is problematic. It creates confusion among councillors who are simultaneously serving in councils at multiple tiers of local government (for example, on both a parish and a district council, known as ‘dual-hatting’), particularly when requirements for declaring and registering interests are different. It also creates confusion among members of the public over what is required of different councillors in different areas and tiers of local government.

⁶ Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.4



The main problem I have experienced as Monitoring Officer...is the lack of consistency across codes... In district council areas, as Monitoring Officer, you have oversight of both district and parish council complaints. Each council can have their own version of the code (meeting the minimum provisions under the Localism Act 2011). It makes life difficult for councillors who are 'twin' or 'triple' hatters having to abide by different codes, and potentially inconsistent in the advice you can provide on each different version of a code.⁷

Monitoring Officer, North Hertfordshire District Council

In Ashford, a 'Kent model' code of conduct and arrangements for dealing with complaints were developed based on the previous national code as this was considered preferable to ensure consistency, continuity and clearly defined expectations.¹⁰

Ashford Borough Council

The issue of parish councils' codes of conduct is closely related; we discuss this in detail in chapter 5.

Model code of conduct

A model code of conduct would create consistency across England, and reflect the common expectations of the public regardless of geography or tier. It would also reduce the potential for confusion among dual-hatted or triple-hatted councillors. As we discuss below, areas such as gifts and hospitality, social media use, and bullying and harassment have all increased in salience, and are not regularly reflected in local authority codes of conduct. All local authorities need to take account of these areas, and a model code of conduct would help to ensure that they do so.

In light of these problems, it is of little surprise that some councils have taken voluntary steps to agree mutual codes of conduct. For example, all of the principal authorities in Worcestershire have agreed a 'pan-Worcestershire' code. This also meant that common training could take place across authorities.⁸

In order to ensure a consistency of standards and expectations of both councillors and the public (and not least because we have a lot of dual-hatted members), the eight principal authorities co-operated in advance of the new regime to create a 'pan-Worcestershire' Code of Conduct which was adopted by all eight, and we understand a majority of town and parish councils in the county as well.⁹

Worcestershire County Council

Whilst the principle of localism is set to facilitate greater local determination on practices best suited to each authority, this may result in inconsistencies of rigour in application of cases from one authority to another...we recommend that model codes of conduct be developed for use by authorities.¹¹

INLOGOV, University of Birmingham

⁷ Written evidence 22 (Jeanette Thompson)

⁸ Written evidence 173 (Worcestershire County Council)

⁹ Written evidence 173 (Worcestershire County Council)

¹⁰ Written evidence 138 (Ashford Borough Council)

¹¹ Written evidence 160 (INLOGOV)



We recognise that there are benefits to councils being able to amend their own codes. For example, a council may provide more detail on appropriate use of social media, relationships with officers, or conduct during council meetings, depending on its own culture and the specific issues it may face. Local authorities can also revise their codes of conduct where they find them difficult to apply in practice, and to learn from best practice elsewhere. A mandatory code set by central government would be unlikely to be updated regularly or amended in light of learning experiences.

A council having final ownership of its code of conduct solidifies the ownership of ethical standards within an authority. There are benefits to a conversation within a council of what high ethical standards would look like in their own context. For example, Uttlesford District Council told us during our visit that the process of rewriting their code and standards process played a positive role in setting an effective ethical culture and making councillors aware of the behaviour expected of them.¹² A mandatory national code would take away ‘ownership’ of ethical standards from local authorities, since those standards would be set centrally, from outside of local government. The Committee commented on the national code in place before 2000 that it had become something which was “[...] done to local authorities; rather than done with them”.¹³ We would not want to return to such a state of affairs.

We therefore consider that there should be a national model code of conduct, but that this should not be mandatory, and should be able to be adapted by individual authorities.

The existing model codes available to local councils compare unfavourably to bespoke

codes, with little detail on important areas such as social media use and bullying and harassment. Therefore, a new model code would be needed. The updated model code should be drafted by the Local Government Association, given their significant leadership role in the sector, in consultation with representative bodies of councillors and officers of all tiers of local government. The Ministry of Housing, Communities and Local Government should ensure that they are given the necessary resources and support to undertake this work.

Recommendation 1: The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.

Bullying and harassment

The evidence received by the Committee suggests that most allegations of code breaches relate to bullying and harassment. This is an area of ethical standards that is much better recognised since the Committee last undertook a review of local government.

Our code of conduct sampling found that most codes of conduct do not cover this behaviour effectively. Whilst most codes sampled had a specific prohibition on bullying and specifically prohibited intimidation in respect of any allegations of wrongdoing, only two out of twenty codes sampled included specific behaviours that would amount to bullying, and five had only a broad provision such as ‘showing respect for others’. Given that the Nolan Principles are not a code of conduct, and so are not prohibitory in character, codes

¹² Uttlesford District Council Standards Committee, Visit to Uttlesford District Council, 10 September 2018

¹³ Committee on Standards in Public Life (2005), *Getting the balance right*, Cm 6407, 3.10



which do not elaborate on them will lack these provisions, although we consider that such prohibitions rightly fall under the Nolan principle of leadership.

Example of a bullying provision

Extract from Newcastle City Council code of conduct¹⁴

You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.

(Note: Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.)

Bullying and harassment can have a significant impact on the wellbeing of officers and councillors who are subject to it. Such behaviour is not acceptable in the workplace, particularly from public office-holders with responsibilities to show leadership.

It is also a broader standards issue, given that individuals subject to bullying or harassment

may be pressured to make decisions or act in ways which are not in the public interest. As such, it is important that bullying and harassment are dealt with effectively, and that a local authority's code of conduct makes provisions to address these matters.

Broader standards failure arising from bullying

In several high-profile cases of standards failures in local government, bullying behaviour which was not challenged or addressed enabled other, more serious misconduct to take place, including the failure of scrutiny and governance structures or financial misconduct.

The Gowling WLG report into Sandwell Metropolitan Borough Council in 2016 considered allegations of a councillor improperly influencing the sale and purchase of council property and attempting to gain favours for their family members.

The report found that the councillor at the centre of allegations of financial impropriety had bullied and coerced a senior housing officer over a long period.

Senior officers did not take steps to prevent the bullying from taking place, which the report stated "[...] left a vulnerable employee horribly exposed to undue pressure, and, more corrosively, perpetuated the culture within the department of ignoring governance".¹⁵

¹⁴ Newcastle City Council Code of Conduct. Available at: https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part_5_2a_-_members_code_of_conduct.pdf

¹⁵ Gowling WLG (2016) *Report to the Chief Executive, Assistant Chief Executive, Monitoring Officer and Chief Financial Officer of Sandwell Metropolitan Borough Council*. Available online at: http://www.sandwell.gov.uk/downloads/file/24029/gowling_wlg_report



The Committee heard from Monitoring Officers and independent investigators that the broad ‘respect’ provision upon which many councils rely is not suitable for dealing with allegations of bullying and harassment. Broad provisions are difficult to adjudicate on with consistency, particularly in the absence of additional, more detailed guidelines of what the provision entails. They also tend to give rise to further disputes over whether behaviour is captured by that provision.

Whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (Acas) have codified a helpful definition: “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient”.¹⁶

Examples of bullying behaviour include:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities¹⁷

¹⁶ Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>

¹⁷ Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>



Harassment is defined in the Equality Act 2010 as “unwanted conduct related to a relevant protected characteristic”, which has the purpose or effect of violating an individual’s dignity or “creating an intimidating, hostile, degrading, humiliating or offensive environment” for that individual”.¹⁸

These definitions make clear that bullying and harassment are instances of serious misconduct. By their nature they are likely to be persistent behaviour, rather than one-off instances. A councillor should not be considered to be bullying or harassing an officer or another councillor simply by making persistent enquiries or requests for information, nor by saying something that the individual concerned simply dislikes or with which they disagree strongly. Genuine instances of bullying and harassment will fall outside the limits of legitimate free expression; but equally accusations of such behaviour should not be used as an attempt to restrict legitimate inquiries or free expression. We discuss the enhanced protection that is afforded to political expression and the appropriate limits of free speech by councillors in more detail below.

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Half of the codes sampled by the Committee made reference to a separate protocol on councillor-officer relations. Whilst many of these protocols focussed on the duties of

officers, particularly in respect of impartiality requirements, we did see protocols laid out reasonable expectations of a good working relationship, which provides better support to the maintenance of a good ethical culture. The requirements of protocols can be enforced through the formal standards process where councils include a specific requirement to act in accordance with the protocol in the main code of conduct.

Intimidation of councillors

During our review, we received evidence relating to the intimidation of councillors, which we undertook to collect as a result of representations received from the local government sector during our 2017 review, *Intimidation in Public Life*.¹⁹

The evidence we received suggests that intimidation of councillors is less widespread than intimidation of Parliamentary candidates and MPs, but, when it does occur, often takes similar forms and is equally severe and distressing. In line with our 2017 findings, it is particularly likely to affect high-profile women in local government.

Instances of councillors being attacked and harassed, notably on social media, is an increasing trend and a very serious issue. There is anecdotal evidence from across the country that female leaders and councillors are subject to more abuse than their male counterparts.²⁰

Local Government Association

Although they do not otherwise fall within the scope of our review, we also heard concerning evidence of intimidation of Police and Crime Commissioners.

¹⁸ Equality Act 2010, section 26

¹⁹ Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543

²⁰ Written evidence 170 (Local Government Association)



On a Sunday afternoon at my home address I was visited by a person who over many years has been a serial complainer about the police and my office. The person is believed to have mental health issues and refused for some time to say who she was or what she wanted. The visit was distressing to my wife and daughter.

My intimidation all related to the release of my home address, with people calling unannounced, one of the three above had an injunction against him.²¹

Association of Police and Crime Commissioners

Given the generally similar pattern of evidence we received in relation to intimidation by social media, we consider that our 2017 recommendations, where implemented, should help to address the intimidation of local councillors.

One aspect in which the intimidation of councillors is distinct from that of MPs and Parliamentary candidates is in relation to home addresses. Unlike MPs and candidates, councillors' addresses are often public, for example, on a council website or on a register of interests. The nature of local democracy means that those who are likely to engage in intimidation of a councillor are likely to live nearby. We heard of cases of councillors being confronted in public whilst in a private capacity, for example, whilst with their family or shopping. Whilst this may not always be intimidatory as such, we heard that councillors are highly aware that they have a high profile in their immediate local area, and so the fear of physical intimidation is much greater. The fact that individuals' home addresses are public

can also make any threats made through electronic means, such as social media, more distressing.

We therefore welcome the government's commitment to bring forward secondary legislation to implement our 2017 recommendation that the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper should be removed.

In *Intimidation in Public Life*, we recommended that Monitoring Officers draw councillors' attention to the sensitive interest provisions in the Localism Act 2011, that permit the non-disclosure of details in the register of interests where the member and Monitoring Officer agree that their disclosure could lead to violence or intimidation.²² We received evidence, however, that often these provisions would only be invoked after a councillor had experienced intimidation or harassment, in which case their address was already publicly available.

Given the experience of intimidation by too many in public life, we do not believe it is justifiable to require any candidate standing for or taking public office to make their home address public, whether on a ballot paper or a register of interests. The general principle should be that an individual's home address should be kept confidential and not disclosed publicly or beyond the necessary officials without the individual's consent.

Some authorities have a blanket policy that home addresses will be recorded on the register of interests but omitted from the published version.

21 Written evidence 307 (Association of Police and Crime Commissioners)

22 Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543, 62



Example of local authority policy on home addresses

In accordance with the arrangements for the placing of Register of Interests on the City Council's website agreed by the Standards Committee details of members' home addresses will be omitted from the version placed on the website.²³

City of Westminster, *Guidance note to members on Register of Interests.*

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to make clear that the 'land' category does not require a councillor to register their home address.

Recommendation 2: The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.

Scope of the code of conduct

At the moment, codes of conduct can only apply to local councillors when they are acting in their capacity as a councillor.²⁴ This means that in practice a councillor cannot breach a code of conduct by, or be sanctioned for, objectionable behaviour in a private context (for example, the way they conduct themselves in a private dispute with a neighbour).

Numerous complaints are made about councillors' conduct on social media or at events, which in some cases are well-founded. However, if the councillor is not acting in their official capacity then Monitoring Officers are limited in their ability to deal with such conduct. This undermines the public confidence in the standards regime as the public expect higher standards of conduct from their elected representatives.²⁵

Lawyers in Local Government

Our evidence suggests that the current narrow scope of the code of conduct makes it difficult to effectively deal with some instances of poor behaviour, particularly in relation to social media use.

The question of public and private capacity raises significant questions about the privileges and responsibilities of representatives. Democratic representatives need to have their right to free speech and expression protected and not unduly restricted; but equally the public interest demands that they meet certain responsibilities in that role.

²³ City of Westminster, *Guidance note to members on Register of Interests*. Available online at: <https://www.westminster.gov.uk/register-members-interests>

²⁴ Localism Act 2011, section 27(2): "...a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority *when they are acting in that capacity*"

²⁵ Written evidence 228 (Lawyers in Local Government)



Some public sector codes of conduct cover behaviour which could purport to be in a personal capacity, but which would inevitably bear on the individual's public role. For example, government ministers are prohibited from acting as patrons of certain organisations or nominating individuals for awards, even if this would purport to be in their personal capacity.²⁶

This suggests to us that the question is not whether behaviour in a personal capacity can impact on an individual's public role, but when it does so.

We took evidence from the standards bodies in Northern Ireland, Scotland and Wales in order to consider their approaches to this issue.

The devolved standards bodies take one of two approaches: either restricting the scope of the code to apply only when a councillor is acting in an official capacity (Scotland), or allowing that a councillor may engage in behaviour in a purely private capacity, which is serious enough to bring their office or authority into disrepute (Wales and Northern Ireland).

In Scotland, the code of conduct only applies to councillors where a member of the public would reasonably consider that the member was acting in their capacity as a councillor. Factors such as whether the behaviour took place on council property, or through a social media account identifying the individual as a councillor, would be taken into account in deciding whether the code of conduct applied. Even if the councillor behaved in a seriously inappropriate way, the code would not apply if there was no suggestion that they were acting as a councillor when they did so.

In Northern Ireland, four provisions of the code of conduct explicitly apply to councillors in all circumstances, not just when they are carrying out their role as a councillor, including a provision not to bring the office of councillor into disrepute.

In Wales, the code of conduct applies both when a councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a councillor behaves in a way that could "[...] reasonably be regarded as bringing [their] office or [their] authority into disrepute".²⁷ This includes any time a councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. The Welsh Ombudsman has also issued guidance of the application of the code of conduct to social media use.

Public Service Ombudsman for Wales social media guidance

"If you refer to yourself as councillor, the code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role then the code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the code."²⁸

²⁶ Ministerial Code, paras 7.13, 7.18

²⁷ The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 2(c)

²⁸ Public Service Ombudsman for Wales (2016), *The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales*. Available online at: <https://www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-CC-CBC-NPA-August-2016.pdf>



The widespread use of social media presents a particular challenge to determining whether a code of conduct applies to instances of behaviour. In line with the guidance provided in Wales, it is clear to us that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies. This would be the case even if the individual posts a 'disclaimer' to suggest that the account is a personal one.

However, a number of recent cases also suggest to us that high standards are expected of public office holders in their use of social media, even when this purports to be in a personal capacity. What is relevant is not just whether an individual is acting in a official capacity or a personal capacity, but also whether the behaviour itself is in public or in private. Restrictions on what an individual may do or say in public are different in kind from restrictions on an individual's private life.

There is a need to balance the rights and responsibilities of democratic representatives. The sort of public behaviour that is relevant to a public office and its code of conduct therefore depends on the scope and nature of the public role in question: the requirements for civil servants will rightly be different to the requirements for teachers, for example. Roles representing the public, such as MPs or councillors, have particular privileges that need to be protected, but also need to acknowledge a greater responsibility, given the scope and public visibility of the role.

Inevitably, councillors carry their council 'label' to some extent in their public behaviour. What counts as relevant public behaviour for the purpose of the councillor code of conduct should therefore be drawn more broadly.

An individual's private life – that is, private behaviour in a personal capacity – should rightly remain out of scope. This includes, for example, what is said in private conversations (where those conversations are not in an official capacity), private disputes and personal relationships. But those in high-profile representative roles, including councillors, should consider that their behaviour in public is rightly under public scrutiny and should adhere to the Seven Principles of Public Life. This includes any comments or statements in print, and those made whilst speaking in public or on publicly accessible social media sites.

This does not, however, mean that councillors should be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression must be respected by councils when adjudicating on potential misconduct, taking into account the enhanced protection afforded to political expression.



Article 10: Rights to freedom of expression

Article 10 of the European Convention on Human Rights states that “everyone has the right to freedom of expression”, although this right is not absolute, and is subject to “such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society...for the protection of the rights and interests of others”.²⁹

The *High Court, in Heesom v Public Service Ombudsman for Wales*,³⁰ considered the application of Article 10 to local councillors, taking into account judgments by the European Court of Human Rights.

It found that “Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.”

It added that politicians, including councillors, have “enhanced protection as to what they say in the political arena” but by the same token are “expected and required to have thicker skins and have more tolerance to comment than ordinary citizens”.

A councillor’s Article 10 rights extend to “all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others” but do not extend to “gratuitous personal comments”.

We do not consider that the approach taken by Wales and Northern Ireland, in extending the code of conduct to any behaviour that is sufficiently serious as to bring the office of councillor or the council into disrepute, could easily be replicated in England. Broad provisions are likely to create disputes about what falls within their scope, particularly when there is not a central authoritative body to rule on those provisions and disseminate previous cases.

We therefore propose that, given their significant representative role, there should be a rebuttable presumption that a councillor’s behaviour in public is in an official capacity. An individual’s behaviour in private, in a personal capacity, should remain outside the scope of the code.

Recommendation 3: Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.

Purporting to act as a member or a representative

The 2007 model code for local government stated that its scope included not just when a councillor was “conducting the business of the authority”, but also if a councillor was to “act, claim to act or give the impression you are acting as a representative of your authority”.³¹ The Localism Act 2011 does not include this qualification. As a result, some cases where

29 European Court of Human Rights and Council of Europe, European Convention on Human Rights, Article 10

30 *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin)

31 The Local Authorities (Model Code of Conduct) Order 2007



an individual is improperly purporting to act as a councillor do not fall within the scope of the code, even though the councillor in question would clearly be misusing their office. For example, a councillor may threaten to cause someone a detriment by implying they would do so through their influence as a councillor.

The issue [of public and private capacity] needs to be looked at more in the round, including serious matters which do not lead to a criminal conviction or where a councillor, though not acting as a councillor, has purported to misuse his or her office through threats of the ‘don’t you know who I am’ variety.³²

Hoey Ainscough Associates

*MC v Standards Committee of LB Richmond*³³ drew a distinction between a member purporting to act as a member and purporting to act as a representative of the local authority, stating that one would not necessarily imply the other. Both of these seem to us to be sufficient conditions for the code of conduct to apply to an individual. Given this established case law, any change to the current legislation governing codes of conduct should include both conditions.

Recommendation 4: Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.

Compliance with standards processes

Complying with standards investigations, and not seeking to misuse the standards process, is an important aspect of ethical conduct. This is for three reasons. First, there is a strong public interest in an effective standards process that is not subject to disruption or abuse. Secondly, councillors should seek to maintain an ethical culture in their authority, and showing appropriate respect for the process contributes to this. Thirdly, non-compliance and misuse wastes public money and the time of officers.

Councillors should not seek to disrupt standards investigations by, for example, not responding to requests for information, clarification or comment in a timely way, or refusing to confirm their attendance at a standards hearing. Nor should councillors seek to misuse the standards process, for example, by making allegations against another councillor for the purposes of political gain.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

Writing codes of conduct

The Committee has previously outlined criteria for an effective code of conduct:

- seen as relevant every day and not exceptional
- proportionate – giving enough detail to guide actions without being so elaborate that people lose sight of the underlying principle

³² Written evidence 212 (Hoey Ainscough Associates)

³³ *MC v Standards Committee of LB Richmond* [2011] UKUT 232 (AAC) (14 June 2011)



- adapted to the needs and context of each organisation
- clear about the consequences of not complying with the code, both for the individual and others
- wherever possible, framed positively³⁴

We have seen evidence that some councils have adopted a minimal code of conduct which amounts to a restatement of the Seven Principles of Public Life. We were concerned to note that DCLG's illustrative code would fall into this category.³⁵ The Seven Principles of Public Life are not a code of conduct: codes of conduct specify what the principles demand in a specific context in order to guide behaviour. Using principles, rather than rules, in a code of conduct can also lead to protracted arguments about what sort of behaviour falls under a particular principle in the absence of specific guidance.

In terms of codes, as an investigator I encounter a variety of codes. They tend to fall into some broad families, ranging from those authorities that adopted the previous statutory code almost unchanged at one end to the extreme other end of the spectrum, which is only the Nolan Principles. That is the whole code. We have great difficulty in working with 'Nolan-only' codes.³⁶

**Jonathan Goolden,
Wilkin Chapman LLP**

Drawing up a code is an important process for an authority: it involves the members of that authority considering what the Seven Principles of Public Life demand in their own context.

A failure to create or adopt a substantive code means that the potential benefits of devolved standards are not being realised.

Many authorities have not yet revisited their codes in the light of learning experiences.³⁷

**Jonathan Goolden,
Wilkin Chapman LLP**

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Codes of conduct should be written in plain English and be accessible for councillors and members of the public. They cannot be written to cover every eventuality, and attempts to do so may actually make codes less effective. They should therefore not be 'legalistic' in tone, or overly technical in style.

A code of conduct is not a values or vision statement for an organisation. It therefore needs to state clearly what is required of councillors rather than an aspiration or aim. Often this will mean phrasing requirements in terms of what councillors 'must not' do.

The requirements should also be enforceable: codes should not include provisions such as 'councillors must be aware of...'.

³⁴ Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.9

³⁵ DCLG (2016), *Illustrative Text for Local Government Code of Conduct*. Available online at: <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

³⁶ Jonathan Goolden, Roundtable, 18 April 2018

³⁷ Jonathan Goolden, Roundtable, 18 April 2018



Where detailed provisions or guidance are required (for example, guidance about social media, or guidance on officer-member relations) these should ideally be kept in a separate document.

Codes of conduct are central to upholding high standards in public life. They should not be inaccessible on a local authority's website, or as an annex to an authority's constitution.

Example of a clear code of conduct

Extract from Plymouth City Council code of conduct³⁸

Disrepute

Councillors must not act in a manner which could be seen to bring the council or the role of councillor into disrepute.

Misuse of position

Councillors must not try to use their position improperly to gain an advantage or disadvantage for themselves or others.

Use of council resources

When councillors use the council's resources or let other people use them, they must follow any reasonable rules set by the council and make sure that resources are not used improperly for political purposes (including party political purposes).

Advice of Monitoring Officer and Responsible Finance Officer

Councillors must consider any advice given by the Monitoring Officer or Responsible Finance Officer when taking decisions.

Giving reasons for decisions

Councillors must give reasons when required to by the law or by any council procedures.

Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

Councillors' interests

The Nolan principle of integrity is based upon protecting the public interest. Where there is undue influence on a public office-holder, including through conflicts of interest, this can lead to decisions which are not made in the public interest.

Integrity: Holders of public office must avoid placing themselves under obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

A system for managing conflicts of interest should distinguish between the requirements for *registering* interests and *declaring or managing interests*. Not all interests that are registered would necessarily present a conflict such that they would need to be managed. Equally, a councillor may have a very specific conflict of interest in relation to a matter, which it would be disproportionate to register given the improbability of that conflict arising in the future.

38 Available online at: <https://www.plymouth.gov.uk/sites/default/files/Code%20of%20Conduct%20and%20Rules%20of%20Debate.pdf>



The purpose of a register of interests is to make transparent an individual's financial and non-financial interests and relationships that are the most likely to lead to a potential conflict. This includes for example, paid employment, significant investments, trusteeships, and directorships. This enables an individual to be held to account for the way in which they manage these interests where necessary.

An interest needs to be managed only where it is reasonable to suppose that an individual's participation in a discussion or decision could be unduly influenced by a particular relationship or personal interest.

How an interest should be managed depends on three factors: the degree of involvement of the individual in the decision or discussion; how directly related the interest or relationship is to the decision or discussion in question; and how significant the interest or relationship is to the individual. Where these factors are minor, then simply declaring the interest may be sufficient. Where the factors are significant, an individual should recuse themselves from the discussion and decision; and should leave the room in the most serious cases.

Where the arrangements necessary to manage an interest or relationship prevent the individual properly from discharging their role (for example, if restrictive arrangements would very regularly have to be put in place), then either the interest should be disposed of or the role relinquished.

The Disclosable Pecuniary Interests (DPI) arrangements

The evidence we have received is that the current Disclosable Pecuniary Interests (DPI) arrangements are not working: the requirements for declaring and managing interests are too narrow; they are unclear both to councillors and the public; and they do not require the registration of important interests such as unpaid directorships and gifts and hospitality.

Strengthening and clarifying the system for declaring and managing interests is all the more important in light of increasingly complex decision-making in local government. To ensure and to demonstrate openly that the principle of integrity is being upheld, it is important to have comprehensive and robust arrangements in place for managing potential conflicts of interest.

We appreciate that the DPI requirements as set down in the Localism Act 2011 and in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are drafted in such a way that a breach of those requirements constitutes a criminal offence. However, as we explain in chapter 4, we have concluded that the criminal offences in the Localism Act 2011 are not fit for purpose and we recommend that they should be repealed. Our conclusions and recommendations in this section therefore do not take these offences into account.



Registering interests

The requirements for a register of interests should be based on the principle we lay out above, that the purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest.

Currently, local authorities are required by law only to make arrangements for registering and declaring pecuniary interests of a councillor and their spouse or partner.

The current list contains manifest omissions such as hospitality deriving from a councillor's position, unpaid employment (including directorships), interest in land outside of a council's area, pecuniary interests of close family members who are not spouses, and memberships of lobby or campaign groups.³⁹

Cornerstone Barristers

We received evidence from a number of legal practitioners and local authorities to suggest that the current list of interests required to be registered is drawn too narrowly.

The narrow requirements of the current law are partly a result of the DPI regime not distinguishing between requirements for registering interests on the one hand, and for declaring and managing interests on the other, which we address below.

Pecuniary interests

Currently, councillors must register their and their spouse or partner's pecuniary interests within the following categories:

- employment, office, trade, profession or vocation carried on for profit or gain
- sponsorship towards election expenses or expenses incurred in carrying out duties as a member
- contracts between the authority and the individual, or a body in which the individual has a beneficial interest
- land in the local authority's area
- securities where the firm has land or a place of business in the local authority's area, and the holding is worth more than £25,000 or the individual holds more than 1% of share capital
- licences to occupy land in the local authority
- corporate tenancies where the landlord is the local authority

Based on the evidence we received, the current list of pecuniary interests required to be registered is satisfactory.

Non-pecuniary interests

Local authorities are not required by law to include specific non-pecuniary interests on their register of interests, although many do so. The Committee's sampling of codes of conduct found most codes had a provision on registering and declaring non-pecuniary interests, although there was some variation in what was required. Four codes out of twenty had no provisions relating to non-pecuniary interests. Some had a broad provision of

39 Written evidence 281 (Cornerstone Barristers)



declaring when a matter might affect a councillor more than the majority of people in the affected area. One authority required councillors only to declare if they were a member of a trade union. Most opted for a form of words that included any management roles in a charity, a body of a ‘public nature’, or an organisation seeking to influence opinion or public policy. Some codes created a category of personal interests or other interests (some of which pecuniary) which, whilst not registrable, should be declared under certain circumstances.

Where councils only comply with the disclosable pecuniary interest requirements and a code of conduct that does little more than comply with the Nolan Principles, it was felt that the regime was too light touch to maintain public confidence.⁴⁰

Mid Sussex District Council

The purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest. Based on this principle, two additional categories of interests should be required to be included in a local authority’s register of interests. First, relevant commercial interests of a councillor and their spouse or partner which may be unpaid – for example, an unpaid directorship (even if non-executive). Secondly, relevant non-pecuniary interests of a councillor and their spouse or partner such as trusteeships or membership of organisations that seek to influence opinion or public policy.

As members increasingly become involved in voluntary and third sector bodies, the issue of conflicts is more prominent and it is not a matter in respect of which there is adequate provision in the code of conduct [...] although there are some provisions within the Localism Act in relation to predetermination it is not considered that it is adequately dealt with in the ethics context beyond DPs.⁴¹

London Borough of Croydon

At a local level, it is perhaps even more likely that non-pecuniary interests – for example, being an unpaid trustee of a local sports club – would lead to a conflict of interest than a councillor’s ordinary paid employment. As the Monitoring Officer of Camden Council stated in evidence to us: “[...] we expect that the public would consider that a member who was a long-serving unpaid trustee of a charity may not be able to consider a potential grant award by the council to the charity entirely fairly and objectively”.⁴²

As we explain in more detail below, the test for whether a councillor should have to register an interest should nevertheless be separate from the test for whether a councillor should have to withdraw from a discussion or vote. Under our recommendations, even if a councillor would have to register an interest for the sake of transparency, they would not have to withdraw from a discussion or vote unless there was a conflict of interest, based on the ‘objective test’ in recommendation 7 below.

40 Written evidence 50 (Mid Sussex District Council)

41 Written evidence 166 (London Borough of Croydon)

42 Written evidence 151 (Andrew Maughan, Camden Council)



Recommendation 5: The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.

Gifts and hospitality

Currently, there is no legal requirement for local authorities to maintain a gifts and hospitality register, nor for individual councillors to register or declare gifts and hospitality they receive as part of their role.

Most codes sampled by the Committee required councillors to register gifts and hospitality in some way. Six out of twenty of the codes sampled had no provision for this. Among codes providing for a gifts and hospitality register, there was variation in the value threshold, which was variously set at £25, £50, or £100. Gifts and hospitality were also treated in a number of different ways: some codes established a straightforward register, some stated that gifts or hospitality were an 'other interest' which should be registered alongside non-pecuniary interests, and others defined the giver of a gift or hospitality over a certain value effectively as an 'associate' of the councillor, whose interest should be declared if a matter would affect them.

In London, we found £79,000 had been spent by more than 200 developers, lobbyists and others involved in the property industry on 723 lunches, dinners and all-expenses paid trips for 105 councillors.⁴³

Transparency International UK

The Committee has seen evidence that the accessibility and timeliness of local authorities' registers of interest varies widely. Many are reported in a non-standard format, and some registers are not updated for long periods. Independent oversight and inspection is important to maintaining high ethical standards, and local authorities should facilitate this by ensuring that their registers are accessible to those who would wish to inspect them.

We are also concerned about the use of high thresholds for reporting gifts and hospitality even where registers exist. An individual threshold of £100 could allow a councillor to accept significant gifts and hospitality from a single source on multiple occasions, without needing to register the fact that they have done so. £50 is the registration threshold for gifts or donations during election campaigns, which would then provide a consistent declaration threshold both during and outside election periods.⁴⁴

Recommendation 6: Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.

⁴³ Written evidence 315 (Transparency International UK)

⁴⁴ Available online at: http://www.electoralcommission.org.uk/__data/assets/pdf_file/0005/141773/ca-part-3-locals-ew.pdf, 20



Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

We are aware of helpful guidance from the Cabinet Office for civil servants on the broader principles surrounding gifts and hospitality. They propose three principles that should guide whether an individual should accept gifts or hospitality:

Cabinet Office principles for accepting gifts or hospitality

- Purpose – acceptance should be in the interests of departments and should further government objectives.
- Proportionality – hospitality should not be over-frequent or over-generous. Accepting hospitality frequently from the same organisation may lead to an impression that the organisation is gaining influence. Similarly, hospitality should not seem lavish or disproportionate to the nature of the relationship with the provider.
- (Avoidance of) conflict of interest – officials should consider the provider's relationship with the department, whether it is bidding for work or grants or being investigated or criticised, and whether it is appropriate to accept an offer from a taxpayer-funded organisation.⁴⁵

The principles of proportionality and avoiding conflicts of interest are particularly important to safeguard the principle of integrity.

The Committee has considered the issue of gifts and hospitality offered by lobbyists in particular, in its report *Strengthening transparency around lobbying*. We concluded that public officer holders accepting significant gifts and hospitality “[...] risks creating a conflict of interest by placing them under an obligation to a third party, which may affect them in their work including when they take decisions, which is relevant to the Nolan principle of integrity”.⁴⁶

In February 2018, it was reported in the press that the chairman of Westminster City Council planning committee received gifts and hospitality 514 times in three years, worth at least at a total of £13,000. The councillor subsequently stood down following an internal inquiry.

The evidence we have received suggests that acceptance of gifts and hospitality is of most concern when it comes to planning. Planning is an area of decision-making where a small number of councillors can have a significant impact on the financial interests of specific individuals or firms. Councillors involved in planning decisions should therefore generally not accept over-frequent or over-generous hospitality and should always ensure that acceptance of such hospitality does not constitute a conflict of interest.

45 Cabinet Office (2010), *Guidance on civil servants receiving hospitality*. Available online at: <https://www.gov.uk/government/publications/guidance-on-civil-servants-receiving-hospitality>

46 Committee on Standards in Public Life (2013), *Strengthening transparency around lobbying*, 3.18



Partner and family interests

Under the DPI arrangements, any relevant pecuniary interests of a councillor's spouse or partner are considered as a DPI of the councillor.

We heard concerns during the review that the DPI arrangements infringe on the privacy of a councillor's spouse or partner. We recognise these concerns, though note that, where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved.

Under the Localism Act 2011, however, councils are not required to register spouse or partner interests separately from those of the councillor, although many do so. The DCLG guidance on DPIs states that: "[...] for the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is your disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner."⁴⁷

Declaring and managing interests

The evidence we received suggests that the DPI requirements for declaring and managing interests are currently unclear. The current wording in the Localism Act 2011 requires that a councillor must not participate in a discussion or vote in a matter (or take any further steps in relation to it) where they are present at a meeting and they have "[...] a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting". The test of having a 'disclosable

pecuniary interest *in* any matter' is ambiguous, as strictly speaking under the Act a councillor's DPI is the employment, land, or investment (for example) itself. The Act does not specify how closely related an interest must be to the matter under consideration to count as an interest 'in' that matter. Recent case law has not settled this issue decisively, which means that there is little authoritative guidance for councillors or those who advise them.

Despite the regulations and DCLG guidance, there is still a dispute regarding what would be a Disclosable Pecuniary Interest – for example, in situations where the interest is the subject of the meeting or affected by the decision – such as in planning applications. This can make declarations of interests problematic.⁴⁸

North Hertfordshire District Council

The fundamental problem is in the wording of the Localism Act which requires members to declare interests (and not participate at meetings) when they have a DPI 'in any matter to be considered at a meeting'. Under the former regime, the situation was much clearer as an interest arose where where a matter under consideration 'relates to or is likely to affect' the interest, thus creating a nexus between the item of business and the incidence of interest. This nexus is absent from the Localism Act regime and it creates significant uncertainty as to when a DPI exists in certain situations.⁴⁹

Ashford Borough Council

⁴⁷ Department for Communities and Local Government (2013), Openness and transparency on personal interests: A guide for councillors

⁴⁸ Written evidence 22 (North Hertfordshire District Council)

⁴⁹ Written evidence 138 (Ashford Borough Council)



The current declaration and withdrawal requirements are also too narrow. Currently, a councillor would not need to declare an interest or recuse themselves where a close family member was affected by a decision, nor a close associate (whether a personal friend or a business associate). This should be addressed by a more demanding test for declaring and managing interests, separately to registration requirements.

We have seen that the standards arrangements in Scotland, Wales and Northern Ireland usually rely upon an ‘objective test’ for determining whether an interest needs actively to be managed (for example, the individual recusing themselves).

Tests for actively managing interests in the devolved codes

Scotland

“Whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.”⁵⁰

Wales

“[...] if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.”⁵¹

Northern Ireland

“An interest will be considered significant where you anticipate that a decision on the matter might reasonably be expected to benefit or disadvantage yourself to a greater extent than a other council constituents.”⁵²

(Councillors must also declare any registered interest in a matter under consideration.)

We propose the introduction of an objective test, in line with practice in Wales and Scotland, for whether a councillor should recuse themselves from a discussion or vote. We heard from the Standards Commission for Scotland and the Public Service Ombudsman for Wales that this test works well in practice. We note that a practical division between the requirements for registering interests and managing interests, with an objective test for the latter, is in line with the categories of personal and prejudicial interests under the

50 Scotland Code of Conduct for Councillors, para 5.3

51 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 12

52 Northern Ireland Local Government Code of Conduct for Councillors, para 6.3



Local Government Act 2000. We heard that officers and councillors generally considered these to be clearer and easier to understand than the DPI arrangements.

In line with the principles we set out for declaring and managing interests above, councillors should declare an interest where an interest in their register relates to a matter they are due to discuss or decide upon, but they do not need to recuse themselves unless the objective test is met.

We note that section 25 of the Localism Act 2011, which draws a firm distinction between predisposition and predetermination, is relevant to the participation of councillors in certain decisions or votes. A councillor should not be considered to have a significant interest in a matter, and therefore have to withdraw from a discussion or vote, just by virtue of having previously expressed a prior view, even a strong view, on the matter in question. This includes if they are, for example, a member of a relevant campaigning group for that purpose.

Recommendation 7: Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision-making in relation to that matter”.



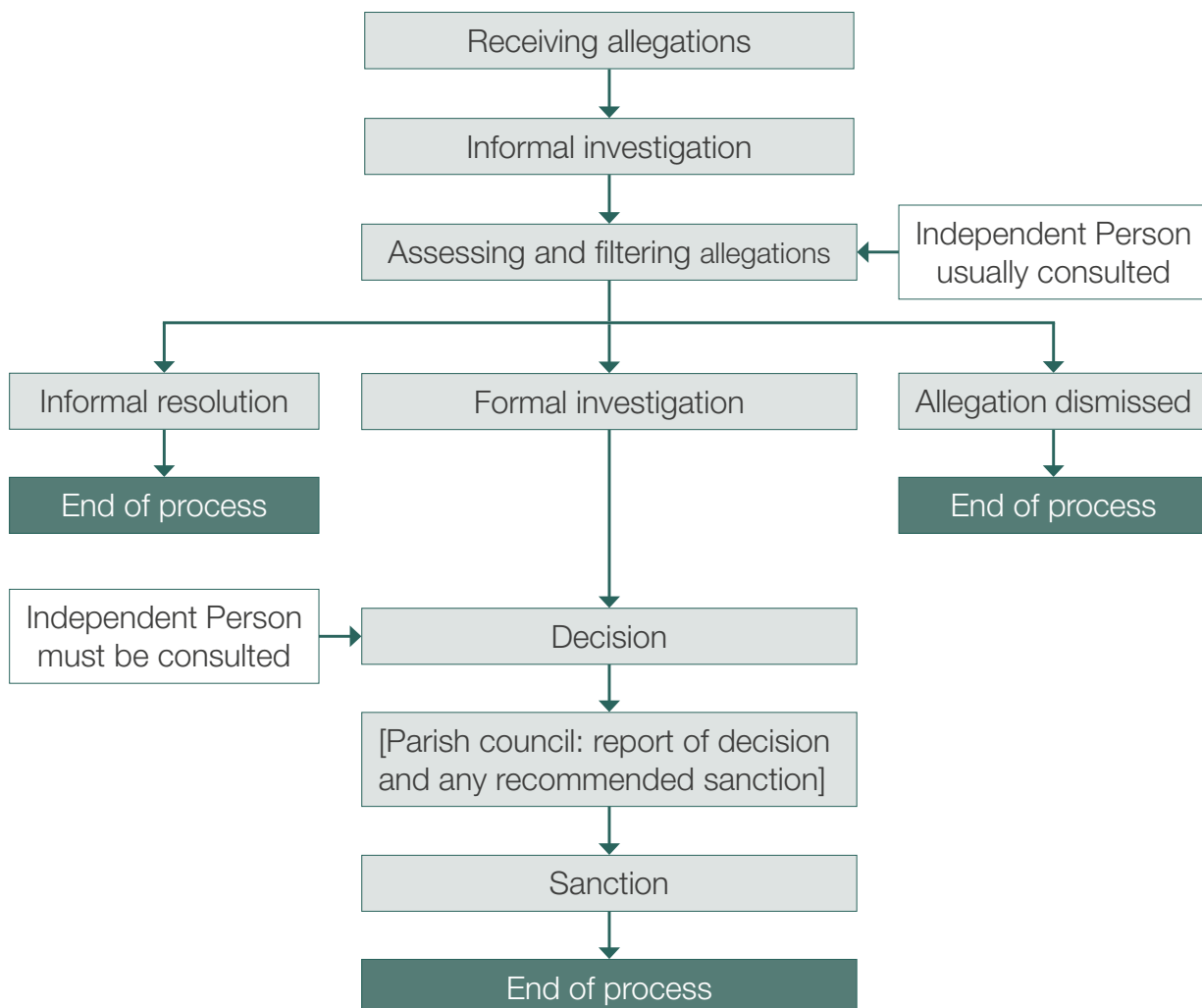
Chapter 3:

Investigations and safeguards

Investigations

An authority must have an effective, fair, impartial, and transparent complaints and investigation procedure, in which both councillors and the public can have confidence. Sanctions should be imposed in a consistent way, and only where there is a genuine breach.

The current investigation process





Objectivity: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

An investigation process needs to be proportionate and fair. The process must have an independent element as a check on the impartiality of decision-making. The more significant the sanctions that can be imposed, the more robust the independent element needs to be in order to safeguard the fairness of the process. At the moment, this element is primarily fulfilled by the Independent Person. Whilst the Monitoring Officer has the power under current legislation to investigate and make decisions on allegations, many principal authorities have standards committees to decide on allegations and impose sanctions.

Filtering complaints

The Monitoring Officer usually filters complaints about councillor conduct and judges if the complaints are trivial or vexatious, or whether they should proceed to a full investigation. Usually this filtering is based on the judgment of the officer, often against a formal policy, though the Monitoring Officer may seek the advice of an independent person or members of a standards committee when they do so.

The standards bodies in Scotland, Wales and Northern Ireland all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. The tests do not necessarily need to be detailed. For example, the Northern Ireland Local Government Commissioner for Standards provides a simple two-stage test, which asks whether they 'can' investigate the complaint, and whether they 'should'.

Northern Ireland Local Government Commissioner for Standards public interest test

1 'CAN' we investigate your complaint?

- Is the person you are complaining about a councillor?
- Did the conduct occur within the last six months?
- Is the conduct something that is covered by the code?

2 'SHOULD' we investigate your complaint?

- Is there evidence which supports the complaint?
- Is the conduct something which it is possible to investigate?
- Would an investigation be proportionate and in the public interest?⁵³

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Safeguards

A certain level of independent oversight is crucial to any standards arrangement. The inclusion of an independent element in the process of deciding on code breaches is important to ensure that the process is fair and impartial, and that councillors are protected against politically-motivated, malicious or unfounded allegations of misconduct.

⁵³ Available online at: <https://nipso.org.uk/nilgcs/making-a-complaint/how-we-deal-with-your-complaint/>



In the current local government standards system, this element is provided by the Independent Person. We believe that this safeguard should be strengthened and clarified. Other safeguards should also be put in place to ensure the fairness of the process, by enabling independent members of standards committees to vote, and a provision for councillors to appeal a decision to suspend them following the finding of a breach.

Our councillors feel safe with the standards committee because they know any allegation will be dealt with fairly and impartially. As group whips, we know that if something goes through the process it will have the confidence of our members.⁵⁴
Cllr Dan Cohen, Leeds City Council

Independent Persons

The role of the Independent Person has become a distinctive office in its own right. The provisions in the Localism Act 2011 give councils considerable flexibility over what sort of person performs the role (with only the criteria for 'independence' specified) and how the role is performed, subject to the requirement that their views must be able to be sought by members and complainants and that their views must to be sought and taken into account before deciding on an allegation that has been subject to a formal investigation.

We have met some exceptional Independent Persons in the course of our review, who give their time and expertise to maintain high standards in local authorities. We have been impressed by the diligence and commitment of those we have met. The role is often unpaid or subject to a nominal payment or honorarium.

The Independent Person has no formal powers, and whilst their views must be 'taken into account', they do not have a decisive say on the outcome of an investigation. As such, the nature and effectiveness of the role in any individual instance depends both upon the appointee and the attitude of the local authority.

The title 'Independent Person' creates a false impression with the public, who believe that I have real decision-making powers. In reality I have no powers at all, the role is wholly advisory and weak [...] ⁵⁵
Richard Stow, Independent Person

We have seen a number of different approaches taken by local authorities and by the office-holders themselves towards the Independent Person rules. Some are simply consulted as required over email by a Monitoring Officer, or attend standards committees in an observer capacity; others play an active role in reviewing an authority's code or processes, offering training to councillors or even forming an authority-wide ethics panel to advise on all aspects of ethical practice and decision-making.

Regardless of the approach taken, it is clear that a positive relationship with the local authority's Monitoring Officer is crucial to being able to perform the role effectively. This relationship involves a mutual recognition of roles: on the one hand, recognising that the Monitoring Officer has specific responsibility and accountability for the standards process in an authority, and on the other that the Independent Person can bring a valuable external and impartial perspective that can assure and enhance the fairness of the process.

54 Cllr Dan Cohen, Visit to Leeds City Council, Tuesday 18 September 2018

55 Written evidence 209 (Richard Stow)



We do agree that the Independent Persons provide a valuable objective voice in the standards process. It is incredibly useful for the Monitoring Officer to have this support and advice from an external perspective, and it offers a great opportunity for local residents to bring a wide variety of experience and expertise to the process.⁵⁶

London Borough of Sutton

Local authorities use Independent Persons in different ways, and we have seen evidence of a range of good practice. Many authorities will appoint two or more Independent Persons. Some authorities will, in any given case, have one Independent Person offer a view to members or complainants, and another to offer a view to the local authority, so as not to be in a position where they may be forced to prejudge the merit of an allegation. Other authorities will consult with one Independent Person on whether to undertake a formal investigation, and another to advise on that investigation. Many local authorities consult an Independent Person at all points of the process, including when filtering complaints.

Best practice 7: Local authorities should have access to at least two Independent Persons.

We heard that many Monitoring Officers appreciate the impartial view that the Independent Person can offer, both to improve the quality of decision-making itself and as a visible check on the process to reassure councillors and complainants that their decisions are made fairly. We have also heard evidence, however, of councils failing to make

good use of their Independent Person, and of an antagonistic or dismissive attitude towards their role.

The evidence we received suggests that the Independent Person role needs to be clarified, strengthened, and better supported.

The years since the passage of the Localism Act have seen a more defined role for the Independent Person emerge. This role should now be formalised. In our view, an Independent Person needs not just to be independent according to the requirements of the Localism Act 2011 but should also show an ability to:

- offer authoritative and impartial advice
- maintain independence in a politically sensitive environment
- gain the confidence of councillors, officers, and the public
- make decisions on an impartial basis, grounded in the evidence
- work constructively with the local authority and senior officers

The Independent Person should be seen primarily as an impartial advisor to the council on code of conduct matters. They should provide a view on code of conduct allegations based on the evidence before them, and whilst being aware of the political context, should be politically neutral. Local authorities should make use of their perspective and expertise when reviewing their code of conduct and processes. Their advice should also be able to be sought from subject members and members of the public, in line with the requirements of the Localism Act.

⁵⁶ Written evidence 311 (London Borough of Sutton)



Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

The role should also be strengthened. Security of tenure is important in order to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, restricted tenure can ensure that the Independent Person's judgment and independence is not compromised by a long period of involvement in a single authority.

There is a tendency to recruit IPs on a four-year basis and that is eminently sensible; it makes it less possible for IPs to be accused of becoming too close to council members. I think it is important to ensure that IPs are seen as remaining independent and continuing to reach their own conclusions on issues where their views are sought.⁵⁷

**Dr Peter Bebbington,
Independent Person**

We therefore recommend that Independent Persons should be appointed for a fixed term of two years, with the option of a single re-appointment. The terms of multiple Independent Persons should ideally overlap, to ensure a level of continuity and institutional memory.

Recommendation 8: The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.

Currently, there is no requirement for the Independent Person's view on a case to be formally recorded, for example, in a formal decision issued by the Monitoring Officer or a standards committee. Whilst there may be reasons that the decision-maker ultimately reaches a different view from the Independent Person, the safeguard that they provide would be stronger if their view was always made transparent.

Although the law requires them to give views on matters under investigation and for the council to have regard to those views, in practice they are often invisible from the process to an outsider – the public whom they are meant to represent. It is not clear to us where their views are published so that the public can have confidence that the council has had regard to them and that the process has been independently verified.⁵⁸

Hoey Ainscough Associates

Recommendation 9: The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.

⁵⁷ Dr Peter Bebbington, Roundtable, 18 April 2018

⁵⁸ Written evidence 212 (Hoey Ainscough Associates)



Were councils to be given the ability to suspend councillors, as we recommend in chapter 4, more safeguards would need to be put in place to ensure that this sanction is imposed fairly and that councillors are properly protected from potential misuse of the standards process. We suggest that the Independent Person would have to confirm that, in their view, a breach of the code had taken place, and that they agree that suspension would be proportionate, in order for the local authority to impose suspension for that breach.

Recommendation 10: A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.

We have noted recent First Tier Tribunal cases⁵⁹ which have found that it will often be, on balance, in the public interest to disclose the view or advice of the Independent Person under the Freedom of Information Act 2000. As above, we support the Independent Person's advice being made public, which could enhance openness and accountability. However, we are concerned that Independent Persons would not automatically enjoy indemnity if a councillor or member of the public were to take legal action against them, in the same way that a member or officer of an authority would. Local authorities should take steps to provide legal indemnity to Independent Persons if their views are disclosed, and the government should confirm this through secondary legislation if needed.

Recommendation 11: Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.

We have seen the benefits of strong networks among Monitoring Officers and senior officers, in order to share best practice, undertake professional development, and learn from each other's experiences. We would support the creation of a network of Independent Persons, which, despite the potential benefits it could offer, is currently lacking at present.

59 Bennis v ICO & Stratford [2018] UKFTT 2017_0220 (GRC)



Strengthening and clarifying the role of the Independent Person

Current role	Proposed role
No role specification	Clarified role specification
No requirements for term	Fixed-term appointment, renewable once
Required only to be consulted by the authority on an allegation subject to a formal investigation	Best practice also includes being consulted on allegations the MO is minded to dismiss, and on whether to undertake a formal investigation
No formal powers	Must agree with the finding of a breach and that suspension is proportionate for a councillor to be suspended
No disclosure requirements	The view of the IP is recorded in any formal decision notice or minutes
No legal protection	Legal indemnity provided by local authority

Standards committees

Under the Localism Act 2011, local authorities are not required to have standards committees to adjudicate on breaches and decide upon sanctions, but a large number of authorities in England choose to do so.

Local authorities should maintain a standards committee. A standards committee can play a role in deciding on allegations and sanctions, or in monitoring standards issues in the local authority and reporting back to full council, or a combination of these.

We have come across a range of different ways in which standards committees operate as part of our review. Leeds City Council produce a valuable annual report to council from the standards committee. Cornwall Council include representatives from town and parish councils and a town clerk, in addition to independent members and members of the principal authority. The Independent Persons who observe the Uttlesford District Council

standards committee have also led training workshops and the redrafting of the code of conduct. Each of these, in their own way, harness the knowledge and observations of the standards committee to elevate issues or significant trends to the notice of the council.

Under the current legislative framework, a standards committee may be advisory (only advising the council as a whole on what action to take, and unable by itself to exercise any of the council's formal powers) or decision-making (having the council's formal powers to decide on allegations and to impose sanctions where a breach is found delegated to it). If the standards committee is a decision-making committee, it is permitted to have independent members (members who are not councillors) appointed to it, but those members are not allowed to vote. Advisory standards committees may have voting independent members. Under the current legislation, Independent Persons in an authority cannot also be members of its standards committee.⁶⁰

⁶⁰ Localism Act 2011, sections 27(4) and 28(8)



A number of respondents to our consultation considered that the system would be strengthened by allowing independent members of decision-making standards committees to vote. We suggest that the current requirements for an Independent Person, with the necessary amendments, should apply to such members (that the individual is not a member, not otherwise co-opted on to a committee of the authority, not an officer in the authority or a dependent parish within the last five years, nor a relative or close friend of such an individual).

The Member Conduct Committee at Wychavon is broadly happy with the existing processes and structures, but feels that it was a retrograde step to remove the voting rights of independent members, who are a cornerstone of an objective conduct committee. The committee would also suggest that the ability to invite parish council representatives to take part in investigations should be restored.⁶¹

Wychavon Borough Council

We have also seen evidence of the advantages of including parish representatives on standards committees, who under the current arrangements, could not be voting members unless on an advisory committee. Including parish representatives on a principal authority standards committee can build a more effective relationship between their respective councils and enable the committee to take the perspective and views of the parish into account.

Recommendation 12: Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.

Even where a local authority includes independent members on a standards committee, they would still be required to retain an Independent Person. In line with our best practice above, although the independent members of standards committee would enhance the independence of a formal decision-making process on an allegation, an Independent Person would still be required to advise subject members on allegations and advise the Monitoring Officer on allegations they are minded to dismiss and on whether to undertake a formal investigation.

Appeals and escalation

A means of appeal is an important aspect of natural justice, and as a safeguard for councillors to ensure that the standards process operates fairly and impartially. Whilst the Local Government and Social Care Ombudsman (who we refer to as the “Local Government Ombudsman”) can consider complaints about the investigation and decision process followed by a local authority where there is evidence of injustice, there is currently no means of appeal against the finding of a breach by a local authority within the local government standards system.

A formal appeal system would be disproportionate in relation to the most commonly imposed sanctions, such as censure or training. However, we recommend

⁶¹ Written evidence 211 (Peter Purnell)



in chapter 4 the introduction of a power to suspend councillors for up to six months. As an aspect of natural justice, such a sanction would require a right of appeal.

The lack of a right of appeal (either by the complainant/subject member) is often criticised.⁶²

Lawyers in Local Government

We have considered a range of options for how a right of appeal could be included within the local government standards arrangements, including internal appeals within a principal authority. However, we consider that an appeals process should ideally be independent. As we set out in chapter 1, we do not believe that a new, external standards body should be created, and so consider that giving a role for appeals to the Local Government Ombudsman would be the most appropriate way to enable an independent, external appeal process.

If these more serious sanctions were available to standards committees, we accept that this could require some kind of external/independent appeal process to be available to the member complained about. This could be organised through the LGA or regional associations such as London councils, and need not require a return to the much criticised national statutory arrangements of the Standards Board, although some additional resource would be required. An alternative would be for the Ombudsman to consider or hear appeals if they met a certain threshold, as we understand the Welsh LGO does in their role.⁶³

London Borough of Sutton

Currently, the Local Government Ombudsman can investigate a local authority's decision-making process in undertaking a standards investigation or imposing a sanction on grounds of maladministration where there is some evidence of injustice, for example, if there is an unreasonable delay or evidence of a conflict of interest. This avenue is open both to complainants and to subject councillors. The Ombudsman could then recommend a remedy to the local authority (though this is not legally enforceable). The Local Government Ombudsman stated in evidence to us that it has investigated the standards process in a local authority in a small number of cases, usually recommending a remedy of re-running a standards investigation.⁶⁴ This is an under-appreciated safeguard within the current system.

Common issues with local authority standards processes considered by the Local Government Ombudsman⁶⁵

- unreasonable delays in councils taking action to investigate a complaint
- councils failing to take into account relevant information in reaching its decision
- councils not following their own procedures in investigating the complaint (e.g. not involving an independent person) or not having proper procedures in place

The Ombudsman cannot, however, adjudicate on the substantive question of whether a breach actually took place and what the appropriate sanction would be, as this lies outside their remit.

62 Written evidence 228 (Lawyers in Local Government)

63 Written evidence 311 (London Borough of Sutton)

64 Written evidence 126 (Local Government and Social Care Ombudsman)

65 Written evidence 126 (Local Government and Social Care Ombudsman)



Our powers enable us to investigate the council's handling of the complaint, and where there is evidence of injustice, we will be able to make recommendations for how the issues can be remedied. However, we cannot consider the substantive issues that form the complaint itself and do not provide a right of appeal against a council's decision whether there has been a breach of standards of conduct.⁶⁶

Local Government Ombudsman

The Local Government Ombudsman indicated in evidence to us that they considered that adjudicating on substantive standards issues would complement their existing work. Given that standards failings are often linked to broader institutional issues, giving the Ombudsman a greater role in considering ethical standards issues could improve their oversight of the sector as a whole.

In order to provide a genuine appeal function, the Ombudsman's decision would need to be legally binding on the local authority – rather than a non-binding recommendation, which is the formal status of the Ombudsman's decisions on cases of maladministration. This would likely require a separate legislative basis. We note that the Public Service Ombudsman for Wales also has a separate legislative basis for their investigations into breaches of the code of conduct to their broader ombudsman role.

In order to ensure that the appeal function would be used proportionately, we consider that it should only be available for councillors who have had a sanction of suspension imposed. The right of appeal should be time-limited, and the Ombudsman should issue

a decision within a specified, reasonable timeframe. The Ombudsman should be able to apply their own public interest test in deciding whether to investigate a case on appeal by a councillor. Complainants should not be permitted to appeal against a finding, but, as now, could complain to the Ombudsman on grounds of maladministration if they consider that the process followed was flawed; if, for example, there was evidence that was provided that was not taken into account.

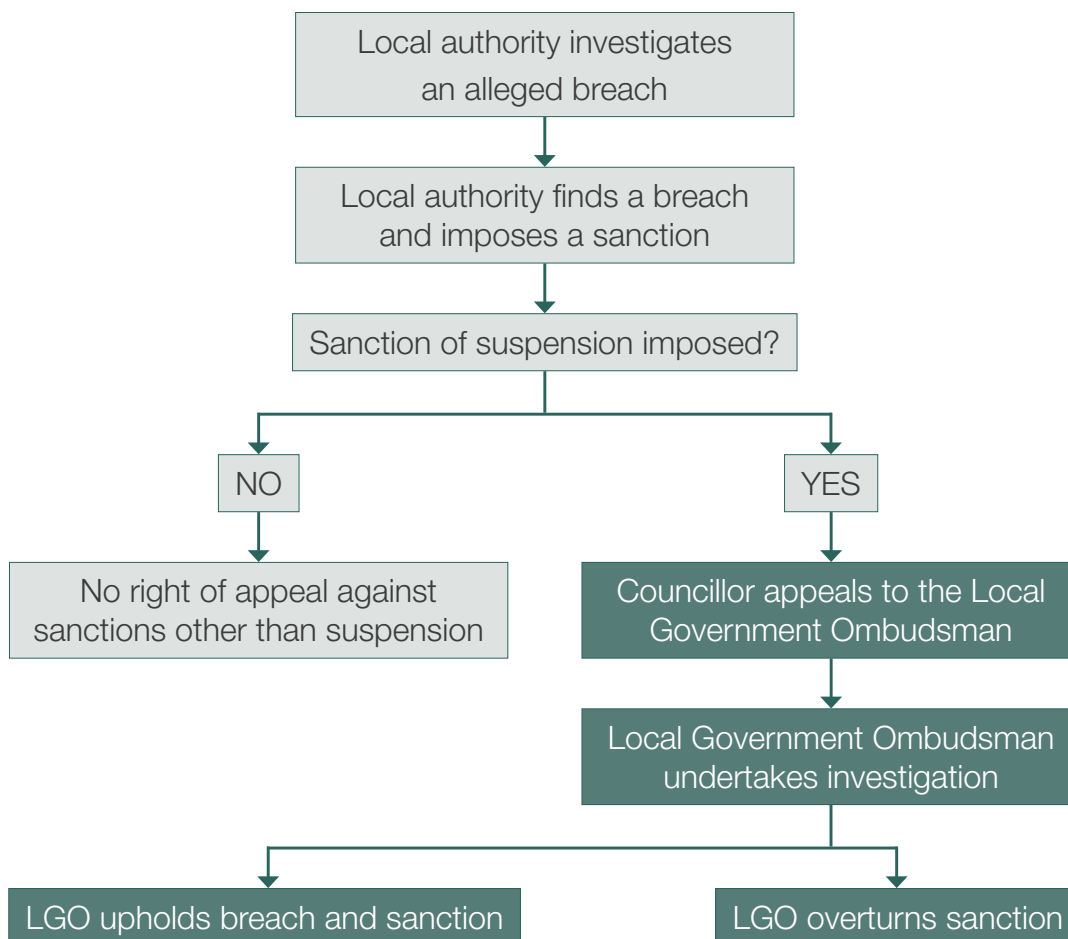
Whilst the Ombudsman's remit does not extend to town and parish councils, under the Localism Act, sanctions can only be imposed on parish councillors following the finding of breach and a recommended sanction by the principal authority, which we recommend below should become a binding decision by the principal authority. We therefore consider that parish councillors who are subject to a suspension should be able to appeal to the Local Government Ombudsman as the decision is taken by a principal authority, who already fall within the Ombudsman's remit.

The role of the Local Government Ombudsman would then be similar, on the one hand, to the role performed by the Adjudication Panel for Wales, which hears appeals of decisions by local standards committees; and on the other, to the Public Service Ombudsman for Wales and the Northern Ireland Public Services Ombudsman who have a combined local government standards and local government ombudsman role. A role limited to appeals against a decision to impose a period of suspension would mean that local authorities would retain primary responsibility for local standards and would avoid the creation of a centralised standards body.

66 Written evidence 126 (Local Government and Social Care Ombudsman)



Proposed appeals process





Recommendation 13: Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.

The Nolan principle of openness demands that councils should be taking decisions, including decisions on standards issues, in an open way. The experience of the Committee is that whilst transparency does not automatically increase public trust in a process, it is nevertheless essential to enabling public scrutiny and accountability.

Recommendation 14: The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.

We have seen examples of both good and bad practice in how open councils' standards processes are. The best examples involved a single, easily accessible page on an authority's website explaining in straightforward terms how a member of the public can make a complaint under the code of conduct, what their complaint needs to include, the process for handling complaints, and the expected timescales for investigations and decisions. That page would also include links to recent decisions on allegations that came before the standards committee.

Promoting openness and transparency

Openness: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Openness and transparency are important secondary safeguards, to ensure that the process can be scrutinised by other councillors and by the public. We heard evidence that many councils do not publish data and decisions on standards issues in a regular or open way. Councils should be free to make their own arrangements for whether they maintain a public list of pending investigations. However, councils should be recording allegations and complaints they receive, even if they do not result in an investigation, and should certainly publish decisions on formal investigations.

Recommendation 15: The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.



Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Avoiding legalisation

It is vital to get the balance right between the privileges and responsibilities of democratic representatives. Whilst councillors have a responsibility to uphold high standards, in particular by upholding their council's code of conduct, it would be concerning if they could easily be made subject to an expensive legal process, which could then make the standards system open to misuse. The standards arrangements in England should therefore remain based on 'lay justice', where the requirements and processes are sufficiently clear and straightforward so that no councillor subject to an investigation would be disadvantaged by lacking formal legal representation.

Updating and clarifying the Localism Act 2011 to address the practical problems of interpretation that have come to light in recent years – particularly regarding conflicts of interests – would help in this regard, as would a greater role for the Local Government Ombudsman, by allowing councillors to appeal a sanction of suspension without having to resort to the civil courts for review or remedy.

More broadly, the focus should remain on individual local authorities maintaining high standards in their own councils. Councils need not be tied up with long-running standards investigations; they should put in place strong filtering mechanisms to make sure that only allegations with real merit begin a formal process of investigation. Likewise, use of the most serious sanctions should remain rare. For those subject to an investigation or sanctions process, councils should also provide clear, plain English guidance on how the process works and councillors' responsibilities within it.



Chapter 4: Sanctions

Any system designed to uphold standards of ethical behaviour needs to include ways to address and redress behaviour which falls seriously and/or repeatedly short of what is expected. Under the current arrangements when a councillor has been found to have broken the code of conduct there is no requirement to comply with remedial action. Whilst it is recognised that early, informal resolution of minor misdemeanours can be the most effective, the evidence we received demonstrated overwhelmingly that this lack of enforcement authority is a weakness in the system which may also deter genuine concerns being raised. The questions remain, however, as to what sanctions are appropriate and proportionate, and who should enforce them.

Throughout this review it has become clear that ethical principles must be embedded in organisational culture through training and leadership, and codes of conduct should guide the behaviour of individuals by spelling out what those principles require. When misconduct does occur, however, sanctions play an important role in maintaining standards.

Sanctions are also needed to give credibility to an ethical culture, so that the culture is not engaged with cynically or lightly. As one academic commentator on local government standards has pointed out, “[...] although there is a tension between ‘rules-based’ and ‘cultural’ strategies it does not follow that they are mutually exclusive. Rather, the challenge is to find the balance between a system that supports self-motivation and trust whilst still being credible in the face of examples of persistent misconduct and cynical motivation.”⁶⁷

As we have stated previously, “[...] people need to see poor behaviour punished as well as good behaviour rewarded, although it is, of course, better for people to internalise the principles behind the right behaviour, and to want to do the right thing, than to do so only because of the fear of getting caught and punished.”⁶⁸

The purpose of sanctions

Sanctions serve four purposes in a standards framework: motivating observance of standards arrangements, deterring damaging behaviour, preventing further wrongdoing, and maintaining public confidence.

Sanctions help to ensure that individuals engage with an ethical standards regime. Our predecessor Committee noted in its first report that “[...] unless obligations are routinely and firmly enforced, a culture of slackness can develop with the danger that in due course this could lead on to tolerance of corruption”.⁶⁹ In this review we heard of a small but significant number of individual councillors who appeared to have no respect for a standards regime without cost or consequence and whose continued poor behaviour demonstrated their ‘opting out’.

Punitive sanctions can act as a deterrent to behaviour which is seriously damaging to the public interest. Sometimes a lapse in good conduct can be a genuine oversight, often due to lack of understanding or awareness, and any sanction should be appropriate and proportionate. But the more damaging behaviour requires a greater deterrent, particularly where it brings local democracy into disrepute or otherwise harms the public good.

⁶⁷ Stephen Greasley (2007) “Maintaining ethical cultures: Self-regulation in English local government”, *Local Government Studies*, 33:3, 451-464

⁶⁸ Committee on Standards in Public Life (2013), *Standards Matter*, Cm 8519, 4.25

⁶⁹ Committee on Standards in Public Life (1995), *Standards in Public Life*, Cm 2850-I, para 97



Some sanctions are needed to prevent further wrongdoing where a breach occurs. These sanctions will typically involve curtailing or restricting an individual's activity in relation to council business, especially where the form of the breach suggests that a repeat offence is likely, or where council business would be inhibited by an individual's continued involvement.

The credibility of any standards regime is undermined without the option to resort to sanction when needed. Sanctions help to maintain public confidence that something can be done when things go badly wrong. When used correctly, the application of appropriate sanctions give reassurance that the expectations of the public of high standards of conduct are being observed, and that wrongdoing is taken seriously. Public confidence will, however, only be maintained if sanctions are sufficient to deter and prevent further wrongdoing, and are imposed fairly and in a timely way.

The current sanctions arrangements

The Localism Act 2011 removed the ability for councillors to be suspended or disqualified (except for the statutory disqualification requirements which we discuss below). As a result, councils have become increasingly creative in their approach to using sanctions. Sanctions used by local authorities include censure, apology and training, as well as the removal from committee responsibilities by a party and in some cases, the withdrawal of access to facilities and resources (for example laptops or unescorted building passes). However, sanctions which ban members from council premises usually require cross-party support and are typically only considered appropriate in response to threatening behaviour such as bullying council officers.

The evidence we received suggests that the lack of serious sanctions, such as suspension:

- prevents local authorities from enforcing lower level sanctions, such as training or apology. When councillors refuse to apologise or to undergo training, the only route open to councils is to publicise the breach and the refusal.
- damages the public credibility of the standards system. Members of the public who make code of conduct complaints but do not see a significant outcome even where a breach is found would be justifiably frustrated that the standards system is not dealing with misconduct in a robust or effective way.
- makes the cost and resources of undertaking an investigation disproportionate in relation to sanctions available. We have heard evidence that Monitoring Officers resist undertaking standards investigations where possible, due to the significant cost, where a likely sanction may only be censure or training. We have also heard some evidence that members of the public do not make formal complaints as they do not consider the effort worthwhile given the limited outcomes available.
- gives local authorities no effective means of containing reputational damage or preventing recurrence, for example, in the case of disclosure of confidential information or bullying of officials. We heard that the lack of effective sanctions is deeply frustrating for officers and councillors who want to maintain the effective running of a council and to maintain high standards of conduct.



The removal of the powers previously open to local authorities to suspend a councillor and the broader sanctions open to Standards for England has removed the teeth of the standards regime, particularly in relation to repeat offenders. This undermines public confidence in the standards regime, particularly in the eyes of complainants who may be left with the belief that a councillor found guilty of a breach has 'got away with it'.⁷⁰

Tonbridge and Malling Borough Council

We do have good processes in place, but rarely use them due to the expense and time taken knowing that there is no significant sanction available at the end of the process to address serious issues. Councils simply cannot afford to enter into potentially long and costly processes unless it is clearly in the public interest. Time and money are key factors when they really should not be. As such, no-one achieves real satisfaction under the current standards regime.⁷¹

Taunton Deane Borough Council

It is the almost universal view of every council we have worked with that the limited range of sanctions available to councils is completely unsuitable for the worst cases and for serial misconduct.⁷²

Hoey Ainscough Associates

Press reports show continuing instances of bullying, insulting, offensive and inappropriate behaviour towards fellow members, public and officers. Even when action is taken, in the worst cases, the limited sanctions that can be imposed are ignored or even seen as a 'badge of honour'... reports have historically shown how, if unchecked at the outset, a corrosive and demoralizing culture can quickly take hold.⁷³

David Prince CBE

Some councillors view low-level sanctions such as censure as a 'badge of honour', to indicate that they do not cooperate with the 'established' process, and may often not cooperate with sanctions in order to cause disruption to a local authority and the individuals within it.

Party group discipline

Political groups, where they exist, make use of their own internal disciplinary processes. These processes are used, for example, to enforce whipping, but also in response to breaches of ethical standards. The evidence we received suggested that these processes are used partly to fill the gap left by the lack of formal sanctions available to principal authorities.

70 Written evidence 24 (Tonbridge and Malling Borough Council)

71 Written evidence 131 (Taunton Deane Borough Council)

72 Written evidence 212 (Hoey Ainscough Associates)

73 Written evidence 31 (David Prince CBE)



In many places party discipline has effectively filled the void left by the council's lack of formal powers but in our experience this is patchy and too subject to political calculation, such as the effect on balance of power within an authority so cannot be relied upon to be consistent across the country.⁷⁴

Hoey Ainscough Associates

A political group is a group of any two or more councillors in a principal authority who formally notify the Monitoring Officer that they wish to be considered as a political group. Members of a political group do not have to be members of the same political party, though most councils will include groups from the main national political parties. The relative strength of numbers in political groups will determine the administration and opposition in a council.

Political groups will often undertake a whipping function, so that the group votes consistently on particular proposals (though this is not permitted in functions such as planning and licensing). They will exercise party discipline, both to enforce whipping and group rules, but also in response to poor behaviour by councillors.

The greatest sanctions appear to be informal sanctions issued by groups and leaders, in terms of, for example, removal from committees, other bodies, posts, and of the whip. Our strong view is that while in many cases political groups have acted on such bases, a standards framework that is reliant on the decisions of those groups to effect proportionate sanctions is not an effective one.⁷⁵

**Andrew Maughan, Monitoring Officer,
Camden Council**

Under the legislation which governs council committees, the council allocates seats on committees to political groups in proportion to the relative sizes of the political groups within the council as a whole. The council is required to put the wishes of a political group into effect as far as possible when allocating individual councillors to committees from within that group. This means that in practice, political group leaders decide on committee appointments (although the wishes of a majority of group members would in theory take precedence). This is a significant power of patronage that can be used as part of a disciplinary process by parties. Groups may also remove individuals from other posts to which they have been nominated by their group; and a majority party may also take away portfolios or other special responsibilities.

We heard from political parties that the threat of suspension or expulsion from a group in particular can be an effective deterrent at the level of political group within a council.

Whilst political groups have a formal legal definition, in practice they are organised differently in different authorities. Some will be highly organised with a hierarchy of a leader, deputy leader and group whips, will have group discussions on a large number of matters that come before council, and enforce whipping through party discipline. Others will have a group leader also acting as a group whip, and may take a lighter-touch approach to group discussions or whipping. Independent groups, for example, are very likely to take a light-touch approach to whipping, or, indeed, may have independence from a whip as the central rationale for the group.

Party discipline can play a positive role in upholding ethical standards within a local authority. We heard that senior officers may

74 Written evidence 212 (Hoey Ainscough Associates)

75 Written evidence 151 (Andrew Maughan, Camden Council)



often make an informal approach to political group leaders if they have concerns over the behaviour of a member of that group. Internal party discipline, or even simply advice from a group leader, can be a useful means of moderating individuals' behaviour without needing to resort to the formal standards process. However, we also heard of instances where an approach to a political group was considered a serious step, and that the Monitoring Officer, if they had any concerns about the behaviour of a councillor, would speak to that individual on a one-to-one basis.

Sometimes, however, cases of alleged misconduct may go to a political group leader or even the national leader of a political party instead of being reported to the Monitoring Officer at a local authority.

Examples of political party disciplinary process used as an alternative to the formal standards process

In July 2018, a Greenwich councillor was suspended by their political group, as a result of their being charged with fraud following investigation by the council and referral to the police. The councillor was also removed from appointments made by their party group.

In Nuneaton, a political group leader wrote to the leader of a national political party in July 2018, to seek party discipline for councillors of that party for alleged abuse during a council meeting.

While party discipline can therefore have a positive role to play within local government, it also has drawbacks. Party discipline cannot apply to councillors who are not a

member of a political group. This means that party discipline cannot be used in relation to independent councillors, including those who might previously have been expelled from a party group. Political groups seldom exist in parishes, and so cannot address misconduct at parish level.

Party discipline may mean that political factors are taken into account over the public interest. When an authority is dominated by a single party or there is a very slim majority held by a party, that party may have an interest in downplaying or minimising standards breaches, rather than addressing them. It may also inhibit scrutiny and openness more generally where this may cause embarrassment to the party group.

Party discipline processes can run concurrently with, and in some cases preempt, the outcome of a formal standards investigation. We saw evidence that political parties have taken steps to enable swift discipline by group leaders or whips at a local level in serious cases. But this will tend to lack transparency, without formal announcements of measures taken or open investigative processes, particularly when political parties are under pressure to respond quickly.

There used to be a fairly clunky process of bringing a report to the group for the group to take action. We've revised that to take account of the way that news can spread so rapidly, and given group leaders the power to make a decision there and then for a time limited period along with the whip.⁷⁶

**Cllr Rory Love, Chairman,
Conservative Councillors' Association**

⁷⁶ Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



We also sought evidence during our review on the role of national political parties. Whilst national political parties will often have their own code of conduct, their involvement in allegations of misconduct will tend to be on a case-by-case basis, with less of a formal system for escalating and managing complaints. Party representatives we spoke to said that, understandably, the national party would involve itself only in serious cases or where it had an interest for particular reasons. Inevitably, the involvement of a national party is more likely when reputational issues are at stake, for example, during the selection of candidates at election time.

During the recent elections, we had no hesitation in suspending candidates from the Conservative whip even before the election day as a message to say “if you have the privilege of representing our party, there are standards we expect of you”.⁷⁷

**Cllr Rory Love, Chairman,
Conservative Councillors’ Association**

There is a particular focus [on standards] just before the point of election, which I think will remain the case. That’s when the party has the most influence, that’s when those conversations take place.⁷⁸

**Cllr Simon Henig CBE, Chair,
Association of Labour Councillors**

We have therefore concluded that political parties cannot play the central role in sanctions and upholding standards within an authority. Political group discipline is, essentially, an internal matter. This means it will never have the levels of transparency, consistency and

the relevant checks on impartiality that should characterise a fair and effective standards process. Whilst we have come across examples of positive joint working across political groups, and very effective relationships between officers and political groups, the party disciplinary process is still subject to political imperatives, even in authorities with otherwise very effective standards arrangements. In addition, political groups rarely operate at parish council level, and so party discipline cannot effectively address misconduct at parish level.

If, as our evidence suggests, the current high levels of involvement of parties in the standards process is due to a lack of formal sanctions, the reintroduction of a power of suspension may lead to a diminished role for political parties. Even if this were the case, political parties would still have an important role to play, which we consider further in chapter 8.

The sanction of the ‘ballot box’

We have considered the case that, beyond censure or training, the most appropriate sanction for councillors is the ‘ballot box’, namely, the possibility that they could be voted out at a local election as a result of misconduct. We conclude that the ‘sanction of the ballot box’ is insufficient, both in principle and in practice.

Relying upon the electorate to address poor member conduct at the ballot box is insufficient. The current regime needs to specifically include greater powers for local authorities to robustly address poor member conduct.⁷⁹

**Sandwell Metropolitan Borough
Council**

⁷⁷ Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018

⁷⁸ Cllr Simon Henig CBE, Individual oral evidence, Wednesday 18 July 2018

⁷⁹ Written evidence 239 (Sandwell Metropolitan Borough Council)



In cases where really serious misconduct happens, and the perpetrator is not discouraged by adverse publicity, there is a significant gap between how the current system can deal with such cases and any criminal sanction, criminal sanctions always being a final resort. The argument that the ultimate arbiter of behaviour is the public at the ballot box does not fully answer this issue.⁸⁰

Wycombe District Council

It is of course accepted that the democratic election of councillors must be respected. Following this, some would argue that (barring disqualification set out in law) only the public who conferred that mandate through an election can take it away by means of another election. It is argued that this is appropriate because only the public can be the proper judge of the suitability of a councillor to represent them which they only have the proper authority to do in an election or re-election.

Whilst the public will of course judge standards in public life at election time to some extent, the process of choosing a representative is based on wider political issues. As the Committee stated in 2013, “[...] decisions about who to vote for are made on the basis of a number of considerations. It would be undesirable for the electorate to have to set aside the opportunity to express their wider political views at election time simply to express a view on a standards issue.”⁸¹ Indeed, voting in elections is often drawn on party lines rather than the overall suitability of an individual candidate.

Public expectations of elected representatives continue to increase not diminish. High ethical standards should be demonstrably observed in practice throughout a term in office. Much harm can be done to individual wellbeing, the democratic process, and council business if misconduct goes unchecked for up to four years.

Public participation ends at the ballot box. There must be more to ensure local governance commits to fulfil the expectations of their electorate where possible [...].⁸²

Cllr David Gaye

It is also the case that a large number of seats in parish and town councils, and occasionally at principal authority level in more sparsely populated areas, are uncontested. In such circumstances the public are not choosing to exercise their judgment, and as a result there is no opportunity for electoral accountability to influence ethical standards.

The argument that the ballot box will decide is a moot point when over 50% of the town and parish councils in Cornwall do not have elections and these local councillors are returned unopposed.⁸³

Cornwall Council

Democratic representation carries both privileges and responsibilities. The significance of that mandate, and the rights and powers that it gives to councillors, also means that a councillor is rightfully subject to the Seven Principles of Public Life and the obligations

80 Written evidence 186 (Wycombe District Council)

81 Committee on Standards in Public Life, *Standards Matter* (2013), Cm 8519, 4.18

82 Written evidence 302 (Cllr David Gaye)

83 Written evidence 147 (Cornwall Council)



under the council's code of conduct. Councillors' conduct should reflect the importance of their elected role and their need to act in the public interest. A standards regime that prevents a councillor from carrying out their role for a period, for example by suspension, does not undermine a councillor's electoral mandate. Rather it underlines the significance of the role and the expectations of high ethical standards that come with elected office.

Sanctions in the devolved standards bodies

The sanctions available to the devolved standards bodies in Wales, Scotland and Northern Ireland, which were also available to the Adjudication Panel in England before its abolition, are suspension for up to one year and disqualification for up to five years.

The devolved standards bodies have used the most serious sanctions available to them sparingly. In 2017/18, the Standards Commission for Scotland has only once suspended a councillor for more than six months (although a number of cases involved a councillor who stood down, where the Commission indicated it would have imposed suspension if it were available).⁸⁴

In 2016/17, the Northern Ireland Local Government Commissioner for Standards disqualified one councillor for three years, and suspended one councillor for three months.⁸⁵

In 2016/17, the Adjudication Panel for Wales suspended four councillors, all for fewer than six months.⁸⁶ However, it should be noted that almost 20% of references and appeals to the Adjudication Panel since 2012 have resulted in disqualification.

Stronger sanctions

We have concluded that stronger sanctions should be made available to local authorities.

We have not seen compelling evidence for introducing a power of disqualification. We consider that there is very strong reason to introduce a power of suspension, but this should only be for a period of up to six months. The evidence we received suggested that the suspension of allowances would form an important aspect of this sanction.

We would expect that such a power would be used rarely. Suspension should be used only in the case of the most serious breaches, such as serious cases of bullying and harassment, or significant breaches of the rules on declaring financial interests; or else in the case of repeated breaches or repeated non-compliance with lower level sanctions.

The sanctions that could be made available to local authorities depend upon the investigative processes and safeguards available to meet the requirements of due process. The more significant the sanction, the more important it is that the process ensures impartial application of sanctions. The evidence we have received suggests that the power to disqualify or suspend a councillor without allowances for longer than six months would likely require a formal independent tribunal arrangement in order to comply with a councillor's ECHR Article 6 right to a fair trial. We do not consider that such arrangements could be put in place without the introduction of a central standards body, which we reject for the reasons discussed in chapter 1.

⁸⁴ Written evidence 106 (Standards Commission for Scotland)

⁸⁵ Northern Ireland Local Government Commissioner for Standards (2017), *Annual Report 2016-17*. Available online at: <https://nipso.org.uk/site/wp-content/uploads/2017/12/NILGCS-Report-2016-17.pdf>

⁸⁶ Adjudication Panel for Wales Register of Tribunals. Available online at: <http://apw.gov.wales/about/register-of-tribunals/?lang=en>



Recommendation 16: Local authorities should be given the power to suspend councillors, without allowances, for up to six months.

Legislation giving effect to this should ensure that non-attendance at council meetings during a period of suspension should be disregarded for the purposes of section 85 of the Local Government Act 1972, which provides that a councillor ceases to be a member of the local authority if they fail to attend council meetings for six consecutive months.

Giving legal certainty to councils

At the moment, councils who impose sanctions at the most serious end of the current range – premises bans and withdrawal of facilities – are doing so without a clear basis in statute or case law. The relevant case law on sanctions has expressly identified training, censure, or publicising the breach as within a council's power, but does not limit the available sanctions to only these. We have heard expert views on both sides of the argument as to whether measures such as premises bans are likely to be *ultra vires* or could be considered as tantamount to suspension; councils are therefore accepting a certain measure of legal risk in using these sanctions. The government should make clear what local authorities' powers are in this area, and put them beyond doubt in legislation if necessary.

As we have seen, sanctions serve a number of purposes in a standards framework, one of which is the prevention of further wrongdoing. Sanctions such as premises bans and withdrawal of facilities may be useful for this purpose, as part of a range of available sanctions.

Recommendation 17: The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.

Criminal offences in the Localism Act 2011

The provisions in the Localism Act make it a criminal offence for a councillor to fail to comply with their duties to register or declare Disclosable Pecuniary Interests (DPI), participate in a discussion or vote in a matter in which they have a DPI, or take any further steps in relation to such a matter. The maximum penalty is a level 5 fine and disqualification as a councillor for up to five years. It is important to acknowledge the seriousness of such a matter and to continue to support the need for serious sanctions for non-compliance in these circumstances. However, the evidence we have received suggests overwhelmingly that resorting to the criminal law is not the most appropriate way to handle such misdemeanours.

The making of certain breaches a criminal offence does not seem to have worked as such matters have to be referred to the police who, from my experience, are not geared up to the local government world and do not (understandably) see such matters as a high priority to them...matters can take a long time and often end up being handed back to the council to deal with in any case.⁸⁷

Taunton Deane Borough Council

⁸⁷ Written evidence 131 (Taunton Deane Borough Council)



The current arrangements are disproportionate. Failure to register or manage interests is a breach of the Seven Principles and damaging to the public interest, but it would usually be remedied by the application of internal sanctions. To potentially criminalise a public office-holder for what is essentially a code of conduct matter is inappropriate. It sets a high bar for the standard of proof and is a costly process for the public purse. It is also, inevitably, a long process which can be disproportionately stressful. We have heard evidence which suggests that the police are wary of the potential for politically motivated allegations and the highly sensitive nature of investigations to which they may not be able to allocate sufficient resources when budgets are constrained. We also heard of a number of instances where the police have not pursued cases referred to them.

Recommendation 18: The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.

Disqualification of councillors

The criteria for disqualification of councillors are currently relatively limited. In the case of a councillor being convicted of a criminal offence, they would only be disqualified if they are imprisoned for three months or more.

Current law on the disqualification of councillors

Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:

- are subject to bankruptcy orders
- are imprisoned for three months or more on conviction of a criminal offence (without the option of a fine)
- are found personally guilty of corrupt or illegal practice in an election

They are also disqualified if they:

- are employed by the local authority
- are employed by a company which is under the control of the local authority
- are employed under the direction of various local authority committees, boards or the Greater London Authority
- are a teacher in a school maintained by the local authority

The Ministry for Housing, Communities and Local Government have committed to bringing forward legislation to add to the existing criteria for disqualification, following a public consultation in September 2017. The additional conditions will include being listed on the sex offenders register, receiving a Criminal Behaviour Order under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014, and receiving a civil injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014. We support these changes, which will better reflect the expectations of the public.



Chapter 5:

Town and parish councils

Local government is made up of a number of tiers, of which town and parish councils are the most local. Their functions vary but may include: maintaining local amenities such as parks, cemeteries, and memorials; responding to planning consultations undertaken by principal authorities; producing neighbourhood development plans; and making grants or undertaking other activities to benefit their local communities. In recent years, however, many parish councils have undertaken a broader range of roles that traditionally were performed by principal authorities, such as economic regeneration and transport services.⁸⁸

While the vast majority of people who serve on town and parish councils do so for the benefit of their community and in doing so observe the Seven Principles of Public Life, the Committee received evidence suggesting that poor behaviour and serious misconduct by some councillors is creating significant disruption in those communities. The evidence also suggests that this misconduct can create a increased workload for the relevant principal authority.

Our predecessor Committees have excluded town and parish councils from their reviews into local government standards; we have chosen to focus on them because the number and nature of concerns shared with the Committee by those who work in and with parish councils was sufficient for us to question whether the present arrangements provide for good governance and meet the needs of the public.

Autonomy and accountability of parish and town councils

The oversight regime for parish councils is light-touch, in view of their comparatively lower budgets and limited remit compared to principal authorities.

There is, however, significant variation in the budgets of town and parish councils. A number of small parish councils have budgets of less than £25,000; but some may have budgets exceeding £1 million.

Parish councils with a precept of less than £25,000 are exempted from the need to have an annual assurance review or to appoint an external auditor to prepare their accounts. They are, however, required to comply with the government's Transparency Code for exempt authorities, and must appoint an auditor if an elector has an objection to the accounts.

Parish councils, unlike principal authorities, do not fall within the remit of the Local Government Ombudsman no matter their size or budget, so they are not subject to investigations or rulings on grounds of maladministration. This means that the stakes in some councils at this level are very high where there are either serious or persistent standards issues. Our view is that the current system does not take this potential risk into account.

Under the Localism Act 2011, much of the responsibility for standards in town and parish councils belongs to their principal

⁸⁸ Local Government Chronicle (2016), *Power to the people*. Available online at: <https://www.nalc.gov.uk/library/news-stories/2437-lgc-supplement-2016/file>



authority. We have seen a variety of models for how parishes relate to a principal authority in relation to standards. In many cases, the Monitoring Officer is the main point of communication, and communicates mainly with the clerk. Some councils maintain joint standards committees, with town and parish councillors sitting alongside councillors from the principal authority to discuss issues from both the principal authority and the parish councils, though parish council representatives cannot vote if the committee is a decision-making committee of the principal authority. We have also seen an important role played by county associations of local councils, who can maintain links with the principal authority through the senior officers and in some cases provide mediation and support on standards issues at the parish level.

One of the things we do in the CALC is provide an advisory service and someone to investigate what's gone on and someone to go along to listen to grievances.⁸⁹

Cornwall Association of Local Councils

When it comes to the day-to-day relationship with principal authorities, some parishes will see the principal authority as a point of support or advice on standards issues; some are heavily dependent on the principal authority to provide legal advice and to deal with governance or behavioural problems; but some have an antagonistic relationship with the principal authority and do not respect its formal remit in respect of ethical standards. As with the standards process within a council, the role of the Monitoring Officer is crucial in maintaining a positive and effective relationship with dependent parishes. We have also seen

the benefits of a strong relationship between senior officers (particularly the Monitoring Officer) and the county association of local councils.

We recognise the need to balance the autonomy of parish councils with accountability. The oversight of parish councils must be proportionate in relation to their comparatively limited budget and remit. Our view is that for the majority of parish councils, the current balance works well, although to address the standards issues which in a minority of councils have undermined good governance, we recommend changes below in the formal relationship between parish councils and principal authorities in relation to standards.

How effectively parish councils use their autonomy over their own governance is highly dependent on the skills, experience and support of the parish clerk. Clerks are sometimes the only employees of the council and also the repository of significant amounts of information, advice and guidance for councillors in undertaking parish business. Where the relationship between the councillors and their clerk is positive there is little need for additional accountability or support in the system.

However, we received evidence of substantial difficulties experienced where clerks are either inexperienced, untrained or feel isolated, particularly if they are the subject of poor behaviour on the part of councillors. Ongoing education and training of clerks would provide: confidence to some clerks on the scope and limits of their role; a network of peers who can provide advice and support when new situations arise that are challenging for a single clerk working alone; and a level of consistency and accountability to councillors, auditors

⁸⁹ Sarah Mason, County Executive Officer, Cornwall Association of Local Councils, Visit to Cornwall Council, Monday 24 September 2018



and the public about the services a clerk can be expected to provide. There is, therefore, a significant need for clerks to be formally qualified (for example, through qualifications run by the Society for Local Council Clerks). Such qualifications need not be costly for parish councils.⁹⁰

Recommendation 19: Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.

Misconduct in parish councils

Analysis of survey responses from over 800 parish clerks, undertaken by Hoey Ainscough Associates on behalf of the Society of Local Council Clerks, suggests that 15% of parish councils experience serious behavioural issues such as bullying and disrespect towards other councillors or the clerk, and 5% of parish councils experience these issues to an extent that they are unable to carry out some or all of their proper functions.

We regularly come across cases of serious bullying and disrespect towards officers and fellow councillors, threatening and intimidating behaviour towards staff, obsessive behaviour and deliberate flouting of the need to declare interests. While such behaviour is very much in the minority it can seriously damage the reputation of an authority, as well as causing huge amounts of stress and effectively gumming up the workings of a council. This is particularly true at parish council level.⁹¹

Hoey Ainscough Associates

We heard of a number of individual cases of serious bullying or other unacceptable behaviour, particularly directed towards local council clerks, leading to high turnover of staff.

The impact often includes serious ill health, loss of employment, loss of confidence and a long-term detriment to their personal and professional lives. The parish sector experiences a high turnover of staff each year. In some areas of the country this can be up to 20-30% of clerks and a large element of this can be attributed to the underlying behaviour issues. We are aware of cases where the issues are long standing and repeated year on year, with multiple cycles of behavioural issues, loss of personnel and recruitment taking place.⁹²

Society of Local Council Clerks

The evidence we received suggests that reintroducing a power of suspension for local authorities, which would be applicable to parish councillors, may address some of these problems. Although many parish councillors are not paid, a suspension of six months would nevertheless remove them from decisions and communications for all meetings during that period. It would also send a strong message to the individual member and the community. We discuss sanctions in more detail in chapter 4.

The evidence we received also suggested that difficulties persist in resolving standards matters where clerks are not well supported by the parish council to formally make and resolve complaints, or to prevent behaviour from recurring. Parish councils should take corporate responsibility when allegations of a councillor

⁹⁰ The basic level qualification offered by the Society of Local Council Clerks costs less than £120, and SLCC offer bursaries for clerks who work for parish councils with a very low precept

⁹¹ Written evidence 212 (Hoey Ainscough Associates)

⁹² Written evidence 197 (Society of Local Council Clerks)



bullying an employee are received. For example, where behaviour that is in breach of a code is observed by councillors or reported by a clerk, the parish council should lodge a formal standards complaint corporately or in the name of the chair. A clerk should not have to do so themselves. In addition to providing necessary support to the clerk in such circumstances, such measures signify to individual councillors that disruptive behaviour is not ignored or accepted by the council generally.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

Of the monitoring officers who responded to the SLCC 11% were unable to commit resources to supporting parish councils with behaviour issues with a further 49% only becoming involved when there is a complaint.⁹³

Society of Local Council Clerks

We have heard that dealing with standards issues in parish councils can be onerous for Monitoring Officers in principal authorities. Monitoring Officers reported to us that they could spend a high proportion of their working time on standards issues in parish councils, and that many of the cases that they had to deal with related to long-standing disputes or tensions, and so are not quickly resolved. We have heard a small number of concerning reports that Monitoring Officers have decided to decline to provide advice or accept

complaints received about or from parish councils about standards issues at the parish tier, citing insufficient resources and support for their work with parishes. Giving principal authorities the ability to deal more effectively with misconduct within parish councils should address to an extent the underlying problem of recurring standards issues, which we discuss below. Beyond this, Monitoring Officers need to be given the resources within their principal authority to allow them to carry out their duties in respect of parish councils as well as their own authority, and to be supported by senior management in doing so.

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

Investigations and sanctions in town and parish councils

Under the Localism Act, a parish council may comply with the duty to adopt a code of conduct by adopting the code of its principal authority, or by adopting its own code.

The evidence we have received is that the variation in parish codes within a principal authority area is an additional burden on that principal authority when advising, investigating and adjudicating on code breaches.

For example, Cornwall Council is a unitary authority that oversees 213 parish councils, all of which, in theory, could have their own

93 Written evidence 197 (Society of Local Council Clerks)



individual code of conduct, on which Cornwall Council could be required to adjudicate. Through working with the Cornwall Association of Local Councils, Cornwall Council agreed a single code with all the parish councils.⁹⁴

Without the support of CALC in Cornwall, we could have ended up with 214 different codes across the county, and this would have created problems with training, which is delivered by Cornwall Council, and interpreting the code which falls to Cornwall Council to administer.⁹⁵

Cornwall Council

Only a principal authority has the power to undertake a formal investigation and decision on an alleged breach of a parish council's code under section 28(6) of the Localism Act.

We have concluded that it is anomalous that parish councils have the autonomy to adopt a code of conduct of their choosing, but do not have the authority to investigate and enforce that code.

We do not consider that parishes should be given the power to undertake a formal investigation on a breach of the code of conduct. Our evidence suggests that parish councils do not wish to take on this responsibility, and that they do not have the resources and structures necessarily to do so on a fair and impartial basis.

There is a need to balance the autonomy of parishes, with a recognition that ultimately the principal authority must be responsible for investigating breaches. We acknowledge the benefits of a councils being able to amend

their own code, which we discuss in chapter 2. Given this burden on principal authorities, however, and the confusion that often arises in the case of dual-hatted councillors, we consider on balance that the costs of giving parish councils the option to adopt their own code of conduct outweigh the benefits.

Recommendation 20: Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.

Following *Taylor v Honiton Town Council*,⁹⁶ a parish council cannot substitute its own decision on an allegation for that of the principal authority. If it imposes a sanction on the councillor, it may only impose the sanction recommended by the principal authority. Whilst Taylor did not address the question directly, the evidence we have received from practitioners is that a parish council is not bound to implement a sanction even if that is recommended by the principal authority.

The Wychavon Committee feels that only having the power to make recommendations to parish councils regarding breaches of the code of conduct often leaves complainants feeling that there is little merit in bringing forward any complaint, especially when coupled with the current regime's stipulation that investigations cannot be pursued if a councillor leaves office.⁹⁷

Wychavon Borough Council

⁹⁴ Written evidence 206 (Cornwall Association of Local Councils)

⁹⁵ Written evidence 147 (Cornwall Council)

⁹⁶ *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

⁹⁷ Written evidence 78 (Wychavon Borough Council)



Accordingly, parish councils may disregard the sanction recommended by a principal authority. This may sometimes be due to an antagonistic relationship with the principal authority, or pressure from particular parish councillors not to implement the recommendation. This already prevents the effective holding to account of some parish councillors for misconduct. If, as we recommend, local authorities were given a power of suspension, under the current law a parish council could effectively ignore a decision to suspend one of its members. We therefore consider that any sanction imposed on a parish councillor following the finding of a breach should be determined by the parish's principal authority, which will require a change to section 28 of the Localism Act 2011.

Recommendation 21: Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.

We have heard concerns that the judgement in *R (Harvey) v Ledbury Town Council*,⁹⁸ which was delivered during our review, prevents parish councils from taking action in the case of bullying. The principle that sanctions could not be applied to councillors outside of the formal investigation and decision process, involving an Independent Person, by a principal authority, is a straightforward application of the earlier judgment in *Taylor v Honiton Town Council*.⁹⁹ The evidence we have received is that this principle is the right approach: a parish council would not typically have the

resources to undertake a formal standards investigation; and sanctions should only be imposed following a fair and impartial process, as we discuss in chapter 3.

However, this does not suggest that there is no action that parish councils may take if an employee is being bullied. The evidence we have received from practitioners is that earlier case law has established that a parish council as a corporate body is vicariously liable for actions by an individual councillor which would involve an implied breach of their contractual obligations as an employer, including an implied obligation to provide a reasonable congenial working environment.¹⁰⁰ We understand that councils may therefore legally take proportionate, protective steps to safeguard employees if they are experiencing bullying or other unacceptable behaviour, for example, requiring that a particular councillor does not contact directly that named member of staff. However, for sanctions to be imposed, which are by nature punitive, then a formal complaint must be made, with an investigation undertaken by the principal authority.

98 *R (Harvey) v Ledbury Town Council* [2018] EWHC 1151 (Admin)

99 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

100 See *Moores v Bude-Stratton Town Council* [2000] EAT 313_99_2703, which was affirmed in *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin), 82



Chapter 6: Supporting officers

Role of the Monitoring Officer

The Monitoring Officer is one of the three statutory officers in local government, alongside the Head of Paid Service (Chief Executive or Chief Officer) and the Chief Finance Officer (often referred to as the Section 151 Officer).

The three statutory officers need to work together. They are not separate. I have always had a practice of ensuring I held regular statutory officer meetings where we specifically talked about those things where one of us might want to intervene.¹⁰¹

Max Caller CBE

The post of Monitoring Officer is set out in statute in section 5 of the Local Government and Housing Act 1989. The original statutory role was to report to the council on any proposal, decision or omission by the council which is likely to give rise to a contravention of law or to maladministration. Given the legal aspect of the role, the Monitoring Officer is often the head of legal services in an authority. More recently, the role is often (but not always) combined with oversight of democratic services (the team of officers who prepare and co-ordinate agendas and papers for committee and council meetings).

The Local Government Act 2000 provided for a greater role for the Monitoring Officer on ethical standards.¹⁰² Guidance issued by the

then-Department for Environment, Transport and the Regions summed up its approach, following the passage of the Local Government Act 2000:

The monitoring officer will have a key role in promoting and maintaining high standards of conduct within a local authority, in particular through provision of support to the local authority's standards committee.¹⁰³

The Monitoring Officer (or their deputy) remains the lynchpin of the arrangements for upholding ethical standards in an authority.

We are aware of a perception that the role of the Monitoring Officer is becoming more difficult.

A survey of 111 Monitoring Officers, carried out by Local Government Lawyer, identified that the increasing complexity of local government decision-making, especially commercial decision-making and outsourcing, was a particular challenge in the role, especially where there is an imperative to drive forward projects and decisions. 38% of those surveyed said that the role had become more risky in 'a significant way', and 48% said that it was moderately riskier than in the past.¹⁰⁴

¹⁰¹ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹⁰² For example, in sections 59, 60, 66 of the Local Government Act 2000

¹⁰³ Department for the Environment, Transport and the Regions (2000), *New council constitutions: guidance to English Authorities* (reissued by DCLG, 2006). Available online at:

<http://webarchive.nationalarchives.gov.uk/20120920053721/http://www.communities.gov.uk/documents/localgovernment/pdf/155181.pdf>

¹⁰⁴ Local Government Lawyer (2018), *Monitoring Officers Report*. Available online at:

<http://www.localgovernmentlawyer.co.uk/monitoringofficers/?page=1>



The Monitoring Officer role is particularly varied and includes quite disparate aspects. A Monitoring Officer who also oversees a department of the council will have a role in senior management, and will be responsible for large teams. They will offer formal legal advice; but they will also act as a mediator and adviser in relation to standards issues. Some of the most significant difficulties for Monitoring Officers include the inherent potential for conflict when simultaneously:

- acting as a source of advice and guidance for members and officers (and parish councils for which they are the Monitoring Officer)
- assessing complaints in the first instance after it is received by a council
- obtaining and weighing advice from Independent Persons
- overseeing and managing investigations to determine whether serious breaches of the code of conduct have occurred, either personally or by seeking outside expertise and handling the consequential report and conveying it to members

The role involves a broad set of skills, and is broader than a chief legal adviser role. It is through the appropriate application of these skills and knowledge (including by developing a network of peers with whom Monitoring Officers can seek reassurance and check the consistency and fairness of their approach), that we have seen these competing pressures can be dealt with effectively.

The role of the Monitoring Officer in relation to ethical standards is no different to that in relation to their other statutory responsibilities. Dealing with complaints in relation to Members should not expose the Monitoring Officer to any greater risk of conflict. However, many have arrangements in place so that they do not advise the Standards Committee in relation to a complaint where they have been the investigating officer, etc.¹⁰⁵

Lawyers in Local Government

More nuanced but even far more serious complications can arise where the Monitoring Officer is overseeing an investigation into a senior member of the local authority, particularly a portfolio-holder. There is a potential conflict of interest, given the professional relationship between the Monitoring Officer and Cabinet members, in providing procedural and legal advice to enable them to pursue their objectives. In this case, the Monitoring Officer should be robustly supported and protected by the Chief Executive. Any investigation, even if outsourced to an independent investigator, should be overseen and managed ideally by the Monitoring Officer from a different authority, or failing that by a deputy, with the Monitoring Officer kept at arm's-length.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

¹⁰⁵ Written evidence 228 (Lawyers in Local Government)



Whilst the location of the Monitoring Officer in the organisational hierarchy may vary, depending on the nature and functions of the individual authority, we have heard that effective governance relies on a strong working relationship between the three statutory officers (Chief Executive, Section 151 Officer, and Monitoring Officer). In particular, a Monitoring Officer needs to be able raise issues of concern to the Chief Executive, and be able to rely on the support of the Chief Executive in making difficult decisions, to know that they will not be undermined. We have seen that the confidence and support of the Chief Executive is crucial to ensuring the Monitoring Officer has the ability to uphold standards in a council, and can engage authoritatively with individual members.

We accept that the role of the Monitoring Officer is a difficult one to navigate, given the tensions that may be involved in advising on and addressing misconduct, alongside offering legal advice to achieve the council and administration's corporate objectives. We have concluded, however, that it is not unique in these tensions. The role can be made coherent and manageable, with the support of other statutory officers.

Standing of statutory officers

Under the current disciplinary arrangements for statutory officers, any decision to dismiss a statutory officer must be taken by full council, following a hearing by a panel that must include at least two Independent Persons.¹⁰⁶ The previous protections applied in respect of any disciplinary action taken against a statutory officer, not just dismissal, and required the action to be recommended by a Designated Independent Person.

A few respondents to the consultation referenced the political pressure that Monitoring Officers come under to achieve particular outcomes and that this can place them in a conflicted as well as vulnerable position. The statutory protections for Monitoring Officers should be re-visited. LLG strongly supports this assertion.¹⁰⁷

Lawyers in Local Government

We have received a range of evidence on the implications of the changed environment for senior officers. We have heard of cases where Monitoring Officers have been put under undue pressure or forced to resign because of unwelcome advice or decisions, and heard that a diminished standing of senior officers has hampered their ability to give objective advice especially when this may not be welcome. On the other hand, we have heard that the current environment ensures that authorities are genuinely led by elected members, and that officers do not have too dominant a role in a local authority, which confuses the lines of accountability.

On balance, we consider that the disciplinary protections for statutory officers should be enhanced, by extending those protections to all disciplinary actions (such as suspension or formal warnings), not just dismissal.

Recommendation 22: The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.

¹⁰⁶ Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881)

¹⁰⁷ Written evidence 228 (Lawyers in Local Government)



Training of officers

We also heard during the review of the danger of councillors or officers perceiving necessary processes and procedures in local government as arbitrary or bureaucratic. When councillors do not appreciate the rationale for the decision-making processes – that exist in order to ensure objectivity, integrity, openness, and accountability – that can lead to undue pressure on officers to ‘bend the rules’, and implement the wishes of the administration regardless of the proper processes.

Sometimes there is a denigration in the culture of an authority because the authority has been hollowed out. In that instance, there is no longer the core of individuals who know the rationale for the rules, rather than just the rules themselves.¹⁰⁸

Max Caller CBE

When officers do not appreciate the rationale for the governance processes, then they can be treated as a ‘rubber stamp’, circumvented, or simply not fully utilised, leading to a compromise in the quality of decision-making.

There is a need to remind people of why the systems of governance are there: why, for example, reports are taken in public.¹⁰⁹

Dame Stella Manzie DBE

Local authorities’ training on governance and process should therefore include an explanation of the rationale for the processes in place, and link specific procedures to their wider aim of ensuring ethical decision-making. Training and support in the governance and

corporate aspects of the statutory officer roles is particularly important, since we heard that there is not necessarily a standard training offer for the statutory aspects of senior officer roles. We discuss councillor induction training in greater detail in chapter 8.

Whistleblowing

The written evidence we received suggests that local authorities will generally have a whistleblowing policy in place.

Since the abolition of the Audit Commission, local government audit is undertaken externally by private companies. External auditors are listed as ‘prescribed persons’, those to whom certain disclosures in the public interest can be made that will attract employment protections under the Public Interest Disclosure Act 1998.

However, the evidence we received suggested that local authorities will not tend to specify a named contact or provide contact information within the external auditor. This would have the effect of deterring whistleblowers from contacting the auditor, or make it difficult to report a concern.

The perceived lack of independence of the current external regime for auditing local government, coupled with the absence of comprehensive information for the public, councillors, and officials as to who to contact in a private audit firm could deter individuals coming forward.¹¹⁰

Protect

¹⁰⁸ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹⁰⁹ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018

¹¹⁰ Written evidence 305 (Protect)



Recommendation 23: The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.

We therefore see benefits to councillors being listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998, to make it easier for individuals to make protected disclosures to a councillor.

Recommendation 24: Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.

Under the current whistleblowing law in the UK, councillors are not listed as a 'prescribed person', which means that the disclosure of information to them in the public interest must meet a higher standard in order to attract employment protections.

Whilst it is accepted that reporting concerns to councillors is not appropriate in all circumstances, there have from our experience been scenarios where concerns have not been dealt with at an internal level, and due to nuances of the individual situation, the most effective way of bringing about scrutiny of the concerns may be to inform elected local government councillors.¹¹¹

Protect

Under the current legislation, ordinary disclosure within a line management chain has a lower bar for attracting employment protection. Generally, an employee would therefore make a disclosure to their manager (for example), before making a 'wider disclosure'. However, we accept that there will be instances where a local government officer may feel able only to make a disclosure to a councillor, rather than another officer.

¹¹¹ Written evidence 305 (Protect)



Chapter 7:

Councils' corporate arrangements

A more complex environment

A number of recent changes have created a more complex environment for local government which can impact on ethical standards.

Local Economic Partnerships (LEPs), which have access to up to £12 billion of funding via the Regional Growth Fund over five years, are one feature of this new environment. LEPs are partnerships between the private and public sectors. They usually cross local government boundaries, to reflect economic patterns rather than administrative functions. LEPs tend to be limited companies, but may also be voluntary partnerships that work through a specific local authority. LEPs are chaired by an individual drawn from the private sector and tend to have a majority private sector board. Funding was awarded to individual LEPs on the basis of the submission of strategic economic plans, and tends to be spent on areas such as transport or skills.

Councils may also embark on joint ventures – for example, partnering with a development company on a high-value housing project, or with an outsourcing firm to deliver back-office services. In such cases the council usually owns 50% of the company and is represented on its board.

Joint working and collaboration can improve outcomes by pooling resources and sharing knowledge. But partnerships also introduce complexity and mixed incentives that can create ethical risks.

The local government sector has also seen a significant change in the way councils are funded. Local government funding has moved from central block grant funding, towards locally-raised funds such as council tax precepts, business rates retention and fees.

Councils have been involved in high-value procurement for many years. However, this new funding environment has resulted in changes in the way that services are delivered, for example, by increased use of outsourcing. This may not always be a council's preferred mode of delivery and councils may feel forced to pursue a particular path in spite of the challenges in maintaining scrutiny, accountability, and high ethical standards.

The NAO has found that these changes have created an environment of financial uncertainty for local councils, who may find it difficult to match its revenue streams to cost pressures in discharging their statutory obligations.¹¹² The changes have therefore altered the imperatives for revenue generation, giving incentives for increasing the value of tax base from which council tax and business rates are raised, and for undertaking other revenue-generating activities, for example, by maintaining a commercial property portfolio.

¹¹² National Audit Office (2018), *Financial sustainability of local authorities*. Available online at: <https://www.nao.org.uk/report/financial-sustainability-of-local-authorities-2018/>



Resulting governance challenges

This complex environment – made up of partnerships, joint ventures, and other new entities – creates the potential for ethical risks. Ethical standards apply to how decisions are made, as much as to an individual's day-to-day conduct, and ethical decision-making is needed to ensure that councils act in the public interest.

In fact we often don't speak about it, all we talk about is people's conduct, whereas actually ethics comes into how decisions are made, how did you weigh this up against this, what constitutes fairness, what is the measure, what is the ethical basis for considering this or choosing this process.¹¹³

Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea

First, such complexity makes it difficult to identify who is accountable for particular decisions or outcomes. In turn, this can make it difficult for officers, councillors, and the public to hold local authorities and other sectoral bodies effectively to account. The *Municipal Journal*, reporting on a roundtable held jointly with the National Audit Office, quoted a participant who argued that "[...] governance has become impossible what with districts, counties, LEPs etc. What gets lost is the clarity of accountability."¹¹⁴

Secondly, the complexity can create conflicts of interest. If a council officer or a councillor is a director of a limited company jointly-owned by the council, they will have fiduciary duties which have the potential to conflict with the interests of the council. Such conflicts may also

arise the other way around, when the council has to make decisions about a company in which it has a significant interest.

Thirdly, the growth in separate bodies – such as investment vehicles, joint ventures, and LEPs – can result in less transparency over decision-making. This is because the new bodies are not likely to be subject to the same reporting and transparency requirements and structures as the local authority itself, but are nonetheless carrying out functions crucial to the work of the authority. The need for proportionate commercial confidentiality adds a further dimension of complexity to this issue.

Responding to the new governance challenges

Setting up separate bodies

We have heard that local authorities setting up a separate body without sufficient clarity over the governance arrangements, can create a governance 'illusion', that because of its relative day-to-day independence the local authority is not responsible or accountable for its activities and propriety. To avoid this, attention needs to be paid to ethical governance at three key stages.

Individual members on outside bodies can be a problem; councillors' legitimacy comes from their election, and they need I think to import with them the ethical dimension that they have from being a councillor.¹¹⁵

Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea

¹¹³ Barry Quirk CBE, Individual oral evidence, Wednesday 19 September

¹¹⁴ "What next for care and health?", *Municipal Journal*, 22 February 2018, 16

¹¹⁵ Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018



First, local authorities may set up bodies with very different structures and functions, that will require different governance arrangements. However, it is important that at the earliest stage, the authority considers and makes decisions about:

- what the relationship will be between the body and the local authority
- what role the statutory officers will have in overseeing its activities and providing assurance on its governance
- how and when the body will report to full council
- what the relationship will be between the body and individual councillors
- how councillors will scrutinise the activities of the body, in particular if it will fall within the remit of the audit or scrutiny committee, and if not, how else scrutiny will happen

Secondly, additional consideration needs to be given to governance if councillors or officers are to be involved or appointed to the body, for example as observers or as board directors. Ideally, the body should be set up so that its interests are aligned with the council's policy aims, in order to minimise any potential conflicts of interest. Nevertheless, if councillors or officers are appointed to the body, they should receive briefing on their governance responsibilities, in particular their legal responsibility to discharge any fiduciary duties to the new body.

The local authority needs, in particular, to consider whether councillors' involvement on the board would constitute a conflict of interest that will need to be managed if the authority makes decisions about the body.

Councils need to put safeguards in place where they decide to involve a council representative in a decision-making position on an ALEO [arm's-length external organisation]. These include procedures for dealing with conflicts of interest, making training and advice available, and personal liability insurance to protect board members in their role.¹¹⁶

Audit Scotland, *Councils' use of arm's-length external organisations (ALEOs)*

Audit Scotland outlined the advantages and disadvantages of councillors sitting on separate bodies in their report, *Councils' use of arm's-length external organisations (ALEOs)*.

Potential advantages of council nominees as board directors or trustees

- can improve the relationship between the ALEO and the council
- can bring an insight into the council and its objectives and the broader community
- council representatives can gain valuable first-hand experience of service issues and different sectors

¹¹⁶ Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf



Potential disadvantages of council nominees as board directors or trustees

- can bring additional demands to their already diverse role
- representatives may lack the background, skills or understanding required of the role
- risk of conflict of interest between their role on the ALEO and their role on the council
- negative impact on council decision-making where councillors withdraw from committees owing to conflicts of interest
- exposure to legal risks and personal liability
- risk to continuity if councillors lose their position if not re-elected¹¹⁷

The disadvantages to councillors acting as directors or trustees for separate, council-owned or council-sponsored bodies suggests that this should not be considered a default option for local authority oversight of a separate body. Audit Scotland noted that, whilst they had not come across any cases of significant misconduct, appointing a member or officer in an observer or liaison capacity to the board of a body without a formal decision-making role could limit the potential for conflicts of interest.¹¹⁸

Council representatives can take a monitoring and liaison role as an alternative to taking a board position. This allows them to oversee and advise the ALEO without taking a decision-making role on the ALEO. Most of our sample group of councils had strengthened the role of such officers to give them greater seniority and influence. Their role involves managing the relationship between the council and the ALEO, and monitoring the performance of the ALEO and its compliance with its contracts or service agreements with the council.¹¹⁹

Audit Scotland, *Councils' use of arm's-length external organisations*

The code of conduct for councillors in Scotland includes a provision exempting councillors from the requirement to withdraw from a discussion where they have an interest, if that interest is by virtue of being appointed to a body which is 'established wholly or mainly for the purpose of providing services to the councillor's local authority' or which has 'entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority'. This exemption was put in place "[...] so that ALEOs can function with councillors as members. It also recognises that it is not practical for a councillor to always remove themselves from council discussions relating to the ALEO".¹²⁰ However, councillors may still not take part in any decision-making in relation to that body where it is in a quasi-judicial capacity, and ideally not in decisions relating to funding of that body.

117 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

118 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

119 Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf

120 Standards Commission for Scotland (2016), *Advice for councillors on ALEOs*. Available online at: [http://www.standardscommissionscotland.org.uk/uploads/tiny_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs\(FINAL\)%20.pdf](http://www.standardscommissionscotland.org.uk/uploads/tiny_mce/160928%20Advice%20for%20Councillors%20on%20ALEOs(FINAL)%20.pdf)



We accept that, in some circumstances, local authorities in England may be justified in granting a member a dispensation under section 33 of the Localism Act 2011 for decision-making regarding a separate body on which the member has a formal role. This is because the exact nature of any potential conflict will vary depending on the relationship between the authority and the body in question. Councillors should always declare their interest if they hold a position with a council-owned or council-sponsored body. However, in general, we suggest that local authorities consider councillors or officers having observer, rather than director, status on a relevant board so as to minimise potential conflicts of interest.

Thirdly, both the body and the local authority need to practice ongoing assurance, oversight, and transparency, and regularly review the governance procedures to ensure that they are still appropriate.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

Local Enterprise Partnerships (LEPs)

Our evidence suggests that there can be a lack of transparency around Local Enterprise Partnerships (LEPs), and gaps in the processes within LEPs to manage potential conflicts of interest.

I've encountered ward members during my LEP board experience, which works well. But more support is needed for LEP panel members in terms of processes and accessibility.¹²¹

Nicola Greenan, Director, East Street Arts, and LEP board member

An internal government review of the National Assurance Framework, led by Mary Ney, a non-executive director of MHCLG, found problems with the governance arrangements for LEPs. Ney found, for example, that whilst LEPs will adopt a conflict of interest policy and maintain registers of interests, "[...] the content of policies and approach to publication varies considerably and is dependent on the overall cultural approach within the organisation".¹²²

The report also identified a need to consider "[...] the position of public sector members on LEP boards in the context of the changing role of local authorities and their increased involvement in commercial enterprises and alternative delivery mechanisms. This is currently somewhat underdeveloped in terms of LEP governance implications".¹²³ Ney recommended that "[...] the National Assurance Framework requires LEPs to include in their local statements how scenarios of potential conflicts of interest of local councillors, private sector and other board members will be managed whilst ensuring input from their areas of expertise in developing

¹²¹ Nicola Greenan, Visit to Leeds City Council, Tuesday 18 September 2018

¹²² Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.1

¹²³ Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 3.4



strategies and decision-making, without impacting on good governance".¹²⁴

We agree with Ney's conclusions and recommendations. We welcome MHCLG's commitment to implement in full the recommendations from the Ney review. We also welcome the department's commitment, in *Strengthened Local Enterprise Partnerships*, to improve scrutiny and peer review among LEPs.¹²⁵

Ethical standards and corporate failure

Our evidence suggests a strong link between failings in ethical standards and corporate failure by councils.

The most obvious way in which this can happen is through a culture of 'slackness', where low level breaches of ethical standards go unchallenged and unaddressed. This can then seep into the culture of an authority and allows for more significant wrongdoing to take place, which would have significant implications for the performance and reputation of the council.

However, in most cases the process is more complicated, and several factors are jointly present in order for serious corporate governance failings to take place. As part of our review, we examined reports from high-profile cases of corporate governance failure.

Tower Hamlets Borough Council (incidents between 2010-14, report by PWC Best Value inspection, 2014)¹²⁶

The Best Value report was commissioned by DCLG to consider four different areas where the council allegedly failed to provide 'best value': payment of grants; transfer of property; spending on publicity; and processes on entering into contracts. The report found problems within the local authority in respect of the first three strands.

The report noted a lack of transparency over reasoning for grant decisions, and an abrogation of governance and oversight by the relevant committee, who would discuss the detail of decisions rather than following and overseeing the overarching mechanisms and methodologies that the authority had put in place.

The report also concluded that there were potential conflicts of interests, as well as a lack of transparency and rigour in the reasoning of decisions to transfer property.

The inspectors found an ambiguity in the demarcation between official and political activity by officers.

The report concluded that there were inadequate governance arrangements, in particular a failure to follow declaration and conflict of interest requirements rigorously, and a failure of officers to follow through on resolutions relating to governance and oversight.

¹²⁴ Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.3

¹²⁵ Ministry of Housing, Communities and Local Government (2018), *Strengthened Local Enterprise Partnerships*

¹²⁶ PricewaterhouseCoopers LLP (2014), *Best value inspection of London Borough of Tower Hamlets*. Available online at: <https://www.gov.uk/government/publications/best-value-inspection-of-london-borough-of-tower-hamlets>

**Doncaster Metropolitan Borough Council (incidents between 2005-09, report of the Audit Commission Corporate Governance Inspection, 2010)¹²⁷**

The Audit Commission found in 2009 that Doncaster was a 'failing council'. Its governance failings at that time meant that it did not have the capacity to secure needed improvement in services. The Audit Commission identified three areas which were "[...] individually divisive and collectively fatal to good governance, each serving to compound and magnify the negative impacts of the others":

- the way the council operates to frustrate what the Mayor and Cabinet seek to do
- the lack of effective leadership shown by the Mayor and Cabinet
- the lack of leadership displayed by some chief officers, and the way they have all been unable to work effectively together to improve services

The commission concluded that councillors placed political objectives, in particular frustrating the work of the council leadership, above their public duties.

The inspection found that the scrutiny function in the council was not undertaking genuine scrutiny, but rather was acting as a parallel executive decision-making process, for example, in drawing up its own budget and policy rather than considering the proposals and decisions made by the Cabinet.

The 2009 IDeA ethical governance healthcheck found that individual councillor behaviours at Doncaster were "venomous, vicious, and vindictive".¹²⁸ The commission report likewise found evidence of bullying and intimidating behaviour, for example, "comments such as 'we have long memories' and 'we will get you' made to officers when, in the course of their professional duty, they have given advice which certain councillors are uncomfortable with or dislike".

The commission also found that officers were collectively unable to withstand pressure from some senior councillors, compromising their impartiality and leading to a loss of trust by other councillors. The report also suggested that the leadership style of the interim Chief Executive compromised the impartiality of officers; and that inexperienced leadership by the Mayor further weakened the governance of the council.

¹²⁷ Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*. Available online at: <https://webarchive.nationalarchives.gov.uk/20121206054613/http://www.audit-commission.gov.uk/inspection-assessment/local-gov-inspection/reports/Pages/201004doncastermetropolitanboroughcouncilcorporategovernanceinspection.aspx>

¹²⁸ Cited in Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*, para 34



**Northamptonshire County Council
(events taking place between 2015-17;
report by Max Caller CBE, Best Value
Inspector, 2018)¹²⁹**

Whilst the problems faced by Northamptonshire Council were primarily financial, underlying these was a lack of scrutiny, both at an overall level and at the level of individual councillors being permitted to ask questions.

The inspection team said that they were “[...] struck by the number of councillors who told us that they had been refused information when they sought to ask questions”.

“Members told us that they had been informed that ‘you can only ask that at scrutiny meetings and not outside a meeting’ that ‘I need to get permission from the Cabinet member to discuss this with you’ or just not getting a response. Councillors told us that they felt if they asked difficult questions at Audit Committee or scrutiny meetings they would be replaced and there was some evidence to support this.”

The report also commented that “[...] there had been no attempt to review either successful or unsuccessful budget inclusions in past years to learn lessons as to why things went well or failed to be delivered”.

Based on these reports, and our broader evidence, we have identified three common threads in cases of corporate governance failings, all of which are linked to failures in upholding the Seven Principles of Public Life.

First, an unbalanced relationship between members and officers. This involves a breakdown in the structures of accountability and objectivity, which should allow officers to provide quality, impartial advice to the members who are ultimately accountable for the work of the council. When this is unbalanced, with either officers or members becoming over-dominant, or a blurring of the official and political, there is a risk that decisions are not made in the public interest.

What you see in cases of corporate failure is that the relationship between members and officers gets ‘bent’ – either with over-dominant councillors and weak officers, or indeed vice versa. A ‘member-led authority’ can become ‘member-dominant’.¹³⁰

Dame Stella Manzie DBE

Secondly, a lack of understanding and appreciation of governance processes and scrutiny. All the examples we describe above involve a lack of a proper scrutiny function, fundamental to the Nolan Principles of openness and accountability. Scrutiny, oversight, and audit processes can stagnate when there is a lack of appreciation of why they exist. Scrutiny should not be a process of rubber-stamping, but rather a probing of policy intent, assessment of financial viability, testing of assumptions, and weighing of evidence to ensure that decisions made, are made in the public interest. Local authorities should therefore not be afraid of the scrutiny function or treat it lightly, but should welcome opportunities to strengthen proposals and realise the benefits of bringing potential issues to light at an early stage.

¹²⁹ Max Caller CBE (2018), *Northamptonshire County Council Best Value Inspection*. Available online at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690731/Best_Value_Inspection_NCC.pdf

¹³⁰ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



If you don't maintain a culture, it doesn't happen by itself. You have to work on it, live it, you have to work on it with people who try and breach it (because they don't understand). A good ethical culture atrophies quite quickly.¹³¹

Max Caller CBE

Thirdly, a culture of fear or bullying. This was a strong theme of the cases we considered. When individuals are fearful of speaking up then poor behaviour goes unreported and can become part of an authority's culture. Similarly, when an individual is subject to bullying by another, this can result in undue pressure to act, or refrain from acting, in a way that is contrary to the public interest. A culture of fear or bullying is fundamentally a failure of leadership, whether leaders fail to tackle wrongdoing when it occurs or are themselves the ones who are doing the bullying.

Left unchecked, standards risks can be realised and become instances of corporate failure. The danger of corporate failure points to a need for councils to identify when standards and governance are at risk, and develop and maintain an ethical culture, to protect against those risks in their own authority.

131 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



Chapter 8: Leadership and culture

Leadership

Leadership is essential in embedding an ethical culture. We have considered throughout our review where, primarily, leadership comes from in local government – who sets the tone when it comes to ethics and standards. We have concluded that leadership is needed from a range of senior individuals, given the multi-faceted nature of local government and the distinctive remits of different roles.

Leadership is needed from a local authority's standards committee. Standards committees play a role not just in formally adjudicating on alleged breaches of the code of conduct, but by continuously reviewing ethical standards in the council, and drawing the authority's attention to areas where standards could be better upheld. Standards committees should see themselves as playing a leadership role in setting expectations of behaviour and continually holding the authority to account on standards issues.

The Chief Executive also plays an important role, especially among officers. Their leadership role includes modelling high standards of conduct, particularly those distinctive to officers in respect of political impartiality and objectivity. But the Chief Executive must also show leadership by empowering other senior officers – such as the Monitoring Officer – to carry out their role effectively. The Chief Executive is ultimately responsible for guarding the demarcation between officers and members, and needs to be clear about when members need to take a decision, and when officers should have the discretion to carry out their roles as they see fit.

If the Chief Executive is weak and senior officers are not backed up then they are stymied as there is nowhere else to go.¹³²
Dame Stella Manzie DBE

Leaders of political groups play a vital leadership role among councillors. Political group leaders set the tone for how new councillors will engage with each other, and set expectations for how councillors will engage with officers. Leaders of political groups not only need to model high standards themselves, but should be quick to address poor behaviour when they see it. They should seek to mentor and advise councillors in their party on how to maintain standards of conduct, and be willing to use party discipline when necessary. The leader of the council plays an important role here: as the most visible group leader, they should model the highest standards of conduct and address any poor behaviour by portfolio-holders.

Where group leaders can appoint councillors to the standards committee, they should demonstrate leadership by appointing members who have the experience and commitment to fulfil that role effectively.

Last, there is a leadership role played by the chair of the council. When this post is occupied by a senior and respected member, they can play a role in setting the tone of full council meetings, and ensure that councillors – regardless of party group – are aware of the expectations for how they engage with each other and with officers. This is particularly important in order to provide support for councillors who are not members of a political group, which we discuss further below.

¹³² Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



Turning around a culture

As part of our review, we took evidence from a number of experienced Chief Executives and Commissioners who have each turned around an unhealthy organisational culture in one or more local authorities.

This evidence, alongside our consideration of reports on corporate failures at specific authorities over the recent years, suggests that four measures are needed from senior leaders in order to turn around an unhealthy culture.

First, senior leadership modelling the expected behaviours and signalling from the first day how these behaviours look, sound and feel. This is particularly the case, as we have discussed above, in the early days of a new council or in the case of corporate renewal, once new senior officers or commissioners have been put in place. As well as modelling the expected behaviour, this element of installing and maintaining an ethical culture is about a present, visible and accessible leadership.

As a leader in a council in trouble I think you have to be absolutely clear what you expect, and model that behaviour every day.¹³³

Max Caller CBE, Commissioner, Northamptonshire County Council

I meet every new starter and tell them “You are a fresh pair of eyes. Do call things out. You are a really valuable asset”, so you set that expectation to challenge and seek improvement really early on.¹³⁴

Dawn French, Chief Executive, Uttlesford District Council, Essex

This demonstrated form of visible leadership can also straddle the member-officer divide, with meetings between new officers and council and group leaders to discuss standards being routine until the tone of the council is reset.

Secondly, an attentiveness to even small practices that do not match expected behaviour. Taking a ‘zero tolerance’ approach even to small breaches may be disproportionate when there is a healthy culture, but is necessary to embed the required behaviours when trying to reverse an unhealthy culture.

There have been standards issues in the authorities in which [I have worked], ranging from informality about the parking passes, to trying to keep information away from the opposition, to informality in granting licences, or to circumventing proper financial regulations. Even the lowest level of wrongdoing needs attention, through a private conversation, and when unaddressed can lead to more significant wrongdoing.¹³⁵

Dame Stella Manzie DBE

Thirdly, the timely, fair and accurate identification by senior leadership of opportunities for development and occasions for discipline of those who are in danger of breaching the rules. An effective leader turning around an unhealthy culture will identify the underlying motives of behaviour, to judge whether it is more appropriate privately to advise and correct an individual, or to discipline them.

¹³³ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹³⁴ Dawn French, Visit to Uttlesford District Council, Monday 10 September 2018

¹³⁵ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



Opportunities to develop individuals to build a more effective culture may change over time, and this is even more the case for a council experiencing a period of transition.

Fourthly, whilst there is clearly a role for interim appointments in order to provide transitional leadership, interim arrangements should not be overstretched, to allow new leaders to embed long-term changes to the organisation's culture.

When you have prolonged interim officers, that has a problem for the culture in the longer term. In the interim term, they [interim appointees] can never start to work on those sorts of things.¹³⁶

Max Caller CBE, Commissioner, Northamptonshire County Council

The role of political groups

Whilst political parties can form only part of the system, and are not a substitute either for effective senior officers, or for the formal standards process, they nevertheless have an important role to play in showing leadership and maintaining an ethical culture.

All the political parties need to get a lot more organised and coherent about standards in local authorities. That would still be important even if local authorities had the power to sanction councillors.¹³⁷

Dame Stella Manzie DBE

The role of party groups in maintaining an ethical culture can be conceptualised in two ways. The first is a 'parallel' model, where the activities of political groups are undertaken in parallel alongside activities of the local

authority, for example, parallel disciplinary processes, training, and so on. The second is a 'layered' model, where political groups play a distinct role that sits between direct advice from officers on the one hand and formal processes undertaken by the local authority on the other.

We see risks in local authorities adopting a 'parallel' model. In practice, parallel processes will mean either that political groups are not used and engaged with effectively, which neglects opportunities for informal training and resolution; or that the effective standards training and discipline become, in time, delegated to political groups, which lacks the necessary checks, independence, and transparency. Such a model also tends to depend heavily on individual post-holders, which means that the authority may face standards risks if there is a change either in political leadership or in those occupying senior officer posts.

Rather, local authorities should see political groups as a semi-formal institution in the 'layered' model. We heard that group whips will often see mentoring new councillors and supporting existing councillors as an important part of their role. When it comes to training, local authorities should value and utilise the informal mentoring and support within political groups that can complement the formal training offered by the local authority and advice from officers. Senior officers should regularly engage with group whips and group members to understand the training needs of members and to ensure that the right expectations are set for how councillors act in the chamber, on committees, with officers, and on outside bodies.

With respect to disciplinary processes, ideally the Monitoring Officer or deputy should

¹³⁶ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

¹³⁷ Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



seek early, informal resolution of emerging issues with members. If, for whatever reason, it is considered that a direct approach is inadvisable or the issue is politically sensitive, senior officers should seek to work with group leaders and whips in order to address the issue of a member's conduct. Where there is a formal complaint, or the issue is a serious one, the formal standards processes should be followed, with the necessary checks and transparency.

There is a balance here, and it is about degrees; I know there are times when it's right to go through a formal process in the council with the greater transparency that brings. But there are also times when any sanction would fail if it went through that process. But actually the person probably has gone further than they should have done, it's up against that fine line of the Seven Principles and what they need is a stern warning. It's better sometimes to have that reflected on during 30 days' suspension from their group rather than go through a formal process that finds that there is insufficient evidence.¹³⁸

**Cllr Rory Love, Chairman,
Conservative Councillors' Association**

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

We heard evidence of the difficulties presented by new political groups, or independent members who sit outside the formal group structures. New political groups will not always enable the mentoring of new councillors, to

set expectations of behaviour, or for officers to draw on long-standing working relationships with group leaders. In the case of councillors who sit outside group structures, party discipline and the use of informal approaches to deal with potential misconduct are not possible. As a result, we heard that, generally, political groups can maintain ethical standards more effectively in an authority when they tend to be larger and better resourced. This points to a need for officers to provide greater support and ensure a full induction process for councillors who lack the support of an established political group.

Building an ethical culture

The aim of a standards system is ultimately to build an ethical culture: to embed high standards throughout an organisation, so that it becomes an integral part of how the organisation works as a whole, and how each individual person goes about their role within it. Having a system which effectively investigates complaints which is punitive where necessary is important; what is more important is a system which enables good behaviour.

An ethical culture starts with tone. A civil tone when conducting politics is the basic starting point for a healthy ethical culture. This is true both for the relationship between councillors and officers, and the relationship between different councillors. A common aim of elected members and those supporting them is to work for the benefit of the community they all serve. This provides a solid basis for an ethical culture. Of course, such civility does not mean that individual members or officers should not feel free to challenge or pursue inquiries, but concerns can be expressed in such a way as to be constructive and civil in tone.

Secondly, a local authority needs to set clear expectations of behaviour, as well as its

¹³⁸ Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



underlying rationale, namely to enable the local authority to perform its functions in a way which is in the public interest. This behaviour needs to be modelled by senior leaders and the expectations of behaviour need to be followed through in advice from officers and group leaders, and any party discipline or sanctions process. The expected behaviour of councillors needs to be set out at an early stage in induction and training programmes.

Our evidence from local authorities suggests that induction for councillors at the earliest stage is crucial to ensuring high standards of conduct. Councils we visited that had not previously arranged training or left it until the dynamics of the groups were set after a new term, were now putting plans in place to ensure that training could occur at an earlier stage in subsequent terms. Councils who perceived they had an effective ethical culture attributed this to early and effective induction of councillors with clear messages from senior leadership about attendance.

To be successful, induction training should not be dry or compliance-focussed, but should set out the rationale for high standards in public life, and should be scenario-based so that councillors can engage with concrete examples and see the relevance of standards to different areas of activity in which they might be involved.

The evidence we received suggests that such training, even where offered, may not always be taken up by councillors. We therefore suggest that a stronger role should be played by political groups and national political parties to ensure that councillors attend relevant training on ethical standards where this is offered by their local authority.

Recommendation 25: Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.

We have considered whether any particular voting pattern – electing councillors every four years, in halves, or in thirds – makes it easier to induct councillors or to preserve an ethical culture. We have concluded that each pattern has advantages and drawbacks in preserving an ethical culture, given the trade-off between regularity of turnover, and the proportion of councillors who are potentially replaced at each election. There is no ‘optimal’ pattern; what matters more is early induction by the local authority.

Thirdly, an objective, impartial Monitoring Officer, who enjoys the confidence of members and of senior officers, is essential. It is important that councillors of all parties know that they can approach the Monitoring Officer in confidence for authoritative and impartial advice.

Fourthly, an ethical culture is an open culture. A local authority should take an open approach to its decision-making, with a presumption that reports and decisions should be public unless there are clear and lawful reasons that the information should be withheld.

When scrutiny is seen as an unnecessary evil and that is what the culture is, it is difficult to know whether decisions are being made properly.¹³⁹

**Max Caller CBE, Commissioner,
Northamptonshire County Council**

¹³⁹ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



We have been concerned by reports of councils relying unnecessarily on commercial confidentiality as a reason to withhold information, and of using informal working groups or pre-meetings in order to hold discussion out of the view of the public, in full cabinet or full council. As the House of Commons Communities and Local Government Committee concluded in relation to commercial information held by local authorities, “[...]we cannot see a justification for withholding such information from councillors [...] councils should be reminded that there should always be an assumption of transparency whenever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority”.¹⁴⁰

High quality and engaged local journalism can help to maintain standards by bringing to light council’s decisions and councillors’ behaviour. We heard in Camden Council, for example, that maintaining an ethical culture was helped by a highly engaged civic community and strong local press, due to the expectation that behaviour and decisions would be publicly reported.

In Camden, we have a very active local press. There is not much that we do that doesn’t get reported. That is probably one (amongst a number) of the positive drivers towards high standards among councillors – what our councillors do and how they behave matters as it is noticed and reported on.¹⁴¹

Andrew Maughan, Monitoring Officer, Camden Council

We are aware, however, that there is a decline of public interest journalism undertaken by the local press in many areas of the country. In some areas of the UK, public-interest journalism is undertaken privately by bloggers, but the quality of such journalism can vary significantly. This suggests to us that local government as a sector cannot rely on public interest journalism to provide the requisite transparency in decision-making; rather local authorities must have the right processes and attitudes in their own organisation to enable external scrutiny of behaviour and decisions.

The role of public-interest journalism is ‘telling people things they didn’t know’. It includes both an investigative aspect and encouraging public engagement with local democracy.¹⁴²

Darryl Chamberlain, editor, 853 blog

The scrutiny function within a local authority is vital to ensure effective and ethical decision-making. An authority should welcome and support scrutiny, seeing it as an opportunity to improve the quality of decision-making by challenging assumptions, probing policy intent, and testing viability. An authority should ideally take a risk-based approach to scrutiny, submitting decisions which carry the greatest risk to the greatest degree of scrutiny. The definition of risk should be based on the risk to the public interest, in respect of the authority’s duties, not reputational risk to the organisation.

¹⁴⁰ House of Commons Communities and Local Government Committee (2017), *Effectiveness of local authority overview and scrutiny committees*, HC 369, para 41

¹⁴¹ Andrew Maughan, Visit to Camden Council, Monday 15 October 2018

¹⁴² Darryl Chamberlain, Individual oral evidence, Tuesday 4 September 2018



[In an unhealthy organisational culture], self regard takes over and leaders end up spending their time looking at risk registers about reputational damage, rather than what the risks to the public are.¹⁴³

**Barry Quirk CBE, Chief Executive,
Royal Borough of Kensington &
Chelsea**

Common law rights of councillors to know what is going on are well established in local government. It is not about regulations (although they are there), it is about making sure the culture says 'these people are elected and have entitlement to know and there are some rules about confidentiality'. They can't pursue cases where they have individual reasons for not being involved.¹⁴⁴

**Max Caller CBE, Commissioner,
Northamptonshire County Council**

Councils should be open to processes such as peer review, for example, as offered through the Local Government Association, in order to test the effectiveness of their culture and organisational and governance structures. Such reviews should also include consideration of the processes the authority has in place to maintain ethical standards.

Recommendation 26: Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.

In the first instance, officers and portfolio-holders need to take decisions in a way that are open to scrutiny by council members. Local government differs from central government in that officials are accountable to full council, not to the administration. Council officers therefore have a general obligation to provide information to councillors and to account for decisions to councillors. Officers should ensure that members are aware of their right to gain information and to ask questions, and the culture of the authority should reflect the accountability of officers and the administration to full council.

¹⁴³ Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018

¹⁴⁴ Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



Conclusion

High standards of conduct in local government are needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Throughout this review, we have seen and heard that both councillors and officers want to maintain the highest standards in their own authorities. The challenge is to maintain a system that serves the best instincts of councillors and officers, whilst guarding against corporate standards risks, and addressing the problem of a small minority of councillors who demonstrate unacceptable behaviour.

A robust system, which includes adequate codes of conduct, investigation mechanisms and safeguards, and – where necessary – punitive sanctions, is important. What is more important, however, is a system and culture that enables good behaviour.

Our recommendations represent a package of reforms to strengthen and clarify the existing framework for local government standards. Whilst many of our recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – we would expect that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by government relatively quickly. The best practice we have identified is, in most cases, already operating in a number of local authorities. Taken as a whole, this best practice represents a benchmark that any local authority in England can and should implement in their own organisation. We intend to monitor the uptake of our best practice in 2020.

Ultimately, however, responsibility for ethical standards rests, and should remain, with local authorities. Senior councillors and officers must show leadership in order to build and maintain an ethical culture in their own authority.

We are confident that local government in England has the willingness and capacity to maintain the highest standards in public life; the recommendations and best practice we have outlined will enable them to do so.



Appendix 1:

About the Committee on Standards in Public Life

The Committee on Standards in Public Life (the Committee) is an advisory non-departmental public body sponsored by the Cabinet Office. The chair and members are appointed by the Prime Minister.

The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference: *“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”*

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister: *“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”*

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee *“[...] should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies”, and that “the government understands the Committee’s remit to examine ‘standards of conduct of all holders of public office’ as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office”.*

The Committee is a standing committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit those areas and monitor whether and how well its recommendations have been put into effect.

Membership of the Committee, as of January 2019

Lord (Jonathan) Evans of Weardale KCB DL, Chair

The Rt Hon Dame Margaret Beckett DBE MP
Simon Hart MP

Dr Jane Martin CBE

Dame Shirley Pearce DBE

Jane Ramsey

Monisha Shah
(leave of absence since October 2018)

The Rt Hon Lord (Andrew) Stunell OBE

Secretariat

The Committee is assisted by a Secretariat consisting of Lesley Bainsfair (Secretary to the Committee), Ally Foat (Senior Policy Advisor), Stuart Ramsay (Senior Policy Advisor), Nicola Richardson (Senior Policy Advisor) (from January 2019), Aaron Simons (Senior Policy Advisor) (from January 2019), Lesley Glanz (Executive Assistant) (from December 2018) and Amy Austin (Executive Assistant and Policy Advisor). Press support is provided by Maggie O’Boyle.

Professor Colin Copus acted as academic advisor to the Committee during the review.



Appendix 2: Methodology

The Committee used a range of methods as part of its evidence gathering for this review, including:

- a public consultation, which received 319 responses, published online alongside our review
- 30 individual stakeholder meetings
- desk research, including:
 - research on the legal framework for local government standards
 - analysis of a sample of 20 principal authority codes of conduct
 - analysis of reports of corporate failure
- roundtable seminars, with Monitoring Officers, clerks and Independent Persons; and academics and think tanks
- five visits to local authorities in England

Stakeholder meetings

The Committee held 30 meetings with individual stakeholders. These meetings were all held on the basis that the no note of the meeting would be published, and material from the meeting would only be quoted in our report with the permission of the individual concerned.

Name	Role and organisation
Marie Anderson	Northern Ireland Local Government Commissioner for Standards
Nick Bennett	Public Service Ombudsman for Wales
Clive Betts MP	Chair, House of Commons Housing, Communities and Local Government Committee
Max Caller CBE	Best Value Inspector, Northamptonshire County Council
Darryl Chamberlain	Editor, 853 blog
Kirsty Cole	Deputy Chief Executive, Newark and Sherwood District Council
Kevin Dunion OBE*	Convenor, Standards Commission for Scotland
Jonathan Goolden	Wilkin Chapman LLP
Justin Griggs	National Association of Local Councils



Name	Role and organisation
Cllr Liz Harvey	Councillor and subject of R (Harvey) v Ledbury Town Council
Cllr Simon Henig CBE	Chair, Association of Labour Councillors
Mayor Dave Hodgson	Chair, Association of Liberal Democrat Councillors
Lorna Johnston	Executive Director, Standards Commission for Scotland
Lord (Robert) Kerslake	Former Permanent Secretary, Department of Communities and Local Government
Michael King	Local Government Ombudsman
Cllr Rory Love	Chairman, Conservative Councillors' Association
Dame Stella Manzie DBE	Former Chief Executive, Birmingham City Council
Graeme McDonald	Chief Executive, Solace
Jacqui McKinlay	Chief Executive, Centre for Public Scrutiny
Diana Melville	Governance Advisor, CIPFA (The Chartered Institute of Public Finance and Accountancy)
Aileen Murphie and Abdool Kara	National Audit Office
Mark Norris	Local Government Association
Cllr Marianne Overton MBE	Local Government Association Vice Chair (Independent)
David Prince CBE	Former Chief Executive, Standards for England, and former member of CSPL
Dr Barry Quirk CBE	Chief Executive, Royal Borough of Kensington and Chelsea
Cllr David Simmonds CBE	Former Local Government Association Vice Chair (Conservative)
John Sinnott and Lauren Haslam	Chief Executive and Director of Law and Governance, Leicestershire County Council
Rishi Sunak MP	Minister for Local Government
Richard Vize	Former editor, Local Government Chronicle
Rob Whiteman	Chief Executive, CIPFA (The Chartered Institute of Public Finance and Accountancy)

* Presentation on the work of the Standards Commission for Scotland at the Committee's October 2018 meeting



Roundtable seminars

The Committee held two roundtable seminars as part of this review. The first took place on Wednesday 18 April 2018 in Birmingham, with Monitoring Officers, clerks, and Independent Persons, and was held on the basis that a non-attributed summary note of the seminar would be published following approval by attendees, but verbatim material from the seminar would only be quoted in our report with the permission of the individual concerned. The summary note was published on our website on 14 May 2018. The second took place on Tuesday 24 April 2018, with academics and think tanks, and was held on the basis that a transcript of the seminar would be published following approval by attendees. This was published on our website on 14 May 2018.

Monitoring Officers, Clerks, and Independent Persons roundtable Wednesday 18 April

Name	Organisation
Dr Peter Bebbington	Stratford-upon-Avon District Council
Lord (Paul) Bew	Committee on Standards in Public Life
Kate Charlton	Birmingham City Council
Tom Clark	Mid Sussex District Council
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Jonathan Goolden	Wilkin Chapman LLP
Philip Horsfield	Lawyers in Local Government
Simon Mansell MBE	Cornwall Council
Tim Martin	West Midlands Combined Authority
Dr Jane Martin CBE	Committee on Standards in Public Life
Sharn Matthews	Northampton Monitoring Officers Group
Megan McKibbin	Ministry of Housing, Communities and Local Government
Lis Moore	Society of Local Council Clerks
Dr Jonathan Rose	Department of Politics & Public Policy, De Montfort University
Richard Stow	Herefordshire County Council
Meera Tharmarajah	National Association of Local Councils
Jeanette Thompson	North Hertfordshire District Council



Academics and think tanks roundtable Tuesday 24 April 2018

Name	Organisation
Lord (Paul) Bew	Committee on Standards in Public Life
John Cade	INLOGOV, University of Birmingham
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Ellie Greenwood	Local Government Association
Paul Hoey	Hoey Ainscough Associates
Dr Jane Martin CBE	Committee on Standards in Public Life
Megan McKibbin	Ministry of Housing, Communities and Local Government
Jacqui McKinlay	Centre for Public Scrutiny
Mark Norris	Local Government Association
Dame Shirley Pearce DBE	Committee on Standards in Public Life
Jane Ramsey	Committee on Standards in Public Life
Rt Hon Lord (Andrew) Stunell OBE	Committee on Standards in Public Life
Brian Roberts	CIPFA (Chartered Institute for Public Finance and Accountancy)
Professor Tony Travers	London School of Economics and Political Science
Daniel Thornton	Institute for Government



Local authority visits

The Committee undertook visits to five principal authorities in England. The five local authorities were selected to ensure a representative range of geographies, tiers of local government, and political control. All five authorities had made written submissions to the Committee's consultation.

Local authority	Date	Meetings
Uttlesford District Council	10 September 2018	Standards committee; Chief Executive; Monitoring Officer; Independent Persons; parish council chair; Essex Association of Local Councils
Worcestershire County Council	11 September 2018	Standards committee; group leaders; Chief Executive; Monitoring Officer; Independent Person; independent members of standards committee
Leeds City Council	18 September 2018	Standards committee; Chief Executive; Deputy Monitoring Officer; Independent Person; Leader and Deputy Leader; Leader of the Opposition; group whips; community representative
Cornwall Council	24 September 2018	Standards committee; Chief Executive; Monitoring Officer and Deputy Monitoring Officer; Leader; Independent Persons; independent members of standards committee; Cornwall Association of Local Councils
Camden Council	15 October 2018	Monitoring Officer; Chief Executive; Administration Chief Whip; Leader of the Opposition; Independent Person*

*Follow-up telephone conversation

Committee on Standards in Public Life

Room GC.07, 1 Horse Guards Road, London SW1A 2HQ

Tel: 020 7271 2948

Email: public@public-standards.gov.uk

January 2019

Part Five, Section A

Members' Code of Conduct

MEMBERS' CODE OF CONDUCT

Explanatory Note

This Code of Conduct, is adopted under powers contained in the Localism Act 2011 ("the 2011 Act"), and contributes towards the discharge of the Council's duty under the 2011 Act to promote and maintain high standards of conduct by elected and co-opted members of Haringey Council. It is consistent with the principles of public life which are prescribed in the 2011 Act and which are included in the Code at paragraphs 1.1 - 1.7 below.

The 2011 Act requires the Council's Monitoring Officer to establish and maintain a register of interests of the members and co-opted members of the Council. It is a legal requirement that members must notify the Monitoring Officer of all their disclosable pecuniary interests within 28 days of becoming a member. Disclosable pecuniary interests are the member's interests, those of the member's spouse or civil partner, or person the member is living with as spouse or as if they were civil partners, and falling within categories specified in Regulations by the Secretary of State as set out at Appendix A. The Register of Members' Interests will be available for inspection by the public at all reasonable hours and will be published on the Council's website.

The 2011 Act has created a number of criminal offences for failure to comply with requirements relating to disclosable pecuniary interests. A summary of the offences is attached at Appendix B.

In addition to disclosable pecuniary interests personal interests as specified in the Code must be notified to the Monitoring Officer and declared at meetings if prejudicial in the manner described in the Code.

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

Part 1: GENERAL PROVISIONS

1. The General Principles

1.1 Selflessness

Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

1.2 Integrity

Members should not place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

1.3 Objectivity

Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

1.4 Accountability

Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and ~~They~~ should co-operate fully and honestly with any scrutiny appropriate to their particular office, including any formal standards investigations.

1.5 Openness

Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

1.6 Honesty

Members should not place themselves in situations where their honesty may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

1.7 Leadership

Members should promote and support these principles by Leadership, and by example, and should act in a way that secures or preserves public confidence.

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

2. Application of the Code

- 2.1 This Code applies to you as a member of Haringey Council.
- 2.2 In your capacity as a member you should at all times adhere to the general principles set out at paragraphs 1.1 – 1.7 above.
- 2.3 It is your responsibility to comply with the provisions of this Code.
- 2.4 In this Code "meeting" means any meeting of
- (a) the Council; or
 - (b) the executive of the Council; or
 - (c) any of the Council's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" means an elected member and a co-opted member

"co-opted member" means a person who is not an elected member of the Council but who has been appointed to a committee or sub-committee of the Council or represents the Council on a joint committee or joint sub-committee of the Council and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

- 2.5 You must comply with this Code whenever you are acting in your capacity as a member
- 2.6 This Code regards you as acting in your capacity as a member when you
- (a) conduct the business of your authority (which in this Code includes the business of the office to which you are elected or appointed); or
 - (b) act as a representative of your authority; or
 - (c) claim to act or give the impression you are acting as a representative of your authority.
- 2.7 This Code does not have effect in relation to your conduct other than where you are acting in your capacity as a member.
- 2.8 Where you act as a representative of your authority
- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

conflicts with any other lawful obligations to which that other body may be subject.

2.9 “Relevant authority” as referred to in paragraph 2.8(a) above is as for the time being defined in section 43 Localism Act 2011 and currently means –

- (a) a county council,
- (b) a county borough council,
- (c) a district council,
- (d) a London borough council,
- (e) the Common Council of the City of London in its capacity as a local authority,
- (f) the Council of the Isles of Scilly,
- (g) the London Fire and Emergency Planning Authority,
- (h) a metropolitan county fire and rescue authority, or
- (i) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of the Act applies.

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

3. General Obligations

3.1 You must treat others with respect.

3.2 You must not

(a) do anything which may cause your authority to breach any of its equality duties;

(b) bully or harass any person through any means;

(i) bullying ~~may be characterised~~ includes conduct such as: offensive, intimidating, malicious or insulting behavior; or an abuse or misuse of power through means that undermine, humiliate, denigrate or injure someone;

(ii) harassment ~~may be characterised~~ includes conduct such as: unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual;

(iii) examples of bullying or harassment include ~~but may not be limited to:~~

- spreading malicious rumours, or insulting someone by word or behaviour
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances – ~~including~~ touching, standing too close, display of offensive materials, asking for sexual favours, ~~making lewd or sexual comments~~ remarks, making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities

(c) intimidate or attempt to intimidate any person who is or is likely to be

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

PART FIVE – CODES AND PROTOCOLS

Section A– Member Code of Conduct

in relation to an allegation that a member (including yourself) has failed to comply with this Members' Code of Conduct; or

- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority;

or

- (e) make trivial or malicious allegations against any other person, including another member.

3.3 You must not

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the Council; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

3.4 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into disrepute

3.5 You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

3.6 You must when using or authorising the use by others of the resources of your authority

- (a) act in accordance with your authority's reasonable requirements;

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

- (b) ensure that such resources are not used improperly for political purposes (including party political purposes);
 - (c) have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 3.7 When reaching decisions on any matter you must have regard to any relevant advice provided to you by
 - (a) the Council's Chief Finance Officer; or
 - (b) the Council's Monitoring Officer,

where that officer is acting pursuant to his/her statutory duties.
- 3.8 You must give reasons for all decisions you make in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

PART 2: MEMBERS INTERESTS

4. Disclosable Pecuniary Interests

4.1 You have a disclosable pecuniary interest in any matter to be considered or being considered by your authority if it is of a description set out at Appendix A and either:

- (a) it is an interest of yours, or
- (b) it is an interest of
 - (i) your spouse or civil partner
 - (ii) a person with whom you are living as husband and wife, or
 - (iii) a person with whom you are living as if you were civil partners

and you are aware that that other person has the interest.

4.2 You must comply with the statutory requirements to register, disclose and withdraw from participating and voting in respect of any matter in which you have a disclosable pecuniary interest

5. Personal Interests

5.1 You have a personal interest in any matter to be considered or being considered by your authority where your interest is not a disclosable pecuniary interest in that matter and either

- (a) the matter relates to or is likely to affect
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are a member or in a position of general control or management;
 - (iii) the interests of a person from whom you have received a gift or hospitality with an estimated value of at least £25 or

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

- (b) a decision in relation to that matter might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

5.2 For the purpose of Paragraph 5.1(b) a “relevant person” is

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in Paragraph 5.1(a)(i) and (ii) above of which such persons are members or in a position of general control or management.

5.3 “Family member” as referred to in paragraph 5.2(a) above is for the time being defined as –

A spouse, partner, parent, parent in law, son, daughter, step son, stepdaughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and partner means a member of a couple who live together.

6. **Prejudicial Interests**

6.1 Where you have a **personal interest** in any matter to be considered or being considered by your authority you also have a prejudicial interest in that matter where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest and where that matter

- (a) affects your financial position or the financial position of a person or body described in Paragraph 5 above, or
- (b) relates to the determining of any approval, consent, licence, permission, or registration in relation to you or any person or body described in Paragraph 5 above.

6.2 A personal interest in any matter to be considered or being considered by your authority is not a prejudicial interest where that matter relates to the functions of your authority in respect of

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

- (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members;
- (vi) setting council tax or a precept under the Local Government Finance Act 1992

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

PART 3: REGISTRATION OF MEMBERS' INTERESTS

7. Notification and Registration of Members' Interests

- 7.1 You must, within 28 days of adoption of this code or of becoming a member notify the Monitoring Officer of any disclosable pecuniary interest, or personal interest as set out in Paragraph 5 (1)(a) above, which you have, and the Monitoring Officer shall, subject to Paragraph 8 (Sensitive Interests) below, enter the interest(s) notified in the Council's Register of Members' Interests maintained under the Localism Act 2011.
- 7.2 You must, within 28 days of becoming aware of any new interest or change to any interest registered under Paragraph 7.1 above, register details of that new interest or change by providing written notification to the Monitoring Officer who shall, subject to Paragraph 8 (Sensitive Interests) enter the interests notified in the Register of Members' Interests.
- 7.3 You must observe the notification provisions relating to disclosable pecuniary interests which arise at meetings or when a member is acting alone which are set out at Paragraphs 9.4 and 9.6 respectively.

Registration of Gifts and Hospitality

- 7.4 You should record in your Register of Interests any gifts or hospitality you are offered in your role as a Member or co-opted member of the Council with an estimated value of at least £25. You should record any such gifts or hospitality within 28 days of their being offered **and in any event review and update your declaration form once per quarter.**

8. Sensitive Interests

- 8.1 Where you have an interest (whether or not a disclosable pecuniary interest) and the nature of it is such that you and the Monitoring Officer consider that disclosure of the details of the interest could lead to you or a person connected with you being subject to violence and intimidation if the interest is entered in the Register of Members' Interests then copies of the register available for inspection and any published version of the register must not include details of the interest but may state that you have an interest the details of which are withheld under section 32(2) of the Localism Act 2011.
- 8.2 If Paragraph 8.1 above refers to the entry of the interest in the Register of Members' Interests that provision is to be read as requiring you to disclose not the interest but merely the fact that the you have a disclosable pecuniary interest in the matter concerned.

PART FIVE – CODES AND PROTOCOLS

Section A– Member Code of Conduct

- 8.3 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under Paragraph 8.1 above is no longer sensitive information, notify the Monitoring Officer asking that the information be included in the Register of Members' Interests.

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

PART 4: DISCLOSURE OF MEMBERS' INTERESTS AND EFFECT UPON PARTICIPATION AT MEETINGS

9. Disclosure of Interests

- 9.1 Subject to paragraphs 9.3 to 9.6 below, where you have a disclosable pecuniary interest or a prejudicial interest in any matter being considered by your authority and you are present at a meeting of the authority or of any committee, sub-committee, joint committee, or joint sub-committee of the authority at which the matter is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered in the Register of Members' Interests or for which you have made a pending notification.
- 9.2 Where you have a personal interest in any matter being considered by your authority which is not a disclosable pecuniary interest nor a prejudicial interest and you are present at a meeting of the authority or of any committee, sub-committee, joint committee, or joint sub-committee of the authority, at which the matter is considered, you are under no obligation to make a disclosure to the meeting but you may do so if you wish.
- 9.3 Paragraphs 9.1 - 9.2 above only apply where you are aware or ought reasonably to be aware of the existence of the interest.
- 9.4 Where you have disclosed a disclosable pecuniary interest pursuant to Paragraph 9.1 above, and that interest is not registered in the Register of Members' Interests and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure.
- 9.5 Where you have an interest in any matter to be considered or being considered by your authority which would be disclosable by virtue of Paragraph 9.1 but by virtue of Paragraph 9 (Sensitive Interests) details of the interest are not registered in the Council's published Register of Members' Interests, at a meeting at which you are present you must disclose the fact that you have a disclosable interest in the matter concerned but details of that interest need not be disclosed.
- 9.6 If a function of the Council may be discharged by **a member acting alone** and you have a disclosable pecuniary interest or a prejudicial interest in any matter to be dealt with or being dealt with in the course of discharging that function:
- (a) if the interest is a **disclosable pecuniary interest** and is not registered in the Register of Members' Interests and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date upon which you first became aware of having the interest in relation to the matter;

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

- (b) you must not take any steps or any further steps in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by yourself).

10. Effect of Disclosable Pecuniary Interest or Prejudicial Interest on participation at meetings

10.1 Subject to Paragraph 10.3, if you are present at a meeting and you have a **disclosable pecuniary interest or a prejudicial interest** in any matter to be considered, or being considered at the meeting;

- (a) You may not participate, or participate further, in any discussion of the matter at the meeting, or
- (b) participate in any vote, or further vote, taken on the matter at the meeting, and
- (c) You must withdraw from the room or chamber where the meeting considering the matter is being held,

unless you have obtained a dispensation from your authority's Standards Committee.

10.2 Subject to Paragraph 10.3, if you are present at a meeting and you have a **disclosable pecuniary interest or a prejudicial interest** in any matter to be considered, or being considered at the meeting;

- (a) You may not exercise executive functions in relation to that matter, or
- (b) seek improperly to influence a decision about that matter.

10.3 Where you have a **prejudicial interest** in any matter to be considered or being considered at a meeting of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the matter, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

Appendix A

Disclosable Pecuniary Interests

In the extract from the Regulations* below, 'M' means the member and 'relevant person' means the member, the member's spouse or civil partner or a person with whom the member is living with as spouse or as if they were civil partners.

<u>Subject</u>	<u>Prescribed description</u>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

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Section A– Member Code of Conduct

Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

*The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 specify the interests above as disclosable pecuniary interests for the purposes of Chapter 7 of Part 1 of the Localism Act 2011.

The Regulations provide the following definitions of terms used in the specification of disclosable pecuniary interests:

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority.

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

PART FIVE – CODES AND PROTOCOLS
Section A– Member Code of Conduct

Appendix B

Offences

It is a criminal offence to

- ☐ Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- ☐ Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- ☐ Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- ☐ Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- ☐ As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of becoming aware of the interest.
- ☐ Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting
- ☐ As an executive member discharging a function alone, takes steps or further steps in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by the member)

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

PART 5, SECTION A
 PROTOCOL – COMPLAINTS AGAINST MEMBERS

Arrangements for dealing with allegations that a member or co-opted member of Haringey Council has failed to comply with the Members' Code of Conduct

1. Introduction

- 1.1 These arrangements set out how an allegation may be made that an elected member or a co-opted member of Haringey Council has failed to comply with the Members' Code of Conduct and how the Council will deal with such allegations.
- 1.2 Under Section 28 of the Localism Act 2011 the Council must have arrangements in place whereby allegations can be investigated and decisions upon them can be made. In addition the arrangements must provide for the Council to appoint at least one Independent Person whose views must be sought and taken into account by the Council before it makes a decision and who may be consulted by the Council at other stages in the process or by the member or co-opted member against whom an allegation has been made. These arrangements fulfil the Council's statutory obligations.
- 1.3 In these Arrangements a number of terms are used which have the following meanings:

Member	An elected Councillor
Co-opted Member	A person who is not an elected member of the Council but has been appointed to a committee or sub-committee of the Council.
Monitoring Officer	A officer of the Council designated under section 5 of the Local Government and Housing Act 1989 to undertake the statutory duties prescribed which include ensuring that the Council and its members and officers act lawfully at all times. Under Section 29 of the Localism Act 2011 the Monitoring Officer must establish and maintain a register of interests of members and co-opted members.
Investigating Officer	An appropriate person appointed by the Monitoring Officer to conduct an investigation into an allegation.
Independent Person	A person appointed by the Council pursuant to Section 28 of the

PART 5, SECTION A
 PROTOCOL – COMPLAINTS AGAINST MEMBERS

Localism Act 2011, whose views are sought and taken into account before decisions upon allegations against members are taken and who may be consulted by a member who is the subject of allegations or the Council, generally.

Standards Committee

A committee of members responsible for promoting and maintaining high standards of member conduct within the Council.

Assessment Sub-Committee

A Sub-Committee of Standards Committee established to decide whether allegations against members are worthy of being investigated.

Hearing Sub-Committee

A Sub-Committee of Standards Committee established to conduct hearings into allegations against members and to determine such allegations following a hearing.

2. The Members' Code of Conduct

- 2.1 The Council has adopted a Members' Code of Conduct which is available for inspection on the Council's website and on request from the Monitoring Officer.

3. The Independent Person

- 3.1 Pursuant to Section 28 of the Localism Act 2011, the Council shall appoint an Independent Person. A person may not be appointed (i) if they are currently a Member or co-opted Member or employee of the Council, or they are a relative or close friend of such a person and or, (ii) they have been a Member, co-opted Member or employee of the Council in the five years prior to appointment.

3.2 The Council appoints two Independent Persons. The persons appointed shall have responded to a public advertisement for the vacancyies and submitted an application for the posts.— The appointment of the successful applicants shall be approved by a majority of the members of the Council.

- 3.23 The views of ~~the an~~ Independent Person shall be sought and taken into account by:

- (i) the Monitoring Officer when deciding whether to undertake a formal investigation on an allegation.

PART 5, SECTION A
 PROTOCOL – COMPLAINTS AGAINST MEMBERS

- (ii) the Hearing Sub-Committee before it makes its decision on an allegation ~~it which it has been asked to decided to investigated.~~

3.34 The views of ~~the an~~ Independent Person may be sought:

- (i) by the Standards Committee/Assessment Sub-Committee/Hearing Sub-Committee or by the Monitoring Officer/Investigating Officer in relation to an allegation in circumstances not within paragraph 3.2, above.
- (ii) by a member or co-opted member of the Council if that person's behaviour is the subject of an allegation.

4. Making an allegation

4.1 An allegation that a member or a co-opted member of Haringey Council has failed to comply with the Members' Code of Conduct should be made in writing, wherever possible, using the Complaint Form on the Council's website to:

Bernie Ryan
 Monitoring Officer
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4.2 ~~The Monitoring Officer plays a key role in promoting and maintaining ethical standards and standards investigations. The role is broad and is particularly varied. Paragraph 12 below sets out the procedure in place to address any conflicts of interest when undertaking a standards investigation, including the Deputy Monitoring Officer or a Monitoring Officer from another Council to oversee and undertake the investigation as set out in these arrangements.~~

4.3 It is important that a person making an allegation provides his/her name and a contact address or email address, so that the Council can acknowledge receipt of the allegation and keep the person informed of its progress. The person must indicate if he/she wants to keep his/her

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name and address confidential and the Monitoring Officer will consider any such requests.

4.34 The Council does not normally investigate anonymous allegations unless there is a clear public interest in doing so.

4.45 The Monitoring Officer will acknowledge receipt of an allegation within five clear working days of receiving it and will keep the person making the allegation informed of progress.

4.56 The Monitoring officer will inform the councillor against whom an allegation has been made and will give the details of the complaint and remedy sought to them. In exceptional circumstances the Monitoring Officer has the discretion not to inform the Councillor if, in his opinion, to do so would risk an investigation being frustrated or prejudiced in some other way.

5. Assessment of an allegation

5.1 The Monitoring Officer will review every allegation received and ~~may~~ **will** consult ~~the an~~ Independent Person before taking a decision as to whether or not it merits reference to the Assessment Sub-Committee of the Standards Committee.

5.2 If the Monitoring Officer requires additional information in order to reach a decision, he/she may revert to the person making the allegation for such information and may request information from the member against whom the complaint is directed. If the person making the allegation fails to provide the additional information requested the allegation may be dismissed by the Monitoring Officer pursuant to paragraph 5.3 (c), below.

5.3 The Monitoring Officer will use a number of criteria for assessing complaints, and ~~may will~~ consult with ~~the an~~ Independent Person and if necessary the appropriate party group whips and party leaders. The decision whether to investigate a complaint will be a proportionate response to the issues raised and likely outcomes. The Monitoring Officer may determine that an allegation does not merit any further action, where:

- (a) The allegation does not demonstrate a breach of the Members' Code of Conduct; for example it relates to a member's private life to which the Code does not apply or it is about dissatisfaction with a Council decision or service, or
- (b) It is about someone who is no longer a member or a co-opted member of the Council, or

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- (c) There is insufficient evidence upon which to investigate and/or the person making the allegation has failed to co-operate with the Monitoring Officer to specify the allegation sufficiently, or
 - (d) The same or a similar allegation has been investigated and determined, or
 - (e) It is an anonymous allegation which does not include sufficient documentary evidence to indicate a significant breach of the Member's Code of Conduct, or
 - (f) The Monitoring Officer facilitates an informal resolution without the need for a formal investigation. This may involve the member accepting that his/her conduct was unacceptable and offering an apology or other remedial action by the Council. If the Monitoring Officer considers an offer of informal resolution is reasonable but the person making the allegation is not willing to accept it, the allegation will be referred to the Standards Committee for determination, or
 - (g) the complainant is considered to be vexatious.
- 5.4 If the complaint is dealt with under 5.3 above, the Monitoring Officer will promptly notify the complainant and the member of the outcome, giving reasons for the decision. Except as provided for in Paragraph 5.3 above, the Monitoring Officer shall refer all allegations to the Assessment Sub-Committee for consideration.
- 5.5 The Assessment Sub-Committee shall determine whether the allegation:
- (a) merits no further investigation and is dismissed, or
 - (b) merits further investigation.
- 5.6 The Assessment Sub-Committee will take into account the view of the Independent Person as provided to the Monitoring Officer under 5.1 and/or 5.3 above. It may determine that an allegation merits no further investigation for whatever reasons it thinks fit, but it may have regard to the criteria set out in Paragraph 5.3 above and to the following additional criteria:
- (a) The allegation is not considered sufficiently serious to warrant investigation, or
 - (b) The allegation appears to be motivated by malice or is 'tit-for-tat', or
 - (c) The allegation appears to be politically motivated, or

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- (d) The matter about which the allegation is made took place more than three months prior to receipt of the allegation unless there are exceptional circumstances or it is otherwise appropriate to investigate.
- 5.7 Where the Assessment Sub-Committee considers that an allegation merits further investigation, the Monitoring Officer shall undertake such investigation.
- 5.8 The decision as to whether or not an allegation should be investigated will normally be taken within thirty clear working days from receipt. The Monitoring Officer will inform the person making the allegation of that decision and if the allegation is to be investigated, an indication of the timescale for the investigation. The Monitoring Officer will keep the person informed if the initial timetable changes substantially,

6. The Investigation

- 6.1 The Monitoring Officer may conduct the investigation personally or may appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another authority or an external investigator.
- 6.2 The Monitoring Officer/Investigating Officer will decide if he/she needs to meet or speak to the person making the allegation to understand the nature of the allegation and so that the person can explain his/her understanding of events and identify what documents he/she considers the Monitoring Officer/Investigating Officer needs to see and who he/she considers the Monitoring Officer/Investigating Officer needs to interview.
- 6.3 The Monitoring Officer/Investigating Officer will normally write to the member against whom the complaint is made and provide him/her with a copy of the complaint and ask the member to provide his/her explanation of events and to identify what documents he/she considers the Monitoring Officer/Investigating Officer needs to see and who he/she considers the Monitoring Officer/Investigating Officer needs to interview. Where it is appropriate to keep confidential the identity of the person making the allegation the Monitoring Officer/Investigating Officer will delete the person's name and address from the papers given to the member. Where disclosure of details of the allegation to the member might prejudice the investigation, the Monitoring Officer/Investigating Officer may delay notifying the member until the investigation has progressed sufficiently.
- 6.4 The Monitoring Officer/Investigating Officer has absolute discretion about which are the appropriate witnesses to interview and documents to consider but will follow best practice in conducting investigations. Having considered all relevant documentation identified and having interviewed all relevant witnesses, at the end of the investigation the Monitoring Officer/Investigating Officer will produce a draft report and

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may where appropriate send copies of that draft report, in confidence, to the person making the allegation and to the member concerned, to give them an opportunity to identify any matter in that report with which there is disagreement or which is considered to require more consideration.

6.5 Where an Investigating Officer has been appointed, having received and taken account of any comments which the person making the allegation and/or the member have made on the draft report, the Investigating Officer will send his/her final report (the Investigation Report) to the Monitoring Officer for the latter's consideration prior to onward transmission to the Hearing Sub-Committee where appropriate. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider the report or may appoint a new Investigating Officer.

6.6 Where the Monitoring Officer has undertaken the investigation personally, having received and taken account of any comments which the person making the allegation and/or the member have made on the draft report, and, where appropriate, having sought to achieve an informal resolution pursuant to paragraph 8.1 below, the Monitoring Officer shall submit the Investigation Report to the Hearing Sub-Committee and ~~the an~~ Independent Person.

7. Where the Monitoring Officer/Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct.

7.1 In these circumstances the Monitoring Officer will refer the matter to the Standards Committee. When the Standards Committee receives an Investigation report which recommends that there is no evidence of failure to comply with the Members' Code of Conduct, the Committee may:

- (a) accept the recommendation resolve that no further action is required and dismiss the allegation, or
- (b) remit the report to the Monitoring Officer for further consideration, or
- (b) remit the complaint to the Hearing Sub-Committee to conduct a hearing for the consideration of the allegation and the Investigation Report and determine the allegation.

7.2 Prior to making a determination under Paragraph 7.1 above, the Standards Committee shall seek and shall take into account the views of ~~the an~~ Independent Person.

8. Where the Monitoring Officer/Investigating Officer concludes that there is evidence of failure to comply with the Code of Conduct.

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- 8.1 Where an Investigation Report concludes that there is evidence of failure to comply with the Code of Conduct the Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult ~~the~~ an Independent Person and the person making the allegation and seek to agree what the person considers to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee which will note the outcome but take no further action.
- 8.2 If the Monitoring Officer considers that an informal resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will submit the Investigation Report to the Hearing Sub-Committee to conduct a hearing for the consideration of the allegation and the Investigation Report and to determine the allegation.

9. The Pre Hearing Process and Hearing

- 9.1 In advance of the Hearing the Monitoring Officer (and/or his nominees) will:
- (a) agree a date for the hearing with all the relevant parties;
 - (b) provide a timetable for the member to provide details about whether they wish to give evidence (and whether orally or in writing) at the hearing and any witnesses they intend to call, and additional papers they may wish to provide in time for inclusion in the committee papers;
 - (c) establish whether the member will be represented or accompanied at the hearing;
 - (d) establish whether the member wishes any part of the Investigation Report to be kept confidential or the Hearing itself to be held in private, and the reasons for this;
 - (e) provide information about the procedure to be used at the hearing;
 - (f) establish whether the member disagrees with any of the findings of fact in the Investigation Report;
 - (g) establish whether the Investigating Officer intends to call any witnesses.
- 9.2 Wherever possible hearings conducted by the Hearing Sub-Committee shall take place within three calendar months of the referral to the Hearing Sub-Committee.

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- 9.3 At the hearing, the Monitoring Officer/Investigating Officer will present the Investigation Report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Monitoring Officer/Investigating Officer may request the person making the allegation to attend and give evidence to the Standards Committee.
- 9.4 The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Committee as to why he/she considers that he/she did not fail to comply with the Members' Code of Conduct.
- 9.5 If a member fails to attend the hearing, the Hearing Sub-Committee may decide to proceed in the member's absence and make a determination, or to adjourn the hearing to a later date
- 9.6 Full details of the process to be undertaken at the hearing are contained in the Hearing Procedure note comprising Appendix A to these arrangements.
- 9.7 The Hearing Sub-Committee, having sought and taken into account the views of ~~the~~ **an** Independent Person may conclude:
- (a) that the member did not fail to comply with the Members' Code of Conduct, and dismiss the complaint, or
 - (b) that the member did fail to comply with the Members' Code of Conduct.
- 9.8 In the event of a finding under Paragraph 9.7 (b) above, the Chair will inform the member of this finding and the Hearing Sub-Committee will then consider what action, if any, it should take as a result of the member's failure to comply with the Members' Code of Conduct. In doing this, the Hearing Sub-Committee will give the member an opportunity to make representations to the Sub-Committee as to whether any action should be taken and what form any action should take and will seek and take into account the views of ~~the~~ **an** Independent Person. It will then decide what action, if any, to take in respect of the matter.

10. Action which may be taken where a member has failed to comply with the Code of Conduct

- 10.1 Having determined that a member has failed to comply with the Members' Code of Conduct, the Hearing Sub-Committee may:
- (a) Publish its findings in respect of the member's conduct;

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- (b) Report its findings to Council for information;
- (c) Issue the member with a formal censure or be reprimanded, a report of which may be submitted to Council
- (d) Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- (e) Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (f) Instruct the Monitoring Officer to arrange training for the member;
- (g) Recommend to Council or Cabinet (as appropriate) that the member be removed from outside appointments to which he/she has been appointed or nominated by the Council/Cabinet
- (h) Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- (i) Exclude the member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings.
- (j) Take no further action
- (k) Any other appropriate sanction which may be available to the Sub-Committee.

10.2 The Hearing Sub-Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

10.3 At the end of the hearing, the Chair shall state the decision of the Hearing Sub-Committee as to whether the member failed to comply with the Code of Conduct and as to any action which the Sub-Committee has resolved to take.

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10.4 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice after consultation with the Chair of the Hearing Sub-Committee, ~~and send a copy to the person making the allegation; to the member concerned; make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.~~

10.5 The decision notice shall include a brief statement of facts, the provision of the Code of Conduct engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

10.6 As soon as reasonably practicable, the decision will be communicated as follows:

- (a) a copy of the decision notice will be sent to the person making the allegation and to the member concerned.
- (b) the decision notice will be made available for public inspection at the Council's offices and on the Council's website.
- (c) the decision will be reported to the next convenient meeting of the Council.

11. Appeals

11.1 There is no right of appeal for either the person making the allegation or for the member against whom the allegation is made, against a decision of the Monitoring Officer or of the Standards Committee/Assessment Sub-Committee/Hearing Sub-Committee

11.2 If a person making the allegation considers that the Council has failed to deal with an allegation properly, he/she may make a complaint to the Local Government Ombudsman.

12. Conflicts of Interest

12.1 No member or officer of the Council will participate at any stage of this protocol if he or she has a conflict of interest in the matter.

12.2 Any member or officer with a potential conflict of interest must disclose it to the Monitoring Officer/Investigating Officer as soon as reasonably practicable.

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12.3 The Monitoring Officer/Investigating Officer shall consider the appropriate steps to be taken in the event of a potential conflict of interest and may consult an Independent Person. Where appropriate, the deputy monitoring officer or a monitoring officer from a different authority may undertake the investigation.

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Appendix A

Hearing Procedure

The model procedure which follows comprises good and equitable practice and should be followed closely wherever possible. There may be occasions when circumstances require variations and subject to the maintenance of the principles of natural justice these may be effected at the discretion of the Hearing Sub-Committee and advised to the parties

1. The Chair shall facilitate introductions and explain the procedure for the hearing.
2. The Monitoring Officer/Investigating Officer shall be invited to present his/her Investigation Report including any documentary evidence or other material and to call witnesses as required. This report and documentary and witness evidence must be based on the allegation made to the Council; no new or additional matters will be allowed.
3. The Member against whom the allegation has been made or his/her representative may question the Monitoring Officer/Investigating Officer upon the content of the Investigation Report and any witnesses called by the Monitoring Officer/Investigating Officer. This is the Member's opportunity to ask questions arising from the Investigation Report and the direct evidence and not to make a statement.
5. Members of the Sub-Committee may question the Monitoring Officer/Investigating Officer upon the content of the Investigation Report and any witnesses called by the Monitoring Officer/Investigating Officer
6. The Member against whom the allegation has been made or his/her representative may present his/her case and call witnesses as required.
7. The Monitoring Officer/Investigating Officer may question the Member and any witnesses
8. Members of the Sub-Committee may question the Member and any witnesses.
9. The Monitoring Officer/Investigating Officer may sum up the investigation into the allegation and make a closing speech.
10. The Member or his/her representative may sum up his/her case and make a closing speech.
11. The Chair shall invite the parties to withdraw to enable the Sub-Committee to deliberate upon the allegation. Prior to reaching a determination the

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Sub-Committee shall seek and take into account the views of ~~the~~an Independent Person.

12. The parties shall be invited to return and the Chair shall announce the Sub-Committee's decision in the following terms:-

- (a) The Sub-Committee has determined that the Member has failed to comply with the Code of Conduct, or
- (b) The Sub-Committee has determined that the Member has not failed to comply with the Code of Conduct and the allegation is dismissed.

The Sub-Committee will give reasons for its decision.

13. If the Sub-Committee has determined that the Member has failed to comply with the Code of Conduct it shall consider any representations from the Member as to whether any action should be taken and what form any action should take.

14. The Chair shall invite the parties to withdraw to enable the Sub-Committee to deliberate upon what action if any should be taken. Prior to reaching a determination the Sub-Committee shall seek and take into account the views of ~~the~~an Independent Person.

15. In addition to any action upon the current matter, the Sub-Committee shall consider whether in consequence it should make recommendations to the Council with a view to promoting high standards of conduct amongst Members.

16. The parties shall be invited to return and the Chair shall announce the Sub-Committee's decision

17. A full written decision shall be issued to the Complainant and the Member within ten clear working days following the hearing and shall be published.

Committee **Standards Committee 14 October 2019**

Title: **Proposed amendments to Council and Committee Standing Orders**

Lead Officer: Ayshe Simsek, Acting Democratic Services and Scrutiny Manager

1. Describe the issue under consideration

- 1.1 The Council Constitution governs the organisation of Council decision making. It is kept under review and when necessary, amendments are proposed to Standards Committee for consideration and recommendation on to Full Council, in accordance with Article 14.03 (Changes to the Constitution).
- 1.2 This report seeks Members initial views on the areas of the Council and Committee standing orders, including Full Council protocol, that require review.

2. Cabinet Member Introduction

Not applicable

3. Recommendations

- 3.1. To recommend the attached changes, set out appendix 2, to the Council Standing orders and Committee Standing Orders set out at appendix 3 for approval at the Full Council meeting in November.
- 3.2 To refer changes to the Full Council Protocol and other suggested changes to Council standing orders to the Leaders of the Political Groups as set out in Council procedure rule for implementation in May 2020.

4. Reasons for decision

To ensure that Council and Committee Standing orders meet democratic principles, are understood by local residents wishing to make representations at meetings and allow Council and Committee Chairs to run a fair and efficient meeting.

5. Alternative options considered

To not agree the changes to the Council and Committee Standing Orders and defer consideration.

6. Background information

The previous administration considered a review of standing orders but did not pursue this further as it was felt most appropriate to be taken forward by the incoming administration.

The proposed changes set out at appendix 1 of this report were considered by the Committee in April and June 2019. In September the proposals were put forward to all councillors for further comments. The following comments were put forward to the June meeting:

- Reducing the time allocated to the Mayors communications by noting the Mayors communication
- Allowing PowerPoint and visual media to accompany presentations/ deputations
- Removing the Haringey debate completely
- Allowing two consecutive supplementary questions from the political parties to the oral questions
- Adding a new section on the Leader's questions
- Increasing public participation with public questions
- Changing the start time of Full Council to 7pm with a 9.30 finish
- Receiving amendments to motions and reports sooner in advance . i.e. Friday 10am instead of Monday 10am
- Where a report is promised, this comes back as a report to the full Council as it might be relevant to all councillors.
- Including a standing item instead of a debate which allows participation from external experts/ partners/ community representatives.

The below comments were put forward in the consultation:

- To keeping the 7.30pm start time of full Council
- Removing the debate
- Having less rigid standing orders and allowing more public questions and further follow up questions on council questions.
- Keeping an agenda item which allows external speakers and community groups

It is proposed to put forward changes to the council and committee standing orders discussed at the April and June meetings to full Council in November, following no comments on these changes being received. The changes are set out in appendix 2 and appendix 3.

Given there was little comment about the full Council meeting protocol, as a way forward, it is proposed that there is discussion taken forward with both political party chief whips on the debate item at meetings. The following options could be considered:

- Removing the Haringey Debate
- Keeping the debate item and reducing the time allocated to 45 minutes in total.
- The Mayor and Leader's of both political groups choosing and advertising a proposed debate item to community groups/ organisations in the borough and

inviting representations to the meetings on the chosen item. The groups would attend the meeting and put forward a 10 minute presentation, there then follows a debate for 30 minutes, which can include questions to the presenters and closing statement by the proposer of the debate [Political group] and response on the actions that can be taken forward by the cabinet member. There would still be three ordinary meetings , with a Labour and Liberal Democrat chosen debate and a final joint party or Mayoral led item.

These proposals alongside the comments made at the meetings can then be passed to the Leader's of both political groups in accordance with the council constitution which advises that ***There is a Protocol outside this Constitution setting out how full Council meetings are to operate. This Protocol can be amended by the written agreement of the Leaders of the Political Groups on the Council.***

7. Contribution to strategic outcomes

The Council's Constitution supports the governance of the Council and its Decision making thereby assisting the Council to meet its strategic outcomes.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8.1 Finance and Procurement

8.2 No financial implications arise from this report.

8.3 Legal

8.4 The proposed changes to the Council and Committee standing orders were taken forward with Legal service's assistance.

8.5 Equality

8.6 There are no equality matters in this report

9. Use of Appendices

Summary of proposed changes to Council Standing Orders – Appendix 1

Council Procedure rules - Appendix 2 in track changes

Committee Standing Orders Appendix 3 - track changes

Full Council Protocol - Appendix 4

10. Local Government (Access to Information) Act 1985

10.1 The Council Constitution which can be found at;

<http://www.haringey.gov.uk/local-democracy/about-Council/Council-constitution>

Appendix 1 –Initial proposed changes to the Council standing orders and Committee Standing Orders

Current Council Standing Order	Reasons for Change	Proposed Change
Section 1.1 – Annual meeting of the Council xiv- Receive a programme of ordinary meetings of the Council for the year	This is proposed for amendment as in practice this report needs to be considered before the Annual meeting in March to enable report planning and organisation of committee meetings. The calendar of meetings is usually considered at the AGM meeting following an election.	Receive a programme of ordinary meetings of the Council for the year, in an election year.
3.1 Ordinary meetings of the Council will take place in accordance with the calendar of meetings. Ordinary meetings will: (i) Elect a person to preside if the Mayor is not present (ii) Receive apologies for absence (iii)Deal with any business required by statute to be considered before any other business (iiii)Receive any declarations of interest from members; v]Approve the minutes of the previous meeting and any outstanding from previous meetings;	To swap around iii and iiiii to allow declaration of interests to be considered before any business	3.1 Ordinary meetings of the Council will take place in accordance with the calendar of meetings. Ordinary meetings will: (i) Elect a person to preside if the Mayor is not present (ii) Receive apologies for absence (iii)Receive any declarations of interest from members; (iiii)Deal with any business required by statute to be considered before any other business v]Approve the minutes of the previous meeting and any outstanding from previous meetings;

4.1 Calling extraordinary meetings Questions Questions shall not be permitted at extraordinary meetings and Rule 10 shall not apply.	Amendment of the latter part of the sentence to allow questions to be asked on Council reports at Extraordinary meetings. This is to allow members to seek any information needed to make an informed decision. This is particularly important for any reports that may need to be considered relating to the budget and policy framework documents at an extraordinary meeting	Questions on Notice shall not be permitted at extraordinary meetings and rules 10.2 to 10.7 shall not apply. [This will mean that section 10.1 permitting questions on reports at extraordinary meetings shall be applicable]
b)There will be 8 questions from Councillors which will receive direct oral answers. Questions on notice for oral answer will be set out on the Summons to the Council meeting.	Some added clarification to show the current practice of 6 oral questions	There will be up to 8 questions from Councillors which will receive direct oral answers. Questions on notice for oral answer will be set out on the Summons to the Council meeting.
C)All questions and answers must be made as questions/answers and must not be a speech or statement.	To support the public's understanding of the response being provided to questions set out on the Council agenda and ensuring that supplementary questions relate to the original question/ reply.	C)All questions and answers must be made as questions/answers, <i>addressing the subject matter</i> and must not be a speech or statement
11. DEPUTATIONS 11.1 A deputation may only be received by the Council if a requisition signed by not less than ten residents of the Borough, stating the object of the deputation, is received by the Democratic Services Manager not later than 10am to leave five clear days prior to the Council meeting.	To allow deputations to come forward following consideration of published agenda items and increase resident participation in meetings, it is proposed to amend the number of clear days from 5 to 3 days allowed to submit a deputation. [Other local authority rules looked at were Camden – 3 working days, Waltham Forest 1 working day, Islington 2 working days and Hackney 5 clear	11.1 A deputation may only be received by the Council if a requisition signed by not less than ten residents of the Borough, stating the object of the deputation, is received by the Democratic Services Manager not later than 10am to leave ~~five~~ three clear days prior to the Council meeting.

	working days	
11.9 The Deputation Spokesperson will be given five minutes to introduce the Deputation, following which they may answer any questions from Members. The Mayor will allocate a maximum amount of time for each deputation, and will have regard to other items of business on the Council agenda when doing so.	Proposed change is to ensure the spokesperson adhears to the matters submitted in the deputation request to the Council and committee	The Deputation Spokesperson will be given five minutes to introduce the Deputation, referring to the matters in their deputation requisition Following which they may answer any questions from Members. The Mayor will allocate a maximum amount of time for each deputation, and will have regard to other items of business on the Council agenda when doing so.
11.10 The relevant Cabinet member shall be given the opportunity to respond to Council on the issues raised, and advise Council what actions will be taken as a result of the deputation. Should no response be given at the meeting to which the deputation is put, the Cabinet Member should provide a response at the next ordinary meeting of Council.	Adding that a written response be provided where a response is not provided at the meeting.	The relevant Cabinet Member shall be given the opportunity to respond to Council on the issues raised, and advise Council what actions will be taken as a result of the deputation. Should no response be given at the meeting to which the deputation is put, the Cabinet Member should provide a response at the next ordinary meeting of Council together with a written response provided to the deputation spokesperson.
19.2 Where the Cabinet or a Committee is making a recommendation to full Council requiring a decision or resolution of	An additional paragraph is required to clarify the process around amendments to recommendations of Council reports and the	As set out in paragraph 15.8b Proposed amendments to recommendations to Council reports

the Council a report shall be submitted on the matter. Where the Cabinet or a Committee consider that any matter coming before them merits being drawn to the notice of the full Council, then a report shall be submitted to the next practicable meeting of the Council.	process to be followed at the meeting.	must be received in writing by the Democratic Services and Scrutiny Manager , proposed and seconded by two members and received no later than 10:00am on the day of the meeting. The Democratic Services Manager will ensure that Group Leaders are notified by telephone or email of any amendments received as soon as possible prior to the commencement of the Council meeting and in any event before 2.00pm on the day of the meeting with comments from officers if required. a)A proposed amendment to a recommendation must be relevant to the recommendation. b)Amendments to recommendations will be moved after the substantive item has been introduced by the relevant member. c)If the amendment is agreed, it will take the place of the recommendation and will then be put to the meeting. If the amendment is not agreed by Council, the original recommendation will then be put to Council.
Committee standing order 29.1 Notice of questions must	Change from five to three	Notice of questions must be given in writing to the

be given in writing to the Democratic Services Manager by 10 a.m. on such day as shall leave five clear days before the meeting (e.g. Friday for a meeting on the Monday 10 days later). The notice must give the name and address of the sender. Should a question be rejected, the questioner will receive a written response advising of this, including the reasons for the rejection	days to be consistent with the change to the committee deputation rule. There is no change to the Full Council rule on this as the timescale for public questions is the same as for Councillors.	Democratic Services Manager by 10 a.m. on such day as shall leave ~~five~~ three clear days before the meeting (e.g. Friday for a meeting on the Monday 10 days later). The notice must give the name and address of the sender. Should a question be rejected, the questioner will receive a written response advising of this, including the reasons for the rejection
30.1 A deputation may only be received by a Committee or its sub bodies if a requisition signed by not less than ten residents of the Borough, stating the object of the deputation, is received by the Democratic Services Manager not later than 10am to leave five clear days prior to the Committee meeting.	Change from five to three days to be consistent with the change to the Council deputation rule	30.1 A deputation may only be received by a Committee or its sub bodies if a requisition signed by not less than ten residents of the Borough, stating the object of the deputation, is received by the Democratic Services Manager not later than 10am to leave ~~five~~ three clear days prior to the Committee meeting.
The deputation spokesperson will be given three minutes to introduce the deputation, following which they may answer any questions from members. The Chair will allocate a maximum amount of time for each deputation, and will have regard to other items of business on the agenda	Proposed change is to ensure the spokesperson adheres to the matters submitted in the deputation request to the Council and committee out above	The Deputation Spokesperson will be given five minutes to introduce the Deputation, referring to the matters in their deputation requisition Following which they may answer any questions from Members. The Mayor will allocate a maximum amount of time for each deputation, and will have regard to other items of

when doing so.		business on the Council agenda when doing so.
Adding a new paragraph to the deputation section 30.7	In the committee standing orders there is not an understanding provided of the outcome of a deputation when these are considered at committee meetings where the Cabinet Member is not present. We have had issues with scrutiny panel meetings where it is not appropriate for officers to respond and the appropriate Cabinet member is also not present at the meeting.	The Committee Chair will provide a response in writing to the deputation spokesperson, outlining the actions that will be taken as a result of the deputation.

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COUNCIL PROCEDURE RULES

Note

In these rules:

“day” means any calendar day including week-ends and public holidays.

“working day” means any day when the offices of the Council’s administrative offices are open for business excluding week-ends and public holidays.

“clear day” means any working day and it excludes both the day of any initial action, giving notice or dispatch of papers (as appropriate) and the day of any subsequent action or meeting (as appropriate).

Where any action is required to be taken on, or before the end of, a working day, then it must be completed by 5.00 p.m. on that day unless the relevant rule states otherwise.

There is a Protocol outside this Constitution setting out how full Council meetings are to operate. This Protocol can be amended by the written agreement of the Leaders of the Political Groups on the Council.

1. ANNUAL MEETING OF THE COUNCIL

1.1 Timing and business

In a year when there is an ordinary election of Councillors, the Annual Meeting will take place within 21 days of the retirement of the outgoing Councillors. In any other year, unless specified otherwise by Order of Parliament, the Annual Meeting will take place in March, April or May.

The annual meeting will:

- (i) Elect a person to preside if the Mayor is not present
- (ii) Elect the Mayor for the ensuing year
- (iii) Receive apologies for absence
- (iv) Receive any late or urgent business
- (v) Receive any declarations of interest from members

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- (vi) Approve the minutes of the last meeting
- (vii) Receive written notification of the appointment of Deputy Mayor
- (viii) Pass a vote of thanks to the retiring Mayor and Mayoress / Escort and Deputy Mayor and Deputy Mayoress / Escort
- (ix) Receive such communications as the Mayor may desire to lay before the Council
- (x) Elect the Leader of the Council (only applies to the first meeting after the Council election)
- (xi) Appoint a Scrutiny Committee, and such Committees and subordinate bodies as the Council considers appropriate to deal with matters which are neither reserved to the Council nor are Executive functions (as set out in Part 3, of this Constitution). To confirm the size and terms of reference of these bodies and to appoint Chairs, Vice Chairs, Members and substitute or reserve Members and subordinate bodies in accordance with political balance rules (as set out in Part 3 of this Constitution)
- (xii) Make appointments to outside bodies except where appointment to those bodies has been delegated by the Council or where the power of appointment is vested in the Cabinet
- (xiii) Receive any announcements from the Leader, and/or Head of Paid Service
- (xiv) ~~Receive a programme of ordinary meetings of the Council for the year~~ Receive a programme of ordinary meetings of the Council for the year, in an election year and.**
- (xv) Consider any business set out in the notice convening the meeting

2. BUDGET SETTING MEETING

The budget-setting meeting will:

- (i) Elect a person to preside if the Mayor is not present
- (ii) Receive apologies for absence
- (iii) Receive any late or urgent business
- (iv) Receive any declarations of interest from members
- (v) Approve the minutes of the last meeting

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- (vi) Hear deputations and receive petitions related to the budget, accepted under rules 11 & 12
- (vii) Hear any proposed amendments to the budget
- (viii) Approve the budget
- (ix) Consider any business set out in the notice convening the meeting

3. ORDINARY MEETINGS

3.1 Ordinary meetings of the Council will take place in accordance with the calendar of meetings. Ordinary meetings will:

- (i) Elect a person to preside if the Mayor is not present
- (ii) Receive apologies for absence
- ~~(iii) Deal with any business required by statute to be considered before any other business~~
- ~~(iv) Receive any declarations of interest from members;~~
- (iii) Receive any declarations of interest from members***
- (iv) Deal with any business required by statute to be considered before any other business***
- (v) Approve the minutes of the previous meeting and any outstanding from previous meetings;
- (vi) Hold a Haringey Debate, on the agreed theme for that meeting. The form of the debate may include holding the debate as an Open Session under paragraph 30. Arrangements for how the debate will function are outlined in the full Council Protocol;
- (vii) Receive any announcements from the Mayor, the Leader, members of the Cabinet, the Head of Paid Service or the Monitoring Officer;
- (viii) To make appointments to Council committees and outside bodies;

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- (ix) Hear deputations and receive petitions accepted under rules 11 & 12;
 - (x) Receive questions from and provide answers to the public on matters notified under Rule 8;
 - (xi) Provide answers to written questions from Members. Receive oral questions from Members, and provide oral answers;
 - (xii) Deal with any business held over from the previous Council meeting;
 - (xiii) Receive reports from the Cabinet and the Council's Committees when a decision or resolution of Council is required, and receive questions and answers at the meeting on any of those reports;
 - (xiv) Receive an annual update from the relevant Cabinet Member on the progress toward reducing carbon emissions in the borough;
 - (xv) Receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
 - (xvi) Consider motions; and
 - (xvii) Consider any other business specified in the summons to the meeting, including consideration of proposals from the Cabinet in relation to the Council's budget and policy framework and reports of the Scrutiny Committee for debate.
- 3.2 The order of items (i), (ii), (iii), (iv) and (v) of paragraph 3.1 shall not be varied. The order of other business may be varied:
- (i) At the discretion of the Mayor, prior to the meeting following consultation with the Leader or at the meeting; or
 - (ii) By a resolution passed at the meeting on a motion (which need not be in writing) duly moved and seconded, and put without discussion.

4. EXTRAORDINARY MEETINGS

4.1 Calling extraordinary meetings

Those listed below may request the Democratic Services Manager to call Council meetings in addition to ordinary meetings:

- (i) The Council by resolution
- (ii) The Mayor

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- (iii) The Monitoring Officer; and
- (iv) Any five members of the Council if they have signed a requisition presented to the Mayor and he/she has refused to call a meeting or has failed to call a meeting within five working days of the receipt of the requisition.

4.2 Business

The only business to be transacted at an extraordinary meeting shall be that stated in the summons.

4.3 Questions

Questions shall not be permitted at extraordinary meetings and ~~Rule 10 shall not apply~~ **Rules 10.2 to 10.7 shall not apply. [This will mean that section 10.1 permitting questions on reports at extraordinary meetings shall be applicable]**

4.4 Deputations

Rule 11 shall apply to extraordinary meetings, but deputations will only be received where its purpose is related to an item of business on the summons.

5. NOTICE OF AND SUMMONS TO MEETINGS

The Democratic Services Manager will determine and give notice to the public of the time and place of any meeting in accordance with the Access to Information Rules. At least five clear working days before a meeting, the Democratic Services Manager will send a Summons signed by him or her by post to every member of the Council or leave it at their usual place of residence. The Summons will state the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

6. CHAIR OF MEETING

The person presiding at the meeting may exercise any power or duty of the Mayor. Where these rules apply to Committee, Board and Scrutiny meetings, references to the Mayor also include the Chair of Committees and Boards.

7. QUORUM

The quorum of a Council meeting shall be one quarter of the whole number of Members. During any Council meeting if the Mayor counts the number of members present and declares there is not a quorum present, the division bell shall be rung for thirty seconds and the Mayor shall then ascertain whether a quorum is present. If a quorum is not

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present the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Mayor. If he/she does not fix a date, the remaining business will be considered at the next ordinary Council meeting.

8. DURATION OF MEETING

8.1

- (i) Council meetings shall end at 10 p.m. on the day of the meetings, provided that the Mayor has discretion to extend the time to allow for adjournments, deputations and to complete the item then under discussion;
- (ii) If a report, a motion or an amendment to a motion is still being discussed, the Member speaking at the time may continue speaking for the remainder of the time allowed for speeches under these rules;
- (iii) The relevant Councillor who moved the report or substantive motion shall have a right of reply before the motion or amendment is put to the vote. No other right of reply is allowed;
- (iv) Before the Mayor concludes the meeting, a motion shall be put detailing the outstanding reports of Committees not disposed of and asking that the Council adopt them, and recommendations contained within them, without debate; all other business remaining shall fall;
- (v) Any motions on the agenda that fall under (iv) may be resubmitted for the next, or a subsequent, Council meeting in accordance with Rule 13.

9. QUESTIONS BY THE PUBLIC

9.1 General

Any resident, council tax payer or national non domestic rate payer of the Borough may ask questions of the Leader, members of the Cabinet, Committee Chairs or Councillor Representatives on external bodies at ordinary meetings of the Council. A total of 20 minutes will normally be allowed for public questions at each ordinary meeting of the Council. A question being answered at the time limit shall be completed. Where an open debate is planned, any public questions will be at the Mayor's discretion following advice from the Monitoring Officer.

9.2 Order of questions

Questions will be asked in the order notice of them was received, except that the Mayor may group together similar questions. Only one question

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per meeting may be put by a single questioner and no more than two questions may be put on behalf of an organisation.

9.3 Notice of questions

A question may only be asked if notice has been received in writing or by electronic mail by the Democratic Services Manager no later than 10am so as to leave eight clear days in advance of the Council meeting, stating the Member of the Council to whom the question is to be addressed. The Democratic Services Manager will circulate a list of all valid questions. Should a question be rejected, the questioner will receive a written response advising of this, including the reasons for the rejection.

9.4 Scope of questions

The Monitoring Officer may reject a question if it:

- Is not about a matter for which the local authority has a responsibility or which affects the well-being of the Borough;
- Is defamatory, frivolous or offensive;
- Is substantially the same as a question, motion or deputation which has been put at a meeting of the Council in the past six months;
- Requires the disclosure of confidential or exempt information.

9.5 Asking the question at the meeting

The Mayor will invite the questioner to put the question to the Member named in the notice. If a questioner who has submitted a written question is unable to be present, they may ask the Mayor to put the question on their behalf. The Mayor may ask the question on the questioner's behalf, indicate that a written reply will be given or decide, in the absence of the questioner, that the question will not be dealt with. The questioner may ask one supplementary question for the purpose of elucidation provided that it falls within the scope under 9.4.

9.6 Written answers

Any questions which cannot be dealt with during public question time, either because of lack of time or because of the non-attendance of the Member to whom it was to be put, will be dealt with by a written answer.

9.7 Reference of question to the Cabinet or a Committee

Unless the Mayor decides otherwise, no discussion will take place on any question, but any Member may move that a matter raised by a

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question be referred to the Cabinet or the appropriate Committee or sub-committee. Once seconded, such a motion will be voted on without discussion.

10 QUESTIONS BY MEMBERS

10.1 On reports of the Cabinet or Committees

A Member of the Council may ask the Leader or the Chair of a Committee any question without notice upon an item of the report of the Cabinet or a Committee when that item is being received or under consideration by the Council.

10.2 Questions on notice at full Council

Subject to Rule 10.3, a Member of the Council may ask:

- The Mayor;
- The Leader
- Any Member of the Cabinet; or
- The Chair of any Committee or Board
- The Council's representative(s) on any outside body;

a question on any matter in relation to which the Council has powers or duties or which affects Haringey.

10.3 Scope of questions

The Monitoring Officer may reject a question if it:

- Is not about a matter for which the local authority has a responsibility or which affects the well-being of the Borough;
- Is defamatory, frivolous or offensive;
- Is substantially the same as a question, motion or deputation which has been put at a meeting of the Council in the past six months; or
- Requires the disclosure of confidential or exempt information

10.4 Notice of questions

- (a) A Councillor may ask one substantive question per meeting, in accordance with rule 10.5 (d), provided that they have been received in writing by the Democratic Services Manager no later

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than 10 am so as to leave eight clear days prior to the Council meeting, stating which Member of Council the question is to be addressed to. Should a question be rejected, the questioner will receive a written response advising of this, including the reasons for the rejection. Each question should be confined to one substantive topic.

- (b) There will be **up to 8** questions from Councillors which will receive direct oral answers. Questions on notice for oral answer will be set out on the Summons to the Council meeting.
- (c) A Member of the Council may ask the Leader or the Chair of a Committee any question without notice upon an item of the report of the Cabinet or a Committee when that item is being received or under consideration by the Council.
- (d) Questions for written answer and the answers provided will be published on the Council's website as soon as practicable after the relevant meeting.

10.5 Order of Questions

- (a) There will be 8 questions which will receive direct oral answers. All other questions will receive written answers. Questions from each group will be placed so as to alternate on the agenda is so far as is practicable with 5 from the majority group and 3 from the opposition. 3 minutes will be allocated to answer the main question and 2 minutes allocated to answer supplementary questions
- (b) A total of 30 minutes (allowing for any adjournments) shall be allowed on questions and answers under this rule; a question being answered at the time limit (and any supplementary questions to it) shall be completed.
- (c) All questions and answers must be made as questions/answers, **addressing the subject matter**, and must not be a speech or statement.
- (d) Any oral questions remaining unanswered after the time limit must be answered in writing and shall be circulated to all Members on or before the fourth working day after the Council meeting.
- (e) Each Member of the Council may ask one question for written answer in addition to those for oral answer. Each question and response should be confined to one substantive topic.

10.6 Response

An answer may take the form of:

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- (a) a direct oral answer;
- (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
- (c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner. Written answers will be supplied to members no later than the meeting

10.7 Supplementary questions

The Councillor asking any question may ask the first supplementary question without notice of the Councillor to whom the first question was asked. The second supplementary question, **relevant to the original question**, may be asked by a Councillor of the other political party or group, unless they do not wish to use it in which case it reverts to the party asking the original question. Each supplementary question must arise directly out of the original question or the reply. No supplementary questions may be asked on written answers.

11. DEPUTATIONS

- 11.1 A deputation may only be received by the Council if a requisition signed by not less than ten residents of the Borough, stating the object of the deputation, is received by the Democratic Services Manager not later than 10am to leave ~~five~~ **three** clear days prior to the Council meeting.
- 11.2 Requisitions for deputations shall not be accepted from, nor on behalf of, political parties, nor if submitted on paper bearing the name, insignia or other device of a political party.
- 11.3 Subject to the foregoing the Democratic Services Manager shall bring the requisition before the Mayor, who having consulted the Leader, or in his/her absence the Deputy Leader, shall decide whether notice shall be given of the deputation on the agenda paper for a meeting of the Council. The Leader must have regard to other business on the Council agenda in reaching such a decision; however a deputation will normally be accepted where there is an item on the Council agenda of the same subject matter. Where there is not an item on the Council agenda of the same subject, the Mayor may refer the Deputation to Cabinet, a Cabinet member, a Committee of the Council or the Overview and Scrutiny Committee.
- 11.4 The Deputation leader must be notified in writing as soon as possible if the deputation is not to be taken at that Council meeting, advising of the reasons for the deputation not being taken at Full Council.
- 11.5 Scope of deputations

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The Monitoring Officer may reject a Deputation if it

- Is not about a matter for which the local authority has a responsibility or which affects the well-being of the Borough;
- Is defamatory, frivolous or offensive;
- Is substantially the same as a deputation, question or motion which has been put at a meeting of the Council in the past six months; or
- Requires the disclosure of confidential or exempt information.

11.6 Taking the Deputation at the meeting

11.7 A total of 30 minutes shall be allocated to Deputations on the Council agenda.

11.8 If the Mayor shall have decided that the notice of the deputation shall be given on the agenda paper, any Councillor shall be at liberty when the item is called by the chair to move a motion without notice that the deputation be not received or that it be referred to the Cabinet, a Cabinet member or a committee as the case may be and such motion on being seconded shall at once be put to the vote.

11.9 The Deputation Spokesperson will be given five minutes to introduce the Deputation, **referring to the matters in their deputation requisition.** **Following** which they may answer any questions from Members. The Mayor will allocate a maximum amount of time for each deputation, and will have regard to other items of business on the Council agenda when doing so.

11.10 The relevant Cabinet member shall be given the opportunity to respond to Council on the issues raised, and advise Council what actions will be taken as a result of the deputation. Should no response be given at the meeting to which the deputation is put, the Cabinet Member should provide a response at the next ordinary meeting of Council **together with a written response provided to the deputation spokesperson.**

12. PETITIONS

12.1 The Democratic Services Manager should be notified of any Petitions by 10 a.m. five clear days in advance of the Council meeting. The petition will be handed to the Mayor, and recorded as received by the Democratic Services Manager without any further debate. The relevant Cabinet member should report the Council's response to the petition at the next ordinary meeting of the Council.

13. MOTIONS ON NOTICE

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13.1 Notice

Except for motions which can be moved without notice under Rule 14, written notice of motions, together with the names of the proposer and seconder, must be delivered to the Democratic Services Manager not later than 10.00 a.m. so as to leave five clear working days before the date of the meeting. These will be available for inspection the day after the closing date for receipt.

13.2 Motion set out in agenda

Each political group will be able to give notice on one motion at each ordinary meeting. Motions for which notice has been given will be listed on the agenda, in a sequence alternated between groups from meeting to meeting.

13.3 Scope

Motions must be about matters for which the Council has a responsibility or which affect the well-being of Haringey.

13.4 Withdrawing a motion

If a motion set out in the summons is not moved either by the Member who gave notice or by some other Member on that Member's behalf it shall, unless postponed by consent of the Council, be treated as withdrawn and shall not be moved without fresh notice

13.5 Motions Out of Order

The Mayor may in consultation with the Chief Executive or Monitoring Officer, rule out of order motions which, in his/her opinion, would risk:-

- (a) defamation of any individual;
- (b) not conforming to the provisions of rule 9.4 or which breach other Council Procedure Rules.

Such motions shall not appear on the Council agenda or be otherwise circulated.

14. MOTIONS WITHOUT NOTICE

The following motions may be moved without notice:

- (a) to appoint a Chair of the meeting at which the motion is moved;
- (b) in relation to the accuracy of the minutes;

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- (c) to change the order of business in the agenda; (in accordance with Rule 3.2 (ii))
- (d) to refer something to an appropriate body or individual;
- (e) to appoint a committee or member arising from an item on the summons for the meeting;
- (f) to receive reports or adoption of recommendations of Committees or officers and any resolutions following from them;
- (g) to withdraw a motion;
- (h) to extend the time limit for speeches by 2 minutes;
- (i) to amend a motion;
- (j) to proceed to the next business;
- (k) that the question be now put;
- (l) to adjourn a debate;
- (m) to adjourn a meeting;
- (n) to suspend a particular Council Procedure Rule;
- (o) to exclude the public and press in accordance with the Access to Information Rules;
- (p) to not hear further a member named under Rule 22.4 or to exclude them from the meeting under Rule 22.5;
- (q) to give the consent of the Council where its consent is required by this Constitution; and
- (r) to move an emergency motion where the Mayor has given consent.

14A. EMERGENCY MOTIONS

Any Member may ask the Mayor to consider the admission of an emergency motion as urgent business, provided that due notice could not reasonably have been given in accordance with Rule 13.1. All other Rules relating to motions on notice must be complied with, including the giving of written notice, together with the names of the proposer and seconder, to the Democratic Services Manager. This notice should be given, if at all possible, by 10.00 a.m. on the day of the Council meeting and, in any event, no later than 3.00 p.m. on that day.

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15. RULES OF DEBATE

15.1 Length of Debate

Discussion on any one motion, including amendments shall not exceed 30 minutes

15.2 No speeches until motion seconded

No speeches may be made after the mover has moved a proposal and explained the purpose of it until the motion has been seconded.

15.3 Substitution of movers and seconders

Another member may speak on behalf of the mover or seconder who gave written notice of a motion

15.4 Right to require motion in writing

Unless notice of the motion has already been given, the Mayor may require it to be written down and handed to him/her before it is discussed.

15.5 Secunder's speech

When seconding a motion or amendment, a member may reserve their speech until later in the debate.

15.6 Content and length of speeches

- (a) Speeches must be directed to the question under discussion or to a personal explanation or point of order. Except as set out below no speech may exceed three minutes without the consent of the Mayor.
- (b) The following persons may be allowed to speak for up to 5 minutes:
 - (i) The Leader and a Member of the Cabinet or Chair of a Committee who is presenting a report to the Council or moving the adoption of minutes of that Committee
 - (ii) The mover of a motion.
 - (iii) A Member exercising his/her right of reply to a motion
- (c)
 - (i) At the Annual Council Meeting and at the Council meeting which determines the budget and on the occasion of the State of the Borough Debate the Leader shall be allowed 15 minutes to deliver his/her priorities speech.

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- (ii) The Leaders of the opposition groups shall be allowed 7 minutes to reply to (c) (i) above
- (iii) The Leader or other person as they may nominate shall be allowed a further 3 minutes in total to respond to the speeches in (ii) above

15.7 When a Member may speak again

A Member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

- (a) if the Member has formally seconded a motion or amendment and reserved the right to speak later
- (b) to speak once on an amendment moved by another member;
- (c) to move a further amendment if the motion has been amended since he/she last spoke;
- (d) if his/her first speech was on an amendment moved by another member, to speak on the main issue (whether or not the amendment on which he/she spoke was carried);
- (e) in exercise of a right of reply in accordance with rule 15.11;
- (f) on a point of order; and
- (g) by way of personal explanation.

15.8 Amendments to motions

- (a) An amendment to a motion must be relevant to the motion and will either be:
 - (i) to refer the matter to an appropriate body or individual for consideration or reconsideration;
 - (ii) to leave out words;
 - (iii) to leave out words and insert or add others; or
 - (iv) to insert or add words.

as long as the effect of (ii) to (iv) is not to negate the motion completely.

- (b) Any proposed amendment to a motion or recommendation at Council shall be submitted to the Democratic Services Manager

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by no later than 10.00 a.m. on the day of the meeting. A motion submitted by a political group may not be amended by that political group in advance of the meeting. The Democratic Services Manager will ensure that Group Leaders are notified by telephone or email of any amendments received as soon as possible prior to the commencement of the Council meeting and in any event before 2.00pm on the day of the meeting.

- (c) Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- (d) If an amendment is not carried, other amendments to the original motion may be moved.
- (e) If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- (f) After an amendment has been carried, the Mayor will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

15.9 Alteration of motion

- (a) A member may alter a motion of which he/she has given notice with the consent of the meeting. The meeting's consent will be signified without discussion.
- (b) A member may alter a motion which he/she has moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.
- (c) Only alterations which could be made as an amendment may be made.

15.10 Withdrawal of motion

A member may withdraw a motion which he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

15.11 Right of reply

- (a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.

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- (b) The mover of a motion may nominate another member to exercise the Right of Reply in their place.
- (c) If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.
- (d) The mover of the amendment has no right of reply to the debate on his or her amendment.

15.12 Motions which may be moved during debate

When a motion is under debate, no other motion may be moved except the following procedural motions:

- (a) to withdraw a motion;
- (b) to amend a motion;
- (c) to proceed to the next business;
- (d) that the question be now put;
- (e) to adjourn a debate;
- (f) to adjourn a meeting;
- (g) to exclude the public and press in accordance with the Access to Information Rules; and
- (h) to not hear further a member named under Rule 22.4 or to exclude them from the meeting under Rule 22.5.

15.13 Closure motions

- (a) A member may move, without comment, the following motions at the end of a speech of another member:
 - (i) to proceed to the next business;
 - (ii) that the question be now put;
 - (iii) to adjourn a debate; or
 - (iv) to adjourn a meeting.
- (b) If a motion to proceed to next business is seconded and the Mayor thinks the item has been sufficiently discussed, he or she will give the mover of the original motion a right of reply and then put the procedural motion to the vote.

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- (c) If a motion that the question be now put is seconded and the Mayor thinks the item has been sufficiently discussed, he/she will put the procedural motion to the vote. If it is passed he/she will give the mover of the original motion a right of reply before putting his/her motion to the vote.
- (d) If a motion to adjourn the debate or to adjourn the meeting is seconded and the Mayor thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she will put the procedural motion to the vote without giving the mover of the original motion the right of reply.

15.14 Point of order

A member may raise a point of order at any time. The Mayor will hear them immediately. A point of order may only relate to an alleged breach of these Council Rules of Procedure or the law. The member must indicate the rule or law and the way in which he/she considers it has been broken. The ruling of the Mayor on the matter will be final.

15.15 Personal explanation

A member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate. The ruling of the Mayor on the admissibility of a personal explanation will be final.

16. PREVIOUS DECISIONS AND MOTIONS

16.1 Motion to rescind a previous decision

A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least 20 members.

16.2 Motion similar to one previously rejected

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months cannot be moved unless the notice of motion or amendment is signed by at least 20 members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

16.3 Decision of Committee to rescind a previous decision

If a Committee decides that a decision of the Council or a Committee, made within the previous 6 months ought to be rescinded or substantially

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varied then that Committee, may recommend but may not resolve to the Council that the decision in question be rescinded or varied.

17. VOTING

17.1 Majority

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those members present and voting in the room at the time the question was put.

17.2 Mayor's casting vote

If there are equal numbers of votes for and against, the Mayor will have a second or casting vote. There will be no restriction on how the Mayor chooses to exercise a casting vote.

17.3 Show of hands

Unless a recorded vote is demanded under Rules 17.4 and 17.5, the Mayor will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

17.4 Recorded vote

Save in relation to a Budget Setting Meeting of the Council where rule 17.6 applies, if 8 members present at the meeting demand it, by standing in their places, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes. This rule does not apply to procedural motions and is subject to the right of the Mayor to reject any demand for a recorded vote that is considered frivolous or vexatious.

17.5 Right to require individual vote to be recorded

Where any member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

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17.6 Recorded votes at Budget Setting Meetings

Immediately after any vote is taken at a Budget Setting Meeting of the Council the names of the members voting for, against or abstaining from the decision will be recorded in the minutes of the meeting.

17.7 Voting on appointments

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

18. MINUTES

18.1 Signing the minutes

The Mayor will sign the minutes of the proceedings at the next suitable meeting. The Mayor will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy, which shall be raised by motion. If no such question is raised, or if it is raised then as soon as it has been disposed of, the Mayor shall sign the minutes.

18.2 No requirement to sign minutes of previous meeting at extraordinary meeting

Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of schedule 12 to the Local Government Act 1972 (an Extraordinary Meeting), then the next following meeting which is not an extraordinary meeting will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of schedule 12 relating to signing of minutes.

18.3 Form of minutes

Minutes will contain all motions and amendments in the exact form and order the Mayor put them.

19. SUBMISSION OF RECOMMENDATIONS AND REPORTS

19.1 The Chief Executive shall submit a report listing any recommendations from Overview and Scrutiny Committee requiring policy change or Cabinet action. The Mayor shall itemise, in turn, each area of dispute between the Cabinet and the Scrutiny Committee and shall call for a debate on each item. At the conclusion of the debate on each item, the Mayor shall call for a vote to be taken on the item concerned.

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- 19.2 Where the Cabinet or a Committee is making a recommendation to full Council requiring a decision or resolution of the Council a report shall be submitted on the matter. Where the Cabinet or a Committee consider that any matter coming before them merits being drawn to the notice of the full Council, then a report shall be submitted to the next practicable meeting of the Council.

(a) Proposed amendments to recommendations to Council reports must be received in writing by the Democratic Services and Scrutiny Manager, proposed and seconded by two members and received no later than 10:00am on the day of the meeting. The Democratic Services Manager will ensure that Group Leaders are notified by telephone or email of any amendments received as soon as possible prior to the commencement of the Council meeting and in any event before 2.00pm on the day of the meeting with comments from officers if required.

(i) A proposed amendment to a recommendation must be relevant to the recommendation.

(ii) Amendments to recommendations will be moved after the substantive item has been introduced by the relevant member.

(iii) If the amendment is agreed, it will take the place of the recommendation and will then be put to the meeting. If the amendment is not agreed by Council, the original recommendation will then be put to Council.

- 19.3 In all other cases decisions of the Cabinet, Committees and other bodies may be implemented once the decision is made subject to the procedures on suspending definitive action the Call-In Procedure Rules in and any statutory action by the Monitoring Officer.
- 19.4 The Chair of the Overview and Scrutiny Committee and the Chair of the Standards Committee will submit a written reports on the proceedings of the Committees as often as the Committees consider necessary but at least once a year at the first meeting after the annual meeting of the Council.

20. RECORD OF ATTENDANCE

All members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting.

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Section A – Council Procedure Rules

21. EXCLUSION OF PUBLIC

Members of the public and press may only be excluded either in accordance with the Access to Information Rules in Part 4 of this Constitution or Rule 23 (Disturbance by Public).

22. MEMBERS' CONDUCT

22.1 General conduct

Members are required to comply with the Code of Conduct at all times. Where necessary and appropriate the Mayor will remind members of their responsibilities under the Code during the course of the meeting.

22.2 Standing to speak

When a member speaks at full Council they must stand and address the meeting through the Mayor, except where the member or members may be physically unable to do so. If more than one member stands, the Mayor will ask one to speak and the others must sit. Other members must remain seated whilst a member is speaking unless they wish to make a point of order or a point of personal explanation.

22.3 Mayor standing

When the Mayor indicates by standing or some other means during a debate, any member speaking at the time must stop and sit down. The meeting must be silent.

22.4 Member not to be heard further

If a member persistently disregards the ruling of the Mayor by behaving improperly or offensively or deliberately obstructs business, the Mayor or any other member may move that the member be not heard further. If seconded, the motion will be voted on without discussion.

22.5 Member to leave the meeting

If the member continues to behave improperly after such a Motion is carried, the Mayor may move that either the member leaves the meeting or that the meeting is adjourned for a specified period and to a specified place. If seconded, the motion will be voted on without discussion.

22.6 General disturbance by individual member or groups of members

If there is a general disturbance making orderly business impossible, the Mayor may adjourn the meeting for as long and to such place as he/she thinks necessary.

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23. DISTURBANCE BY PUBLIC

23.1 Removal of member of the public

If a member of the public interrupts proceedings, the Mayor will warn the person concerned. If they continue to interrupt, the Mayor will order their removal from the meeting room.

23.2 Clearance of part of meeting room

If there is a general disturbance in any part of the meeting room open to the public, the Mayor may call for that part to be cleared.

24. DECLARATIONS OF INTEREST OF MEMBERS

24.1 If a member of the Council has a disclosable pecuniary interest or a prejudicial interest as referred to in the Members' Code of Conduct in any matter under consideration, then the member shall declare his or her interest at the start of the meeting or as soon as the interest becomes apparent. The member may not participate or participate further in any discussion of the matter or participate in any vote or further vote taken on the matter at the meeting and must withdraw from the meeting until discussion of the relevant matter is concluded unless that member has obtained a dispensation from the Council's Standards Committee.

24.2 If a member of the Council has a personal interest which is not a disclosable pecuniary interest nor a prejudicial interest, the member is under no obligation to make a disclosure at the meeting but may do so if he/she wishes.

25. SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES

25.1 Suspension

All of these Council Rules of Procedure except Rules 20, 21 and 24 may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Council are present. Suspension can only be for the duration of the meeting.

25.2 Amendment

Any motion to add to, vary or revoke these Council Procedure Rules will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

26. ALTERATION OF DATE/TIME OF MEETING

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The Mayor or Deputy Mayor may in any case when he/she considers it necessary following consultation with the Leader, and provided due notice can be given, alter the date or time of the meeting of the Council.

27. INTEREST OF OFFICERS IN CONTRACTS

The Monitoring Officer shall record particulars of any notice given by an officer of the council

28. ADVICE TO COUNCIL BY OFFICERS

The Mayor may permit Officers to give advice to the Council as and when appropriate.

29. OPEN SESSIONS WITH PARTNERS

29.1 The Leader, after consultation with the Mayor, may request the Democratic Services Manager to call an open session at which partner organisations via nominated spokespersons will be invited to attend and debate with elected members, matters of common interest and public policy. Such meetings may be held outside Council premises. The Democratic Services Manager, will by letter, invite partner organisations to attend the event. The Council rules of debate will be applicable to open sessions and these will be set out in the letter of invitation.

29.2 Haringey Debates

The Haringey debates which take place at ordinary meetings may take the form of an Open Session. The Leader will decide the form of the debate with the aim of enabling the widest possible public involvement and publicity.

30. VOTES OF NO CONFIDENCE

30.1 A vote of no confidence relating to any office holder may only be moved if notice of it clearly set out as such appears on the agenda of the relevant meeting of the Council

30.2 In accordance with Article 7.06 in Part 2 of this Constitution, the Leader shall cease to hold office if a vote of no confidence is carried at a meeting of the full council by a majority of the members of the whole council then present. In that event Articles 7.06 and 7.07 make provision for the discharge of the Leader's functions.

30.3 A Chair of a Committee, Sub-Committee or other body shall cease to hold office if a vote of no confidence is carried at a meeting of the full Council by a majority of the members of the whole Council then present. The Vice Chair will assume the role of Chair until such time as the appointment of a replacement as Chair, or the re-appointment of the member concerned, by full Council.

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- 30.4 For the avoidance of doubt, Rule 30.3 applies to all other bodies exercising non-executive functions including the Alexandra Palace and Park Board. Rule 30.3 shall not apply to the Chair of the Overview and Scrutiny Committee or the Chair of a Scrutiny/Review Panel but Article 6.05 shall apply.

31. ALEXANDRA PARK AND PALACE

Before full Council considers any matter, acting in its capacity as the statutory trustee of Alexandra Park and Palace trust, the Chief Executive shall read out the following reminder to Members: “When discharging the trustee function the Council must have regard to its duties as the trustee to the exclusion of all other matters. These duties include the obligation to act in the best interests of the charity above all other considerations. Similarly, each Member is under a duty, to the extent that it lies within the Member’s power, to secure that the Council fulfils its duties as the trustee and, conversely, that the Council does not commit any breach of trust.”

32. RECORDING, PHOTOGRAPHY AND USE OF SOCIAL MEDIA AT MEETINGS

- 32.1 Meetings may be filmed or recorded by the Council for live or subsequent broadcast via the Council’s internet site or by anyone attending the meeting using any communication method. Members of the public recording, filming or reporting on any meeting shall be asked not to include the public seating areas, however the Council cannot guarantee that members of the public attending any meeting will not be filmed or recorded by others attending the meeting. Members of the public participating in any meeting (e.g. making deputations, asking questions, making oral protests) will be aware that they are likely to be filmed, recorded or reported on. Members of the public shall be aware that by entering the meeting room they are consenting to being filmed and to the possible use of those images and sound recordings.
- 32.2 The Chair of the meeting has the discretion to terminate or suspend filming or recording, if in his or her opinion continuation of the filming, recording or reporting would disrupt or prejudice the proceedings, infringe the rights of any individual, or may lead to the breach of a legal obligation by the Council.
- 32.3 There is a protocol outside this Constitution offering guidance on recording, photography and use of social media at Council, Cabinet and other public meetings.

33. MAYOR’S PREROGATIVE ON THE INTERPRETATION OF PROCEDURE RULES

PART FOUR – RULES OF PROCEDURE
Section A – Council Procedure Rules

The ruling of the Mayor, with the advice of the Chief Executive or the Monitoring Officer, on the interpretation or application of any of these Standing Orders, or on any procedures of the Council Meeting, shall not be challenged at the meeting.

Part Four, Section B

Committee Procedure Rules

COMMITTEE PROCEDURE RULES

1. The Council at its annual meeting shall establish such Committees, Sub-Committees and other bodies as may be required by law or be necessary to carry out the work of the Council, and shall prescribe the number of voting members of each Committee or other body having regard to political balance in accordance with the Local Government and Housing Act 1989, define their terms of reference and delegate to them such functions, powers and duties (except the power of levying the council tax) as the Council shall think fit or statute may require.
2. The Council may resolve that non-voting members, assessors and advisers shall also be appointed to any such committee or other body, and shall hold office until the annual meeting in the year following their appointment or for so long as the Council deem appropriate, whichever is the earlier; and if they resolve to make such appointments, shall specify the number of appointments to be made and the functions in relation to the body that each person so appointed may exercise.
3. Where appointments to Sub-Committees and other bodies are made by the Council, they shall be deemed for all purposes to have been made by their parent Committee (or, in the case of joint Sub-Committees and other bodies, by their parent Committees) and to be subordinate bodies of the Committee(s), which may make arrangements for a sub-committee to discharge any of the functions of the authority which the committee may discharge.
4. Where Chairs and Deputy-Chairs of Sub-Committees and other bodies have been appointed by the Council shall be deemed to have been appointed by their parent Committee(s).
5. From time to time other bodies may be established for the purpose of assisting or advising Committees in the exercise of their functions. They may be authorised to co-ordinate executive action across several Services or to develop policy in areas where special consideration is desirable.
6. Unless expressly provided for in the respective constitution or terms of reference, these rules will apply to all non-executive bodies including the Licensing Sub-Committee. When the Licensing Sub-Committee is conducting a hearing, then only the rules on Substitute Members shall apply.

PART FOUR – RULES OF PROCEDURE
Section B – Committee Procedure Rules

7. Whenever:
 - (a) the Council is required to review the allocation of seats on Committees between political groups, or
 - (b) the Council resolves to carry out such a review, or
 - (c) a Committee is required to review the allocation of seats on a Sub-Committee between political groups, or
 - (d) a Committee resolves to carry out such a review, the Chief Executive shall submit a report to the Council or Committee (as the case may be), showing what allocation of seats would, in his/her opinion, best meet the requirements of section 15(4) of the Local Government and Housing Act 1989.
8. In the light of such a report under paragraph 7 above, the Council or Committee, as the case may be, shall determine the allocation of seats to political groups.
9. Full Council, in respect of non executive committees and the Leader, in respect of Executive appointments, are responsible for appointing to or terminating appointing to committees/Cabinet.
10. These rules in respect of Committees shall apply to the Standards Committee and Licensing Sub-Committee, to the extent indicated in paragraph 6 above, with the exception of the rules on political balance in relation to the Licensing Sub-Committee.

MEETINGS OF COMMITTEES, SUB-COMMITTEES, ETC.

12. The meetings of Committees and Sub-Committees shall be organised in accordance with a timetable approved each year by the Council and/or the Cabinet. The Chair may call a special meeting and may agree to the cancellation of a meeting on being satisfied that there is insufficient business to warrant it. Dates of meetings may be changed to a date decided by the Chair if it is in the interests of the Council's affairs or in the public interest to do so.
13. Other bodies may be timetabled or shall meet as and when required on dates to be decided by the Chair following consultation with the leading Opposition member.
14. The Chair of a Committee or Sub-Committee may call a special meeting if a requisition for a special meeting, signed by at least two, or one quarter of the total number of the voting members of a Committee or Sub-Committee, whichever is greater, has been presented to the Democratic Services Manager.

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Section B – Committee Procedure Rules

15. If the Chair has refused to call a meeting or, without him/her so refusing, no special meeting has been called within seven days of the presentation of the requisition, then any two, or one quarter of the number of the voting members of the Committee or Sub-Committee, whichever is greater, may forthwith call a special meeting of the Committee or Sub-Committee.
16. Where any members decide to call a special meeting of a Committee or Sub-Committee, they shall signify to the Chief Executive that they have done so, the business to be transacted and the date and time for which the meeting is called. The Chief Executive shall thereupon ensure that the agenda is published and sent as at rule 51 below.
17. The notice convening a special meeting shall set out the business to be considered, and no other business shall be considered.
18. No meeting shall continue after 10 p.m., except that discussion of the specific item or case in hand at 10 p.m. may continue thereafter at the discretion of the Chair of the meeting. Consideration of any business remaining shall be deferred to the next ordinary meeting, except where the matter(s) falls to be dealt with under the urgency provisions.
19. In the absence of the Chair, the Deputy-Chair(s) shall have authority to act for any of the purposes set out in rule 12-15 above.

CHAIRS AND DEPUTY CHAIRS OF COMMITTEES, SUB-COMMITTEES, ETC

20. At each annual meeting, the Council shall appoint the Chair and Deputy Chair(s) for every Committee, Sub-Committee and other body for the year ahead, unless the Constitution provides otherwise. If a vacancy arises during the year, the Chief Executive shall report to the next ordinary meeting of the Council to enable a member to be appointed to fill the vacancy.
21. If any appointment possible under the previous paragraph is not made, the Committee, Sub-Committee or other body shall, from among their voting members, appoint a person to preside at their meetings.
22. In the absence of the Chair from a meeting, the Deputy-Chair shall preside. In the absence of both the Chair and a Deputy-Chair from a meeting and providing the meeting is quorate, any member may propose, at the request of the Democratic Services Manager or his/her representative, the election of a voting member present to preside at the meeting.
23. The first proposal to elect a member to preside shall be voted upon before any further proposal is made. The Democratic Services Manager or his/her representative, acting on the advice of the Monitoring Officer or his/her representative, shall determine any question of interpretation

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Section B – Committee Procedure Rules

relating to the election procedure before a member has been chosen to preside. Unless a member is elected to preside, or the Chair or Deputy Chair returns, the meeting cannot transact any business.

24. If, while another member is presiding at a meeting, the Chair or Deputy-Chair enters the meeting, the member presiding shall stand down in favour of the Chair or Deputy-Chair at the conclusion of the item under discussion.

QUORUM

25. No business shall be transacted at any meeting of a Committee, Sub-Committee or other body, unless at least one quarter of the whole number of voting members are present, provided that in no case shall any business be transacted unless at least three voting members are present.

26. **Commencement of Meeting**

If there is no quorum after fifteen minutes from the time appointed for the start of the meeting, that meeting shall be postponed to a future date, to be determined by the Chair after consultation with the Opposition spokesperson.

27. **During Meeting**

If at any time after the commencement of a meeting there is not a quorum present, the Chair shall suspend the business for three minutes. If there is still no quorum at the end of three minutes the Chair shall terminate the meeting.

LIMITATION ON DELEGATED POWERS

28. Each Committee, Sub-Committee, or other body shall act in accordance with Part 3 of this Constitution and with the responsibilities for functions so delegated to it as approved by the Council (and in accordance with its own constitution, if any) subject to the following general reservations:

- (a) Where powers have been delegated to a Committee, Sub-Committee, or other body it shall be competent for that body to refer any matter to the next higher authority for decision by them and the Democratic Services Manager shall so arrange. A Chair of a body may, within two working days after the date of a decision being made and before definitive action has been taken, delay by written notice to the Democratic Services Manager, such definitive action to enable the decision to be confirmed or otherwise by the next higher authority.
- (b) A matter referred by a joint body to the higher authority under sub-clause (a) above shall be submitted to the relevant parent body/bodies having responsibility for that aspect of the joint body's terms of reference.

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Section B – Committee Procedure Rules

QUESTIONS, DEPUTATIONS AND PETITIONS

29. Public Questions

- 29.1 Any resident, council tax payer or national non domestic rate payer of the Borough may ask the Chair of any Committee or its sub bodies any question on anything for which the Committee is responsible at any ordinary meeting.
- 29.2 Notice of questions must be given in writing to the Democratic Services Manager by 10 a.m. on such day as shall leave ~~five~~ **three** clear days before the meeting (e.g. Friday for a meeting on the Monday 10 days later). The notice must give the name and address of the sender. Should a question be rejected, the questioner will receive a written response advising of this, including the reasons for the rejection
- 29.3 The Monitoring Officer may reject a question if it:
- Is not about a matter for which the local authority has a responsibility or which affects the Borough;
 - Is defamatory, frivolous or offensive;
 - Is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
 - Requires the disclosure of confidential or exempt information.
- 29.4 The Democratic Services Manager may put questions into an appropriate form without affecting their substance and redirect them if necessary.
- 29.5 The questions to be asked shall be supplied to all members no later than at the meeting.
- 29.6 The Democratic Services Manager shall announce the question number and the name and address of the questioner. The questioner shall ask the question and the member shall reply orally or may ask another member to reply on his/her behalf.
- 29.7 The Chair may allow one supplementary question for elucidation only.
- 29.8 A total time of 20 minutes (excluding any adjournment) shall be allowed for public questions and answers, but a question being answered at the time limit shall be completed.
- 29.9 Any questions remaining unanswered after the time limit, and any questions for which the questioner is neither present shall be answered in writing.

30. Deputations

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Section B – Committee Procedure Rules

- 30.1 A deputation may only be received by a Committee or its sub bodies if a requisition signed by not less than ten residents of the Borough, stating the object of the deputation, is received by the Democratic Services Manager not later than 10am to leave ~~five~~ **three** clear days prior to the Committee meeting.
- 30.2 Requisitions for deputations shall not be accepted from, nor on behalf of, political parties, nor if submitted on paper bearing the name, insignia or other device of a political party.
- 30.3 Subject to the foregoing the Democratic Services Manager shall bring the requisition before the Chair, who shall decide whether notice shall be given of the deputation on the agenda paper for a meeting of the Committee. The Chair must have regard to other business on the agenda in reaching such a decision; however a deputation will normally be accepted where there is an item on the agenda of the same subject matter. Where there is not an item on the agenda of the same subject, the Chair may refer the deputation to another relevant body of the Council.
- 30.4 The Deputation leader must be notified in writing as soon as possible if the deputation is not to be taken at that Committee meeting, advising of the reasons for the deputation not being taken at the Committee.

30.5 Scope of deputations

The Monitoring Officer may reject a deputation if it

- Is not about a matter for which the relevant Committee has responsibility;
- Is defamatory, frivolous or offensive;
- Is substantially the same as a deputation, question or motion which has been put at a meeting of the Committee in the past six months; or
- Requires the disclosure of confidential or exempt information.

30.6 Taking the deputation at the meeting

- A total of 15 minutes shall be allocated to deputations on the Committee agenda.
- If the Chair has decided that the notice of the deputation shall be given on the agenda paper, any councillor shall be at liberty when the item is called by the Chair to move a motion without notice that the deputation be not received or that it be referred to another

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relevant body of the Council and such motion on being seconded shall at once be put to the vote.

- The deputation spokesperson will be given three minutes to introduce the deputation, **referring to the matters in their deputation requisition.** Following which they may answer any questions from members. The Chair will allocate a maximum amount of time for each deputation, and will have regard to other items of business on the agenda when doing so.

30.7 The Committee Chair will provide a response in writing to the deputation spokesperson, outlining the actions that will be taken as a result of the deputation.

31. Petitions

- 31.1 The Democratic Services Manager should be notified of any Petitions by 10 a.m. five clear days in advance of the Committee meeting. The petition will be handed to the Chair, and recorded as received by the Democratic Services Manager without any further debate. The Chair should report the response to the petition at the next ordinary meeting of the Committee.

PRESENTATIONS

32. Presentations shall be made to Committees at the discretion of the Chair on matters of interest or concern to residents of the Borough which fall within the scope of the Committee's terms of reference.
33. The total time allowed for a presentation shall not exceed 30 minutes, including the time allowed for questions, unless the meeting approves some other limit.

CONFIRMATION OF MINUTES

34. Minutes of every meeting shall be presented to the next ordinary meeting.
35. The Chair shall put the question that the minutes of the meeting held on the (date) be confirmed as a correct record and signed.
36. No discussion shall take place upon the minutes except upon their accuracy. If no question is raised, or if it is raised then as soon as it has been disposed of, the Chair shall sign the minutes.

RULES OF DEBATE

37. Meetings are to be conducted with as little procedural formality as is consistent with the need for good order and the despatch of business.

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Section B – Committee Procedure Rules

38. The Chair shall conduct the debate and shall seek to prevent a member from wasting time, being repetitive or using unbecoming language. In matters of doubt the Chair shall have regard to the appropriate provisions of these Procedure Rules. Each speaker must direct his or her speech to the question under discussion, or to a point of order, or to a personal explanation.

DISORDERLY OR OFFENSIVE CONDUCT BY A MEMBER

39. **Member not to be heard further**
If a member persistently disregards the ruling of the chair by behaving improperly or offensively or deliberately obstructs business, the chair may move that member be not heard further. If seconded, the motion will be voted on without discussion.
40. **Member to leave the meeting**
If the member continues to behave improperly after such a motion is carried, the chair may move that either the member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.
41. **General disturbance**
If there is a general disturbance making orderly business impossible, the chair may adjourn the meeting for as long as he/she thinks necessary.

DISTURBANCE BY MEMBERS OF THE PUBLIC

42. **Removal of member of public**
If a member of the public interrupts proceedings, the chair will warn the person concerned. If they continue to interrupt, the chair will order their removal from the meeting room.
43. **Clearance of part of meeting room**
If there is a general disturbance in any part of the meeting room open to the public, the chair may call for that part to be cleared.

DECLARATIONS OF INTEREST OF MEMBERS

44. If a member of a Committee has a disclosable pecuniary interest or a prejudicial interest as referred to in Members' Code of Conduct in any matter under consideration, then the member shall declare his or her interest at the start of the meeting or as soon as the interest becomes apparent. The member may not participate or participate further in any discussion of the matter or participate in any vote or further vote taken on the matter at the meeting and must withdraw from the meeting until discussion of the relevant matter is concluded unless that member has obtained a dispensation from the Council's Standards Committee.
45. If a member of a Committee has a personal interest which is not a disclosable pecuniary interest nor a prejudicial interest, the member is

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under no obligation to make a disclosure at the meeting but may do so if he/she wishes.

VOTING

46. Unless the Constitution provides otherwise, any matter will be decided by a simple majority of those members present and voting in the room at the time the question was put. Voting shall be by a show of hands.
47. Immediately after the vote is taken, a member may require to be recorded in the minutes whether he/she voted for or against the decision or abstained.
48. In the case of an equality of votes, the Chair shall have a second or casting vote, unless the constitution of the body as approved by the Council provides otherwise.
49. Proposals carried are recorded as resolutions or recommendations. Proposals lost are not recorded, except as provided for in (2) above.

ATTENDANCE

50. Any member of the Council may attend the public part of all meetings whenever he/she wishes and, with the Chair's consent, may take part in the business of a meeting of which he/she is not a member but may not move a resolution nor vote. Before a member participates in or addresses a meeting under this rule, written notice should be given to the Chair, preferably before the meeting but in any event as soon as the member arrives at the meeting. Members of the Council are not required to complete any form used by the public to request permission to speak at a meeting.
51. With the Chair's consent, any member of the Council may attend the exempt part of meetings whenever he or she wishes and may take part in the business of a meeting of which he or she is not a member but may not move a resolution nor vote. No member, other than the appointed members of the bodies concerned, may attend certain meetings affecting specific individuals, such as Appointments Panels, hearings and appeals where this is prevented in the Constitution or procedure rules of the body or where advised by the Monitoring Officer.
52. Apart from at full Council, where every member shall sign his/her name on the attendance sheet, attendance of members at committees will be recorded by the Democratic Services staff.
53. Where a member is proposing to be absent for any reason from a meeting of a particular Committee/Sub-Committee to which they have been appointed they may give notice to arrange for a substitute member in their place. The Chief Whip of a political group may give this notice in place of any member from that group who will be absent.

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Section B – Committee Procedure Rules

54. Notice under rule 53 must be given in writing, including e-mail, to the Democratic Services Manager by 10.00 a.m. on the day of the meeting if the meeting commences at 6.00 p.m. or later. Where the meeting commences before 6.00 p.m., the notice must be given by 10.00 a.m. on the previous working day before the meeting.
55. On receipt of notice under rule 53 above, the Democratic Services Manager will notify the Chief Whip for the political group of the member who will be absent. The Chief Whip will make arrangements for the attendance of a substitute member from the list of reserve members for that Committee/Sub-Committee nominated by the group. Where none of the listed reserve members for the relevant Committee/Sub-Committee is available, or where no reserve members have been nominated, then the Chief Whip may select any other member of the group. The provisions of this rule are subject to rule 58 below.
56. The name of the member selected to act as the substitute must be notified in writing, including e-mail, by the Chief Whip to the Democratic Services Manager no later than 3 hours before the time for commencement of the meeting stated on the agenda.
57. If the Chief Whip of a political group is absent or unable to act for any reason, then any action to be taken by the Chief Whip in this rule may be undertaken instead by the group's Assistant Whips, Group Secretary and Group Chair.
58. In the case of meetings of Committees/Sub-Committees where prior member training is required, only those members who have attended appropriate training can be selected as substitutes. Currently these bodies are the Standards Committee and its Sub-Committees, the Planning Sub-Committee, Dismissal Appeals Sub-Committee, and hearings conducted by the Licensing Committee and its Sub-Committees. Reserve members will be trained for the relevant body as soon as possible after their appointment.
59. Substitutes properly appointed will be recorded in the minutes and shall carry full voting and other rights and responsibilities. Rule 53 does not apply so as to allow substitution at meetings of the Cabinet or its Committees or its subordinate bodies.

RECORDING, PHOTOGRAPHY AND USE OF SOCIAL MEDIA AT MEETINGS

60. Meetings may be filmed or recorded by the Council for live or subsequent broadcast via the Council's internet site or by anyone attending the meeting using any communication method. Members of the public recording, filming or reporting on any meeting shall be asked not to include the public seating areas, however the Council cannot guarantee that members of the public attending any meeting will not be

PART FOUR – RULES OF PROCEDURE
Section B – Committee Procedure Rules

filmed or recorded by others attending the meeting. Members of the public participating in any meeting (e.g. making deputations, asking questions, making oral protests) will be aware that they are likely to be filmed, recorded or reported on. Members of the public shall be aware that by entering the meeting room they are consenting to being filmed and to the possible use of those images and sound recordings.

61. The Chair of the meeting has the discretion to terminate or suspend filming or recording, if in his or her opinion continuation of the filming, recording or reporting would disrupt or prejudice the proceedings, infringe the rights of any individual, or may lead to the breach of a legal obligation by the Council.
62. There is a protocol outside this Constitution offering guidance on recording, photography and use of social media at Council, Cabinet and other public meetings.

SUSPENSION AND AMENDMENT OF COMMITTEE PROCEDURE RULES

63. All of these Committee Procedure Rules except Rules 44, 45 and 52 may be suspended by motion on or without notice if at least one half of all members of the Committee, sub committee etc., are present. Suspension can only be for the duration of the meeting.

CHAIR'S PREROGATIVE ON INTERPRETATION OF STANDING ORDERS

64. The ruling of the Chair on the interpretation or application of any of these Standing Orders, or on any proceedings of the Committee, Sub-Committee, Panel or other body, shall not be challenged.

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**REPORT OF CABINET
2019/20/02**

FULL COUNCIL 26 November 2019

Cabinet Member Finance and Strategic Regeneration

INTRODUCTION

- 1.1. The Cabinet considered the attached report, on additional Housing Revenue Account budget for new build properties and acquisitions of existing properties to house homeless households.

SUMMARY OF CONSIDERATIONS

- 2.1 We considered a report which proposed increasing the Housing Revenue Account's (HRA) Capital Programme funding envelope to finance the construction of new build properties; the acquisition of new build properties for affordable housing and the acquisition of existing properties to house homeless households.
- 2.2 We considered that this was an essential step in ensuring that the Council can deliver on key housing commitments. The additional funding would also allow the Council to acquire properties to house homeless households – and re-municipalise former Council homes lost under the right to buy over the past few years.
- 2.3 We referred to paragraph 4, of the attached report at Appendix 1 on the options that were considered when considering these proposals and noted the statutory officer comments contained in the report at section 8, including equalities comments.
- 2.4 In response to questions from Councillors, we also noted the following information:
- Section 8.13 contained a financial table with a breakdown of the proposed allocations of HRA capital funding. The report recommendations would allow the Council to take advantage of certain new acquisitions that come to the Council's attention as well as potential sites, and also enable the acquisition of street properties to increase Council housing stock. We were confident that the Council would be embarking on a course that was of benefit to people in the borough seeking housing and tackling homelessness.
 - That the additional £12.8m funding was for construction of new build properties and the acquisition of new build properties for affordable housing. There was supporting analysis in the attached report regarding the two primary components for acquisitions and development.

- In relation to the question on the precise figure for Right to Buy projections and the precise projection on the available funding, the report referred to the sum being adequate but did not reference how much was available. The Director for Finance agreed provide this information in writing to the Chair of Overview and Scrutiny.
- With regard to impact on rents for tenants, the change to the HRA capital programme for new homes built and acquisitions was in effect bringing forward what the Council would have spent in later years on housing. The report provided understanding on how the business plan accommodates this by the time the financial year of 2020/21 is reached. With regards to TA accommodation there was a business plan focused on affordability without impacting on tenants.

3. WE RECOMMEND TO FULL COUNCIL:

Approval of the additions to the 2019/20 HRA capital programme of £70.4m to finance: the construction of new build properties (£4.1m); the acquisition of new build properties for affordable housing (£8.7m) and the acquisition of existing properties to house homeless households (£57.6m) as set out in Appendix 1.

Reasons for decision

As set out at Appendix 1

Alternative options considered

As set out in Appendix 1

Report for: Cabinet 12 November 2019

Title: Approval of additional Housing Revenue Account budget for new build properties and acquisitions of existing properties to house homeless households

Report authorised by: Dan Hawthorn, Director of Housing, Regeneration and Planning and Jon Warlow, Director of Finance

Lead Officers: Alan Benson, Interim Assistant Director for Housing
Kaycee Ikegwu, Head of Finance and Business Partnering

Ward(s) affected: All

**Report for Key/
Non-Key Decision:** Key

1. Describe the issue under consideration

- 1.1. This report seeks approval to increase the capital programme by £70.4m in the Housing Revenue Account (HRA) in 2019/20, above and beyond the reprofiled budget approved in the Cabinet report of 10 September 2019.
- 1.2. The proposed increases totalling £12.8m for funding new homes building and new homes acquisitions are contained within the envelope of the 5-year HRA capital budget set out in the 10 September report and approved by Cabinet. There was insufficient funding identified in this financial year to cover the greater than expected scale of activities now being delivered in the Council housing delivery programme.
- 1.3. The report also proposes an addition to the HRA capital programme of £57.6m in respect of the acquisition of existing properties to be used as temporary accommodation for homeless households, a function previously included in the General Fund (GF) capital programme.
- 1.4. It is noted that this report does not, of itself, make any new spending commitments. All actual decisions to spend will be subject to the normal decision-making processes.

2. Cabinet Member Introduction

- 2.1. Increasing the Housing Revenue Account's (HRA) Capital Programme is an essential step in ensuring that the Council can deliver a key pledge from the current administration's manifesto and a central outcome of the Borough Plan: delivering 1000 new Council Homes. As well as this, the additional funding will allow the council to acquire properties to house homeless households – and re-

municipalise former Council homes lost under the right to buy over the past few years.

3. Recommendations

- 3.1. That Cabinet recommends Full Council approves additions to the 2019/20 HRA capital programme of £70.4m to finance: the construction of new build properties (£4.1m); the acquisition of new build properties for affordable housing (£8.7m) and the acquisition of existing properties to house homeless households (£57.6m).

4. Reasons for decision

- 4.1. On 10 September 2019, Cabinet approved a reprofiled HRA capital budget of £77.8m, for 2019/20. This included £62.8m for existing stock, £2.9m for the Council housing delivery programme and £12m for new homes acquisition. There is also a £41.4m in the General Fund capital budget to acquire existing properties to be used to house homeless households.
- 4.2. The construction of new build properties is now moving at a faster pace than anticipated in February 2019. The current budget provision of £2.9m for new build properties as outlined in the quarter 1 (period 3) budget monitoring report for 2019/20 to Cabinet dated 10 September 2019, has become insufficient to cover the cost of the accelerated works in this year.
- 4.3. Hence the need for an increase of £4.1m within the 2019/20 HRA budget for the construction of new build properties by the Council. This is following a re-assessment of the budget required given the faster speed and greater progress on these projects by the Council than projected in February 2019.
- 4.4. New opportunities have come forward to acquire properties under development by other organisations, that were not previously foreseen. Thus, the need for an increase of £8.7m within the 2019/20 HRA budget, for the acquisition of new homes.
- 4.5. In respect of the acquisition of existing properties to be used as temporary accommodation for homeless households, the Council recently received legal advice that acquisitions of such properties should be purchased within the HRA, rather than the General Fund. A decision is needed to regularise the current year's purchases and historic purchases. Further details are outlined in the report to Cabinet on 12 November 2019: 'Update on the Community Benefit Society'.
- 4.6. An additional capital provision of £57.6m within the 2019/20 HRA budget is required for the actioned, identified and potential purchase of existing properties, to be used to house homeless households. Further details are outlined in the report to Cabinet on 12 November 2019: 'Update on the Community Benefit Society'.
- 4.7. This report requests that Cabinet recommends Full Council approves a total sum of £70.4m of additional funding within the 2019/20 HRA budget to finance the activities detailed above and set out in more detail in section six.

5 Alternative options considered

- 5.1. Not allowing an increase in the programme of new build or acquisition of new build properties:** This option was rejected because there is a need to press ahead rapidly on the 1,000 council homes target and to deliver the interim target of 500 having planning permission and 350 having a start on site by May 2020.
- 5.2. Not allowing additional provision for the purchase of properties to be used to house homeless households:** This option was rejected because there is a need to ensure there is a supply of good quality, long term housing for homeless households.

6. Background information

- 6.1.** In September 2019, Cabinet approved a reprofiled HRA capital budget of £77.8m, for 2019/20. This included £62.8m for existing stock, £2.9m for the Council housing delivery programme and £12.0m for new homes acquisition. There is also a £41.4m in the General Fund capital budget to acquire existing properties to be used to house homeless households.
- 6.2.** The proposed increases totalling £12.8m for funding new homes building and new homes acquisitions are contained within the envelope of the 5-year HRA capital budget set out in the September 10 report and approved by Cabinet. There was insufficient funding identified in this financial year to cover the greater than expected scale of activities now being delivered in the Council housing delivery programme.
- 6.3.** The construction of new build properties is now moving at a faster pace than anticipated in February 2019. The aim is to start 350 new build properties by May 2020, with 500 having planning permission. The current budget provision of £2.9m for new build properties was outlined in the quarter 1 (period 3) budget monitoring report for 2019/20 to Cabinet dated 10 September 2019. An additional amount of £4.1m is now required, making the total budget for 2019/20 £7.0m.
- 6.4.** The acquisition of new homes being developed by other organisations for the purposes of Council housing has also progressed faster than expected because new opportunities have come forward to acquire properties that were not previously foreseen. The current provision of £12.0m for the acquisition of new homes was outlined in the quarter 1 (period 3) budget report for 2019/20 to Cabinet dated 10 September 2019. An additional amount of £8.7m is required for the schemes, making the total budget for 2019/20 £20.7m.
- 6.5.** A further £57.6m is required within the HRA for the purchase of properties to be used to house homeless households. This is following recently received legal advice that such properties should be purchased within the HRA, rather than in the General Fund. Further details are outlined in the report to Cabinet on 12 November 2019: 'Update on the Community Benefit Society'.

- 6.6 There are 57 ex-Council properties acquired prior to 2019/20, at a total sum of c.£13m. Following the legal advice that these acquisitions should be held within the HRA, there will now be accounting adjustments between the General Fund and HRA to reflect the transfers between the two funds.
- 6.7. It is noted that if the recommendations in this report are agreed by Cabinet, it will need to be referred to the next meeting of Full Council on 26 November 2019 to make the necessary amendments to the Council's budget.
- 6.8. Subsequently, a further report will be presented to Cabinet in February 2020, setting out the HRA Business Plan, with all these capital work strands, including maintenance of existing stock, for the next ten years. This will request authorisation to spend from the HRA in the years from 2020-21 onwards.

7. Contribution to strategic outcomes

- 7.1 The recommendations in this report will support the delivery of the Housing Priority in Haringey's Borough Plan 2019/2023, which sets out in its first outcome that: *"We will work together to deliver the new homes Haringey needs, especially new affordable homes"*. Within this outcome, the Borough Plan sets the aim to: *"Ensure that new developments provide affordable homes with the right mix of tenures to meet the wide range of needs across the borough, prioritising new social rented homes"*.
- 7.2 In particular, the recommendations in this report are explicitly about delivering the aim: *"to deliver 1,000 new council homes at council rents by 2022"*. The proposals in this report contribute directly to the strategic outcomes on new housing supply that are at the core of the aims of the Council as expressed in the Borough Plan.
- 7.3 This report also supports the objective contained in the Borough Plan 2019/2023 to: *"work together to prevent people from becoming homeless, and to reduce existing homelessness"* and to: *"improve the experience of homeless families and minimise costs by reducing the Council's reliance on providers of nightly paid emergency accommodation"* where temporary accommodation cannot be avoided.

8. Statutory Officers comments

Finance

- 8.1. This report requests that Cabinet recommends Full Council approves an additional HRA capital budget of £70.4m to fund the various activities highlighted in sections 4.2 to 4.6.

New Homes Build & Acquisitions

- 8.2. Some of the schemes in these programmes are being accelerated. Therefore, a combined £12.8m additional budget is required in this year.

- 8.3. This represents a reprofiling of provisions from 2020/21. This will increase the revenue cost of borrowing in the current year (additional borrowing cost of £0.12m up to year-end). However, this will be offset by lower cost of borrowing in future years as the capital requirement will be less.
- 8.4. This minor change in revenue cost of capital to the HRA will be offset by corresponding small reduction in the budgeted HRA revenue contribution to capital, currently at £16m in 2019/20. This will result in a minor increase in the level of HRA borrowing required.
- 8.5. This increased capital programme provision, when drawn down this year, will not affect the viability of the overall Housing Revenue Account.

Acquisition for Temporary Accommodation

- 8.6. The £57.6m represents the provision required to cover the cost of properties already acquired in the General Fund in the year, acquisitions in legal conveyancing and potential future acquisitions up to March 2020.
- 8.7. This will be funded partly by borrowing and partly through using Retained Right to Buy receipts (RTB).
- 8.8. Borrowing of £40.3m and retained Right to Buy receipts of £17.3m are required. The projected retained RTB receipts at year end is adequate to cover the £17.3m.
- 8.9. The borrowing of £40.3m will attract an estimated cost of capital of £0.11m in this financial year.
- 8.10. There is adequate rental income to cover the cost of capital and running cost in the period they will remain in the HRA.
- 8.11. The consequent deletion of TA acquisition budget (£41.4m) from the GF capital programme will be proposed as part of the quarter 2 capital programme update to cabinet on December 10 2019.
- 8.12. The HRA financial plan update will substantively address the changes required to subsequent years HRA capital programme. There will be no consequent increases in rent and service charges levels in 2019/20.

- 8.13. Table 1: Proposed HRA capital budget position

Reprofiled 5 Year Budget, including TA acquisition (£57.6m)								
	Revised Budget September 2019-20 £'000	November Budget Adjustment 2019-20 £'000	Revised budget after adjustment 2019-20 £'000	2020-21 £'000	2021-22 £'000	2022-23 £'000	2023-24 £'000	Total £'000
Capital Investment								
Existing Stock Investment (Haringey Standard)	62,812	0	62,812	63,215	57,663	58,816	59,992	302,498
New Homes Build Programme	2,940	4,062	7,002	12,507	180,590	27,714	26,036	253,849
New Homes Acquisitions	12,006	8,725	20,731	30,748	126,962	149,784	104,812	433,037
Existing Homes Acquisition	0	57,600	57,600	0	0	0	0	57,600
Total Capital Investment	77,758	70,387	148,145	106,470	365,215	236,314	190,840	1,046,984

Procurement

- 8.14. As this is a funding application there are no procurement implications at this stage. However, Strategic Procurement will ensure that all procurement activity will provide value for money and be delivered in a compliance with all the required legislation.

Legal

- 8.15. The Council operates a leader and cabinet executive as provided by LGA 2000. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 require that it is for full Council, not the Cabinet, to make certain decisions. The terminology commonly used to reflect the statutory framework is that the authority's "budget and policy framework" are to be set by full Council..
- 8.16. Regulation 5 of the 2000 Regulations deals with the situation where the Cabinet is minded to determine a matter contrary to, or not wholly in accordance with, (i) the authority's budget, or (ii) the plan or strategy for the time being approved or adopted by the authority in relation to their borrowing or capital expenditure. In this situation the decision is for full Council, unless the local authority's constitution authorises the Cabinet to take the decision. The proposed increase in the HRA capital programme will be a departure from the Council's budget and will therefore need to be authorised by full Council.

Equality

- 8.17. The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act.
 - Advance equality of opportunity between people who share those protected characteristics and people who do not.
 - Foster good relations between people who share those characteristics and people who do not.

- 8.18. The three parts of the duty apply to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.
- 8.19. The proposal is to make £ 70.4m additional capital funding available in the Housing Revenue Account (HRA) in 2019/20, beyond that made available in the February 2019 budget report. The purpose of this additional allocation is to finance the construction and acquisition of new build properties and the acquisition of existing properties to house homeless households.
- 8.20. Those most likely to be affected by the decision include households that are vulnerable to and/or experiencing homelessness. Data held by the Council suggests that women, young people, BAME communities, those who identify as LGBT+ and individuals with disabilities are particularly vulnerable to homelessness, as detailed in the Equalities Impact Assessment of the Council's Homelessness Strategy, accessible at [this link](#). As such, it is reasonable to anticipate a positive impact on residents with these protected characteristics.

9. Use of Appendices

10. Local Government (Access to Information) Act 1985

- a. [Cabinet report Q1 budget monitoring 10 September 2019](#)
- b. [Cabinet report budget 12 February 2019](#)
- c. [Full Council 25 February 2019](#)

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REPORT OF THE CORPORATE COMMITTEE No. 1, 2019/20**COUNCIL 26 November 2019**

Chair:
Councillor Isidoros Diakides

Deputy Chair:
Councillor Mike Hakata

INTRODUCTION

- 1.1 This report to Full Council arises from the report on the Treasury Management 2018/19 Outturn, considered by the Corporate Committee at their meeting on the 25th July 2019. The report provides an update on the Council's treasury management activities and performance in the year to 31st March 2019 in accordance with the CIPFA Treasury Management Code of Practice.
- 1.2 Overall responsibility for the Council's treasury management remains with Full Council and the Council approved the Treasury Management Strategy Statement on 26 February 2018. The Corporate Committee is responsible for monitoring treasury management activity and we monitor this through the receipt of quarterly reports.

SUMMARYTreasury Management 2018/19 Outturn

- 2.1 We considered a report on the Treasury Management 2018/19 Outturn, which provided an update on the Council's treasury management activities and performance in the year to 31st March 2019, in accordance with the CIPFA Treasury Management Code of Practice. The Treasury Management Outturn report indicated that the Council had not breached any of its treasury management or prudential indicators in 2018/19. The presentation covered the general definition of treasury management, borrowing, investments, roles and responsibilities and the key aspects of the outturn report.
- 2.2 We asked what potential costs were involved with restructuring the LOBO loans. The Head of Pensions, Treasury and Chief Accountant advised the Council had a policy to exercise its option to repay LOBOs if the lender increased the interest rates. We also noted that the Council would repay the loans if, and when, it was financially advantageous to do so.
- 2.3 In response to further discussion around LOBOs and examples of other local authorities that had repaid the loans, we were advised that most of the loans being referred to were taken out with UK, rather than European, banks and they had a significantly higher interest rate than the LOBO loans taken out by Haringey. We noted that the Council was subject to a financial penalty for paying back the LOBO loans early.
- 2.4 We sought assurances about the borrowing headroom having increased from last year. In response, the Head of Pensions, Treasury and Chief Accountant advised that the operational boundary had increased as a result of increased capital borrowing. The Authority carried out additional long term borrowing in 2018/19, and

raised £70m of long term fixed rate loans from the PWLB in the year. We noted that that the extent to which the Council could afford to increase its overall level of borrowing was determined by considerations as to whether or not it could afford to service the debt.

WE RECOMMEND

That Full Council note the Treasury Management 2018/19 Outturn as attached.

Report for: Corporate Committee 25 July 2019

Title: Treasury Management Outturn 2018/19

Report authorised by: Jon Warlow, Director of Finance (S151 Officer)

Lead Officer: Thomas Skeen, Head of Pensions, Treasury & Chief Accountant
thomas.skeen@haringey.gov.uk 020 8489 1341

Ward(s) affected: N/A

Report for Key/
Non Key Decision: Non Key decision

1. Describe the issue under consideration

- 1.1. The Chartered Institute of Public Finance and Accountancy's Treasury Management Code (CIPFA's TM Code) requires that Authorities report on the performance of the treasury management function at least twice yearly (mid-year and at year end).
- 1.2. The Council's Treasury Management Strategy for 2018/19 was approved by Full Council on 26 February 2018.
- 1.3. This report updates the Committee on the Council's treasury management activities and performance in the year to 31st March 2019 in accordance with the CIPFA Treasury Management Code of Practice.

2. Cabinet Member Introduction

- 2.1. Not applicable.

3. Recommendations

- 3.1. That members note the Treasury Management activity undertaken during the year to 31st March 2019 and the performance achieved.
- 3.2. That members note that all treasury activities were undertaken in line with the approved Treasury Management Strategy.

4. Reason for Decision

- 4.1. None.

5. Other options considered

5.1. None.

6. Background information

6.1. The Council's treasury management activity is underpinned by CIPFA's Code of Practice on Treasury Management ("the Code"), which requires local authorities to produce annually, Prudential Indicators and a Treasury Management Strategy Statement. CIPFA has defined Treasury management as: "The management of the local Council's investments and cash flows, its banking, money market and capital market transactions; the effective control of the risks associated with those activities; and the pursuit of optimum performance consistent with those risks."

6.2. The Code recommends that members are informed of treasury management activities at least twice a year. Formulation of treasury policy, strategy and activity is delegated to the Corporate Committee and this Committee receives reports quarterly.

6.3. However, overall responsibility for treasury management remains with Full Council and the Council approved the Treasury Management Strategy Statement on 26 February 2018. The Corporate Committee is responsible for monitoring treasury management activity and this is achieved through the receipt of quarterly reports.

6.4. Government guidance on local Council treasury management states that local authorities should consider the following factors in the order they are stated:

Security - Liquidity - Yield

6.5. The Treasury Management Strategy reflects these factors and is explicit that the priority for the Council is the security of its funds. However, no treasury activity is without risk and the effective identification and management of risk are integral to the Council's treasury management activities.

7. Contribution to Strategic Outcomes

7.1. None.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and Procurement

- 8.1. Finance Comments are included throughout the attached report.

Legal

- 8.2. The Assistant Director for Corporate Governance has been consulted on the content of this report which is consistent with legislation governing the financial affairs of the Council. In considering the report Members must take into account the expert financial advice available to it and any further oral advice given at the meeting of the Committee.

Equalities

- 8.3. There are no equalities issues arising from this report.

9. Use of Appendices

- 9.1. Appendix 1 – Treasury Outturn 2018/19

10. Local Government (Access to Information) Act 1985

- 10.1. Not applicable.

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Appendix 1 - Treasury Management Outturn Report 2018/19

Introduction

The Authority has adopted the Chartered Institute of Public Finance and Accountancy's *Treasury Management in the Public Services: Code of Practice* (the CIPFA Code) which requires the Authority to approve treasury management semi-annual and annual reports.

The Authority's treasury management strategy for 2018/19 was approved at a full Council meeting on 26 February 2018. The Authority has borrowed and invested substantial sums of money and is therefore exposed to financial risks including the loss of invested funds and the revenue effect of changing interest rates. The successful identification, monitoring and control of risk is therefore central to the Authority's treasury management strategy.

Treasury risk management at the Authority is conducted within the framework of the Chartered Institute of Public Finance and Accountancy's *Treasury Management in the Public Services: Code of Practice 2017 Edition* (the CIPFA Code) which requires the Authority to approve a treasury management strategy before the start of each financial year and, as a minimum, a semi-annual and annual treasury outturn report. This report fulfils the Authority's legal obligation under the Local Government Act 2003 to have regard to the CIPFA Code.

The 2017 Prudential Code includes a requirement for local authorities to provide a Capital Strategy, a summary document approved by full Council covering capital expenditure and financing, treasury management and non-treasury investments. The Authority's Capital Strategy, complying with CIPFA's requirement, was approved by full Council on 25 February 2019.

External Context (provided by the Council's treasury management advisor, Arlingclose)

Economic background: After spiking at over \$85/barrel in October 2018, oil prices fell back sharply by the end of the year, declining to just over \$50 in late December before steadily climbing toward \$70 in April 2019. UK Consumer Price Inflation (CPI) for February 2019 was up 1.9% year/year, just above the consensus forecast but broadly in line with the Bank of England's February Inflation Report. The most recent labour market data for the three months to January 2019 showed the unemployment rate fell to a new low 3.9% while the employment rate of 76.1% was the highest on record. The 3-month average annual growth rate for pay excluding bonuses was 3.4% as wages continue to rise steadily and provide some upward pressure on general inflation. Once adjusted for inflation, real wages were up 1.4%.

After rising to 0.6% in the third calendar quarter from 0.4% in the second, fourth quarter economic growth slowed to 0.2% as weaker expansion in production, construction and services dragged on overall activity. Annual GDP growth at 1.4% continues to remain below trend. Following the Bank of England's decision to increase Bank Rate to 0.75% in August, no changes to monetary policy have been made since.

The US Federal Reserve continued its tightening bias throughout 2018, pushing rates to the 2.25%-2.50% range in December. However, a recent softening in US data caused the Fed to signal a pause in hiking interest rates at the last Federal Open Market Committee (FOMC) meeting in March.

With the 29th March 2019, the original EU 'exit day' now been and gone, having failed to pass a number of meaningful votes in Parliament, including shooting down Theresa May's deal for the third time, MPs voted by a majority of one (313 to 312) to force the prime minister to ask for an

extension to the Brexit process beyond 12th April in order to avoid a no-deal scenario. Recent talks between the Conservative and Labour parties to try to reach common ground on a deal which may pass a vote by MPs have yet to yield any positive results. The EU must grant any extension and its leaders have been clear that the terms of the deal are not up for further negotiation. The ongoing uncertainty continues to weigh on sterling and UK markets.

While the domestic focus has been on Brexit's potential impact on the UK economy, globally the first quarter of 2019 has been overshadowed by a gathering level of broader based economic uncertainty. The US continues to be set on a path of protectionist trade policies and tensions with China in particular, but with the potential for this to spill over into wider trade relationships, most notably with EU. The EU itself appeared to be show signs of a rapid slowdown in economic growth with the major engines of its economy, Germany and France, both suffering misfires from downturns in manufacturing alongside continued domestic/populist unrest in France. The International Monetary Fund downgraded its forecasts for global economic growth in 2019 and beyond as a consequence.

Financial markets: December was a month to forget in terms of performance of riskier asset classes, most notably equities. The FTSE 100 (a good indicator of global corporate sentiment) returned -8.8% assuming dividends were reinvested; in pure price terms it fell around 13%. However, since the beginning of 2019 markets have rallied, and the FTSE 100 and FTSE All share indices were both around 10% higher than at the end of 2018.

Gilt yields continued to display significant volatility over the period on the back of ongoing economic and political uncertainty in the UK and Europe. After rising in October, gilts regained their safe-haven status throughout December and into the new year - the 5-year benchmark gilt yield fell as low as 0.80% and there were similar falls in the 10-year and 20-year gilts over the same period dropping from 1.73% to 1.08% and from 1.90% to 1.55%. The increase in Bank Rate pushed up money markets rates over the year and 1-month, 3-month and 12-month LIBID (London Interbank Bid) rates averaged 0.53%, 0.67% and 0.94% respectively over the period.

Recent activity in the bond markets and PWLB interest rates highlight that weaker economic growth is not just a UK phenomenon but a global risk. During March the US yield curve inverted (10-year Treasury yields were lower than US 3 month money market rates) and German 10-year Bund yields turned negative. The drivers are a significant shift in global economic growth prospects and subsequent official interest rate expectations given its impact on inflation expectations. Further to this is world trade growth which collapsed at the end of 2018 falling by 1.8% year-on-year. A large proportion of this downturn in trade can be ascribed to the ongoing trade tensions between the US and China which despite some moderation in January does suggest that the International Monetary Fund's (IMF) and Organisation for Economic Co-Operation & Development's (OECD) forecasts for global growth in 2019 of 3.5% might need to be revised downwards.

Credit background: Credit Default Swap (CDS) spreads drifted up towards the end of 2018 on the back of Brexit uncertainty before declining again in 2019 and continuing to remain low in historical terms. After hitting around 129 basis points in December 2018, the spread on non-ringfenced bank NatWest Markets plc fell back to around 96bps at the end of March, while for the ringfenced entity, National Westminster Bank plc, the CDS spread held relatively steady around 40bps. The other main UK banks, as yet not separated into ringfenced and non-ringfenced from a CDS perspective, traded between 33 and 79bps at the end of the period.

The ringfencing of the big four UK banks (Barclays, Bank of Scotland/Lloyds, HSBC and RBS/Natwest Bank plc) transferred their business lines into retail (ringfenced) and investment banking (non-ringfenced) entities.

In February, Fitch put the UK AA sovereign long-term rating on Rating Watch Negative as a result of Brexit uncertainty, following this move with the same treatment for UK banks and a number of government-related entities.

There were minimal other credit rating changes during the period. Moody's revised the outlook on Santander UK to positive from stable to reflect the bank's expected issuance plans which will provide additional protection for the its senior unsecured debt and deposits.

Local Context

On 31st March 2018, the Authority had net borrowing of £365.4m and £45.9m of investments. The underlying need to borrow for capital purposes is measured by the Capital Financing Requirement (CFR), while usable reserves and working capital are the underlying resources available for investment. These factors are summarised in Table 1 below.

Table 1: Balance Sheet Summary

	31.3.18 Actual £m
General Fund CFR	343.3
HRA CFR	248.7
Total CFR	591.9
Less: *Other debt liabilities	-34.0
Borrowing CFR - comprised of:	557.9

- External borrowing	365.4
- Internal borrowing	192.6

* finance leases, PFI liabilities and transferred debt that form part of the Authority's total debt

The Authority pursued its strategy of keeping borrowing and investments below their underlying levels, sometimes known as internal borrowing, in order to reduce risk and keep interest costs low.

The treasury management position at 31st March 2019 and the change during the year is shown in Table 2 below.

Table 2: Treasury Management Summary

	31.03.18 Balance £m	Movement £m	31.03.19 Balance £m	31.03.19 Rate %
Long-term borrowing	307.4	58.4	365.8	4.14
Short-term borrowing	58.0	-35.0	23.0	0.90
Total borrowing	365.4	23.4	388.8	3.95
Long-term investments	0.0	0.0	0.0	0.00
Short-term investments	10.0	5.0	15.0	1.04
Cash and cash equivalents	35.9	-20.3	15.6	0.50
Total investments	45.9	-15.3	30.6	0.77
Net borrowing	319.4		358.1	

Borrowing Strategy during the year

At 31st March 2019 the Authority held £388.8m of loans, (an increase of £23.4m from 31st March 2018), as part of its strategy for funding previous and current years' capital programmes. Outstanding loans on 31st March are summarised in Table 3 below.

Table 3: Borrowing Position

	31.03.18 Balance £m	Net Movement £m	31.03.19 Balance £m	31.03.19 Weighted Average Rate %	31.03.19 Weighted Average Maturity (years)
Public Works Loan Board	182.4	58.4	240.8	3.84	27.39
Banks (LOBO)	125.0	0.0	125.0	4.72	41.19
Banks (fixed-term)	0.0	0.0	0.0	0.00	0
Local authorities (long-term)	0.0	0.0	0.0	0.00	0
Local authorities (short-term)	58.0	-35.0	23.0	0.90	0.11
Total borrowing	365.4	23.4	388.8	3.95	30.21

The Authority's chief objective when borrowing has been to strike an appropriately low risk balance between securing low interest costs and achieving cost certainty over the period for

which funds are required, with flexibility to renegotiate loans should the Authority's long-term plans change being a secondary objective.

As the Authority has an increasing CFR due to the capital programme and an estimated borrowing requirement, the Authority expected to carry out additional long term borrowing in 2018/19, and raised £70m of long term fixed rate loans from the PWLB in the year, at an average rate of 2.57% which will provide longer-term certainty and stability to the debt portfolio. This borrowing was taken to fund the Council's growing underlying need to borrow from the capital programme, in conjunction with considerations around interest rates.

Going forwards into future years, the Council has a significant capital programme, and a large proportion of this will be financed by borrowing, which the Council will have to undertake in coming years. The Council's treasury advisor, Arlingclose undertakes weekly 'cost of carry' analysis to inform the Council about whether it is financially beneficial to undertake borrowing now or to delay this for set time periods: given PWLB interest rate forecasts. Any borrowing which is taken to prior to capital expenditure taking place, and reducing the extent of the Council's internal borrowing, would have to be invested in the money markets at rates of interest significantly lower than the cost of borrowing, creating an immediate cost for revenue budgets.

LOBO loans: The Authority continues to hold £125m of LOBO (Lender's Option Borrower's Option) loans where the lender has the option to propose an increase in the interest rate as set dates, following which the Authority has the option to either accept the new rate or to repay the loan at no additional cost. No banks exercised their option during the period.

The Authority's chief objective when borrowing has been to strike an appropriately low risk balance between securing low interest costs and achieving cost certainty over the period for which funds are required, with flexibility to renegotiate loans should the Authority's long-term plans change being a secondary objective.

Treasury Investment Activity

The Authority holds invested funds, representing income received in advance of expenditure plus balances and reserves held. During the year, the Authority's investment balances ranged between £11.2m and £88.6m million due to timing differences between income and expenditure. The investment position is shown in table 4 below.

Table 4: Treasury Investment Position

	31.03.18	Net	31.03.19	31.03.19	31.03.19
	Balance	Movement	Balance	Rate of	Weighted
	£m	£m	£m	Return	Average
				%	Maturity
					days
Banks & building societies (unsecured)	0.0	0.0	0.0	0.00	0.0
Money Market Funds	0.0	0.0	0.0	0.00	0.0
UK Government:					
- Local Authorities	10.0	5.0	15.0	1.04	244.0
- Debt Management Office	35.9	-20.3	15.6	0.50	1.0
Total investments	45.9	-15.3	30.6	0.77	120.1

Both the CIPFA Code and government guidance require the Authority to invest its funds prudently, and to have regard to the security and liquidity of its treasury investments before seeking the optimum rate of return, or yield. The Authority's objective when investing money is to strike an appropriate balance between risk and return, minimising the risk of incurring losses from defaults and the risk of receiving unsuitably low investment income.

The table below shows counterparty credit quality as measured by credit ratings on the final day of each quarter during the year. The table also shows the percentage of the in-house investment portfolio exposed to bail-in risk. Bail-in is the response to the government bail-outs in the global financial crisis, when a number of banks failed and received government bail-outs in 2008. Under bail-in, unsecured deposits made with certain financial institutions would be at risk, should the institution fail, and investors would lose a portion of their invested funds. The below table shows a snapshot at a point in time, and movements in the figures do not reflect changes in policy or strategy, but are indicative of the Council's cashflows on that particular date.

The progression of risk and return metrics are shown in the extracts from Arlingclose's quarterly investment benchmarking in Table 5 below.

Table 5: Investment Benchmarking - Treasury investments managed in-house

	Credit Score	Credit Rating	Bail-in Exposure	Weighted Average Maturity (days)	Rate of Return %
<u>31.03.2018</u> Haringey	3.14	AA	0%	70	0.36
<u>31.03.2019</u> Haringey	3.37	AA	0%	122	0.77
Similar LAs	4.34	AA-	47%	166	1.25
All LAs	4.20	AA-	55%	53	1.43

Scoring:

-AAA = highest credit quality = 1

- D = lowest credit quality = 26

-Aim = A- or higher credit rating, with a score of 7 or lower, to reflect current investment approach with main focus on security

Non-Treasury Investments

The definition of investments in CIPFA's revised Treasury Management Code now covers all the financial assets of the Authority as well as other non-financial assets which the Authority holds primarily for financial return. This is replicated in MHCLG's Investment Guidance, in which the definition of investments is further broadened to also include all such assets held partially for financial return.

The Council lends money to third parties such as its subsidiaries, local businesses, local charities, local residents and its employees to support local public services and stimulate local economic growth. These are often treated as capital expenditure and included within the Council's capital programme. The main risk when making service loans is that the borrower will be unable to repay the principal lent and/or the interest due. In order to limit this risk, it will be ensured that any new loans made will remain proportionate to the size of the Authority. The Council also holds properties which are classified as 'investment properties' in the Council's statement of accounts. These properties are all within the local area, and the revenue stream associated with these (net of the costs of maintaining the properties) forms a modest part of the Council's annual budget, therefore contributing to the resources available to the Council to spend on local public services.

Balances as at 31.3.19 of non-treasury investments were as follows:

Table 6: Non Treasury investments

	31.03.19				
	Balance	Loss Allowance	Balance	Weighted Average	Net Total Revenue*
	£m	£m	£m	Rate of return %	£m
Subsidiaries	0.3	-0.3	0.0	0.0	0.0
Local Businesses	4.8	-0.6	4.2	5.2	0.2
Local Charities	47.4	-43.5	3.9	3.3	0.1
Local Residents	0.1	0.0	0.1	4.4	0.0
Employees	0.1	0.0	0.1	0.0	0.0
Commercial Properties	70.5	0.0	70.5	5.8	4.1
Total borrowing	123.2	-44.4	78.8		4.5

*for commercial properties this is the revenue generated from the properties less directly associated costs

The largest balance above relates to Alexandra Palace debts (shown under local charities). There is a large amount of historic debt that a provision was created for, however this has not been written off. The loans to local business include the opportunity investment fund, and a loan to a business who operates some of Haringey's leisure facilities.

Accounting standards require the Authority to set aside loss allowance for loans, reflecting the likelihood of non-payment. The figures for loans in the Authority's statement of accounts for 2018/19 onwards are shown net of this loss allowance. However, the Authority makes every reasonable effort to collect the full sum lent and has appropriate credit control arrangements in place to recover overdue repayments.

The Authority assesses the risk of loss before entering into and whilst holding service loans by weighing up the service outcomes any such loan could provide against the creditworthiness of the recipient. This is done on a case by case basis, given the low number of such arrangements. This forms part of the Council's capital programme, further details of which are in the Council's annual medium term financial strategy.

Budgeted Income and Outturn

Treasury Investments generated an average rate of return of 0.66% in the first three quarters of the year. The Council's treasury investment income for the year was £317k against a budget of £136.5k.

Borrowing costs for 2018/19 were £14.6m (£10.3m HRA, £4.3m General Fund) against a budget of £15.7m (£10.0m HRA, £5.7m General Fund). The underspend forecast is due to a number of factors, including: the current lower interest rate environment reducing interest costs for the Council, and delays in the capital programme's delivery. Slippage in the Council's capital programme will reduce the borrowing requirement, and reduce this forecast.

Compliance

The Director of Finance reports that all treasury management activities undertaken during the year complied fully with the CIPFA Code of Practice and the Authority's approved Treasury Management Strategy.

Compliance with the authorised limit and operational boundary for external debt is demonstrated in table 7 below.

Table 7: Debt Limits

	31.3.19 Actual £m	2018/19 Operational Boundary £m	2018/19 Authorised Limit £m	Complied?
Borrowing	388.8	568.4	618.4	Yes
PFI and Finance Leases	36.2	39.9	43.3	Yes
Total debt	424.9	608.3	661.6	Yes

Since the operational boundary is a management tool for in-year monitoring it is not significant if the operational boundary is breached on occasions due to variations in cash flow, and this is not counted as a compliance failure, however Haringey's debt remained below this limit at all points in the financial year.

Treasury Management Indicators

The Authority measures and manages its exposures to treasury management risks using the following indicators.

Security: The Authority has adopted a voluntary measure of its exposure to credit risk by monitoring the value-weighted average credit score of its investment portfolio. This is calculated by applying a score to each investment (AAA=1, AA+=2, etc.) and taking the arithmetic average, weighted by the size of each investment. Unrated investments are assigned a score based on their perceived risk.

	31.3.19 Actual	2018/19 Target	Complied?
Portfolio average credit	3.14 (AA)	7.00 (A-)	Yes

Liquidity: The Authority has adopted a voluntary measure of its exposure to liquidity risk by monitoring the amount of cash available to meet unexpected payments within a rolling three-month period, without additional borrowing.

	31.3.19 Actual	2018/19 Target	Complied?
Total cash available within 3 months	£20.6	£10m	Yes

Interest Rate Exposures: This indicator is set to control the Authority's exposure to interest rate risk. The upper limits on fixed and variable rate interest rate exposures, expressed as the proportion of net principal borrowed was:

	31.3.19 Actual	2018/19 Limit	Complied?
Upper limit on fixed interest rate exposure	72.6%	100%	Yes
Upper limit on variable interest rate exposure	27.4%	60%	Yes

Fixed rate investments and borrowings are those where the rate of interest is fixed for at least 12 months, measured from the start of the financial year or the transaction date if later. All other instruments are classed as variable rate.

Maturity Structure of Borrowing: This indicator is set to control the Authority's exposure to refinancing risk. The upper and lower limits on the maturity structure of all borrowing were:

Maturity structure of borrowing (U: upper, L: lower)	Lower Limit	Upper Limit	31.3.19
under 12 months	0	60%	27.4%
12 months & within 2 years	0	40%	1.7%
2 years & within 5 years	0	40%	20.5%
5 years & within 10 years	0	40%	0.6%
10 yrs & within 20 yrs	0	40%	8.3%
20 yrs & within 30 yrs	0	40%	10.3%
30 yrs & within 40 yrs	0	50%	15.9%
40 yrs & within 50 yrs	0	50%	15.4%
50 yrs & above	0	40%	0

Time periods start on the first day of each financial year. The maturity date of borrowing is the earliest date on which the lender can demand repayment.

Principal Sums Invested for Periods Longer than 365 days: The purpose of this indicator is to control the Authority's exposure to the risk of incurring losses by seeking early repayment of its investments. The limits on the long-term principal sum invested to final maturities beyond the period end were:

	2018/19	2019/20	2019/21
Actual principal invested beyond year end	-	-	-
Limit on principal invested beyond year end	£10m	£10m	£10m
Complied?	Yes	Yes	Yes

Report for: Full Council, 26 November 2019

Title: Approval of Council Tax Reduction Scheme for 2020/21

Report authorised by : Jon Warlow, Director of Finance

Lead Officer: Jon Warlow, Director of Finance

Ward(s) affected: All wards

**Report for Key/
Non Key Decision:** Key Decision

1. Describe the issue under consideration

- 1.1 Following the transfer of Council Tax Benefit to Local Authority control from April 2013, Haringey has run a replacement Council Tax Reduction Scheme that protected pensioners (as prescribed by Central Government) and those in receipt of certain disability benefits and passed on the funding cuts by giving a maximum level of support of 80.2% to all other claimants.
- 1.2 Following a consultation process in 2018, the scheme for 2019/20 was amended to increase the maximum level of support from 80.2% to 100% for working age claimants with children and to reflect some national welfare changes.
- 1.3 There is a statutory obligation on the Council to consider, each financial year, whether to revise or replace its scheme and a further obligation to consult residents before the scheme is changed.
- 1.4 This report sets out details of the review of Haringey's current Council Tax Reduction Scheme (CTRS) 2019/20 and recommends that it continues unchanged for 2020/21.
- 1.5 The Council must approve the final scheme by 11th March 2020, even if the scheme remains unchanged ready for implementation on the 1st April 2020.

2. Cabinet Member Introduction: Cllr Adje , Cabinet Member for Finance and Strategic Regeneration

- 2.1 We recognise there has been a significant financial burden on many of the lowest income households in Haringey since changes to council tax relief were made in 2013.
- 2.2 When centrally controlled Council Tax Benefit was replaced with locally controlled Council Tax Reduction Schemes and there was a considerable reduction in funding from central government. Haringey adopted a local scheme whereby working age claimants who were not disabled had to pay 19.8% towards their Council Tax.
- 2.3 Last year, however, we increased the maximum level of support to 100% for working age claimants with children, as already given to pensioners and disabled claimants. This means that this group now receives the same level of support as they did prior to 2013.

- 2.4 Maintaining the current scheme will provide financial support to some of the most vulnerable residents in the borough.

3. Recommendations

That Full Council:

- 3.1 Notes that an Equalities Impact Assessment (**Appendix 4**) has been undertaken in relation to the Council Tax Reduction Scheme and that the findings of this EIA must be taken into account when making a decision regarding the Scheme for 2020/21.
- 3.2 Agrees to adopt the Council Tax Reduction Scheme 2020/21 as contained in Appendix 3 and therefore retains the same Scheme agreed for 2019/20. This means that from 01st April 2020;
 - I. That pensioners continue to receive support for the payment of Council Tax.
 - II. That working age claimants in receipt of certain disability benefits continue to receive support for the payment of Council Tax up to 100%.
 - III. That working age claimants with children continue to receive support for the payment for Council Tax up to 100%.
 - IV. For all other working age claimants, the extent of Council Tax Support available will continue to be capped at 80.2% of Council Tax liability.
- 3.3 Gives authority to the Director of Finance, the Director of Customer, Transformation and Resources and Assistant Director of Corporate and Customer Services to make any required minor amendments to the Scheme, prior to publication and take all appropriate steps to implement and administer the Scheme.

4. Reasons for decision

- 4.1 The recommendation to retain the current scheme continues to support the Government's initiative of work incentives and pays due regard to the challenging financial climate we are currently in.
- 4.2 In recognition of the vulnerable sectors of society, additional supportive measures were put into the 2019/20 scheme giving increased protection to approximately 5,600 claimants, and it is proposed that these continue into 2020/21. Maintaining the current scheme ensures that these protected claimants will not be further disadvantaged.
- 4.3 Consideration has been given to revising the current scheme, however it is proposed that it should remain unchanged at this time.
- 4.4 The real reduction in Council resources and service pressures have required the Council to implement significant annual expenditure reductions since 2011. These are forecast to continue for 2020/21 and future years. The affordability to the Council of the CTRS scheme therefore continues to be an important consideration.
- 4.5 Haringey is comparable with other London LAs and its scheme reflects the need to strike a fair balance between protecting the wellbeing of our residents and recognising the challenging financial situation we are in.
- 4.6 **Appendix 1** breaks down all London LA schemes and some summary points are shown below:

- 15 LAs ask residents for a higher contribution to their Council Tax than Haringey including Enfield, Barnet, Waltham Forest and Barking & Dagenham.
- Wandsworth and Harrow have the highest contribution level at 30% for non disabled working age claimants
- 10 allow council tax to be reduced by up to 100% for all working age claimants, including City of London, Kensington & Chelsea and Westminster.

5. Background Information

- 5.1 Council Tax Benefit was abolished and replaced with locally managed Council Tax Reduction Schemes from 1 April 2013 with a reduced level of funding from Central Government and a mandate to protect pensioners from any changes.
- 5.2 Following financial modelling looking at claimant volumes, the number of pensioners in the area and anticipated collection figures, Haringey proposed to pass on the shortfall in funding to working age claimants by reducing the maximum level of Council Tax Reduction they could receive from 100% to 80.2%.
- 5.3 The consultation exercise in 2012 led to the Council extending the maximum of a 100% Council Tax Reduction to those in receipt of certain disability benefits. Further consultation in 2018 extended this protection to working age claimants with children. These changes extended the maximum 100% reduction to approximately 7,400 and 5,600 claimants respectively.
- 5.4 The Council must consider whether to revise or replace its CTRS for each financial year, but does not actually have to revise or replace it and can choose to make no changes.
- 5.5 This report proposes a continuation of the current Council Tax Reduction Scheme which includes the application method, entitlement criteria, ways to appeal, how to deal with changes of circumstances and notification styles.
- 5.6 The Scheme will continue to be run by Haringey Council and remains separate from the Department of Work and Pension's (DWP) Housing Benefit / Universal Credit awards.

6. Contribution to Strategic Outcomes

- 6.1 This recommendation links to all parts of the "People", "Economy" and "Your Council" Priorities of the Borough Plan, 2019-23.
- 6.2 Continuing to extend the maximum level of financial support for households with children will continue to ease the financial burden of families in Haringey and promote better outcomes for children and young people. There are clear links between socio-economic and health inequalities, and therefore reducing the financial burden on recipients of Council Tax Reduction contributes to wider positive life outcomes.
- 6.3 In addition, the scheme continues to provide financial support to those in low-paid employment and to those not in employment. This allows for greater spending power by those recipients of Council Tax Reduction, which could be having a positive impact on the local economy.

7. Statutory Officer Comments

Finance

- 7.1 The financial impact of the revised scheme introduced from 01 April 2019 is circa £1.6m through reduced Council Tax income. The 2019/20 Budget and 2019-2024 MTFS incorporated this impact and assumed that it would continue across the planning period. Therefore, as the recommendation in this report is to make no changes to the scheme for 2020/21, there are no additional financial implications to highlight.
- 7.2 Should the Council consider consulting on changes for future years beyond 2020/21, the financial implications will be assessed at that time and built into the Council's overall financial plans as required.

Procurement

- 7.3 Strategic Procurement notes the contents of this report

Legal

- 7.4 The Assistant Director of Corporate Governance has been consulted on this report. Under section 13A(2) of the Local Government Finance Act 1992, the Council as billing authority must make a localised Council Tax Reduction Scheme in accordance with Schedule 1A to the Act.
- 7.5 Each financial year the Council must consider whether to revise its scheme, or to replace it with another scheme. The Council must make any revision to its scheme, or any replacement scheme, no later than 11 March in the financial year preceding that for which the revision or replacement scheme is to have effect.
- 7.6 This report recommends that Full Council retains the same provisions for the Council Tax Reduction Scheme 2020/21 that was agreed at Full Council on 31 January 2019 for the 2019/20 scheme so that it continues unchanged for 2020/21. Therefore Full Council is required to agree continuing adoption of the Council Tax Reduction Scheme from 1 April 2020 for the council tax year 2020/21.
- 7.7 Schedule 1A to the 1992 Act makes further provision about Council Tax Reduction Schemes including prescribing the consultation process that must be followed. There is no obligation to consult as no changes are being recommended to the 2020/21 scheme.
- 7.8 Schedule 1A allows the Government to make regulations about the prescribed requirements for schemes. Any scheme that the Council adopts must comply with these regulations.

Equalities

- 7.9 The Council has a public sector equality duty under the Equality Act 2010 to have due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 7.10 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.
- 7.11 An Equality Impact Assessment (EqIA) has been completed, which assesses the potential impact of maintaining the current Council Tax Reduction Scheme (with no proposed changes) for 2020/21.
- 7.12 Maintaining the current CTRS will continue to have a neutral or positive impact for existing and future recipients of Council Tax Reduction across the protected characteristics. This is as all claimants, will either benefit or remain financially the same under a continuation of the scheme.

8. Use of Appendices

Appendix 1 – Summary of other London LA Schemes 2019/20
Appendix 2 – Equality Act 2010: The Public Sector Equality Duty
Appendix 3 – Haringey Council Tax Reduction Scheme
Appendix 4 – Equality impact assessment

9. Local Government Access to Information Act 1985

9.1 N/A

Appendix 1: Summary of other London LA Schemes 2019/20

Local Authority	Minimum Council Tax payment	Comment / Protection
Harrow (Outer)	30.00%	Claimants in receipt of certain disability premiums
Wandsworth (Inner)	30.00%	
Barnet (Outer)	28.00%	Increased from 20% in 17/18
Enfield (Outer)	26.50%	Increased from 25% in 17/18
Barking and Dagenham (Outer)	25.00%	
Bromley (Outer)	25.00%	
Ealing (Outer)	25.00%	
Havering (Outer)	25.00%	Increased from 15% in 17/18
Hillingdon (Outer)	25.00%	
Lewisham (Inner)	25.00%	Increased from 3% in 17/18
Redbridge (Outer)	25.00%	Increased from 15% in 17/18
Waltham Forest (Outer)	24.00%	
Bexley (Outer)	20.00%	
Brent (Outer)	20.00%	Claimants in receipt of certain disability premiums
Lambeth (Inner)	20.00%	Claimants in receipt of certain disability premiums
Haringey (Inner)	19.80%	Claimants in receipt of certain disability premiums Working age claimants with children
Sutton (Outer)	17.50%	Claimants in receipt of certain disability premiums Families with children under 5
Hackney (Inner)	17.00%	Increased from 15% in 17/18
Croydon (Outer)	15.00%	Claimants in receipt of certain disability premiums Single claimants with children under 5
Greenwich (Outer)	15.00%	
Southwark (Inner)	15.00%	
Newham (Inner)	10.00%	Reduced from 20% in 17/18
Islington (Inner)	8.50%	
Camden (Inner)	0.00%	Reduced from 8.5% in 17/18
City of London (Inner)	0.00%	
Hammersmith and Fulham (Inner)	0.00%	
Hounslow (Outer)	0.00%	Reduced from 8.5% in 17/18
Kensington and Chelsea (Inner)	0.00%	
Kingston upon Thames (Outer)	0.00%	
Merton (Outer)	0.00%	
Richmond upon Thames (Outer)	0.00%	Reduced from 5% in 17/18
Tower Hamlets (Inner)	0.00%	
Westminster (Inner)	0.00%	

(note – Councils sorted from highest minimum payment to lowest)

Appendix 2:
Equality Act 2010 – The Public Sector Equality Duty

Section 149 of the Equality Act 2010 Public Sector Equality Duty states

(1) A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) – A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) – Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) – The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) – Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) tackle prejudice, and
- (b) promote understanding.

(6) – Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) – The relevant protected characteristics are – age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

(8) – A reference to conduct that is prohibited by or under this Act includes a reference to –

- (a) a breach of an equality clause or rule;
- (b) a breach of a non-discrimination rule.

**London Borough of Haringey
Council Tax Reduction Scheme**

Introduction

This scheme is based on the Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 (SI 2012/2886) and incorporates the statutory obligations detailed in the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 (SI 2012/2885).

Certain elements of the Default Scheme have been removed or amended within this scheme and apply solely to persons who have not reached the qualifying age for state pension credit.

This scheme will be amended to take into account any circumstances subsequently identified, through government statute. This scheme will be treated as having been amended to accommodate any changes the government may make to The Prescribed Requirements. Where references are made to the Prescribed Requirements or Default Scheme, these will relate to the most recently published edition of those documents. Where either is revoked, the last published version(s) will apply.

Features of the scheme

Key changes from the Default Scheme (of which apply to persons who have not reached the qualifying age for state pension credit) are as follows:

- Applicants of working-age will have their Council Tax support assessed against 80.2% of their council tax liability
- Applicants in receipt of certain disability benefits and premiums and applicants responsible for a child(ren) or young person(s) in the same household will receive protection from the above measure. These applicants will have their Council Tax support assessed against 100% of their council tax liability
- A minimum weekly Council Tax Support award of £1 has been introduced
- A capital savings limit of £10,000 has been introduced
- Child benefit and war pensions will be fully disregarded when calculating entitlement for all applicants
- The maximum period for backdating claims shall be 6 months
- Any change of circumstance which is advantageous to council tax support entitlement and reported by the applicant outside one month, will take effect from the date on which it is reported

Application, appeals, revisions and superseded decisions

Provisions at Part 3 and Schedule 1 of this scheme set out how applications for a Council Tax Reduction must be made and how appeals are to be made to the authority.

General administration of the scheme

Apart from where statutorily required, advice of any award granted, removed or revised will be by an adjustment to the council tax bill and the bill itself will be the formal notification. Haringey Council reserves the right to include additional notifications.

Any excess award of Council Tax Reduction will be rectified by the amount being recovered by an adjustment to the council tax bill.

Uprating

This scheme proposes that certain figures for working age claimants set out in the scheme may be uprated in line with changes to social security benefit rates for Housing Benefit, as prescribed in the Housing Benefit Regulations 2006 as amended from time to time.

Data sharing, fraud and error

Information provided by applicants will be used by Haringey Council to process applications for Council Tax Reductions. Information may also be shared internally to facilitate the processing of applications.

Information provided by applicants will also be used by Haringey Council for the prevention and detection of fraud and may also be shared with external and internal bodies responsible for auditing or administering public funds for these purposes.

Haringey Council is the data controller for the purposes of the Data Protection Act.

Penalties

Haringey Council has a responsibility to protect taxpayers and the public purse by effectively fighting fraud. The Council takes all forms of fraud seriously and will take action to recover any money that has been claimed based on false information, a failure to provide (disclose) information or a failure to notify a change of circumstances, possession or supply of articles for use in fraud or more generally obtaining services dishonestly. Such action could include a civil penalty and/or prosecution.

Haringey Council is committed to developing a culture of honesty, and zero tolerance to fraud. Individuals can anonymously notify the Council of a potential fraud.

To report all cases of fraud or corruption please call Fraudwatch on Freephone 0500 500 777

Alternatively please contact:

Audit and Risk Management can be contacted at:
Level 7, Alexandra House,
10 Station Road, Wood Green,
London, N22 7TR
Telephone: 020 8489 3768

Email: fraudcall@haringey.gov.uk

London Borough of Haringey Council Tax Reduction Scheme

This Scheme is based upon the Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 (SI 2012/2886).

Application

The Scheme set out below is the reduction scheme for the London Borough of Haringey pursuant to section 13A(2) Local Government Finance Act 1992, approved on 31 January 2019.

These rules may be cited as the Council Tax Reduction Scheme 2019 and come into force on 1 April 2019. These rules are decided by and apply to Haringey Council.

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Part 1
Introduction

Introduction

1

This scheme relates to the financial year beginning with 1st April 2019 and may be cited as the London Borough of Haringey Council Tax Reduction Scheme.

Part 2
Interpretation

Interpretation

2

(1) In this scheme--

"the 1992 Act" means the Local Government Finance Act 1992;

"Abbeyfield Home" means an establishment run by the Abbeyfield Society including all bodies corporate or unincorporated which are affiliated to that society;

"adoption leave" means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996;

"an AFIP" means an armed forces independence payment payable in accordance with an armed and reserve forces compensation scheme established under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004;

"alternative maximum council tax reduction" means the amount determined in accordance with paragraph 31 and Schedule 4;

"applicable amount" means--

(a) in relation to a pensioner, the amount calculated in accordance with paragraph 25 and Schedule 2, and

(b) in relation to a person who is not a pensioner, the amount calculated in accordance with--

(i) paragraph 26 and Schedule 3; or

(ii) paragraph 28,

as the case may be;

"applicant" means a person who has made an application;

"application" means an application for a reduction under this scheme;

"approved blood scheme" means a scheme established or approved by the Secretary of State, or trust established with funds provided by the Secretary of State, for the purpose of providing compensation in respect of a person having been infected from contaminated blood products;

"assessment period" means--

(a) in relation to pensioners--

- (i) in relation to the earnings of a self-employed earner, the period determined in accordance with paragraph 43 for the purpose of calculating the weekly earnings of the applicant; or
- (ii) in relation to any other income, the period determined in accordance with paragraph 40 for the purpose of calculating the weekly income of the applicant;

(b) in relation to persons who are not pensioners, such period as is set out in paragraphs 47 to 49 over which income falls to be calculated;

"attendance allowance" means--

- (a) an attendance allowance under Part 3 of the SSCBA;
- (b) an increase of disablement pension under section 104 or 105 of that Act;
- (c) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983 or any analogous payment; or
- (d) any payment based on need for attendance which is paid as part of a war disablement pension;

"the authority" means the London Borough of Haringey by virtue of paragraph 4(6) of Schedule 1A to the 1992 Act;

"basic rate" has the meaning given by the Income Tax Act 2007;

"the benefit Acts" means the SSCBA, the Jobseekers Act 1995, the State Pension Credit Act 2002 and the Welfare Reform Act 2007 and the Pensions Act 2014;

"board and lodging accommodation" means accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises;

"care home" has the meaning given by section 3 of the Care Standards Act 2000 and in Scotland means a care home service within the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001 and in Northern Ireland means a nursing home within the meaning of Article 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 or a residential care home within the meaning of Article 10 of that Order;

"the Caxton Foundation" means the charitable trust of that name established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;

"child" means a person under the age of 16;

"child benefit" has the meaning given by section 141 of the SSCBA;

"child tax credit" means a child tax credit under section 8 of the Tax Credits Act 2002;

"close relative" means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or if any of the preceding persons is one member of a couple, the other member of that couple;

"concessionary payment" means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged either to the National Insurance Fund or to a Departmental Expenditure Vote to which payments of benefit or tax credits under the benefit Acts or the Tax Credits Act 2002 are charged;

"contributory employment and support allowance" means a contributory allowance under Part 1 of the Welfare Reform Act 2007 as amended by the provisions of Schedule 3, and Part 1 of Schedule

14, to the Welfare Reform Act 2012 that remove references to an income related allowance and a contributory allowance under Part 1 of the Welfare Reform Act 2007 as that Part has effect apart from those provisions;

"council tax benefit" means council tax benefit under Part 7 of the SSCBA;

"couple" has the meaning given by paragraph 4;

"designated office" means the office of the authority designated by it for the receipt of applications--

- (a) by notice upon or with a form supplied by it for the purpose of making an application; or
- (b) by reference upon or with such a form to some other document available from it and sent by electronic means or otherwise on application and without charge; or
- (c) by any combination of the provisions set out in paragraphs (a) and (b);

"disability living allowance" means a disability living allowance under section 71 of the SSCBA;

"earnings" has the meaning given by paragraph 41, 44, 51 or 53 as the case may be;

"the Eileen Trust" means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

"electronic communication" has the same meaning as in section 15(1) of the Electronic Communications Act 2000;

"employed earner" is to be construed in accordance with section 2(1)(a) of the SSCBA and also includes a person who is in receipt of a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay or statutory maternity pay;

"the Employment, Skills and Enterprise Scheme" means a scheme under section 17A (schemes for assisting persons to obtain employment: "work for your benefit" schemes etc) of the Jobseekers Act 1995 known by that name and provided pursuant to arrangements made by the Secretary of State that is designed to assist claimants for job-seekers allowance to obtain employment, including self-employment, and which may include for any individual work-related activity (including work experience or job search);

"employment zone" means an area within Great Britain designated for the purposes of section 60 of the Welfare Reform and Pensions Act 1999 and an "employment zone programme" means a programme established for such an area or areas designed to assist claimants for a jobseeker's allowance to obtain sustainable employment;

"enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament or the National Assembly for Wales;

"extended reduction" means a reduction under this scheme for which a person is eligible under Part 12 (extended reductions);

"extended reduction period" means the period for which a person is in receipt of an extended reduction in accordance with paragraph 89, 96 or 101;

"extended reduction (qualifying contributory benefits)" means a reduction under this scheme for which a person is eligible in accordance with paragraph 88 or 95;

"family" has the meaning given by paragraph 6;

"the Fund" means moneys made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by him on 24th April 1992 or, in Scotland, on 10th April 1992;

"guarantee credit" is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002;

"a guaranteed income payment" means a payment made under article 15(1)(c) (injury benefits) or 29(1)(a) (death benefits) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;

"housing benefit" means housing benefit under Part 7 of the SSCBA;

"an income-based jobseeker's allowance" and "a joint-claim jobseeker's allowance" have the meanings given by section 1(4) of the Jobseekers Act 1995;

"income-related employment and support allowance" means an income-related allowance under Part 1 of the Welfare Reform Act 2007;

"independent hospital"--

(a) in England means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section;

(b) in Wales has the meaning given by section 2 of the Care Standards Act 2000; and

(c) in Scotland means an independent health care service as defined by section 10F of the National Health Service (Scotland) Act 1978;

"the Independent Living Fund (2006)" means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part;

"invalid carriage or other vehicle" means a vehicle propelled by a petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

"the London Bombings Relief Charitable Fund" means the company limited by guarantee (number 5505072), and registered charity of that name established on 11th July 2005 for the purpose of (amongst other things) relieving sickness, disability or financial need of victims (including families or dependants of victims) of the terrorist attacks carried out in London on 7th July 2005;

"the London Emergencies Trust" means the company of that name (number 09928465) incorporated on 23rd December 2015 and the registered charity of that name (number 1172307) established on 28th March 2017;

"lone parent" means a person who has no partner and who is responsible for and a member of the same household as a child or young person;

"the Macfarlane (Special Payments) Trust" means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;

"the Macfarlane (Special Payments) (No 2) Trust" means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

"the Macfarlane Trust" means the charitable trust, established partly out of funds provided by the Secretary of State to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

"main phase employment and support allowance" means an employment and support allowance where the calculation of the amount payable in respect of the applicant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act 2007 or the applicant is a member of the work-related activity group except in Part 1 of Schedule 3;

"maternity leave" means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Part 8 of the Employment Rights Act 1996;

"maximum council tax reduction amount" means the amount determined in accordance with paragraph 29;

"member of a couple" means a member of a married or unmarried couple;

"member of the work-related activity group" means a person who has or is treated as having limited capability for work under either--

- (a) Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations; or
- (b) Part 4 of the Employment and Support Allowance Regulations 2013 other than by virtue of regulation 26 of those Regulations;

"MFET Limited" means the company limited by guarantee (number 7121661) of that name, established for the purpose in particular of making payments in accordance with arrangements made with the Secretary of State to persons who have acquired HIV as a result of treatment by the NHS with blood or blood products;

"mobility supplement" means--

- (a) in relation to pensioners, a supplement to which paragraph 5(1)(a)(vii) of Schedule 5 refers;
- (b) in relation to persons who are not pensioners, a supplement to which paragraph 13 of Schedule 8 refers;

"mover" means an applicant who changes the dwelling in which the applicant is resident, and in respect of which the applicant is liable to pay council tax, from a dwelling in the area of the authority to a dwelling in the area of a second authority;

"net earnings" means such earnings as are calculated in accordance with paragraph 42 or 52, as the case may be;

"net profit" means such profit as is calculated in accordance with paragraph 61;

"new dwelling" means, for the purposes of the definition of "second authority" and paragraphs 91, 98 and 103, the dwelling to which an applicant has moved, or is about to move, in which the applicant will be resident;

"non-dependant" has the meaning given by paragraph 9;

"occasional assistance" means any payment or provision made by a local authority, the Welsh Ministers or the Scottish Ministers for the purposes of--

- (a) meeting, or helping to meet an immediate short-term need--
 - (i) arising out of an exceptional event or exceptional circumstances, or
 - (ii) that needs to be met to avoid a risk to the well-being of an individual, and
- (b) enabling qualifying individuals to establish or maintain a settled home, and--
 - (i) "local authority" has the meaning given by section 270(1) of the Local Government Act 1972; and
 - (ii) "qualifying individuals" means individuals who have been, or without the assistance might otherwise be--
 - (aa) in prison, hospital, an establishment providing residential care or other institution, or
 - (bb) homeless or otherwise living an unsettled way of life;

and "local authority" means a local authority in England within the meaning of the Local Government Act 1972;

"occupational pension" means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

"occupational pension scheme" has the same meaning as in section 1 of the Pension Schemes Act 1993;

"partner", in relation to a person, means--

- (a) where that person is a member of a couple, the other member of that couple;
- (b) subject to paragraph (c), where that person is polygamously married to two or more members of his household, any such member to whom he is married; or
- (c) where that person is polygamously married and has an award of universal credit with the other party to the earliest marriage that still subsists, that other party to the earliest marriage;

"paternity leave" means a period of absence from work on paternity leave by virtue of section 80A or 80B of the Employment Rights Act 1996;

"pension fund holder" means with respect to a personal pension scheme or an occupational pension scheme, the trustees, managers or scheme administrators, as the case may be, of the scheme concerned;

"pensionable age" has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995;

"pensioner" has the meaning given by paragraph 3(2)(a);

"person on income support" means a person in receipt of income support;

"person treated as not being in Great Britain" has the meaning given by paragraph 21;

"person who is not a pensioner" has the meaning given by paragraph 3(2)(b);

"personal independence payment" has the meaning given by Part 4 of the Welfare Reform Act 2012;

"personal pension scheme" means--

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993;
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988 or a substituted contract within the meaning of section 622(3) of that Act which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004;
- (c) a personal pension scheme approved under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988 which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;

"policy of life insurance" means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

"polygamous marriage" means any marriage to which paragraph 5 applies;

"qualifying age for state pension credit" means (in accordance with section 1(2)(b) and (6) of the State Pension Credit Act 2002)--

- (a) in the case of a woman, pensionable age; or
- (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;

"qualifying contributory benefit" means--

- (a) severe disablement allowance;
- (b) incapacity benefit;
- (c) contributory employment and support allowance;

"qualifying income-related benefit" means--

- (a) income support;
- (b) income-based jobseeker's allowance;
- (c) income-related employment and support allowance;

"qualifying person" means a person in respect of whom payment has been made from the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, the Scottish Infected Blood Support Scheme, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund or the London Bombings Relief Charitable Fund;

"reduction week" means a period of seven consecutive days beginning with a Monday and ending with a Sunday;

"relative" means a close relative, grandparent, grandchild, uncle, aunt, nephew or niece;

"relevant week", in relation to any particular day, means the week within which the day in question falls;

"remunerative work" has the meaning given by paragraph 10;

"rent" means "eligible rent" to which regulation 12 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 refer, less any deductions in respect of non-dependants which fall to be made under paragraph 30 (non-dependant deductions);

"savings credit" is to be construed in accordance with sections 1 and 3 of the State Pension Credit Act 2002;

"Scottish basic rate" means the rate of income tax of that name calculated in accordance with section 6A of the Income Tax Act 2007;

"the Scottish Infected Blood Support Scheme" means the scheme of that name administered by the Common Services Agency (constituted under section 10 of the National Health Service (Scotland) Act 1978);

"Scottish taxpayer" has the same meaning as in Chapter 2 of Part 4A of the Scotland Act 1998;

"second authority" means the authority to which a mover is liable to make payments for the new dwelling;

"self-employed earner" is to be construed in accordance with section 2(1)(b) of the SSCBA;

"shared parental leave" means leave under section 75E or 75G of the Employment Rights Act 1996;

"single applicant" means an applicant who neither has a partner nor is a lone parent;

"the Skipton Fund" means the ex-gratia payment scheme administered by the Skipton Fund Limited, incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme's provisions;

"sports award" means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc Act 1993 out of sums allocated to it for distribution under that section;

"the SSCBA" means the Social Security Contributions and Benefits Act 1992;

"state pension credit" means state pension credit under the State Pension Credit Act 2002;

"student" has the meaning given by paragraph 73;

"tax year" means a period beginning with 6th April in one year and ending with 5th April in the next;

"training allowance" means an allowance (whether by way of periodical grants or otherwise) payable--

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise, or the Welsh Ministers;
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State, Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise or the Welsh Ministers,

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education, other than under arrangements made under section 2 of the Employment and Training Act 1973, or is training as a teacher;

"the Trusts" (except where the context otherwise requires) means the Macfarlane Trust, the Macfarlane (Special Payments) Trust and the Macfarlane (Special Payments) (No 2) Trust and "Trustees" is to be construed accordingly;

"universal credit" has the meaning given by section 1 of the Welfare Reform Act 2012;

"voluntary organisation" means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

"war disablement pension" means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003;

"war pension" means a war disablement pension, a war widow's pension or a war widower's pension;

"war widow's pension" means any pension or allowance payable to a woman as a widow under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;

"war widower's pension" means any pension or allowance payable to a man as a widower or to a surviving civil partner under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;

"water charges" means--

- (a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part 5 of the Water Industry Act 1991,

(b) as respects Scotland, any water and sewerage charges established by Scottish Water under a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002,

in so far as such charges are in respect of the dwelling which a person occupies as his home;

“the We Love Manchester Emergency Fund” means the registered charity of that name (number 1173260) established on 30th May 2017;

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act 2002;

“young person” means a person who falls within the definition of qualifying young person in section 142 of the SSCBA.

(2) In this scheme, where an amount is to be rounded to the nearest penny, a fraction of a penny must be disregarded if it is less than half a penny and must otherwise be treated as a whole penny.

(3) For the purpose of this scheme, a person is on an income-based jobseeker's allowance on any day in respect of which an income-based jobseeker's allowance is payable to him and on any day--

(a) in respect of which he satisfies the conditions for entitlement to an income-based jobseeker's allowance but where the allowance is not paid because of a reduction in accordance with section 19 or 19A or regulations made under section 17A or 19B of the Jobseekers Act 1995 (circumstances in which a jobseeker's allowance is not payable);

(b) which is a waiting day for the purposes of paragraph 4 of Schedule 1 to that Act and which falls immediately before a day in respect of which an income-based jobseeker's allowance is payable to him or would be payable to him but for section 19 or 19A or regulations made under section 17A or 19B of that Act; or

(c) in respect of which an income-based jobseeker's allowance would be payable but for a restriction imposed pursuant to section 6B, 7, 8 or 9 of the Social Security Fraud Act 2001 (loss of benefit provisions).

(4) For the purposes of this scheme, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day--

(a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act 2007 (disqualification); or

(b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act (employment and support allowance: supplementary provisions) and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.

(5) For the purposes of this scheme, two persons must be taken to be estranged only if their estrangement constitutes a breakdown of the relationship between them.

(6) In this scheme, references to any person in receipt of state pension credit includes a person who would be in receipt of state pension credit but for regulation 13 of the State Pension Credit Regulations 2002 (small amounts of state pension credit).

(7) In this scheme, references to a person in class A, B or C (as the case may be) is a reference to class A, B or C described in paragraphs 13-15 of Part 4.

(8) References in this scheme to an applicant participating as a service user are to-

(a) a person who is being consulted by or on behalf of-

(i) a body which has a statutory duty to provide services in the field of health, social care or social housing; or

(ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,

in their capacity as a user, potential user, carer of a user or person otherwise affected by the provision of those services;

(aa) a person who is being consulted by or on behalf of—

(i) the Secretary of State in relation to any of the Secretary of State's functions in the field of social security or child support or under section 2 of the Employment and Training Act 1973; or

(ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such functions,

in their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person; or

(b) the carer of a person consulted as described in sub-paragraph (a) or (aa) where the carer is not being consulted as described in that sub-paragraph.

Application of scheme: pensioners and persons who are not pensioners

3

(1) This scheme applies to--

(a) pensioners who fall within any of classes A to C; and

(b) persons who are not pensioners who fall within any of classes D to F.

(2) In this scheme--

(a) a person is a "pensioner" if--

(i) he has attained the qualifying age for state pension credit; and

(ii) he is not, and, if he has a partner, his partner is not--

(aa) a person on income support, on an income-based jobseeker's allowance or on an income-related employment and support allowance, or

(bb) a person with an award of universal credit; and

(b) a person is a "person who is not a pensioner" if--

(i) he has not attained the qualifying age for state pension credit; or

(ii) he has attained the qualifying age for state pension credit and he, or if he has a partner, his partner, is--

(aa) a person on income support, on an income-based jobseeker's allowance or on an income-related employment and support allowance, or

(bb) a person with an award of universal credit.

Meaning of "couple"

4

(1) In this scheme "couple" means--

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners.

(2) Two people of the same sex are to be treated as living together as if they were civil partners if, and only if, they would be treated as living together as husband and wife were they of opposite sexes.

Polygamous marriages

5

(1) This paragraph applies to any case where--

- (a) a person is a husband or wife by virtue of a marriage entered into under a law which permits polygamy; and
- (b) either party to the marriage has for the time being any spouse additional to the other party.

(2) For the purposes of paragraph 4 (meaning of "couple") neither party to the marriage is to be taken to be a member of a couple.

Meaning of "family"

6

(1) In this scheme "family" means--

- (a) a couple;
- (b) a couple and a member of the same household for whom one of them is or both are responsible and who is a child or a young person; or
- (c) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child or a young person.

(2) The references to a child or young person in sub-paragraph (1)(b) and (c) include a child or young person in respect of whom section 145A of the SSCBA applies for the purposes of entitlement to child benefit, but only for the period prescribed under section 145A(1).

(3) The references to a young person in sub-paragraph (1)(b) and (c) do not include a young person who is--

- (a) on income support, an income-based jobseeker's allowance or an income-related employment and support allowance, or has an award of universal credit;

- (b) a person to whom section 6 of the Children (Leaving Care) Act 2000 (exclusion from benefits) applies; or
- (c) entitled to an award of universal credit.

Circumstances in which a person is to be treated as responsible or not responsible for another

7

- (1) A person is to be treated as responsible for a child or young person who is normally living with him, including a child or young person to whom paragraph 6(2) applies.
- (2) Where a child or young person spends equal amounts of time in different households, or where there is a question as to which household he is living in, the child or young person must be treated for the purposes of sub-paragraph (1) as normally living with--
 - (a) the person who is receiving child benefit in respect of that child or young person, or
 - (b) if there is no such person--
 - (i) where only one claim for child benefit has been made in respect of him, the person who made that claim, or
 - (ii) in any other case the person who has the primary responsibility for him.
- (3) For the purposes of this scheme a child or young person is the responsibility of only one person in any reduction week and any person other than the one treated as responsible for the child or young person under this paragraph is to be treated as not so responsible.

Households

8

- (1) Subject to sub-paragraphs (2) and (3), an applicant and any partner and, where the applicant or his partner is treated (by virtue of paragraph 7) as responsible for a child or young person, that child or young person and any child of that child or young person, are to be treated as members of the same household notwithstanding that any of them is temporarily absent from that household.
- (2) A child or young person is not be treated as a member of the applicant's household where he is--
 - (a) placed with the applicant or his partner by a local authority under section 22C of the Children Act 1989 or by a voluntary organisation under section 59(1)(a) of that Act, or section 81(2) of the Social Services and Well-being (Wales) Act 2014 (ways in which looked after children are to be accommodated and maintained), or in Scotland boarded out or placed with the applicant or the applicant's partner by a local authority under section 81 of the Social Services and Well-being (Wales) Act 2014 or by a voluntary organisation under section 59(1)(a) of the Children Act 1989; or
 - (b) placed, or in Scotland boarded out, with the applicant or his partner prior to adoption; or
 - (c) placed for adoption with the applicant or his partner in accordance with the Adoption and Children Act 2002 or the Adoption Agencies (Scotland) Regulations 2009 or the Adoption (Northern Ireland) Order 1987.
- (3) Subject to sub-paragraph (4), sub-paragraph (1) does not apply to a child or young person who is not living with the applicant and who--

- (a) is being looked after by, or in Scotland is in the care of, a local authority under a relevant enactment; or
 - (b) has been placed, or in Scotland boarded out, with a person other than the applicant prior to adoption; or
 - (c) has been placed for adoption in accordance with the Adoption and Children Act 2002 or the Adoption Agencies (Scotland) Regulations 2009.
- (4) The authority must treat a child or young person to whom sub-paragraph (3)(a) applies as being a member of the applicant's household in any reduction week where--
- (a) that child or young person lives with the applicant for part or all of that reduction week; and
 - (b) the authority considers that it is reasonable to do so taking into account the nature and frequency of that child's or young person's visits.
- (5) In this paragraph "relevant enactment" means--
- (a) the Army Act 1955;
 - (b) the Air Force Act 1955;
 - (c) the Naval Discipline Act 1957;
 - (d) the Matrimonial Proceedings (Children) Act 1958;
 - (e) the Social Work (Scotland) Act 1968;
 - (f) the Family Law Reform Act 1969;
 - (g) the Children and Young Persons Act 1969;
 - (h) the Matrimonial Causes Act 1973;
 - (i) the Children Act 1975;
 - (j) the Domestic Proceedings and Magistrates' Courts Act 1978;
 - (k) the Adoption and Children (Scotland) Act 2007;
 - (l) the Family Law Act 1986;
 - (m) the Children Act 1989;
 - (n) the Children (Scotland) Act 1995;
 - (na) the Children's Hearings (Scotland) Act 2011; and
 - (o) the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Non-dependants

9

- (1) In this scheme, "non-dependant" means any person, except someone to whom sub-paragraph (2) applies, who normally resides with an applicant or with whom an applicant normally resides.
- (2) This paragraph applies to--
- (a) any member of the applicant's family;
 - (b) if the applicant is polygamously married--
 - (i) where the applicant has (alone or jointly with his partner) an award of universal credit, any--

- (aa) party to such a marriage other than the applicant's partner; and
 - (bb) any child or young person who is a member of his household and for whom he or his partner or another party to the polygamous marriage is responsible; or
- (ii) in any other case, any partner of his and any child or young person who is a member of his household and for whom he or one of his partners is responsible;
- (c) a child or young person who is living with the applicant but who is not a member of his household by virtue of paragraph 8 (households);
- (d) subject to sub-paragraph (3), any person who, with the applicant, is jointly and severally liable to pay council tax in respect of a dwelling for any day under section 6 or 7 of the 1992 Act (persons liable to pay council tax);
- (e) subject to sub-paragraph (3), any person who is liable to make payments on a commercial basis to the applicant or the applicant's partner in respect of the occupation of the dwelling;
- (f) a person who lives with the applicant in order to care for him or a partner of his and who is engaged by a charitable or voluntary organisation which makes a charge to the applicant or his partner for the services provided by that person.
- (3) Excepting persons to whom sub-paragraph (2)(a) to (c) and (f) refer, a person to whom any of the following paragraphs applies is a non-dependant--
- (a) a person who resides with the person to whom he is liable to make payments in respect of the dwelling and either--
 - (i) that person is a close relative of his or his partner; or
 - (ii) the tenancy or other agreement between them is other than on a commercial basis;
 - (b) a person whose liability to make payments in respect of the dwelling appears to the authority to have been created to take advantage of a council tax reduction scheme except someone who was, for any period within the eight weeks prior to the creation of the agreement giving rise to the liability to make such payments, otherwise liable to make payments of rent in respect of the same dwelling;
 - (c) a person who becomes jointly and severally liable with the applicant for council tax in respect of a dwelling and who was, at any time during the period of eight weeks prior to his becoming so liable, a non-dependant of one or more of the other residents in that dwelling who are so liable for the tax, unless the change giving rise to the new liability was not made to take advantage of a council tax reduction scheme.

Remunerative work

10

- (1) Subject to the following provisions of this paragraph, a person must be treated for the purposes of this scheme as engaged in remunerative work if he is engaged, or, where his hours of work fluctuate, he is engaged on average, for not less than 16 hours a week, in work for which payment is made or which is done in expectation of payment.
- (2) Subject to sub-paragraph (3), in determining the number of hours for which a person is engaged in work where his hours of work fluctuate, regard must be had to the average of hours worked over--

(a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does no work, those periods but disregarding any other absences);

(b) in any other case, the period of 5 weeks immediately prior to the date of application, or such other length of time as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(3) Where, for the purposes of sub-paragraph (2)(a), a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work must be disregarded in establishing the average hours for which he is engaged in work.

(4) Where no recognisable cycle has been established in respect of a person's work, regard must be had to the number of hours or, where those hours will fluctuate, the average of the hours, which he is expected to work in a week.

(5) A person must be treated as engaged in remunerative work during any period for which he is absent from work referred to in sub-paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(6) A person on income support, an income-based jobseeker's allowance or an income-related employment and support allowance for more than 3 days in any reduction week is to be treated as not being in remunerative work in that week.

(7) A person must not be treated as engaged in remunerative work on any day on which the person is on maternity leave, paternity leave, shared parental leave or adoption leave, or is absent from work because he is ill.

(8) A person must not be treated as engaged in remunerative work on any day on which he is engaged in an activity in respect of which--

(a) a sports award has been made, or is to be made, to him; and

(b) no other payment is made or is expected to be made to him.

Part 3 Procedural Matters

Procedure for reduction applications and appeals against reduction decisions

11

Schedule 1 contains provisions about the procedure--

(a) by which a person may apply for a reduction under this scheme;

(b) by which a person may make an appeal against certain decisions of the authority;

(c) by which a person can apply to the authority for a reduction under section 13A(1)(c) of the 1992 Act.

Part 4 Classes of Person Entitled to a Reduction Under this Scheme

Classes of person entitled to a reduction under this scheme

12

(1) The classes of person described in paragraphs 13 to 18 are entitled to a reduction under this scheme.

(2) In those paragraphs, references to the applicant's income or capital include, in a case where that income or capital cannot accurately be determined, references to the applicant's estimated income or capital.

Class A: pensioners whose income is no greater than the applicable amount

13

On any day class A consists of any person who is a pensioner--

- (a) who is for that day liable to pay council tax in respect of a dwelling of which he is a resident;
- (b) who, subject to paragraph 19 (periods of absence from a dwelling), is not absent from the dwelling throughout the day;
- (c) in respect of whom a maximum council tax reduction amount can be calculated;
- (d) who does not fall within a class of person not entitled to a reduction under this scheme;
- (e) whose income (if any) for the relevant week does not exceed his applicable amount, and
- (f) who has made an application.

Class B: pensioners whose income is greater than the applicable amount

14

On any day class B consists of any person who is a pensioner--

- (a) who is for that day liable to pay council tax in respect of a dwelling of which he is a resident;
- (b) who, subject to paragraph 19 (periods of absence from a dwelling), is not absent from the dwelling throughout the day;
- (c) in respect of whom a maximum council tax reduction amount can be calculated;
- (d) who does not fall within a class of person not entitled to a reduction under this scheme;
- (e) whose income for the relevant week is greater than his applicable amount;
- (f) in respect of whom amount A exceeds amount B where--
 - (i) amount A is the maximum council tax reduction in respect of the day in the applicant's case; and
 - (ii) amount B is $2\frac{6}{7}$ per cent of the difference between his income for the relevant week and his applicable amount, and
- (g) who has made an application.

Class C: alternative maximum council tax reduction--pensioners

15

(1) On any day class C consists of any person who is a pensioner--

- (a) who is for that day liable to pay council tax in respect of a dwelling of which he is a resident;
- (b) who, subject to paragraph 19 (periods of absence from a dwelling), is not absent from the dwelling throughout the day;
- (c) in respect of whom a maximum council tax reduction amount can be calculated;
- (d) who does not fall within a class of person not entitled to a reduction under this scheme;
- (e) who has made an application; and
- (f) in relation to whom the condition in sub-paragraph (2) is met.

(2) The condition referred to in sub-paragraph (1)(f) is that no other resident of the dwelling is liable to pay rent to the applicant in respect of the dwelling and there is an alternative maximum council tax reduction in respect of the day in the case of that person which is derived from the income, or aggregate incomes, of one or more residents to whom this sub-paragraph applies.

(3) Sub-paragraph (2) applies to any other resident of the dwelling who--

- (a) is not a person who, in accordance with Schedule 1 to the 1992 Act, falls to be disregarded for the purposes of discount;
- (b) is not a person who is liable for council tax solely in consequence of the provisions of section 9 of the 1992 Act (spouse's or civil partner's joint and several liability for tax);
- (c) is not a person who is residing with a couple or with the members of a polygamous marriage where the applicant is a member of that couple or of that marriage and--
 - (i) in the case of a couple, neither member of that couple is a person who, in accordance with Schedule 1 to the 1992 Act (persons disregarded for the purposes of discount), falls to be disregarded for the purposes of discount; or
 - (ii) in the case of a polygamous marriage, two or more members of that marriage are not persons who, in accordance with Schedule 1 to the 1992 Act, fall to be disregarded for the purposes of discount;
- (d) is not a person who jointly with the applicant falls within the same paragraph of section 6(2)(a) to (e) of the 1992 Act (persons liable to pay council tax) as applies in the case of the applicant; or
- (e) is not a person who is residing with two or more persons both or all of whom fall within the same paragraph of section 6(2)(a) to (e) of the 1992 Act where two or more of those persons are not persons who, in accordance with Schedule 1 to the 1992 Act, fall to be disregarded for the purposes of discount.

Class D: persons who are not pensioners whose income is less than the applicable amount

16

On any day class D consists of any person who is not a pensioner--

- (a) who is for that day liable to pay council tax in respect of a dwelling of which he is a resident;
- (b) who, subject to paragraph 19 (periods of absence from a dwelling), is not absent from the dwelling throughout the day;
- (c) in respect of whom a maximum council tax reduction amount can be calculated;
- (d) who does not fall within a class of person not entitled to a reduction under this scheme;
- (e) whose income (if any) for the relevant week is less than his applicable amount, and

- (f) who has made an application.
- (g) any such person identified in 16(a), 16(b), 16(c), 16 (d), 16 (e) and 16(f) shall not be entitled to a council tax reduction if, once calculated, their award would have been less than £1 per week.

Class E: persons who are not pensioners whose income is greater than the applicable amount

17

On any day class E consists of any person who is not a pensioner--

- (a) who is for that day liable to pay council tax in respect of a dwelling of which he is a resident;
- (b) who, subject to paragraph 19 (periods of absence from a dwelling), is not absent from the dwelling throughout the day;
- (c) in respect of whom a maximum council tax reduction amount can be calculated;
- (d) who does not fall within a class of person not entitled to a reduction under this scheme;
- (e) whose income for the relevant week is greater than his applicable amount;
- (f) in respect of whom amount A exceeds amount B where--
 - (i) amount A is the maximum council tax reduction in his case; and
 - (ii) amount B is $2 \frac{6}{7}$ per cent of the difference between his income for the relevant week and his applicable amount, and
- (g) who has made an application.
- (h) any such person identified in 17(a), 17(b), 17(c), 17 (d), 17 (e), 17(f) and 17(g) shall not be entitled to a council tax reduction if, once calculated, their award would have been less than £1 per week

Class F: alternative maximum council tax reduction--persons who are not pensioners

18

(1) On any day class F consists of any person who is not a pensioner--

- (a) who is for that day liable to pay council tax in respect of a dwelling of which he is a resident;
- (b) who, subject to paragraph 19 (periods of absence from a dwelling), is not absent from the dwelling throughout the day;
- (c) in respect of whom a maximum council tax reduction amount can be calculated;
- (d) who does not fall within a class of person not entitled to a reduction under this scheme;
- (e) who has made an application; and
- (f) in relation to whom the condition in sub-paragraph (2) is met.

(2) The condition referred to in sub-paragraph (1)(f) is that no other resident of the dwelling is liable to pay rent to the person in question in respect of the dwelling and there is an alternative maximum

council tax reduction in respect of the day in the case of that person which is derived from the income, or aggregate incomes, of one or more residents to whom this sub-paragraph applies.

(3) Sub-paragraph (2) applies to any other resident of the dwelling who--

- (a) is not a person who, in accordance with Schedule 1 to the 1992 Act, falls to be disregarded for the purposes of discount; and
- (b) is not a person who is liable for council tax solely in consequence of the provisions of section 9 of the 1992 Act (spouse's or civil partner's joint and several liability for tax);
- (c) is not a person who is residing with a couple or with the members of a polygamous marriage where the applicant for the reduction is a member of that couple or of that marriage and--
 - (i) in the case of a couple, neither member of that couple is a person who, in accordance with Schedule 1 to the 1992 Act, falls to be disregarded for the purposes of discount; or
 - (ii) in the case of a polygamous marriage, two or more members of that marriage are not persons who, in accordance with Schedule 1 to the 1992 Act, fall to be disregarded for the purposes of discount;
- (d) is not a person who jointly with the applicant for reduction falls within the same paragraph of section 6(2)(a) to (e) of the 1992 Act (persons liable to pay council tax) as applies in the case of the applicant; or
- (e) is not a person who is residing with two or more persons both or all of whom fall within the same paragraph of section 6(2)(a) to (e) of the 1992 Act where two or more of those persons are not persons who, in accordance with Schedule 1 to the 1992 Act, fall to be disregarded for the purposes of discount.

Periods of absence from a dwelling: pensioners

19

- (1) A person is not absent from a dwelling in relation to any day which falls within a period of temporary absence from that dwelling.
- (2) In sub-paragraph (1), a "period of temporary absence" means--
 - (a) a period of absence not exceeding 13 weeks, beginning with the first whole day on which a person resides in residential accommodation in Great Britain where and for so long as--
 - (i) the person resides in that accommodation;
 - (ii) the part of the dwelling in which he usually resided is not let or sub-let; and
 - (iii) that period of absence does not form part of a longer period of absence from the dwelling of more than 52 weeks,

where he has entered the accommodation for the purpose of ascertaining whether it suits his needs and with the intention of returning to the dwelling if it proves not to suit his needs;

- (b) subject to sub-paragraph (2B), a period of absence within Great Britain not exceeding 13 weeks, beginning with the first whole day of absence from the dwelling, where and for so long as--
 - (i) the person intends to return to the dwelling;
 - (ii) the part of the dwelling in which he usually resided is not let or sub-let; and
 - (iii) that period is unlikely to exceed 13 weeks;

(c) subject to sub-paragraph (2D), a period of absence within Great Britain not exceeding 52 weeks, beginning with the first whole day of that absence, where and for so long as--

- (i) the person intends to return to the dwelling;
- (ii) the part of the dwelling in which he usually resided is not let or sub-let;
- (iii) the person is a person to whom sub-paragraph (3) applies; and
- (iv) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period; and

(d) subject to sub-paragraphs (2F), (3C), (3E) and (3G) and where sub-paragraph (2E) applies, a period of absence outside Great Britain not exceeding 4 weeks, beginning with the first day of that absence from Great Britain where and for so long as—

- (i) the person intends to return to the dwelling;
- (ii) the part of the dwelling in which he usually resides is not let or sub-let; and
- (iii) the period of absence from Great Britain is unlikely to exceed 4 weeks.

(2A) The period of 13 weeks referred to in sub-paragraph (2)(b) shall run or continue to run during any period of absence from Great Britain.

(2B) Where—

- (a) a person returns to Great Britain after a period of absence from Great Britain (period A);
- (b) that person has been absent from the dwelling, including any absence within Great Britain, for less than 13 weeks beginning with the first day of absence from that dwelling; and
- (c) at the outset of, or during, period A, period A ceased to be treated as a period of temporary absence,

then any day that follows period A and precedes the person's return to the dwelling, shall not be treated as a period of temporary absence under sub-paragraph (2)(b).

(2C) The period of 52 weeks referred to in sub-paragraph (2)(c) shall run or continue to run during any period of absence from Great Britain.

(2D) Where—

- (a) a person returns to Great Britain after a period of absence from Great Britain (period A);
- (b) that person has been absent from the dwelling, including any absence within Great Britain, for less than 52 weeks beginning with the first day of absence from that dwelling; and
- (c) at the outset of, or during, period A, period A ceased to be treated as a period of temporary absence,

then, any day that follows period A and precedes the person's return to the dwelling, shall not be treated as a period of temporary absence under sub-paragraph (2)(c).

(2E) This sub-paragraph applies where—

- (a) a person is temporarily absent from Great Britain;
- (b) immediately before that period of absence from Great Britain, the person was not absent from the dwelling.

(2F) If the temporary absence referred to in sub-paragraph (2)(d) is in connection with the death of—

- (a) the person's partner or a child or young person for whom the person or the person's partner is responsible;
- (b) the person's close relative;
- (c) the close relative of the person's partner; or
- (d) the close relative of a child or young person for whom the person or the person's partner is responsible,

then the period of 4 weeks in the opening words of sub-paragraph (2)(d) may be extended by up to 4 further weeks if the relevant authority considers it unreasonable to expect the person to return to Great Britain within the first 4 weeks (and the reference in sub-paragraph (iii) of that paragraph to a period of 4 weeks shall, where the period is extended, be taken as referring to the period as so extended).

(3) This sub-paragraph applies to a person who--

- (a) is a person to whom sub-paragraph (3A) applies;
- (b) is resident in a hospital or similar institution as a patient;
- (c) is undergoing, or whose partner or dependent child is undergoing medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
- (d) is following a training course;
- (e) is undertaking medically approved care of a person;
- (f) is undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
- (g) is receiving medically approved care provided in accommodation other than residential accommodation;
- (h) is a student;
- (i) is receiving care provided in residential accommodation and is not a person to whom sub-paragraph (2)(a) applies; or
- (j) has left the dwelling he resides in through fear of violence, in that dwelling, or by a person who was formerly a member of the family of the person first mentioned.

(3A) This sub-paragraph applies to a person ("P") who is—

- (a) detained in custody on remand pending trial;
- (b) detained pending sentence upon conviction; or
- (c) as a condition of bail required to reside—
 - (i) in a dwelling, other than a dwelling P occupies as P's home; or
 - (ii) in premises approved under section 13 of the Offender Management Act 2007,

and who is not also detained in custody following sentence upon conviction.

(3B) This sub-paragraph applies where—

- (a) a person is temporarily absent from Great Britain;
- (b) the person is a member of Her Majesty's forces posted overseas, a mariner or a continental shelf worker;
- (c) immediately before that period of absence from Great Britain, the person was not absent from the dwelling.

(3C) Where sub-paragraph (3B) applies, a period of absence from Great Britain not exceeding 26 weeks, beginning with the first day of absence from Great Britain, shall be treated as a period of temporary absence where and for so long as—

- (a) the person intends to return to the dwelling;
- (b) the part of the dwelling in which he usually resided is not let or sub-let;
- (c) the period of absence from Great Britain is unlikely to exceed 26 weeks.

(3D) This sub-paragraph applies where—

- (a) a person is temporarily absent from Great Britain;
- (b) the person is a person described in any of paragraphs (b), (c), (g) or (j) of sub-paragraph (3);
- (c) immediately before that period of absence from Great Britain, the person was not absent from the dwelling.

(3E) Where sub-paragraph (3D) applies, a period of absence from Great Britain not exceeding 26 weeks, beginning with the first day of absence from Great Britain, shall be treated as a period of temporary absence where and for so long as—

- (a) the person intends to return to the dwelling;
- (b) the part of the dwelling in which he usually resided is not let or sub-let;
- (c) the period of absence is unlikely to exceed 26 weeks, or in exceptional circumstances, is unlikely substantially to exceed that period.

(3F) This sub-paragraph applies where—

- (a) a person is temporarily absent from Great Britain;
- (b) the person is a person described in any of paragraphs (a), (d), (e), (f), (h) or (i) of sub-paragraph (3);
- (c) immediately before that period of absence from Great Britain, the person was not absent from the dwelling.

(3G) Where sub-paragraph (3F) applies, a period of absence from Great Britain not exceeding 4 weeks, beginning with the first day of absence from Great Britain, shall be treated as a period of temporary absence where and for so long as—

- (a) the person intends to return to the dwelling;
- (b) the part of the dwelling in which he usually resided is not let or sub-let;
- (c) the period of absence is unlikely to exceed 4 weeks, or in exceptional circumstances, is unlikely substantially to exceed that period.

(4) This sub-paragraph applies to a person who is--

- (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court (other than a person who is detained in hospital under the provisions of the Mental Health Act 1983, or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 or, in Northern Ireland, under Article 4 or 12 of the Mental Health (Northern Ireland) Order 1986); and
- (b) on temporary release from detention in accordance with Rules made under the provisions of the Prison Act 1952 or the Prisons (Scotland) Act 1989.

(5) Where sub-paragraph (4) applies to a person, then, for any day when he is on temporary release--

- (a) if such temporary release was immediately preceded by a period of temporary absence under sub-paragraph (2)(b) or (c), he must be treated, for the purposes of sub-paragraph (1), as if he continues to be absent from the dwelling, despite any return to the dwelling;
- (b) for the purposes of sub-paragraph (3)(a), he must be treated as if he remains in detention;
- (c) if he does not fall within paragraph (a), he is not to be considered to be a person who is liable to pay council tax in respect of a dwelling of which he is a resident.

(6) In this paragraph—

“continental shelf worker” means a person who is employed, whether under a contract of service or not, in a designated area or a prescribed area in connection with any of the activities mentioned in section 11(2) of the Petroleum Act 1998;

“designated area” means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964 as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

“mariner” means a person who is employed under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel, where—

- (a) the employment in that capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mails carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on its voyage;

“medically approved” means certified by a medical practitioner;

“member of Her Majesty’s forces posted overseas” means a person who is a member of the regular forces or the reserve forces (within the meaning of section 374 of the Armed Forces Act 2006), who is absent from the main dwelling because the person has been posted outside of Great Britain to perform the duties of a member of Her Majesty’s regular forces or reserve forces;

“patient” means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution;

“prescribed area” means any area over which Norway or any member State (other than the United Kingdom) exercises sovereign rights for the purpose of exploring the seabed and subsoil and exploiting their natural resources, being an area outside the territorial seas of Norway or such member State, or any other area which is from time to time specified under section 10(8) of the Petroleum Act 1998;

“residential accommodation” means accommodation which is provided in--

- (a) a care home;
- (b) an independent hospital;
- (c) an Abbeyfield Home; or
- (d) an establishment managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament other than a local social services authority;

"training course" means a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, Skills Development Scotland, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

Periods of absence from a dwelling: persons who are not pensioners

19A

- (1) A person is not absent from a dwelling in relation to any day which falls within a period of temporary absence from that dwelling.
- (2) In sub-paragraph (1), a "period of temporary absence" means--
 - (a) a period of absence not exceeding 13 weeks, beginning with the first whole day on which a person resides in residential accommodation where and for so long as--
 - (i) the person resides in that accommodation;
 - (ii) the part of the dwelling in which he usually resided is not let or sub-let; and
 - (iii) that period of absence does not form part of a longer period of absence from the dwelling of more than 52 weeks,

where he has entered the accommodation for the purpose of ascertaining whether it suits his needs and with the intention of returning to the dwelling if it proves not to suit his needs;

 - (b) a period of absence not exceeding 13 weeks, beginning with the first whole day of absence from the dwelling, where and for so long as--
 - (i) the person intends to return to the dwelling;
 - (ii) the part of the dwelling in which he usually resided is not let or sub-let; and
 - (iii) that period is unlikely to exceed 13 weeks; and
 - (c) a period of absence not exceeding 52 weeks, beginning with the first whole day of that absence, where and for so long as--
 - (i) the person intends to return to the dwelling;
 - (ii) the part of the dwelling in which he usually resided is not let or sub-let;
 - (iii) the person is a person to whom sub-paragraph (3) applies; and
 - (iv) the period of absence is unlikely to exceed 52 weeks or, in exceptional circumstances, is unlikely substantially to exceed that period.- (3) This sub-paragraph applies to a person who--
 - (a) is detained in custody on remand pending trial or required, as a condition of bail, to reside--

- (i) in a dwelling, other than the dwelling referred to in sub-paragraph (1), or
- (ii) in premises approved under section 13 of the Offender Management Act 2007,

or is detained in custody pending sentence upon conviction;

- (b) is resident in a hospital or similar institution as a patient;
- (c) is undergoing, or whose partner or dependent child is undergoing, in the United Kingdom or elsewhere, medical treatment, or medically approved convalescence, in accommodation other than residential accommodation;
- (d) is following, in the United Kingdom or elsewhere, a training course;
- (e) is undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
- (f) is undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
- (g) is, in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
- (h) is a student;
- (i) is receiving care provided in residential accommodation and is not a person to whom sub-paragraph (2)(a) applies; or
- (j) has left the dwelling he resides in through fear of violence, in that dwelling, or by a person who was formerly a member of the family of the person first mentioned.

(4) This sub-paragraph applies to a person who is--

- (a) detained in custody pending sentence upon conviction or under a sentence imposed by a court (other than a person who is detained in hospital under the provisions of the Mental Health Act 1983, or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 or, in Northern Ireland, under Article 4 or 12 of the Mental Health (Northern Ireland) Order 1986); and
- (b) on temporary release from detention in accordance with Rules made under the provisions of the Prison Act 1952 or the Prisons (Scotland) Act 1989.

(5) Where sub-paragraph (4) applies to a person, then, for any day when he is on temporary release--

- (a) if such temporary release was immediately preceded by a period of temporary absence under sub-paragraph (2)(b) or (c), he must be treated, for the purposes of sub-paragraph (1), as if he continues to be absent from the dwelling, despite any return to the dwelling;
- (b) for the purposes of sub-paragraph (3)(a), he must be treated as if he remains in detention;
- (c) if he does not fall within paragraph (a), he is not to be considered to be a person who is liable to pay council tax in respect of a dwelling of which he is a resident.

(6) In this paragraph--

"medically approved" means certified by a medical practitioner;

"patient" means a person who is undergoing medical or other treatment as an in-patient in any hospital or similar institution;

"residential accommodation" means accommodation which is provided in--

- (a) a care home;
- (b) an independent hospital;
- (c) an Abbeyfield Home; or
- (d) an establishment managed or provided by a body incorporated by Royal Charter or constituted by Act of Parliament other than a local social services authority;

"training course" means a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, Skills Development Scotland, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

Transitional provision

19 B

- (1) Subject to paragraph (2), paragraph 19 shall not apply in respect of a person who is temporarily absent from Great Britain on 1st April 2017 until the day that person returns to Great Britain.
- (2) Paragraph (1) does not apply to a person who, on 1st April 2017, is temporarily absent from Great Britain and is—
 - (a) a member of Her Majesty's forces posted overseas;
 - (b) absent in the capacity of a continental shelf worker; or
 - (c) absent in the capacity of a mariner.

- (3) In this regulation—

"continental shelf worker" means a person who is employed, whether under a contract of service or not, in a designated area or a prescribed area in connection with any of the activities mentioned in section 11(2) of the Petroleum Act 1998;

"designated area" means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964 as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

"mariner" means a person who is employed under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel, where—

- (a) the employment in that capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mails carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on its voyage;

"member of Her Majesty's forces posted overseas" means a person who is a member of the regular forces or the reserve forces (within the meaning of section 374 of the Armed Forces Act 2006), who is absent from the dwelling that the person normally occupies as his home because

the person has been posted outside of Great Britain to perform the duties of a member of Her Majesty's regular forces or reserve forces; and

“prescribed area” means any area over which Norway or any member State (other than the United Kingdom) exercises sovereign rights for the purpose of exploring the seabed and subsoil and exploiting their natural resources, being an area outside the territorial seas of Norway or such member State, or any other area which is from time to time specified under section 10(8) of the Petroleum Act 1998.

Part 5

Classes of Person Excluded from this Scheme

Classes of person excluded from this scheme

20

The classes of person described in paragraphs 21 to 24 are not entitled to a reduction under this scheme.

Class of person excluded from this scheme: persons treated as not being in Great Britain

21

- (1) The class of person described in this paragraph consists of any person treated as not being in Great Britain.
- (2) Except where a person falls within sub-paragraph (5) or (6), a person is to be treated as not being in Great Britain if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.
- (3) A person must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the person has a right to reside in one of those places.
- (4) For the purposes of sub-paragraph (3), a right to reside does not include a right which exists by virtue of, or in accordance with--
 - (a) regulation 13 of the EEA Regulations or Article 6 of Council Directive No 2004/38/EC;
 - (aa) regulation 14 of the EEA Regulations, but only in a case where the right exists under that regulation because the person is --
 - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
 - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
 - (ab) Article 45 of the Treaty on the functioning of the European Union (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland; or
 - (b) regulation 15A(1) of the EEA Regulations, but only in a case where the right exists under that regulation because the applicant satisfies the criteria in paragraph (4A) of that regulation or Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of their rights as a European Union citizen).
- (5) A person falls within this sub-paragraph if the person is--

- (a) a qualified person for the purposes of regulation 6 of the EEA Regulations as a worker or a self-employed person;
 - (b) a family member of a person referred to in paragraph (a) within the meaning of regulation 7(1)(a), (b) or (c) of the EEA Regulations;
 - (c) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of the EEA Regulations;
 - (d) a person recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967;
 - (e) a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is –
 - (i) discretionary leave to enter or remain in the United Kingdom,
 - (ii) leave to remain under the Destitution Domestic Violence Concession which came into effect on 1st April 2012, or
 - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005;
 - (f) a person who has humanitarian protection granted under those rules;
 - (g) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 and who is in the United Kingdom as a result of his deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom;
 - (h) in receipt of income support or on an income-related employment and support allowance;
 - (ha) in receipt of an income-based jobseeker's allowance and has a right to reside other than a right to reside falling within paragraph (4); or
 - (i) a person who is treated as a worker for the purpose of the definition of "qualified person" in regulation 6(1) of the EEA Regulations pursuant to regulation 5 of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (right of residence of a Croatian who is an "accession State national subject to worker authorisation").
- (6) A person falls within this sub-paragraph if the person is a Crown servant or member of Her Majesty's forces posted overseas.
- (7) A person mentioned in sub-paragraph (6) is posted overseas if the person is performing overseas the duties of a Crown servant or member of Her Majesty's forces and was, immediately before the posting or the first of consecutive postings, habitually resident in the United Kingdom.
- (8) In this paragraph--
- "claim for asylum" has the same meaning as in section 94(1) of the Immigration and Asylum Act 1999;
- "EEA Regulations" means the Immigration (European Economic Area) Regulations 2006.

Transitional Provision

- (1) Paragraph (ha) does not apply to a person who, on 31st March 2015-
- (a) is liable to pay council tax at a reduced rate by virtue of a council tax reduction under an authority's scheme established under section 13A(2) of the Act; and

(b) is entitled to an income-based jobseeker's allowance,
until the first of the events in paragraph (2) occurs.

(2) The events are-

(a) the person makes a new application for a reduction under an authority's scheme established under section 13A(2) of the Act; or

(b) the person ceases to be entitled to an income-based jobseeker's allowance.

(3) In this regulation "the Act" means the Local Government Finance Act 1992.

Class of person excluded from this scheme: persons subject to immigration control

22

(1) Subject to paragraph (1A), persons subject to immigration control are not entitled to a reduction under this scheme.

(1A) A person who is a national of a state which has ratified the European Convention on Social and Medical Assistance (done in Paris 11th December 1953) or a state which has ratified the Council of Europe Social Charter (signed in Turin on 18th October 1961) and who is lawfully present in the United Kingdom is not a person subject to immigration control for the purposes of paragraph (1).

(2) "Person subject to immigration control" has the meaning given in section 115(9) of the Immigration and Asylum Act 1999.

Class of person excluded from this scheme: capital limit

23

(1) The class of person described in this paragraph consists of any pensioner whose capital limit exceeds £16,000 and of any person who is not a pensioner whose capital exceeds £10,000.

(2) Capital for the purposes of sub-paragraph (1) is to be calculated in accordance with Part 10 of this scheme.

Class of person excluded from this scheme: students

24

The class of person described in this paragraph consists of any student to whom paragraph 75(1) applies (except to the extent that a student may be entitled to an alternative maximum council tax reduction by virtue of paragraph 18).

**Part 6
Applicable Amounts**

Applicable amounts: pensioners

25

(1) The applicable amount for a pensioner for a week is the aggregate of such of the following amounts as apply in his case--

- (a) an amount in respect of his personal allowance, determined in accordance with paragraph 1 of Schedule 2 (personal allowance);
- (b) an amount determined in accordance with paragraph 2 of that Schedule in respect of up to two individuals who are either children or young persons and who are members of his family;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with paragraph 3 of that Schedule (family premium);
- (d) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of that Schedule (premiums).

(1A) For the purposes of sub-paragraph (1)(b) as it applies apart from sub-paragraph (1C), where the family includes more than two individuals who are either children or young persons and under paragraph 2 of that Schedule a different amount applies to different individuals, the two amounts to be included in the applicable amount shall be those that result in the greatest possible total amount.

(1B) Sub-paragraph (1C) applies where—

- (a) (whether or not as part of a tax credit couple as defined in section 3(5A) of the Tax Credits Act 2002) the applicant has an award of child tax credit (whether or not any amount is payable by way of such credit) in respect of a child or young person who is a member of his family; and
- (b) the total amount to be included in the applicable amount under sub-paragraph (1)(b) as substituted by sub-paragraph (1C) would be higher than the total amount that would be included under paragraph (1)(b) apart from sub-paragraph (1C).

(1C) Where this paragraph applies, for sub-paragraph (1)(b) substitute—

- (b) an amount determined in accordance with paragraph 2 of that Schedule in respect of any child or young person who is a member of his family and in respect of whom the individual element of child tax credit has been included in the determination of the maximum rate of that credit;"

(2) In Schedule 2--

"additional spouse" means a spouse of either party to the marriage who is additional to the other party to the marriage;

"patient" means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005.

Transitional provision

25A

(1) This paragraph 25A applies where—

- (a) on 31st March 2018, a person is liable to pay council tax at a reduced rate by virtue of a council tax reduction under an authority's scheme established under section 13A(2) of the Local Government Finance Act 1992 ("a section 13A(2) scheme"); and

(b) the person is, or the person and the person's partner are between them, responsible for more than two individuals who are either children or young persons and who are members of the same household (each such individual is referred to as a "protected individual").

(2) Where this paragraph 25A applies, paragraph 25 does not apply to the person entitled to a council tax reduction referred to in paragraph (1) until—

(a) the person makes a new application for a reduction under an authority's section 13A(2) scheme; or

(b) the person or the person's partner (if any) becomes responsible for a new individual, whichever is the first to occur.

(3) Paragraphs (4) to (8) apply where—

(a) the provisions of paragraph 25 apply by virtue of paragraph (2)(b);

(b) the child tax credit provisions do not apply; and

(c) the person has not made a new application for a reduction under an authority's scheme for a reduction under an authority's section 13A(2) scheme.

(4) Notwithstanding the default provisions, a child amount shall be included in the applicable amount in relation to any protected individual, in relation to any time when the person or the person's partner (if any) is responsible for the individual and the individual is a member of the same household.

(5) Paragraph (6) applies where—

(a) the person or the person's partner (if any) is responsible for one or more protected individuals who are members of the same household; and

(b) either of them is responsible for one or more new individuals who are members of the same household.

(6) Where this paragraph applies, any protected individual for whom the person or the person's partner is responsible is to be counted for the purpose of deciding whether, under the default provisions, an additional child amount is to be included in the applicable amount with respect to the new individual or individuals referred to in paragraph (5)(b).

(7) Paragraph (8) applies where—

(a) the number of protected individuals for whom either the person or the person's partner (if any) is responsible, and who are members of the same household, is one;

(b) the number of new individuals for whom either the person or the person's partner is responsible, and who are members of the same household, is two or more; and

(c) a different child amount would apply to different individuals.

(8) Where this paragraph applies, the child amounts to be included in the applicable amount shall be—

(a) the child amount in relation to the protected individual; and

(b) a child amount in relation to such one of the new individuals as will result in the greatest possible total amount.

(9) Under paragraph (3), for the purposes of determining whether the child tax credit provisions apply, by virtue of paragraph 6(1B) of Schedule 1 to the 2012 Regulations, where the person or the person's partner is responsible for one or more protected individuals, the total amount that would be included in the applicable amount under the default provisions shall be taken to be the total that would be included under paragraphs (4), (6) and (8).

(10) For the purposes of this part—

(a) “the 2012 Regulations” means the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012;

(b) “applicable amount”, “child”, “partner” and “young person” have the same meanings as in the 2012 Regulations;

(c) “child amount” means the amount determined under paragraph 2 of Schedule 2 to the 2012 Regulations;

(d) “child tax credit provisions” means the provisions of paragraph 6(1)(b) of Schedule 1 to the 2012 Regulations (as substituted by paragraph 6(1C) of that Schedule);

(e) “default provisions” means the provisions of paragraph 6(1)(b) of Schedule 1 to the 2012 Regulations (as substituted by paragraph 6(1C) of that Schedule);

(f) “new individual” means a child or young person who is not a protected individual;

(g) any reference to an individual being part of the same household means being part of the same household with the person who is entitled to a reduction under an authority's section 13A(2) scheme and the person's partner (if any);

(h) a person is to be treated as responsible for a child or young person in the circumstances set out in regulation 7 of the 2012 Regulations.

Applicable amounts: persons who are not pensioners

26

(1) Subject to paragraphs 27 and 28, the applicable amount for a week for a person who is not a pensioner is the aggregate of such of the following amounts as may apply in his case--

(a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1 of Schedule 3;

(b) an amount in respect of any child or young person who is a member of his family, determined in accordance with paragraph 3 of that Schedule;

(c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part 2 of that Schedule (family premium);

(d) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of that Schedule (premiums);

(e) the amount of the support component which may be applicable to him in accordance with Parts 5 and 6 of that Schedule (the components);

(f) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of that Schedule (transitional addition).

(2) In Schedule 3--

"additional spouse" means a spouse of either party to the marriage who is additional to the other party to the marriage;

"converted employment and support allowance" means an employment and support allowance which is not income-related and to which a person is entitled as a result of a conversion decision within the meaning of the Employment and Support Allowance (Existing Awards) Regulations 2008;

"patient" means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005.

Polygamous marriages: persons who are not pensioners

27

(1) This paragraph applies where an applicant who is not a pensioner is a member of a polygamous marriage and does not have (alone or jointly with a party to a marriage), an award of universal credit.

(2) The applicable amount for a week of an applicant where this paragraph applies is the aggregate of such of the following amounts as may apply in his case--

- (a) the amount applicable to him and one of his partners determined in accordance with paragraph 1(3) of Schedule 3 as if he and that partner were a couple;
- (b) an amount equal to the difference between the amounts specified in sub-paragraphs (3) and (1)(b) of paragraph 1 of that Schedule in respect of each of his other partners;
- (c) an amount determined in accordance with paragraph 2 of that Schedule (main phase employment and support allowance) in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household;
- (d) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part 2 of that Schedule (family premium);
- (e) the amount of any premiums which may be applicable to him determined in accordance with Parts 3 and 4 of that Schedule (premiums);
- (f) the amount of the support component which may be applicable to him in accordance with Parts 5 and 6 of that Schedule (the components);
- (g) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of that Schedule (transitional addition).

Applicable amount: persons who are not pensioners who have an award of universal credit

28

(1) Subject to sub-paragraph (2), in determining the applicable amount for a week of an applicant who is not a pensioner--

- (a) who has, or
- (b) who (jointly with his partner) has,

an award of universal credit, the authority must use the calculation or estimate of the maximum amount of the applicant, or the applicant and his partner jointly (as the case may be), subject to the adjustment described in sub-paragraph (3).

(2) In determining the applicable amount for a week of an applicant who is a member of a polygamous marriage, the fact that two people are husband and wife is to be disregarded if--

- (a) one of them is a party to an earlier marriage that still subsists; and
- (b) the other party to that earlier marriage is living in the same household.

(3) The adjustment referred to in sub-paragraph (1) is to multiply the maximum amount by 12 and divide the product by 52.

(4) In this paragraph "maximum amount" means the maximum amount calculated by the Secretary of State in accordance with section 8(2) of the Welfare Reform Act 2012.

Part 7

Maximum Council Tax Reduction for the Purposes of Calculating Eligibility for a Reduction Under this Scheme and Amount of Reduction

Maximum council tax reduction amount under this scheme: pensioners and persons who are not pensioners

29

(1) Subject to sub-paragraphs (2) to (4), a person's maximum council tax reduction amount in respect of a day is—

- (a) 100 per cent of the amount A/B if the applicant is a pensioner;
- (b) save as excepted for at (c) to (e) below, 80.2 per cent of the amount A/B if the applicant is a person who is not a pensioner;
- (c) 100 per cent of the amount A/B if the applicant is not a pensioner but is in receipt of any of the following--

- (i) Attendance Allowance including Constant Attendance Allowance;
- (ii) Disability Living Allowance including Care and Mobility components;
- (iii) Severe Disablement Allowance including Exceptionally Severe Disablement Allowance;
- (iv) Mobility Allowance and Supplement;
- (v) Long Term Rate Incapacity Benefit;
- (vi) Working Tax Credits – Disability element;
- (vii) Personal Independence Payment;
- (viii) Armed Forces Independence Payment;
- (ix) Support component of Employment and Support Allowance

(d) 100 per cent of the amount A/B if the applicant is not a pensioner but is responsible for a disabled child or young person of the same household and where the applicant is in receipt of any of the following premiums--

- (i) Disability Premium;
- (ii) Disabled Child Premium;
- (iii) Enhanced Disability Premium;
- (iv) Enhanced Disability Child Premium;
- (v) Carer Premium;
- (vi) Severe Disability Premium

(e) 100 per cent of the amount A/B if the applicant is not a pensioner but is responsible for a child or young person in the same household

where--

(A) A is the amount set by the authority as the council tax for the relevant financial year in respect of the dwelling in which he is a resident and for which he is liable, subject to any discount which may be appropriate to that dwelling under the 1992 Act; and

(B) B is the number of days in that financial year,

less any deductions in respect of non-dependants which fall to be made under paragraph 30 (non-dependant deductions: pensioners and persons who are not pensioners).

(2) In calculating a person's maximum council tax reduction under this scheme any reduction in the amount that person is liable to pay in respect of council tax, which is made in consequence of any enactment in, or made under, the 1992 Act (other than a reduction under this scheme), is to be taken into account.

(3) Subject to sub-paragraph (4), where an applicant is jointly and severally liable for council tax in respect of a dwelling in which he is resident with one or more other persons, in determining the maximum council tax reduction in his case in accordance with sub-paragraph (1), the amount A is to be divided by the number of persons who are jointly and severally liable for that tax.

(4) Where an applicant is jointly and severally liable for council tax in respect of a dwelling with only his partner, sub-paragraph (3) does not apply in his case.

(5) The reference in sub-paragraph (3) to a person with whom an applicant is jointly and severally liable for council tax, where the applicant is a person who is not a pensioner, does not include a student to whom paragraph 75(1) (entitlement of students to a reduction under this scheme) applies.

(6) In this paragraph "relevant financial year" means, in relation to any particular day, the financial year within which the day in question falls.

Non-dependant deductions: pensioners

30

(1) Subject to the following provisions of this paragraph, the non-dependant deductions in respect of a day referred to in paragraph 29 are--

- (a) in respect of a non-dependant aged 18 or over in remunerative work, $\text{£}12.20 \times \frac{1}{7}$;
- (b) in respect of a non-dependant aged 18 or over to whom paragraph (a) does not apply, $\text{£}4.00 \times \frac{1}{7}$.

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (1)(a) applies, where it is shown to the appropriate authority that his normal gross weekly income is--

- (a) less than £207.70, the deduction to be made under this paragraph is that specified in sub-paragraph (1)(b);
- (b) not less than £207.70 but less than £360.10, the deduction to be made under this paragraph is $£8.10 \times 1/7$;
- (c) not less than £360.10 but less than £447.40, the deduction to be made under this paragraph is $£10.20 \times 1/7$.

(3) Only one deduction is to be made under this paragraph in respect of a couple or, as the case may be, members of a polygamous marriage (other than where there is an award of universal credit) and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount is to be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard must be had, for the purpose of that sub-paragraph, to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross income.

(5) Where in respect of a day--

- (a) a person is a resident in a dwelling but is not himself liable for council tax in respect of that dwelling and that day;
- (b) other residents in that dwelling (the liable persons) have joint and several liability for council tax in respect of that dwelling and that day otherwise than by virtue of section 9 of the 1992 Act (liability of spouses and civil partners); and
- (c) the person to whom paragraph (a) refers is a non-dependant of two or more of the liable persons,

the deduction in respect of that non-dependant must be apportioned equally between those liable persons.

(6) No deduction is to be made in respect of any non-dependants occupying an applicant's dwelling if the applicant or his partner is--

- (a) severely sight-impaired or blind or treated as such by virtue of by virtue of sub-paragraphs (12) or (13) below; or
- (b) receiving in respect of himself--
 - (i) attendance allowance, or would be receiving that allowance but for--
 - (aa) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
 - (bb) an abatement as a result of hospitalisation; or
 - (ii) the care component of the disability living allowance, or would be receiving that component but for--
 - (aa) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
 - (bb) an abatement as a result of hospitalisation; or

(iii) the daily living component of personal independence payment, or would be receiving that allowance but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients); or

(iv) an AFIP, or would be receiving that payment but for a suspension of it in accordance with any terms of the armed and reserve forces compensation scheme which allows for a suspension because a person is undergoing medical treatment in a hospital or similar institution.

(7) No deduction is to be made in respect of a non-dependant if--

(a) although he resides with the applicant, it appears to the authority that his normal home is elsewhere; or

(b) he is in receipt of a training allowance paid in connection with youth training established under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990; or

(c) he is a full-time student within the meaning of Part 11 (students); or

(d) he is not residing with the applicant because he has been a patient for a period in excess of 52 weeks, and for these purposes--

(i) "patient" has the meaning given in paragraph 19(6), and

(ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he is to be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods; or

(e) he is not residing with the applicant because he is a member of the regular forces or the reserve forces (within the meaning of section 374 of the Armed Forces Act 2006) who is absent, while on operations, from the dwelling usually occupied as their home.

(8) No deduction is to be made in respect of a non-dependant--

(a) who is on income support, state pension credit, an income-based jobseeker's allowance or an income-related employment and support allowance;

(b) to whom Schedule 1 to the 1992 Act applies (persons disregarded for purposes of discount) but this paragraph does not apply to a non-dependant who is a student to whom paragraph 4 of that Schedule refers; or

(c) who is entitled to an award of universal credit where the award is calculated on the basis that the person does not have any earned income.

(9) In the application of sub-paragraph (2) there is to be disregarded from the non-dependant's weekly gross income--

(a) any attendance allowance, disability living allowance, personal independence payment or an AFIP received by him;

(b) any payment made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, the Scottish Infected Blood Support Scheme, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund; or the Independent Living Fund (2006) which are paid as income in kind (see sub-paragraph (13)); and

(c) the payments set out in sub-paragraph (10).

(10) The payments mentioned in sub-paragraph (9) are—

(a) any payment made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, the Scottish Infected Blood Support Scheme, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund or the Independent Living Fund (2006);

(b) any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under or by any of the Trusts to which paragraph (a) refers and which is made to or for the benefit of—

(i) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;

(ii) any child who is a member of that person's family or who was such a member and who is a member of the applicant's family; or

(iii) any young person who is a member of that person's family or who was such a member and who is a member of the applicant's family;

(c) any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under or by any of the Trusts to which paragraph (a) refers and which is made to or for the benefit of—

(i) the person who is suffering from haemophilia or who is a qualifying person;

(ii) any child who is a member of that person's family or who was such a member and who is a member of the applicant's family; or

(iii) any young person who is a member of that person's family or who was such a member and who is a member of the applicant's family;

(d) any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under or by any of the Trusts to which paragraph (a) refers, where—

(i) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and

(ii) the payment is made either—

(aa) to that person's parent or step-parent, or

(bb) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person's death;

(e) any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under or by any of the Trusts to which paragraph (a) refers, where—

(i) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who was or had been a member of his family; and

(ii) the payment is made either—

(aa) to that person's parent or step-parent, or

(bb) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date;

(f) in the case of a person to whom or for whose benefit a payment referred to in this sub-paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.

(g) any payment made under, or by, a trust which is approved by the Secretary of State and which is established for the purpose of giving relief and assistance to a disabled person whose disability was caused by their mother having taken a preparation containing the drug known as Thalidomide during her pregnancy.

(11) An applicant or his partner is severely sight-impaired or blind or treated as such for the purposes of sub-paragraph (6)(a) if the applicant or his partner—

(a) is registered as severely sight-impaired in a register kept by a local authority in Wales under section 18(1) of the Social Services and Well-being (Wales) Act 2014]; or

(b) is registered as severely sight-impaired in a register kept by a local authority in England under section 77(1) of the Care Act 2014 (registers of sight-impaired adults); or

(c) in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994.

(11A) For the purposes of sub-paragraph (8), “earned income” has the meaning given in regulation 52 of the Universal Credit Regulations 2013.]

(12) For the purposes of sub-paragraph (11), a person who has ceased to be registered as [severely sight-impaired or] blind on regaining his eyesight is nevertheless to be treated as [such] for a period of 28 weeks following the date on which he ceased to be so registered.

(13) The reference in sub-paragraph (9)(b) to “income in kind” does not include a payment to a third party made in respect of the applicant which is used by the third party to provide benefits in kind to the applicant.

Non-dependant deductions: persons who are not pensioners

30A

(1) Subject to the following provisions of this paragraph, the non-dependant deductions in respect of a day referred to in paragraph 29 are--

- (a) in respect of a non-dependant aged 18 or over in remunerative work, the figures as provided for at 30 (1) (a) above;
- (b) in respect of a non-dependant aged 18 or over to whom paragraph (a) does not apply, the figures as provided for at 30 (1) (b) above.

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (1)(a) applies, where it is shown to the appropriate authority that his normal gross weekly income is--

- (a) less than the figures as provided for at 30 (2) (a) above, the deduction to be made under this paragraph is that specified in sub-paragraph (1)(b);
- (b) in accordance with the figures as provided for at 30 (2) (b) above;
- (c) in accordance with the figures as provided for at 30 (2) (c) above.

(3) Only one deduction is to be made under this paragraph in respect of a couple or, as the case may be, members of a polygamous marriage (other than where there is an award of universal credit) and, where, but for this paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount is to be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard must be had, for the purpose of that sub-paragraph, to the couple's or, as the case may be, all members of the polygamous marriage's joint weekly gross income.

(5) Where in respect of a day--

- (a) a person is a resident in a dwelling but is not himself liable for council tax in respect of that dwelling and that day;
- (b) other residents in that dwelling (the liable persons) have joint and several liability for council tax in respect of that dwelling and that day otherwise than by virtue of section 9 of the 1992 Act (liability of spouses and civil partners); and
- (c) the person to whom paragraph (a) refers is a non-dependant of two or more of the liable persons,

the deduction in respect of that non-dependant must be apportioned equally between those liable persons.

(6) No deduction is to be made in respect of any non-dependants occupying an applicant's dwelling if the applicant or his partner is--

- (a) blind or treated as blind by virtue of paragraph 10 of Schedule 3 (additional condition for the disability premium); or

- (b) receiving in respect of himself--

- (i) attendance allowance, or would be receiving that allowance but for--

- (aa) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or

- (bb) an abatement as a result of hospitalisation; or

- (ii) the care component of the disability living allowance, or would be receiving that component but for--

- (aa) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
 - (bb) an abatement as a result of hospitalisation; or
 - (iii) the daily living component of personal independence payment, or would be receiving that allowance but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients); or
 - (iv) an AFIP, or would be receiving that payment but for a suspension of it in accordance with any terms of the armed and reserve forces compensation scheme which allows for a suspension because a person is undergoing medical treatment in a hospital or similar institution.
- (7) No deduction is to be made in respect of a non-dependant if--
- (a) although he resides with the applicant, it appears to the authority that his normal home is elsewhere; or
 - (b) he is in receipt of a training allowance paid in connection with youth training established under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990; or
 - (c) he is a full-time student within the meaning of Part 11 (students); or
 - (d) he is not residing with the applicant because he has been a patient for a period in excess of 52 weeks, and for these purposes--
 - (i) "patient" has the meaning given in paragraph 19(6), and
 - (ii) where a person has been a patient for two or more distinct periods separated by one or more intervals each not exceeding 28 days, he is to be treated as having been a patient continuously for a period equal in duration to the total of those distinct periods.
- (8) No deduction is to be made in respect of a non-dependant--
- (a) who is on income support, state pension credit, an income-based jobseeker's allowance or an income-related employment and support allowance; or
 - (b) to whom Schedule 1 to the 1992 Act applies (persons disregarded for purposes of discount) but this paragraph does not apply to a non-dependant who is a student to whom paragraph 4 of that Schedule refers.
- (9) In the application of sub-paragraph (2) there is to be disregarded from the non-dependant's weekly gross income--
- (a) any attendance allowance, disability living allowance, personal independence payment or an AFIP received by him;
 - (b) any payment made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006) which, had his income fallen to be calculated under paragraph 54 (calculation of income other than earnings: persons who are not pensioners), would have been disregarded under paragraph 28 of Schedule 8 (income in kind); and
 - (c) any payment which, had his income fallen to be calculated under paragraph 54, would have been disregarded under paragraph 41 of Schedule 8 (payments made under certain trusts and certain other payments).

Part 8

Alternative Maximum Council Tax Reduction for the Purposes of Calculating Eligibility for a Reduction Under this Scheme and Amount of Reduction

Alternative maximum council tax reduction under this scheme: pensioners and persons who are not pensioners

31

(1) Subject to sub-paragraphs (2) and (3), the alternative maximum council tax reduction in respect of a day where the conditions set out in paragraph 15 (alternative maximum council tax reduction: pensioners) or 18 (alternative maximum council tax reduction: persons who are not pensioners) are fulfilled, is the amount determined in accordance with Schedule 4 (amount of alternative council tax reduction).

(2) Subject to sub-paragraph (3), where an applicant is jointly and severally liable for council tax in respect of a dwelling in which he is resident with one or more other persons, in determining the alternative maximum council tax reduction in his case, the amount determined in accordance with Schedule 4 must be divided by the number of persons who are jointly and severally liable for that tax.

(3) Where an applicant is jointly and severally liable for council tax in respect of a dwelling with only his partner, solely by virtue of section 9 of the 1992 Act (liability of spouses and civil partners), sub-paragraph (2) does not apply in his case.

Part 9

Amount of Reduction Under this Scheme

Amount of reduction under this scheme: Classes A to F

32

(1) Where a person is entitled to a reduction under this scheme in respect of a day, the amount of the reduction to which he is entitled is as follows.

(2) Where the person is within class A or D, that amount is the amount which is the maximum council tax reduction in respect of the day in the applicant's case.

(3) Where the person is within class B or E, that amount is the amount found by deducting amount B from amount A, where "amount A" and "amount B" have the meanings given in paragraph 14(f) or 17(f), as the case may be.

(4) Where the person is within class C or F, that amount is the amount which is the alternative maximum council tax reduction in respect of the day in the applicant's case.

(5) Sub-paragraph (6) applies where both--

- (a) sub-paragraph (2) or sub-paragraph (3), and
- (b) sub-paragraph (4),

apply to a person.

(6) The amount of the reduction to which the person is entitled is whichever is the greater of--

- (a) the amount of the reduction given by sub-paragraph (2) or sub-paragraph (3), as the case may be, and

- (b) the amount of the reduction given by sub-paragraph (4).

Part 10
Income and Capital for the Purposes of Calculating Eligibility for a Reduction Under this Scheme and Amount of Reduction

Chapter 1
Income and Capital: General

Calculation of income and capital: applicant's family and polygamous marriages

33

- (1) The income and capital of--
 - (a) an applicant; and
 - (b) any partner of that applicant,

is to be calculated in accordance with the provisions of this Part.

- (2) The income and capital of any partner of the applicant is to be treated as income and capital of the applicant, and in this Part any reference to the applicant applies equally to any partner of that applicant.

- (3) Except where paragraph 37 applies, where an applicant or the partner of an applicant is married polygamously to two or more members of his household--

- (a) the applicant must be treated as possessing capital and income belonging to each such member; and
 - (b) the income and capital of that member is to be calculated in accordance with the following provisions of this Part in like manner as for the applicant.

Circumstances in which income and capital of non-dependant is to be treated as applicant's

34

- (1) Sub-paragraph (2) applies where it appears to the authority that a non-dependant and an applicant have entered into arrangements in order to take advantage of this scheme and the non-dependant has more income and capital than the applicant.
- (2) Except where--
 - (a) the applicant is a pensioner and is on a guarantee credit, or
 - (b) the applicant is not a pensioner and is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance,

the authority must treat the applicant as possessing income and capital belonging to that non-dependant and, in such a case, any income and capital which the applicant does possess is to be disregarded.

- (3) Where an applicant is treated as possessing income and capital belonging to a non-dependant under sub-paragraph (2) the income and capital of that non-dependant must be calculated in accordance with the following provisions of this Part in like manner as for the applicant and, except where the

context otherwise requires, any reference to the "applicant" is to be construed for the purposes of this Part as if it were a reference to that non-dependant.

Chapter 2

Income and Capital: Pensioners in Receipt of Guarantee Credit or Savings Credit

Applicant in receipt of guarantee credit: pensioners

35

In the case of an applicant who is a pensioner and who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of his capital and income must be disregarded.

Calculation of applicant's income and capital in savings credit only cases: pensioners

36

(1) In determining the income and capital of an applicant who is a pensioner and who has, or whose partner has, an award of state pension credit comprising only the savings credit, subject to the following provisions of this paragraph, the authority must use the calculation or estimate of the applicant's or as the case may be, the applicant's partner's income and capital made by the Secretary of State for the purpose of determining the award of state pension credit.

(2) Where the calculation or estimate provided by the Secretary of State includes the amount taken into account in that determination in respect of net income, the authority may only adjust that amount so far as necessary to take into account--

- (a) the amount of any savings credit payable;
- (b) in respect of any dependent children of the applicant, child care charges taken into account under paragraph 57(1)(c) (calculation of income on a weekly basis);
- (c) the higher amount disregarded under this scheme in respect of--
 - (i) lone parent's earnings; or
 - (ii) payments of maintenance, whether under a court order or not, which is made or due to be made by--
 - (aa) the applicant's former partner, or the applicant's partner's former partner; or
 - (bb) the parent of a child or young person where that child or young person is a member of the applicant's family except where that parent is the applicant or the applicant's partner;
- (d) any amount to be disregarded by virtue of paragraph 10(1) of Schedule 5 (sums disregarded from applicant's earnings: pensioners);
- (e) the income and capital of any partner of the applicant who is treated as a member of the applicant's household under paragraph 8, to the extent that it is not taken into account in determining the net income of the person claiming state pension credit;
- (f) paragraph 34 (circumstances in which capital and income of a non-dependant is to be treated as applicant's), if the authority determines that that provision applies in the applicant's case;
- (g) such further reduction (if any) as the authority thinks fit under section 13A(1)(c) of the 1992 Act (power of billing authority to reduce amount of council tax payable);
- (h) any amount to be disregarded by virtue of paragraph 6 of Schedule 5 (exempt work).

(3) Paragraphs 39 to 46 (calculation of income: pensioners) and 57 to 61 (calculation of income: pensioners and persons who are not pensioners) do not apply to the amount of the net income to be taken into account under sub-paragraph (1), but do apply (so far as relevant) for the purpose of determining any adjustments to that amount which the authority makes under sub-paragraph (2).

(4) If sub-paragraph (5) applies, the authority must calculate the applicant's capital in accordance with paragraphs 63, 65 to 68 and 70 (calculation of capital: pensioners).

(5) This sub-paragraph applies if--

- (a) the Secretary of State notifies the authority that the applicant's capital has been determined as being £16,000 or less or the authority determines his capital as being £16,000 or less;
- (b) subsequent to that determination the applicant's capital rises to more than £16,000; and
- (c) the increase occurs whilst there is in force an assessed income period within the meaning of sections 6 and 9 of the State Pension Credit Act 2002.

Chapter 3

Income and Capital Where there is an Award of Universal Credit

Calculation of income and capital: persons who are not pensioners who have an award of universal credit

37

(1) In determining the income of an applicant--

- (a) who has, or
- (b) who (jointly with his partner) has,

an award of universal credit the authority must, subject to the following provisions of this paragraph, use the calculation or estimate of the amount of the income of the applicant, or the applicant and his partner jointly (as the case may be), made by the Secretary of State for the purpose of determining the award of universal credit.

(2) The authority must adjust the amount of the income referred to in sub-paragraph (1) by multiplying the amount by 12 and dividing the product by 52.

(3) The authority may only adjust the amount of the income as adjusted in accordance with sub-paragraph (2) so far as necessary to take into account--

- (a) the amount of the award of universal credit, determined in accordance with sub-paragraph (3);
- (b) paragraph 34 (circumstances in which income and capital of non-dependant is to be treated as applicant's), if the authority determines that the provision applies in the applicant's case;
- (c) such further reduction (if any) as the authority thinks fit under section 13A(1)(c) of the 1992 Act (power of billing authority to reduce amount of council tax payable).

(4) The amount for the award of universal credit to be taken into account for the purposes of sub-paragraph (3)(a) is to be determined by multiplying the amount of the award of universal credit by 12 and dividing the product by 52.

(5) Paragraph 34 (income and capital of non-dependant to be treated as applicant's) applies for the purpose of determining any adjustments which fall to be made to the figure for income under sub-paragraph (3).

(6) In determining the capital of an applicant--

- (a) who has, or
- (b) who (jointly with his partner) has,

an award of universal credit, the authority must use the calculation or estimate of the capital of the applicant, or the applicant and his partner jointly (as the case may be), made by the Secretary of State for the purpose of determining the award of universal credit.

Chapter 4 **Income: Other Pensioners**

Calculation of income and capital where state pension credit is not payable: pensioners

38

Where neither paragraph 35 (applicant in receipt of guarantee credit: pensioners) nor 36 (applicant in receipt of savings credit only: pensioners) applies in the applicant's case, his income and capital is to be calculated or estimated in accordance with paragraphs 39 to 46 and 57 to 62 (calculation of income) and Chapter 7 of this Part (calculation of capital).

Meaning of "income": pensioners

39

(1) For the purposes of classes A to C in this scheme, "income" means income of any of the following descriptions--

- (a) earnings;
- (b) working tax credit;
- (c) retirement pension income within the meaning of the State Pension Credit Act 2002;
- (d) income from annuity contracts (other than retirement pension income);
- (e) a war disablement pension or war widow's or widower's pension;
- (f) a foreign war disablement pension or war widow's or widower's pension;
- (g) a guaranteed income payment;
- (h) a payment made under article 29(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011, in any case where article 31(2)(c) applies;
- (i) income from capital other than capital disregarded under Part 1 of Schedule 9;
- (j) social security benefits, other than retirement pension income or any of the following benefits--
 - (i) disability living allowance;
 - (ii) personal independence payment;
 - (iii) an AFIP;
 - (iv) attendance allowance payable under section 64 of the SSCBA (entitlement to attendance allowance);
 - (v) an increase of disablement pension under section 104 (increase for constant attendance) or 105 of that Act (increase for exceptionally severe disablement);
 - (vi) child benefit;
 - (vii) any guardian's allowance payable under section 77 of the SSCBA (guardian's allowance);

- (viii) any increase for a dependant, other than the applicant's partner, payable in accordance with Part 4 of that Act (increases for dependants);
 - (ix) any--
 - (aa) social fund payment made under Part 8 of the SSCBA (the social fund), or
 - (bb) occasional assistance;
 - (x) Christmas bonus payable under Part 10 of that Act (Christmas bonus for pensioners);
 - (xi) housing benefit;
 - (xii) council tax benefit;
 - (xiii) bereavement support payment under section 30 of the Pensions Act 2014;
 - (xiv) statutory sick pay;
 - (xv) statutory maternity pay;
 - (xvi) statutory paternity pay payable under Part 12ZA of the SSCBA;
 - (xvii) statutory shared parental pay payable under Part 12ZC of the SSCBA;
 - (xviii) statutory adoption pay payable under Part 12ZB of that Act (statutory adoption pay);
 - (xix) any benefit similar to those mentioned in the preceding provisions of this paragraph payable under legislation having effect in Northern Ireland;
 - (xx) carer's allowance supplement payable under section 81 of the Social Security (Scotland) Act 2018;
- (k) all foreign social security benefits which are similar to the social security benefits mentioned above;
- (l) a payment made--
- (i) under article 30 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (award for children who have reached the child's age limit), in any case where article 30(1)(b) applies; or
 - (ii) under article 12(8) of that Order (unemployability allowances: children who have reached the child's age limit), in any case where sub-paragraph (b) of that article applies;
- (m) a pension paid by a government to victims of National Socialist;
- (n) payments under a scheme made under the Pneumoconiosis etc (Worker's Compensation) Act 1979;
- (o) payments made towards the maintenance of the applicant by his spouse, civil partner, former spouse or former civil partner or towards the maintenance of the applicant's partner by his spouse, civil partner, former spouse or former civil partner, including payments made--
- (i) under a court order;
 - (ii) under an agreement for maintenance; or
 - (iii) voluntarily;
- (p) payments due from any person in respect of board and lodging accommodation provided by the applicant;

- (q) royalties or other sums paid as a consideration for the use of, or the right to use, any copy-right, design, patent or trade mark;
- (r) any payment in respect of any--
 - (i) book registered under the Public Lending Right Scheme 1982; or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982;
- (s) any payment, other than a payment ordered by a court or made in settlement of a claim, made by or on behalf of a former employer of a person on account of the early retirement of that person on grounds of ill-health or disability;
- (t) any sum payable by way of pension out of money provided under--
 - (i) the Civil List Act 1837,
 - (ii) the Civil List Act 1937,
 - (iii) the Civil List Act 1952,
 - (iv) the Civil List Act 1972, or
 - (v) the Civil List Act 1975;
- (u) any income in lieu of that specified in paragraphs (a) to (r);
- (v) any payment of rent made to an applicant who--
 - (i) owns the freehold or leasehold interest in any property or is a tenant of any property;
 - (ii) occupies part of the property; and
 - (iii) has an agreement with another person allowing that person to occupy that property on payment of rent;
- (w) any payment made at regular intervals under an equity release scheme;
- (x) PPF periodic payments within the meaning of section 17(1) of the State Pension Credit Act 2002.

(2) Where the payment of any social security benefit referred to in sub-paragraph (1), or retirement pension income to which section 16(1)(za) to (e) of the State Pension Credit Act 2002 applies, is subject to any deduction (other than an adjustment specified in sub-paragraph (4)) the amount to be taken into account under sub-paragraph (1) is to be the amount before the deduction is made.

(3) Where an award of any working tax credit or child tax credit is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit which arose in a previous tax year the amount to be taken into account under sub-paragraph (1) is to be the amount of working tax credit or child tax credit awarded less the amount of that deduction.

(4) The adjustments specified in this sub-paragraph are those made in accordance with--

- (a) the Social Security (Overlapping Benefits) Regulations 1979;
- (b) the Social Security (Hospital In-Patients) Regulations 1975;
- (c) section 30DD or section 30E of the SSCBA (reductions in incapacity benefit in respect of pensions and councillor's allowances);
- (d) section 3 of the Welfare Reform Act 2007 (deductions from contributory employment and support allowance in respect of pensions and councillor's allowances) and regulations made under it;

(e) section 14 of the Pensions Act 2014 (pension sharing: reduction in sharer's section 4 pension);

(f) section 45B or 55B of the Social Security Contributions and Benefits Act 1992 (reduction in additional pension in Category A retirement pension and shared additional pension: pension sharing).

(5) In sub-paragraph (1)(w), "equity release scheme" means a loan--

- (a) made between a person ("the lender") and the applicant;
- (b) by means of which a sum of money is advanced by the lender to the applicant by way of payments at regular intervals; and
- (c) which is secured on a dwelling in which the applicant owns an estate or interest and which he occupies as his home.

Calculation of weekly income: pensioners

40

(1) Except in a case within sub-paragraph (2), (3A), or (4A) or (5), for the purposes of calculating the weekly income of an applicant who is a pensioner, where the period in respect of which a payment is made--

- (a) does not exceed a week, the whole of that payment is to be included in the applicant's weekly income;
- (b) exceeds a week, the amount to be included in the applicant's weekly income is to be determined--
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
 - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
 - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number of days in the period in respect of which it is made.

(2) Sub-paragraph (3) applies where--

- (a) the applicant's regular pattern of work is such that he does not work the same hours every week; or
- (b) the amount of the applicant's income fluctuates and has changed more than once.

(3) The weekly amount of that applicant's income is to be determined--

- (a) if, in a case to which sub-paragraph (2)(a) applies, there is a recognised cycle of work, by reference to his average weekly income over the period of the complete cycle (including, where the cycle involves periods in which the applicant does no work, those periods but disregarding any other absences); or
- (b) in any other case, on the basis of--
 - (i) the last two payments if those payments are one month or more apart;

- (ii) the last four payments if the last two payments are less than one month apart; or
- (iii) calculating or estimating such other payments as may, in the particular circumstances of the case, enable the applicant's average weekly income to be determined more accurately.

(3A) Income calculated pursuant to sub-paragraphs (2) and (3) must be taken into account—

- (a) in the case of an application, on the date on which the application was made or treated as made, and the first day of each reduction week thereafter;
- (b) in the case of an application or a reduction under a scheme where the applicant commences employment, the first day of the reduction week following the date the applicant commences that employment, and the first day of each reduction week thereafter; or
- (c) in the case of an application or a reduction under a scheme where the applicant's average weekly earnings from employment change, the first day of the reduction week following the date the applicant's earnings from employment change so as to require recalculation under this paragraph, and the first day of each reduction week thereafter,

regardless of whether those earnings were actually received in that reduction week.

(4) For the purposes of sub-paragraph (3)(b) the last payments are the last payments before the date the application was made or treated as made.

(4A) An applicant's earnings from employment as an employed earner not calculated pursuant to sub-paragraphs (2) and (3) must be taken into account—

- (a) in the case of an application, on the date on which the application was made or treated as made, and the first day of each reduction week thereafter;
- (b) in the case of an application or a reduction under a scheme where the applicant commences employment, the first day of the reduction week following the date the applicant commences that employment, and the first day of each reduction week thereafter; or
- (c) in the case of an application or a reduction under a scheme where the applicant's average weekly earnings from employment change, the first day of the reduction week following the date of the change, and the beginning of each reduction week thereafter,

regardless of whether those earnings were actually received in that reduction week.

(5) If the applicant is entitled to receive a payment to which sub-paragraph (6) applies, the amount of that payment is to be treated as if made in respect of a period of a year.

(6) This sub-paragraph applies to--

- (a) royalties or other sums paid as a consideration for the use of, or the right to use, any copy-right, design, patent or trade mark;
- (b) any payment in respect of any--
 - (i) book registered under the Public Lending Right Scheme 1982; or
 - (ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982; and
- (c) any payment which is made on an occasional basis.

(7) The period under which any benefit under the benefit Acts is to be taken into account is to be the period in respect of which that benefit is payable.

- (8) Where payments are made in a currency other than Sterling, the value of the payment is to be determined by taking the Sterling equivalent on the date the payment is made.
- (9) The sums specified in Schedule 5 are to be disregarded in calculating--
- (a) the applicant's earnings; and
 - (b) any amount to which sub-paragraph (6) applies where the applicant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work referred to in sub-paragraph (6)(b).
- (10) For the purposes of sub-paragraph (9)(b), and for that purpose only, the amounts specified in sub-paragraph (6) is to be treated as though they were earnings.
- (11) Income specified in Schedule 6 is to be disregarded in the calculation of the applicant's income.
- (12) Schedule 9 (capital disregards: pensioners) has effect so that--
- (a) the capital specified in Part 1 is disregarded for the purpose of determining an applicant's income; and
 - (b) the capital specified in Part 2 is disregarded for the purpose of determining an applicant's income under paragraph 71 (calculation of tariff income from capital: pensioners).
- (13) In the case of any income taken into account for the purpose of calculating a person's income any amount payable by way of tax is disregarded.

Earnings of employed earners: pensioners

41

- (1) Subject to sub-paragraph (2), "earnings", in the case of employment as an employed earner who is a pensioner, means any remuneration or profit derived from that employment and includes--
- (a) any bonus or commission;
 - (b) any payment in lieu of remuneration except any periodic sum paid to an applicant on account of the termination of his employment by reason of redundancy;
 - (c) any payment in lieu of notice;
 - (d) any holiday pay;
 - (e) any payment by way of a retainer;
 - (f) any payment made by the applicant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the applicant's employer in respect of--
 - (i) travelling expenses incurred by the applicant between his home and place of employment;
 - (ii) expenses incurred by the applicant under arrangements made for the care of a member of his family owing to the applicant's absence from home;
 - (g) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001;
 - (h) statutory sick pay and statutory maternity pay payable by the employer under the SSCBA;
 - (i) statutory paternity pay payable under Part 12ZA of that Act;

- (ia) statutory shared parental pay payable under Part 12ZC of the SSCBA;
- (j) statutory adoption pay payable under Part 12ZB of that Act;
- (k) any sums payable under a contract of service--
 - (i) for incapacity for work due to sickness or injury; or
 - (ii) by reason of pregnancy or confinement.

(2) Earnings does not include--

- (a) subject to sub-paragraph (3), any payment in kind;
- (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
- (c) any occupational pension;
- (d) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme;
- (e) any payment of compensation made pursuant to an award by an employment tribunal established under the Employment Tribunals Act 1996 in respect of unfair dismissal or unlawful discrimination;
- (f) any payment in respect of expenses arising out of the applicant participating as a service user.

(3) Sub-paragraph (2)(a) does not apply in respect of any non-cash voucher referred to in sub-paragraph (1)(g).

Calculation of net earnings of employed earners: pensioners

42

(1) For the purposes of paragraph 57 (calculation of income on a weekly basis), the earnings of an applicant who is a pensioner derived or likely to be derived from employment as an employed earner to be taken into account must, subject to paragraph 40(5) and Schedule 5 (sums to be disregarded from earnings: pensioners), be his net earnings.

(2) For the purposes of sub-paragraph (1) net earnings must, except where sub-paragraph (5) applies, be calculated by taking into account the gross earnings of the applicant from that employment over the assessment period, less--

- (a) any amount deducted from those earnings by way of--
 - (i) income tax;
 - (ii) primary Class 1 contributions under the SSCBA;
- (b) one-half of any sum paid by the applicant by way of a contribution towards an occupational pension scheme;
- (c) one-half of the amount calculated in accordance with sub-paragraph (4) in respect of any qualifying contribution payable by the applicant; and
- (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay, statutory maternity pay, ~~ordinary or additional~~ statutory paternity pay, statutory shared parental pay; or statutory adoption pay, any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the SSCBA.

(3) In this paragraph "qualifying contribution" means any sum which is payable periodically as a contribution towards a personal pension scheme.

(4) The amount in respect of any qualifying contribution is to be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this paragraph the daily amount of the qualifying contribution is to be determined--

(a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;

(b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.

(5) Where the earnings of an applicant are determined under paragraph 40(2)(b) (calculation of weekly income: pensioners) his net earnings is to be calculated by taking into account those earnings over the assessment period, less--

(a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate, or in the case of a Scottish taxpayer, the Scottish basic rate, of tax applicable to the assessment period less only the personal reliefs to which the applicant is entitled under Chapters 2, 3 and 3A of Part 3 of the Income Tax Act 2007 as are appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the basic rate, or the Scottish basic rate, of tax is to be applied and the amount of the personal reliefs deductible under this subparagraph is to be calculated on a pro rata basis;

(b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the SSCBA in respect of those earnings if such contributions were payable; and

(c) one-half of any sum which would be payable by the applicant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

Calculation of earnings of self-employed earners: pensioners

43

(1) Where the earnings of an applicant who is a pensioner consist of earnings from employment as a self-employed earner, the weekly amount of his earnings is to be determined by reference to his average weekly earnings from that employment--

(a) over a period of one year; or

(b) where the applicant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period ("computation period") as may, in the particular case, enable the weekly amount of his earnings to be determined more accurately.

(2) For the purposes of determining the weekly amount of earnings of an applicant to whom subparagraph (1)(b) applies, his earnings over the computation period are to be divided by the number equal to the number of days in that period and the product multiplied by 7.

(3) The period over which the weekly amount of an applicant's earnings is calculated in accordance with this paragraph is to be his assessment period.

Earnings of self-employers earners: pensioners

- (1) Subject to sub-paragraph (2), "earnings", in the case of employment as a self-employed earner who is a pensioner, means the gross income of the employment.
- (2) "Earnings" in the case of employment as a self-employed earner does not include--
- (a) where an applicant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation for which payment is made, those payments;
 - (b) any payment made by a local authority to an applicant--
 - (i) with whom a person is accommodated by virtue of arrangements made under section 22C of the Children Act 1989 or, as the case may be, section 26 or 26A of the Children (Scotland) Act 1995 or in Wales placed with the applicant or the applicant's partner by a local authority under section 81 of the Social Services and Well-being (Wales) Act 2014; or
 - (ii) with whom a local authority fosters a child under the Looked After Children (Scotland) Regulations 2009 or who is a kinship carer under those Regulations;
 - (c) any payment made by a voluntary organisation in accordance with section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations);
 - (d) any payment made to the applicant or his partner for a person ("the person concerned") who is not normally a member of the applicant's household but is temporarily in his care, by--
 - (i) a local authority but excluding payments of housing benefit made in respect of the person concerned;
 - (ii) a voluntary organisation;
 - (iii) the person concerned where the payment is for the provision of accommodation in respect of the meeting of that person's needs under section 18 or 19 of the Care Act 2014 (duty and power to meet needs for care and support);
 - (iv) the National Health Service Commissioning Board or a clinical commissioning group established under section 14D of the National Health Service Act 2006;
 - (v) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006; or
 - (vi) the persons concerned where the payment is for the provision of accommodation to meet that person's needs for care and support under section 35 or 36 of the Social Services and Well-being (Wales) Act 2014 (respectively, duty and power to meet care and support needs of an adult);
 - (da) any payment or part of a payment made by a local authority in accordance with section 26A of the Children (Scotland) Act 1995 (duty to provide continuing care) to a person ("A") which A passes on to the applicant where A—
 - (i) was formerly in the applicant's care;
 - (ii) is aged 16 or over; and
 - (iii) continues to live with the applicant;
 - (db) any payments made to an applicant under section 73(1)(b) of the Children and Young People (Scotland) Act 2014 (kinship care assistance: further provisions);
 - (e) any sports award.

Notional income: pensioners

45

- (1) An applicant who is a pensioner is to be treated as possessing--
 - (a) subject to sub-paragraph (2), the amount of any retirement pension income--
 - (i) for which no claim has been made; and
 - (ii) to which he might expect to be entitled if a claim for it were made;
 - (b) income from an occupational pension scheme which the applicant elected to defer.
- (2) Sub-paragraph (1)(a) does not apply to the following where entitlement has been deferred--
 - (a) a Category A or Category B retirement pension payable under sections 43 to 55 of the SSCBA;
 - (b) a shared additional pension payable under section 55A or 55AA of the SSCBA;
 - (c) graduated retirement benefit payable under sections 36 and 37 of the National Insurance Act 1965;
 - (d) a state pension under Part 1 of the Pensions Act 2014.
- (3) For the purposes of sub-paragraph (2), entitlement has been deferred--
 - (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3) of the SSCBA;
 - (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3) of the SSCBA;
 - (c) in the case of graduated retirement benefit, in the circumstances specified in section 36(4) and (4A) of the National Insurance Act 1965;
 - (d) in the case of a state pension under Part 1 of the Pensions Act 2014, in the circumstances specified in section 17(7) and (8) of that Act.
- (4) This sub-paragraph applies where a person who has attained the qualifying age for state pension credit--
 - (a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;
 - (b) fails to purchase an annuity with the funds available in that scheme; and
 - (c) either--
 - (i) defers in whole or in part the payment of any income which would have been payable to him by his pension fund holder, or
 - (ii) fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or
 - (iii) income withdrawal is not available to him under that scheme.

- (5) Where sub-paragraph (4) applies, the amount of any income foregone is to be treated as possessed by that person, but only from the date on which it could be expected to be acquired were an application for it to be made.
- (6) The amount of any income foregone in a case where sub-paragraph (4)(c)(i) or (ii) applies is to be the rate of the annuity which may have been purchased with the fund and must be determined by the authority, taking account of information provided by the pension fund holder.
- (7) The amount of any income foregone in a case where sub-paragraph (4)(c)(iii) applies is to be the income that the applicant could have received without purchasing an annuity had the funds held under the relevant scheme been held under a personal pension scheme or occupational pension scheme where income withdrawal was available and is to be determined in the manner specified in sub-paragraph (6).
- (8) In sub-paragraph (4), "money purchase benefits" has the same meaning as in the Pension Schemes Act 1993.
- (9) Subject to sub-paragraphs (10), (11A), (11B) and (12), a person is to be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to a reduction under this scheme or increasing the amount of the reduction.
- (10) Sub-paragraph (9) does not apply in respect of the amount of an increase of pension or benefit where a person, having made an election in favour of that increase of pension or benefit under Schedule 5 or 5A to the SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005, changes that election in accordance with regulations made under Schedule 5 or 5A to that Act in favour of a lump sum.
- (11) In sub-paragraph (10), "lump sum" means a lump sum under Schedule 5 or 5A to the SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005.
- (11A) Sub-paragraph (9) does not apply in respect of the amount of an increase of pension where a person, having made a choice in favour of that increase of pension under section 8(2) of the Pensions Act 2014, alters that choice in accordance with Regulations made under section 8(7) of that Act in favour of a lump sum.
- (11B) Sub-paragraph (9) does not apply in respect of the amount of an increase of pension where a person, having made a choice in favour of that increase of pension in accordance with Regulations made under section 10 of the Pensions Act 2014, which include provision corresponding or similar to section 8(2) of that Act, alters that choice in favour of a lump sum, in accordance with Regulations made under section 10 of that Act, which include provision corresponding or similar to Regulations made under section 8(7) of that Act.
- (11C) In sub-paragraph (11A), "lump sum" means a lump sum under section 8 of the Pensions Act 2014.
- (11D) In sub-paragraph (11B), "lump sum" means a lump sum under Regulations made under section 10 of the Pensions Act 2014 which include provision corresponding or similar to section 8 of that Act.
- (12) Sub-paragraph (9) does not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the applicant participating as a service user.
- (13) Where an applicant is in receipt of any benefit under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the authority must treat the applicant as possessing such benefit at the altered rate from either 1st April or the first Monday in April in that year, whichever date the authority selects to apply, to the date on which the altered rate is to take effect.
- (14) In the case of an applicant who has, or whose partner has, an award of state pension credit comprising only the savings credit, where the authority treats the applicant as possessing any benefit at the altered rate in accordance with sub-paragraph (13), the authority must--

(a) determine the income and capital of that applicant in accordance with paragraph 36(1) (calculation of applicant's income in savings credit only cases: pensioners) where the calculation or estimate of that income and capital is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter; and

(b) treat that applicant as possessing such income and capital at the altered rate by reference to the date selected by the relevant authority to apply in its area, for the purposes of establishing the period referred to in sub-paragraph (13).

(15) For the purposes of sub-paragraph (9), a person is not to be regarded as depriving himself of income where--

(a) his rights to benefits under a registered pension scheme are extinguished and in consequence of this he receives a payment from the scheme, and

(b) that payment is a trivial commutation lump sum within the meaning given by paragraph 7 of Schedule 29 to the Finance Act 2004.

(16) In sub-paragraph (15), "registered pension scheme" has the meaning given in section 150(2) of the Finance Act 2004.

Income paid to third parties: pensioners

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(1) Any payment of income, other than a payment specified in sub-paragraph (2) or (3), to a third party in respect of an applicant who is a pensioner is to be treated as possessed by the applicant.

(2) Sub-paragraph (1) does not apply in respect of a payment of income made under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where--

(a) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980;

(b) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and

(c) the person referred to in paragraph (a) and his partner does not possess, or is not treated as possessing, any other income apart from that payment.

(3) Sub-paragraph (1) does not apply in respect of any payment of income other than earnings, or earnings derived from employment as an employed earner, arising out of the applicant participating as a service user.

Chapter 5

Income: Persons Who are Not Pensioners

Average weekly earnings of employed earners: persons who are not pensioners

47

(1) Where the income of an applicant who is not a pensioner consists of earnings from employment as an employed earner his average weekly earnings must be estimated by reference to his earnings from that employment--

(a) over a period immediately preceding the reduction week in which the application is made or treated as made and being a period of--

- (i) 5 weeks, if he is paid weekly; or
- (ii) 2 months, if he is paid monthly; or

(b) whether or not paragraph (a)(i) or (ii) applies, where an applicant's earnings fluctuate, over such other period preceding the reduction week in which the application is made or treated as made as may, in any particular case, enable his average weekly earnings to be estimated more accurately.

(2) Where the applicant has been in his employment for less than the period specified in sub-paragraph (1)(a)(i) or (ii)--

(a) if he has received any earnings for the period that he has been in that employment and those earnings are likely to represent his average weekly earnings from that employment his average weekly earnings must be estimated by reference to those earnings;

(b) in any other case, the authority must estimate the applicant's average weekly earnings.

(3) Where the amount of an applicant's earnings changes the authority must estimate his average weekly earnings by reference to his likely earnings from the employment over such period as is appropriate in order that his average weekly earnings may be estimated accurately but the length of the period must not in any case exceed 52 weeks.

(4) For the purposes of this paragraph the applicant's earnings are to be calculated in accordance with paragraphs 51 and 52 (earnings of employed earners: persons who are not pensioners).

Average weekly earnings of self-employed earners: persons who are not pensioners

48

(1) Where the income of an applicant who is not a pensioner consists of earnings from employment as a self-employed earner his average weekly earnings must be estimated by reference to his earnings from that employment over such period as is appropriate in order that his average weekly earnings may be estimated accurately but the length of the period must not in any case exceed a year.

(2) For the purposes of this paragraph the applicant's earnings must be calculated in accordance with paragraphs 53, 61 and 62 (earnings, and net profit, of self-employed earners).

Average weekly income other than earnings: persons who are not pensioners

49

(1) The income of an applicant who is not a pensioner which does not consist of earnings must, except where sub-paragraph (2) applies, be estimated over such period as is appropriate in order that his average weekly income may be estimated accurately but the length of the period must not in any case exceed 52 weeks; and nothing in this paragraph authorises an authority to disregard any such income other than that specified in Schedule 8 (sums disregarded in the calculation of income other than earnings: persons who are not pensioners).

(2) The period over which any benefit under the benefit Acts is to be taken into account is to be the period in respect of which that benefit is payable.

(3) For the purposes of this paragraph income other than earnings is to be calculated in accordance with paragraph 54 (calculation of income other than earnings: persons who are not pensioners).

Calculation of weekly income of employed earners: persons who are not pensioners

50

(1) For the purposes of paragraphs 47 (average weekly earnings of employed earners), 49 (average weekly income other than earnings) and 59 (calculation of average weekly income from tax credits), where the period in respect of which a payment is made--

- (a) does not exceed a week, the weekly amount is to be the amount of that payment;
- (b) exceeds a week, the weekly amount is to be determined--
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in any other case, by dividing the amount of the payment by the number equal to the number of days in the period to which it relates and multiplying the product by 7.

(2) For the purposes of paragraph 48 (average weekly earnings of self-employed earners) the weekly amount of earnings of an applicant is to be determined by dividing his earnings over the assessment period by the number equal to the number of days in that period and multiplying the product by 7.

Earnings of employed earners: persons who are not pensioners

51

(1) Subject to sub-paragraph (2), "earnings", in the case of employment as an employed earner of a person who is not a pensioner, means any remuneration or profit derived from that employment and includes--

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to an applicant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice or any lump sum payment intended as compensation for the loss of employment but only in so far as it represents loss of income;
- (d) any holiday pay except any payable more than 4 weeks after termination or interruption of the employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the applicant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the applicant's employer in respect of--
 - (i) travelling expenses incurred by the applicant between his home and place of employment;
 - (ii) expenses incurred by the applicant under arrangements made for the care of a member of his family owing to the applicant's absence from home;
- (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 (remedies and compensation for unfair dismissal);
- (h) any payment or remuneration made under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);

- (i) any such sum as is referred to in section 112 of the SSCBA (certain sums to be earnings for social security purposes);
- (j) any statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay, or a corresponding payment under any enactment having effect in Northern Ireland;
- (k) any remuneration paid by or on behalf of an employer to the applicant who for the time being is on maternity leave, paternity leave or adoption leave or is absent from work because he is ill;
- (l) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001.

(2) Earnings does not include--

- (a) subject to sub-paragraph (3), any payment in kind;
- (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
- (c) any occupational pension;
- (d) any payment in respect of expenses arising out of the applicant's participation in a service user group.

(3) Sub-paragraph (2)(a) does not apply in respect of any non-cash voucher referred to in sub-paragraph (1)(l).

Calculation of net earnings of employed earners: persons who are not pensioners

52

(1) For the purposes of paragraph 47 (average weekly earnings of employed earners: persons who are not pensioners), the earnings of an applicant who is not a pensioner derived or likely to be derived from employment as an employed earner to be taken into account must, subject to sub-paragraph (2), be his net earnings.

(2) There is to be disregarded from an applicant's net earnings, any sum, where applicable, specified in paragraphs 1 to 16 of Schedule 7 (sums disregarded in the calculation of earnings: persons who are not pensioners).

(3) For the purposes of sub-paragraph (1) net earnings must, except where sub-paragraph (6) applies, be calculated by taking into account the gross earnings of the applicant from that employment over the assessment period, less--

- (a) any amount deducted from those earnings by way of--
 - (i) income tax;
 - (ii) primary Class 1 contributions under the SSCBA;
- (b) one-half of any sum paid by the applicant by way of a contribution towards an occupational pension scheme;
- (c) one-half of the amount calculated in accordance with sub-paragraph (5) in respect of any qualifying contribution payable by the applicant; and
- (d) where those earnings include a payment which is payable under any enactment having effect in Northern Ireland and which corresponds to statutory sick pay, statutory maternity pay, statutory

paternity pay or statutory adoption pay, any amount deducted from those earnings by way of any contributions which are payable under any enactment having effect in Northern Ireland and which correspond to primary Class 1 contributions under the SSCBA.

(4) In this paragraph "qualifying contribution" means any sum which is payable periodically as a contribution towards a personal pension scheme.

(5) The amount in respect of any qualifying contribution is to be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this paragraph the daily amount of the qualifying contribution is to be determined--

(a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;

(b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.

(6) Where the earnings of an applicant are estimated under paragraph 47(2)(b) (average weekly earnings of employed earners: classes D to F), his net earnings is to be calculated by taking into account those earnings over the assessment period, less--

(a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax applicable to the assessment period less only the personal relief to which the applicant is entitled under sections 35 to 37 of the Income Tax Act 2007 (personal allowances) as is appropriate to his circumstances but, if the assessment period is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph is to be calculated on a pro rata basis;

(b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the SSCBA in respect of those earnings if such contributions were payable; and

(c) one-half of any sum which would be payable by the applicant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.

Earnings of self-employed earners: persons who are not pensioners

53

(1) Subject to sub-paragraph (2), "earnings", in the case of employment as a self-employed earner of a person who is not a pensioner, means the gross income of the employment.

(2) "Earnings" does not include any payment to which paragraph 31 or 32 of Schedule 8 refers (payments in respect of a person accommodated with the applicant under arrangements made by a local authority or voluntary organisation and payments made to the applicant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the applicant's care) nor does it include any sports award.

(3) This paragraph applies to--

(a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; or

(b) any payment in respect of any--

(i) book registered under the Public Lending Right Scheme 1982; or

(ii) work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982,

where the applicant is the first owner of the copyright, design, patent or trade mark, or an original contributor to the book or work concerned.

(4) Where the applicant's earnings consist of any items to which sub-paragraph (3) applies, those earnings must be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing the earnings by--

(a) the amount of reduction under this scheme to which the applicant would have been entitled had the payment not been made, plus

(b) an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 7 (sums disregarded in the calculation of earnings: persons who are not pensioners) as appropriate in the applicant's case.

Calculation of income other than earnings: persons who are not pensioners

54

(1) For the purposes of paragraph 49 (average weekly income other than earnings: persons who are not pensioners), the income of an applicant who is not a pensioner which does not consist of earnings to be taken into account must, subject to sub-paragraphs (2) to (8), be his gross income and any capital treated as income under paragraph 55 (capital treated as income: persons who are not pensioners).

(2) There is to be disregarded from the calculation of an applicant's gross income under sub-paragraph (1), any sum, where applicable, specified in Schedule 8.

(3) Where the payment of any benefit under the benefit Acts is subject to any deduction by way of recovery the amount to be taken into account under sub-paragraph (1) must be the gross amount payable.

(4) Where the applicant or, where he is a member of a couple, his partner is receiving a contributory employment and support allowance and that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations 2008, the amount of that benefit to be taken into account is the amount as if it had not been reduced.

(5) Where an award of any working tax credit or child tax credit under the Tax Credits Act 2002 is subject to a deduction by way of recovery of an overpayment of working tax credit or child tax credit which arose in a previous tax year the amount to be taken into account under sub-paragraph (1) is to be the amount of working tax credit or child tax credit awarded less the amount of that deduction.

(6) Sub-paragraphs (7) and (8) apply where--

(a) a relevant payment has been made to a person in an academic year; and

(b) that person abandons, or is dismissed from, his course of study before the payment to him of the final instalment of the relevant payment.

(7) Where a relevant payment is made quarterly, the amount of a relevant payment to be taken into account for the assessment period for the purposes of sub-paragraph (1) in respect of a person to whom sub-paragraph (7) applies, is to be calculated by applying the formula--

$$(A - (B \times C)) / D$$

Where

(a) A = the total amount of the relevant payment which that person would have received had he remained a student until the last day of the academic term in which he abandoned, or was dismissed from, his course, less any deduction under paragraph 81(5) (costs of travel, books and equipment);

(b) B = the number of reduction weeks from the reduction week immediately following that which includes the first day of that academic year to the reduction week which includes the day on which the person abandoned, or was dismissed from, his course;

(c) C = the weekly amount of the relevant payment, before the application of the £10 disregard, which would have been taken into account as income under paragraph 81(2) (treatment of student loans) had the person not abandoned or been dismissed from, his course and, in the case of a person who was not entitled to a reduction under this scheme immediately before he abandoned or was dismissed from his course, had that person, at that time, been entitled to housing benefit;

(d) D = the number of reduction weeks in the assessment period.

(8) Where a relevant payment is made by two or more instalments in a quarter, the amount of a relevant payment to be taken into account for the assessment period for the purposes of sub-paragraph (1) in respect of a person to whom sub-paragraph (7) applies, is to be calculated by applying the formula in sub-paragraph (8) but as if--

A = the total amount of relevant payments which that person received, or would have received, from the first day of the academic year to the day the person abandoned the course, or was dismissed from it, less any deduction under paragraph 81(5).

(9) In this paragraph--

"academic year" and "student loan" have the same meanings as in Part 11 (students);

"assessment period" means--

(a) in a case where a relevant payment is made quarterly, the period beginning with the reduction week which includes the day on which the person abandoned, or was dismissed from, his course and ending with the reduction week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that person;

(b) in a case where the relevant payment is made by two or more instalments in a quarter, the period beginning with the reduction week which includes the day on which the person abandoned, or was dismissed from, his course and ending with the reduction week which includes--

(i) the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued; or

(ii) the last day of the last quarter for which an instalment of the relevant payment was payable to that person,

whichever of those dates is earlier;

"quarter" in relation to an assessment period means a period in that year beginning on--

(c) 1st January and ending on 31st March;

(d) 1st April and ending on 30th June;

(e) 1st July and ending on 31st August; or

(f) 1st September and ending on 31st December;

"relevant payment" means either a student loan or an amount intended for the maintenance of dependants referred to in paragraph 76(7) or both.

(10) For the avoidance of doubt there must be included as income to be taken into account under sub-paragraph (1)--

- (a) any payment to which paragraph 41(2) or 51(2) (payments not earnings) applies; or
- (b) in the case of an applicant who is receiving support under section 95 or 98 of the Immigration and Asylum Act 1999 including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the applicant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act 1999.

Capital treated as income: persons who are not pensioners

55

- (1) Any capital payable by instalments which are outstanding at the date on which the application is made or treated as made, or, at the date of any subsequent revision or supersession, must, if the aggregate of the instalments outstanding and the amount of the applicant's capital otherwise calculated in accordance with Chapter 7 of this Part exceeds £10,000, be treated as income.
- (2) Any payment received under an annuity is to be treated as income.
- (3) Any earnings to the extent that they are not a payment of income is to be treated as income.
- (4) Any Career Development Loan paid pursuant to section 2 of the Employment and Training Act 1973 is to be treated as income.
- (5) Where an agreement or court order provides that payments must be made to the applicant in consequence of any personal injury to the applicant and that such payments are to be made, wholly or partly, by way of periodic payments, any such periodic payments received by the applicant (but not a payment which is treated as capital by virtue of this Part), is to be treated as income.

Notional income: persons who are not pensioners

56

- (1) An applicant who is not a pensioner is to be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to a reduction under a council tax reduction scheme or increasing the amount of the reduction.
- (2) Except in the case of--
 - (a) a discretionary trust;
 - (b) a trust derived from a payment made in consequence of a personal injury;
 - (c) a personal pension scheme, occupational pension scheme or a payment made by the Board of the Pension Protection Fund where the applicant has not attained the qualifying age for state pension credit;
 - (d) any sum to which paragraph 50(2)(a) of Schedule 10 (capital disregards: persons who are not pensioners) applies which is administered in the way referred to in paragraph 50(1)(a);
 - (e) any sum to which paragraph 51(a) of Schedule 10 refers;
 - (f) rehabilitation allowance made under section 2 of the Employment and Training Act 1973;
 - (g) child tax credit;
 - (h) working tax credit, or
 - (i) any sum to which sub-paragraph (11) applies,

any income which would become available to the applicant upon application being made, but which has not been acquired by him, is to be treated as possessed by the applicant but only from the date on which it could be expected to be acquired were an application made.

(3) Any payment of income, other than a payment of income specified in sub-paragraph (4), made--

(a) to a third party in respect of a single applicant or a member of the family (but not a member of the third party's family) must, where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, be treated as possessed by that single applicant or, as the case may be, by that member;

(b) to a third party in respect of a single applicant or in respect of a member of the family (but not a member of the third party's family) must, where it is not a payment referred to in paragraph (a), be treated as possessed by that single applicant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single applicant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that applicant or member is liable;

(c) to a single applicant or a member of the family in respect of a third party (but not in respect of another member of that family) must be treated as possessed by that single applicant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

(4) Sub-paragraph (3) does not apply in respect of a payment of income made--

(a) under or by the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No 2) Trust, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006);

(b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 (concessionary coal);

(c) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation--

(i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations 1996;

(ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;

(iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations;

(iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations; or

(v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;

(d) in respect of a person's participation in the Work for Your Benefit Pilot Scheme;

(e) in respect of a person's participation in the Mandatory Work Activity Scheme;

(f) in respect of an applicant's participation in the Employment, Skills and Enterprise Scheme;

(g) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where--

(i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980;

- (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (iii) the person referred to in sub-paragraph (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.

(5) Where an applicant is in receipt of any benefit under the benefit Acts and the rate of that benefit is altered with effect from a date on or after 1st April in any year but not more than 14 days thereafter, the authority must treat the applicant as possessing such benefit at the altered rate from either 1st April or the first Monday in April in that year, whichever date the authority selects, to the date on which the altered rate is to take effect.

(6) Subject to sub-paragraph (7), where--

- (a) an applicant performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the authority must treat the applicant as possessing such earnings (if any) as is reasonable for that employment unless the applicant satisfies the authority that the means of that person are insufficient for him to pay or to pay more for the service.

(7) Sub-paragraph (6) does not apply--

- (a) to an applicant who is engaged by a charitable or voluntary organisation or who is a volunteer if the authority is satisfied in any of those cases that it is reasonable for him to provide those services free of charge; or
- (b) in a case where the service is performed in connection with--
 - (i) the applicant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations 1996, other than where the service is performed in connection with the applicant's participation in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations; or
 - (ii) the applicant's or the applicant's partner's participation in an employment or training programme as defined in regulation 19(3) of those Regulations for which a training allowance is not payable or, where such an allowance is payable, it is payable for the sole purpose of reimbursement of travelling or meal expenses to the person participating in that programme; or
- (c) to an applicant who is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement starts.

(8) In sub-paragraph (7)(c) "work placement" means practical work experience which is not undertaken in expectation of payment.

(9) Where an applicant is treated as possessing any income under any of sub-paragraphs (1) to (8), the foregoing provisions of this Part apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which he does possess.

(10) Where an applicant is treated as possessing any earnings under sub-paragraph (6) the foregoing provisions of this Part apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph 42(2) or 52(3) (calculation of net earnings of employed earners: pensioners and persons who are not pensioners, respectively) do not apply and his net earnings are to be calculated by taking into account those earnings which he is treated as possessing, less--

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax applicable to the assessment period less only the personal relief to

which the applicant is entitled under sections 35 to 37 of the Income Tax Act 2007 (personal allowances) as is appropriate to his circumstances; but, if the assessment period is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph is to be calculated on a pro rata basis;

- (b) an amount equivalent to the amount of the primary Class 1 contributions that would be payable by him under the SSCBA in respect of those earnings if such contributions were payable; and
- (c) one-half of any sum payable by the applicant by way of a contribution towards an occupational or personal pension scheme.

(11) Sub-paragraphs (1), (2), (3) and (6) do not apply in respect of any amount of income other than earnings, or earnings of an employed earner, arising out of the applicant's participation in a service user group.

Chapter 6

Income: Further Provisions Applying to Pensioners and Persons Who are Not Pensioners

Calculation of income on a weekly basis

57

(1) Subject to paragraph 60 (disregard of changes in tax, etc), the income of an applicant is to be calculated on a weekly basis--

- (a) by estimating the amount which is likely to be his average weekly income in accordance with this Part;
- (b) by adding to that amount the weekly income calculated--
 - (i) if the applicant is a pensioner, under paragraph 71 (tariff income: pensioners);
 - (ii) if the applicant is a person who is not a pensioner, under paragraph 72 (tariff income: persons who are not pensioners); and

(c) deducting from the sum of paragraphs (a) and (b) any relevant child care charges to which paragraph 58 (treatment of child care charges) applies from any earnings which form part of the average weekly income or, in a case where the conditions in sub-paragraph (2) are met, from those earnings plus whichever credit specified in paragraph (b) of that sub-paragraph is appropriate, up to a maximum deduction in respect of the applicant's family of whichever of the sums specified in sub-paragraph (3) applies in his case.

(2) The conditions of this paragraph are that--

- (a) the applicant's earnings which form part of his average weekly income are less than the lower of either his relevant child care charges or whichever of the deductions specified in sub-paragraph (3) otherwise applies in his case; and
- (b) that applicant or, if he is a member of a couple either the applicant or his partner, is in receipt of either working tax credit or child tax credit.

(3) The maximum deduction to which sub-paragraph (1)(c) above refers is to be--

- (a) where the applicant's family includes only one child in respect of whom relevant child care charges are paid, £175.00 per week;
- (b) where the applicant's family includes more than one child in respect of whom relevant child care charges are paid, £300 per week.

Treatment of child care charges: pensioners

58

(1) This paragraph applies where an applicant (within the meaning in this paragraph) is incurring relevant child care charges and--

- (a) is a lone parent and is engaged in remunerative work;
- (b) is a member of a couple both of whom are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other--
 - (i) is incapacitated;
 - (ii) is an in-patient in hospital; or
 - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

(2) For the purposes of sub-paragraph (1) and subject to sub-paragraph (4), a person to whom sub-paragraph (3) applies must be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he--

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the SSCBA;
- (c) is paid an employment and support allowance;
- (d) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support (General) Regulations 1987; or
- (e) is credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975.

(3) This sub-paragraph applies to a person who was engaged in remunerative work immediately before--

- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit, an employment and support allowance or income support on the grounds of incapacity for work; or
- (b) the first day of the period in respect of which earnings are credited,

as the case may be.

(4) In a case to which sub-paragraph (2)(d) or (e) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.

(5) Relevant child care charges are those charges for care to which sub-paragraphs (6) and (7) apply, and are to be calculated on a weekly basis in accordance with sub-paragraph (9).

(6) The charges are paid by the applicant for care which is provided--

- (a) in the case of any child of the applicant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday; or

(b) in the case of any child of the applicant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.

(7) The charges are paid for care which is provided by one or more of the care providers listed in sub-paragraph (8) and are not paid--

- (a) in respect of the child's compulsory education;
- (b) by an applicant to a partner or by a partner to an applicant in respect of any child for whom either or any of them is responsible in accordance with paragraph 7 (circumstances in which a person is treated as responsible or not responsible for another); or
- (c) in respect of care provided by a relative of the child wholly or mainly in the child's home.

(8) The care to which sub-paragraph (7) refers may be provided--

- (a) out of school hours, by a school on school premises or by a local authority--
 - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
 - (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday; or
- (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999; or
- (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010; or
- (d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010; or
- (e) by--
 - (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010; or
 - (ii) local authorities registered under section 83(1) of that Act,

where the care provided is child minding or day care of children within the meaning of that Act; or

- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002; or
- (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006; or
- (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or
- (i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or
- (j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of "childcare" for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or

(k) by a foster parent or kinship carer under the Fostering Services Regulations 2011, the Fostering Services (Wales) Regulations 2003 or the Looked After Children (Scotland) Regulations 2009 in relation to a child other than one whom the foster parent is fostering or kinship carer is looking after; or

(l) by a provider of personal care within the meaning of paragraph 1 of Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and being a regulated activity prescribed by those Regulations or by a person who is employed, or engaged under a contract for services, to provide care and support by the provider of a domiciliary support service within the meaning of Part 1 of the Regulations and Inspection of Social Care (Wales) Act 2016; or

(m) by a person who is not a relative of the child wholly or mainly in the child's home.

(9) Relevant child care charges must be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.

(10) For the purposes of sub-paragraph (1)(c) the other member of a couple is incapacitated where--

(a) he is aged not less than 80;

(b) he is aged less than 80, and--

(i) an additional condition specified in paragraph 10 of Schedule 3 (additional condition for the disability premium) to this scheme is treated as applying in his case; and

(ii) he satisfies that conditions or would satisfy it but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the SSCBA;

(c) the other member of the couple would be a member of the support group or a member of the work-related activity group but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations 2008 or the Employment and Support Allowance Regulations 2013;

(d) he is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days must be treated as one continuous period;

(e) he is, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations 2008 [or the Employment and Support Allowance Regulations 2013] for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;

(f) there is payable in respect of him one or more of the following pensions or allowances--

(i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under Schedule 4 to the SSCBA;

(ii) attendance allowance under section 64 of the SSCBA;

(iii) severe disablement allowance under section 68 of the SSCBA;

(iv) disability living allowance under section 71 of the SSCBA;

(v) personal independence payment;

- (vi) an AFIP;
 - (vii) increase of disablement pension under section 104 of the SSCBA;
 - (viii) a pension increase paid as part of a war disablement pension or under an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under sub-paragraph (ii), (iv), (v) or (vii) above;
 - (ix) main phase employment and support allowance;
- (g) a pension or allowance or payment to which sub-paragraph (v), (vii) or (viii) of paragraph (f) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient, which in this paragraph means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005;
- (h) an attendance allowance under section 64 of the SSCBA or disability living allowance would be payable to that person but for--
- (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
 - (ii) an abatement as a consequence of hospitalisation;
- (i) the daily living component of personal independence payment would be payable to that person but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);
- (j) an AFIP would be payable to that person but for any suspension of payment in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution;
- (k) paragraph (f), (g), (h) or (i) would apply to him if the legislative provisions referred to in those paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (l) he has an invalid carriage or other vehicle provided to him by the Secretary of State or a clinical commissioning group under paragraph 9 of Schedule 1 to the National Health Service Act 2006 or under section 46 of the National Health Service (Scotland) Act 1978 or provided by the Department of Health, Social Services and Public Safety in Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972.
- (11) For the purposes of sub-paragraph (10), once sub-paragraph (10)(d) applies to the person, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that sub-paragraph is, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter to apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.
- (12) For the purposes of sub-paragraph (10), once sub-paragraph (10)(e) applies to the person, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for work.
- (13) For the purposes of sub-paragraphs (6) and (8)(a), a person is disabled if he is a person--
- (a) to whom an attendance allowance or the care component of disability allowance is payable or would be payable but for--

- (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA;
or
- (ii) an abatement as a consequence of hospitalisation;

(b) to whom the daily living component of personal independence payment is payable or has ceased to be payable by virtue of a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);

(c) who is registered as severely sight-impaired in a register kept under section 77(1) of the Care Act 2014 (registers of sight-impaired adults) in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994 or is registered as severely sight-impaired in a register kept by a local authority in Wales under section 18(1) of the Social Services and Well-being (Wales) Act 2014; or

(d) who ceased to be registered as blind or severely sight-impaired in such a register within the period beginning 28 weeks before the first Monday in September following that person's fifteenth birthday and ending on the day preceding that person's sixteenth birthday.

(14) For the purposes of sub-paragraph (1) a person on maternity leave, paternity leave, shared parental leave or adoption leave is to be treated as if he is engaged in remunerative work for the period specified in sub-paragraph (15) ("the relevant period") provided that—

- (a) in the week before the period of maternity leave, paternity leave, shared parental leave or adoption leave began he was in remunerative work;
- (b) the applicant is incurring relevant child care charges within the meaning of sub-paragraph (5); and
- (c) he is entitled to either statutory maternity pay under section 164 of the SSCBA, statutory paternity pay by virtue of section 171ZA or 171ZB of that Act, statutory adoption pay by virtue of section 171ZL of that Act, maternity allowance under section 35 of that Act, statutory shared parental pay by virtue of section 171ZU or 171ZV of that Act or qualifying support.

(15) For the purposes of sub-paragraph (14) the relevant period begins on the day on which the person's maternity, paternity leave, shared parental leave or adoption leave commences and ends on—

- (a) the date that leave ends;
- (b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, ordinary or additional statutory paternity pay or statutory shared paternity pay or statutory adoption pay ends, the date that entitlement ends; or
- (c) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance or qualifying support, statutory maternity pay, ordinary or additional statutory paternity pay, statutory shared paternity pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of the working tax credit ends,

whichever shall occur first.

(16) In sub-paragraphs (14) and (15)--

- (a) "qualifying support" means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support (General) Regulations 1987; and

(b) "child care element" of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act 2002 (child care element).

(17) In sub-paragraphs (6), (8)(a) and (13)(d), "the first Monday in September" means the Monday which first occurs in the month of September in any year.

Treatment of child care charges: persons who are not pensioners

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(1) This paragraph applies where an applicant (within the meaning in this paragraph) is incurring relevant child care charges and--

- (a) is a lone parent and is engaged in remunerative work;
- (b) is a member of a couple both of whom are engaged in remunerative work; or
- (c) is a member of a couple where one member is engaged in remunerative work and the other--
 - (i) is incapacitated;
 - (ii) is an in-patient in hospital; or
 - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence).

(2) For the purposes of sub-paragraph (1) and subject to sub-paragraph (4), a person to whom sub-paragraph (3) applies must be treated as engaged in remunerative work for a period not exceeding 28 weeks during which he--

- (a) is paid statutory sick pay;
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the SSCBA;
- (c) is paid an employment and support allowance;
- (d) is paid income support on the grounds of incapacity for work under regulation 4ZA of, and paragraph 7 or 14 of Schedule 1B to, the Income Support (General) Regulations 1987; or
- (e) is credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975.

(3) This sub-paragraph applies to a person who was engaged in remunerative work immediately before--

- (a) the first day of the period in respect of which he was first paid statutory sick pay, short-term incapacity benefit, an employment and support allowance or income support on the grounds of incapacity for work; or
- (b) the first day of the period in respect of which earnings are credited,

as the case may be.

(4) In a case to which sub-paragraph (2)(d) or (e) applies, the period of 28 weeks begins on the day on which the person is first paid income support or on the first day of the period in respect of which earnings are credited, as the case may be.

(5) Relevant child care charges are those charges for care to which sub-paragraphs (6) and (7) apply, and are to be calculated on a weekly basis in accordance with sub-paragraph (10).

- (6) The charges are paid by the applicant for care which is provided--
- (a) in the case of any child of the applicant's family who is not disabled, in respect of the period beginning on that child's date of birth and ending on the day preceding the first Monday in September following that child's fifteenth birthday; or
 - (b) in the case of any child of the applicant's family who is disabled, in respect of the period beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday.
- (7) The charges are paid for care which is provided by one or more of the care providers listed in sub-paragraph (8) and are not paid--
- (a) in respect of the child's compulsory education;
 - (b) by an applicant to a partner or by a partner to an applicant in respect of any child for whom either or any of them is responsible in accordance with paragraph 7 (circumstances in which a person is treated as responsible or not responsible for another); or
 - (c) in respect of care provided by a relative of the child wholly or mainly in the child's home.
- (8) The care to which sub-paragraph (7) refers may be provided--
- (a) out of school hours, by a school on school premises or by a local authority--
 - (i) for children who are not disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their fifteenth birthday; or
 - (ii) for children who are disabled in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their sixteenth birthday; or
 - (b) by a child care provider approved in accordance with the Tax Credit (New Category of Child Care Provider) Regulations 1999; or
 - (c) by persons registered under Part 2 of the Children and Families (Wales) Measure 2010; or
 - (d) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school or establishment referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010; or
 - (e) by--
 - (i) persons registered under section 59(1) of the Public Services Reform (Scotland) Act 2010; or
 - (ii) local authorities registered under section 83(1) of that Act,
- where the care provided is child minding or day care of children within the meaning of that Act; or
- (f) by a person prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002; or
 - (g) by a person who is registered under Chapter 2 or 3 of Part 3 of the Childcare Act 2006; or
 - (h) by any of the schools mentioned in section 34(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 2 of Part 3 of that Act does not apply by virtue of section 34(2) of that Act; or

(i) by any of the schools mentioned in section 53(2) of the Childcare Act 2006 in circumstances where the requirement to register under Chapter 3 of Part 3 of that Act does not apply by virtue of section 53(2) of that Act; or

(j) by any of the establishments mentioned in section 18(5) of the Childcare Act 2006 in circumstances where the care is not included in the meaning of "childcare" for the purposes of Part 1 and Part 3 of that Act by virtue of that subsection; or

(k) by a foster parent or kinship carer under the Fostering Services Regulations 2011, the Fostering Services (Wales) Regulations 2003 or the Looked After Children (Scotland) Regulations 2009 in relation to a child other than one whom the foster parent is fostering or kinship carer is looking after; or

(l) by a provider of personal care within the meaning of paragraph 1 of Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and being a regulated activity prescribed by those Regulations; or

(m) by a person who is not a relative of the child wholly or mainly in the child's home.

(9) In sub-paragraphs (6) and (8)(a), "the first Monday in September" means the Monday which first occurs in the month of September in any year.

(10) Relevant child care charges must be estimated over such period, not exceeding a year, as is appropriate in order that the average weekly charge may be estimated accurately having regard to information as to the amount of that charge provided by the child minder or person providing the care.

(11) For the purposes of sub-paragraph (1)(c) the other member of a couple is incapacitated where--

(a) the applicant is a pensioner and the other member of the couple is aged not less than 80;

(b) the applicant is a pensioner and the other member of the couple is aged less than 80, and--

(i) the additional condition specified in paragraph 10 of Schedule 3 (additional condition for the disability premium) to this scheme is treated as applying in his case; and

(ii) he satisfies that conditions or would satisfy it but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the SSCBA;

(c) the applicant is not a pensioner, the applicant's applicable amount includes a disability premium on account of the other member's incapacity or the support component or the other member is a member of the work-related activity group on account of his having limited capability for work;

(d) the applicant is not a pensioner, the applicant's applicable amount would include a disability premium on account of the other member's incapacity but for that other member being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the SSCBA;

(e) the other member of the couple would be a member of the support group or a member of the work-related activity group but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations 2008 or the Employment and Support Allowance Regulations 2013;

(f) he is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days must be treated as one continuous period;

(g) he is, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations 2008 or the Employment and Support Allowance Regulations 2013 for a continuous period of

not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;

(h) there is payable in respect of him one or more of the following pensions or allowances--

- (i) long-term incapacity benefit or short-term incapacity benefit at the higher rate under Schedule 4 to the SSCBA;
- (ii) attendance allowance under section 64 of the SSCBA;
- (iii) severe disablement allowance under section 68 of the SSCBA;
- (iv) disability living allowance under section 71 of the SSCBA;
- (v) personal independence payment;
- (vi) an AFIP;
- (vii) increase of disablement pension under section 104 of the SSCBA;
- (viii) a pension increase paid as part of a war disablement pension or under an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under sub-paragraph (ii), (iv), (v) or (vii) above;
- (ix) main phase employment and support allowance;

(i) a pension or allowance or payment to which sub-paragraph (v), (vii) or (viii) of paragraph (h) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient, which in this paragraph means a person (other than a person who is serving a sentence of imprisonment or detention in a youth custody institution) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005;

(j) an attendance allowance under section 64 of the SSCBA or disability living allowance would be payable to that person but for--

- (i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or
- (ii) an abatement as a consequence of hospitalisation;

(k) the daily living component of personal independence payment would be payable to that person but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);

(l) an AFIP would be payable to that person but for any suspension of payment in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution;

(m) paragraph (h), (i), (j) or (k) would apply to him if the legislative provisions referred to in those paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or

(n) he has an invalid carriage or other vehicle provided to him by the Secretary of State or a clinical commissioning group under paragraph 9 of Schedule 1 to the National Health Service Act 2006 or under section 46 of the National Health Service (Scotland) Act 1978 or provided by the Department of Health, Social Services and Public Safety in Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972.

(12) For the purposes of sub-paragraph (11), once sub-paragraph (11)(f) applies to the person, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that sub-paragraph is, on his again becoming so incapable, or so treated as incapable, of work at the

end of that period, immediately thereafter to apply to him for so long as he remains incapable, or is treated as remaining incapable, of work.

(13) For the purposes of sub-paragraph (11), once sub-paragraph (11)(g) applies to the person, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for work.

(14) For the purposes of sub-paragraphs (6) and (8)(a), a person is disabled if he is a person--

(a) to whom an attendance allowance or the care component of disability allowance is payable or would be payable but for--

(i) a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA; or

(ii) an abatement as a consequence of hospitalisation;

(b) to whom the daily living component of personal independence payment is payable or has ceased to be payable by virtue of a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012 (hospital in-patients);

(c) who is registered as blind in a register compiled under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or

(d) who ceased to be registered as blind in such a register within the period beginning 28 weeks before the first Monday in September following that person's fifteenth birthday and ending on the day preceding that person's sixteenth birthday.

(15) For the purposes of sub-paragraph (1) a person on maternity leave, paternity leave, shared parental leave or adoption leave is to be treated as if he is engaged in remunerative work for the period specified in sub-paragraph (16) ("the relevant period") provided that--

(a) in the week before the period of maternity leave, paternity leave or adoption leave began he was in remunerative work;

(b) the applicant is incurring relevant child care charges within the meaning of sub-paragraph (5); and

(c) he is entitled to either statutory maternity pay under section 164 of the SSCBA, statutory paternity pay by virtue of section 171ZA or 171ZB of that Act, statutory adoption pay by of section 171ZL of that Act, maternity allowance under section 35 of that Act, statutory shared parental pay by virtue of section 171ZU or 171ZV of that Act or qualifying support.

(16) For the purposes of sub-paragraph (15) the relevant period begins on the day on which the person's maternity, paternity leave, shared parental leave or adoption leave commences and ends on--

(a) the date that leave ends;

(b) if no child care element of working tax credit is in payment on the date that entitlement to maternity allowance, qualifying support, statutory maternity pay, ordinary or additional statutory paternity pay, statutory shared parental pay or statutory adoption pay ends, the date that entitlement ends; or

(c) if a child care element of working tax credit is in payment on the date that entitlement to maternity allowance or qualifying support, statutory maternity pay, ordinary or additional statutory paternity pay, statutory shared parental pay or statutory adoption pay ends, the date that entitlement to that award of the child care element of the working tax credit ends,

whichever occurs first.

(17) In sub-paragraphs (15) and (16)--

- (a) "qualifying support" means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B to the Income Support (General) Regulations 1987; and
- (b) "child care element" of working tax credit means the element of working tax credit prescribed under section 12 of the Tax Credits Act 2002 (child care element).

(18) In this paragraph "applicant" does not include an applicant--

- (a) who has, or
- (b) who (jointly with his partner) has,

an award of universal credit.

Calculation of average weekly income from tax credits

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- (1) This paragraph applies where an applicant receives a tax credit.
- (2) Where this paragraph applies, the period over which a tax credit is to be taken into account is the period set out in sub-paragraph (3).
- (3) Where the instalment in respect of which payment of a tax credit is made is--
 - (a) a daily instalment, the period is 1 day, being the day in respect of which the instalment is paid;
 - (b) a weekly instalment, the period is 7 days, ending on the day on which the instalment is due to be paid;
 - (c) a two weekly instalment, the period is 14 days, commencing 6 days before the day on which the instalment is due to be paid;
 - (d) a four weekly instalment, the period is 28 days, ending on the day on which the instalment is due to be paid.
- (4) For the purposes of this paragraph "tax credit" means child tax credit or working tax credit.

Disregard of changes in tax, contributions etc

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In calculating the applicant's income the authority may disregard any legislative change--

- (a) in the basic or other rates of income tax;
- (aa) in the Scottish basic or other rates of income tax;
- (b) in the amount of any personal tax reliefs under Chapters 2, 3, and 3A of Part 3 of the Income Tax Act 2007;
- (c) in the rates of national insurance contributions payable under the SSCBA or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits

applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of that Act (small profits threshold in relation to Class 2 contributions);

- (d) in the amount of tax payable as a result of an increase in the weekly rate of Category A, B, C or D retirement pension or any addition thereto or any graduated pension payable under the SSCBA or a state pension under Part 1 of the Pensions Act 2014;
- (e) in the maximum rate of child tax credit or working tax credit,

for a period not exceeding 30 reduction weeks beginning with the reduction week immediately following the date from which the change is effective.

Calculation of net profit of self-employed earners

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(1) For the purposes of paragraphs 48 (average weekly earnings of self-employed earners: persons who are not pensioners) and 57 (calculation of income on a weekly basis) the earnings of an applicant to be taken into account must be--

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner who is a pensioner whose employment is carried on in partnership, his share of the net profit derived from that employment, less--
 - (i) an amount in respect of income tax and of national insurance contributions payable under the SSCBA calculated in accordance with paragraph 62 (deduction of tax and contributions of self-employed earners); and
 - (ii) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium;
- (c) in the case of a self-employed earner who is not a pensioner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975, his share of the net profit derived from that employment, less--
 - (i) an amount in respect of income tax and of national insurance contributions payable under the SSCBA calculated in accordance with paragraph 62 (deduction of tax and contributions for self-employed earners); and
 - (ii) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium.

(2) There must be disregarded from the net profit of an applicant who is not a pensioner, any sum, where applicable, specified in paragraphs 1 to 16 of Schedule 7 (sums disregarded in the calculation of earnings: persons who are not pensioners).

(3) For the purposes of sub-paragraph (1)(a) the net profit of the employment must, except where sub-paragraph (9) applies, be calculated by taking into account the earnings of the employment over the assessment period less--

- (a) subject to sub-paragraphs (5) to (8), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of--
 - (i) income tax; and

- (ii) social security contributions payable under the SSCBA,

calculated in accordance with paragraph 62 (deduction of tax and contributions for self-employed earners); and

- (c) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium.

(4) For the purposes of sub-paragraph (1)(b) the net profit of the employment is to be calculated by taking into account the earnings of the employment over the assessment period less, subject to sub-paragraphs (5) to (8), any expenses wholly and exclusively incurred in that period for the purposes of the employment.

(5) Subject to sub-paragraph (6), no deduction is to be made under sub-paragraph (3)(a) or (4), in respect of--

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the assessment period;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment; and
- (g) in the case of an applicant who is not a pensioner, any debts, except bad debts proved to be such, but this paragraph does not apply to any expenses incurred in the recovery of a debt.

(6) A deduction is to be made under sub-paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for--

- (a) the replacement in the course of business of equipment or machinery; or
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(7) The authority must refuse to make a deduction in respect of any expenses under sub-paragraph (3)(a) or (4) where it is not satisfied given the nature and the amount of the expense that it has been reasonably incurred.

(8) For the avoidance of doubt--

- (a) a deduction must not be made under sub-paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction must be made thereunder in respect of--
 - (i) the excess of any value added tax paid over value added tax received in the assessment period;
 - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.

(9) Where an applicant is engaged in employment as a child minder the net profit of the employment is to be one-third of the earnings of that employment, less--

- (a) an amount in respect of--
 - (i) income tax; and
 - (ii) national insurance contributions payable under the SSCBA,

calculated in accordance with paragraph 62 (deduction of tax and contributions for self-employed earners); and

- (b) one-half of the amount calculated in accordance with sub-paragraph (11) in respect of any qualifying premium.

(10) For the avoidance of doubt where an applicant is engaged in employment as a self-employed earner and he is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of his employments must not be offset against his earnings in any other of his employments.

(11) The amount in respect of any qualifying premium is to be calculated by multiplying the daily amount of the qualifying premium by the number equal to the number of days in the assessment period; and for the purposes of this paragraph the daily amount of the qualifying premium must be determined--

- (a) where the qualifying premium is payable monthly, by multiplying the amount of the qualifying premium by 12 and dividing the product by 365;
- (b) in any other case, by dividing the amount of the qualifying premium by the number equal to the number of days in the period to which the qualifying premium relates.

(12) In this paragraph, "qualifying premium" means any premium which is payable periodically in respect of a personal pension scheme and is so payable on or after the date of application.

Calculation of deduction of tax and contributions of self-employed earners

62

(1) The amount to be deducted in respect of income tax under paragraph 61(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) must be calculated--

- (a) on the basis of the amount of chargeable income, and
- (b) as if that income were assessable to income tax at the basic rate, or in the case of a Scottish taxpayer, the Scottish basic rate, of tax applicable to the assessment period less only the personal reliefs to which the applicant is entitled under Chapters 2, 3 and 3A of Part 3 of the Income Tax Act 2007 as are appropriate to his circumstances.

(2) But, if the assessment period is less than a year, the earnings to which the basic rate, or the Scottish basic rate, of tax is to be applied and the amount of the personal reliefs deductible under this paragraph must be calculated on a pro rata basis.

(3) The amount to be deducted in respect of national insurance contributions under paragraph 60(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) is the total of--

- (a) the amount of Class 2 contributions payable under section 11(2) or, as the case may be, 11(8) of the SSCBA at the rate applicable to the assessment period except where the applicant's chargeable income is less than the amount specified in section 11(4) of that Act (small profits threshold) for the tax year applicable to the assessment period; but if the assessment period is less than a year, the amount specified for that tax year must be reduced pro rata; and

(b) the amount of Class 4 contributions (if any) which would be payable under section 15 of the SSCBA (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable to the assessment period on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year applicable to the assessment period; but if the assessment period is less than a year, those limits must be reduced pro rata.

(4) In this paragraph "chargeable income" means--

- (a) except where paragraph (b) applies, the earnings derived from the employment less any expenses deducted under sub-paragraph (3)(a) or, as the case may be, (5) of paragraph 61;
- (b) in the case of employment as a child minder, one-third of the earnings of that employment.

Chapter 7 Capital

Calculation of capital

63

(1) The capital of an applicant to be taken into account must be, subject to sub-paragraph (2), the whole of his capital calculated in accordance with this Part and (in the case of persons who are not pensioners) any income treated as capital under paragraph 64 (income treated as capital: persons who are not pensioners).

(2) There must be disregarded from the calculation of an applicant's capital under sub-paragraph (1), any capital, where applicable, specified in--

- (a) Schedule 9, in relation to pensioners;
- (b) Schedule 10, in relation to persons who are not pensioners.

(3) In the case of an applicant who is a pensioner, his capital is to be treated as including any payment made to him by way of arrears of--

- (a) child tax credit;
- (b) working tax credit;
- (c) state pension credit,

if the payment was made in respect of a period for the whole or part of which a reduction under this scheme was allowed before those arrears were paid.

(4) The capital of a child or young person who is a member of the family of an applicant who is not a pensioner must not be treated as capital of the applicant.

Income treated as capital: persons who are not pensioners

64

(1) This paragraph applies in relation to persons who are not pensioners.

(2) Any bounty derived from employment to which paragraph 9 of Schedule 7 (sums disregarded in the calculation of earnings: persons who are not pensioners) applies and paid at intervals of at least one year is to be treated as capital.

(3) Any amount by way of a refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E is to be treated as capital.

(4) Any holiday pay which is not earnings under paragraph 41(1)(d) or 51(1)(d) (earnings of employed earners) is to be treated as capital.

(5) Except any income derived from capital disregarded under paragraphs 4, 5, 7, 11, 17, 30 to 33, 50 or 51 of Schedule 10 (capital disregards: persons who are not pensioners), any income derived from capital is to be treated as capital but only from the date it is normally due to be credited to the applicant's account.

(6) In the case of employment as an employed earner, any advance of earnings or any loan made by the applicant's employer is to be treated as capital.

(7) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than a payment which is made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, the Independent Living Fund (2006) or the London Bombings Charitable Relief Fund, is to be treated as capital.

(8) There is to be treated as capital the gross receipts of any commercial activity carried on by a person in respect of which assistance is received under the self-employment route, but only in so far as those receipts were payable into a special account during the period in which that person was receiving such assistance.

(9) Any arrears of subsistence allowance which are paid to an applicant as a lump sum must be treated as capital.

(10) Any arrears of working tax credit or child tax credit must be treated as capital.

Calculation of capital in the United Kingdom

65

Capital which an applicant possesses in the United Kingdom is to be calculated at its current market or surrender value less--

- (a) where there would be expenses attributable to the sale, 10 per cent; and
- (b) the amount of any encumbrance secured on it.

Calculation of capital outside the United Kingdom

66

Capital which an applicant possesses in a country outside the United Kingdom must be calculated--

- (a) in a case where there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

less, where there would be expenses attributable to sale, 10 per cent and the amount of any encumbrances secured on it.

Notional capital

67

(1) An applicant is to be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to a reduction or increasing the amount of that reduction except to the extent that that capital is reduced in accordance with paragraph 68 (diminishing notional capital rule).

(2) A person who is a pensioner who disposes of capital for the purpose of--

- (a) reducing or paying a debt owed by the applicant; or
- (b) purchasing goods or services if the expenditure was reasonable in the circumstances of the applicant's case,

is to be regarded as not depriving himself of it.

(3) Sub-paragraphs (4) to (6) apply in relation to applicants who are not pensioners.

(4) Except in the case of--

- (a) a discretionary trust; or
- (b) a trust derived from a payment made in consequence of a personal injury; or
- (c) any loan which would be obtained only if secured against capital disregarded under Schedule 9; or
- (d) a personal pension scheme, occupational pension scheme or a payment made by the Board of the Pension Protection Fund; or
- (e) any sum to which paragraph 50(2)(a) of Schedule 10 (capital disregards: persons who are not pensioners) applies which is administered in the way referred to in paragraph 50(1)(a); or
- (f) any sum to which paragraph 51(a) of Schedule 10 refers; or
- (g) child tax credit; or
- (h) working tax credit,

any capital which would become available to the applicant upon application being made, but which has not been acquired by him, is to be treated as possessed by him but only from the date on which it could be expected to be acquired were an application made.

(5) Any payment of capital, other than a payment of capital specified in sub-paragraph (6), made--

- (a) to a third party in respect of a single applicant or a member of the family (but not a member of the third party's family) must, where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, be treated as possessed by that single applicant or, as the case may be, by that member;
- (b) to a third party in respect of a single applicant or in respect of a member of the family (but not a member of the third party's family) must, where it is not a payment referred to in paragraph (a), be treated as possessed by that single applicant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel or rent of that single applicant or, as the case may be, of any member of that family or is used for any council tax or water charges for which that applicant or member is liable;
- (c) to a single applicant or a member of the family in respect of a third party (but not in respect of another member of the family) must be treated as possessed by that single applicant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.

(6) Sub-paragraph (5) does not apply in respect of a payment of capital made--

- (a) under or by any of the Trusts, the Fund, the Eileen Trust, MFET Limited, the Independent Living Fund (2006), the Skipton Fund, the Caxton Foundation, or the London Bombings Relief Charitable Fund;
- (b) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation--
 - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations 1996;
 - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
 - (iii) in the Intense Activity Period specified in regulation 75(1)(a)(iv) of those Regulations;
 - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations; or
 - (v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;
- (c) in respect of a person's participation in the Work for Your Benefit Pilot Scheme;
- (d) in respect of a person's participation in the Mandatory Work Activity Scheme;
- (e) in respect of an applicant's participation in the Employment, Skills and Enterprise Scheme;
- (f) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where--
 - (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980;
 - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
 - (iii) the person referred to in sub-paragraph (i) and any member of his family does not possess, or is not treated as possessing, any other income apart from that payment.

(7) Where an applicant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, he may be treated as if he were such sole owner or partner and in such a case--

- (a) the value of his holding in that company must, notwithstanding paragraph 63 (calculation of capital) be disregarded; and
- (b) he must, subject to sub-paragraph (8), be treated as possessing an amount of capital equal to the value or, as the case may be, his share of the value of the capital of that company and the foregoing provisions of this Chapter apply for the purposes of calculating that amount as if it were actual capital which he does possess.

(8) For so long as the applicant undertakes activities in the course of the business of the company, the amount which he is treated as possessing under sub-paragraph (7) is to be disregarded.

(9) Where an applicant is treated as possessing capital under any of sub-paragraphs (1), (4) or (5) the foregoing provisions of this Chapter apply for the purposes of calculating its amount as if it were actual capital which he does possess.

Diminishing notional capital rule: pensioners

(1) Where an applicant who is a pensioner is treated as possessing capital under paragraph 67(1) (notional capital), the amount which he is treated as possessing--

(a) in the case of a week that is subsequent to--

- (i) the relevant week in respect of which the conditions set out in sub-paragraph (2) are satisfied; or
- (ii) a week which follows that relevant week and which satisfies those conditions,

is to be reduced by an amount determined under sub-paragraph (3);

(b) in the case of a week in respect of which sub-paragraph (1)(a) does not apply but where--

- (i) that week is a week subsequent to the relevant week; and
- (ii) that relevant week is a week in which the condition in sub-paragraph (4) is satisfied,

is to be reduced by the amount determined under sub-paragraph (5).

(2) This sub-paragraph applies to a reduction week where the applicant satisfies the conditions that--

- (a) he is in receipt of a reduction under this scheme; and
- (b) but for paragraph 67(1), he would have received a greater reduction in council tax under this scheme in that week.

(3) In a case to which sub-paragraph (2) applies, the amount of the reduction in the amount of capital he is treated as possessing for the purposes of sub-paragraph (1)(a) must be equal to the aggregate of--

- (a) an amount equal to the additional amount of the reduction in council tax to which sub-paragraph (2)(b) refers;
- (b) where the applicant has also claimed state pension credit, the amount of any state pension credit or any additional amount of state pension credit to which he would have been entitled in respect of the reduction week to which sub-paragraph (2) refers but for the application of regulation 21(1) of the State Pension Credit Regulations 2002 (notional capital);
- (c) where the applicant has also claimed housing benefit, the amount of any housing benefit or any additional amount of housing benefit to which he would have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (notional capital);
- (d) where the applicant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the reduction week to which sub-paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations 1996 (notional capital); and
- (e) where the applicant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the reduction week to which sub-paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations 2008 (notional capital).

(4) Subject to sub-paragraph (7), for the purposes of sub-paragraph (1)(b) the condition is that the applicant is a pensioner and would have been entitled to a reduction in council tax under this scheme in the relevant week but for paragraph 67(1).

(5) In such a case the amount of the reduction in the amount of capital he is treated as possessing for the purposes of sub-paragraph (1)(b) is equal to the aggregate of--

- (a) the amount of the reduction in council tax to which the applicant would have been entitled in the relevant week but for paragraph 67(1);
- (b) if the applicant would, but for regulation 21 of the State Pension Credit Regulations 2002, have been entitled to state pension credit in respect of the benefit week, within the meaning of regulation 1(2) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled;
- (c) if the applicant would, but for regulation 47(1) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week which includes the last day of the relevant week, the amount which is equal to--
 - (i) in a case where no housing benefit is payable, the amount to which he would have been entitled; or
 - (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled;
- (d) if the applicant would, but for regulation 113 of the Jobseeker's Allowance Regulations 1996, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(3) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled; and
- (e) if the applicant would, but for regulation 115 of the Employment and Support Allowance Regulations 2008, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled.

(6) But if the amount mentioned in paragraph (a), (b), (c), (d) or (e) of sub-paragraph (5) ("the relevant amount") is in respect of a part-week, the amount that is to be taken into account under that paragraph is to be determined by--

- (a) dividing the relevant amount by the number equal to the number of days in that part-week, and
- (b) multiplying the result of that calculation by 7.

(7) The amount determined under sub-paragraph (5) is to be re-determined under that sub-paragraph if the applicant makes a further application and the conditions in sub-paragraph (8) are satisfied, and in such a case--

- (a) paragraphs (a) to (e) of sub-paragraph (5) apply as if for the words "relevant week" there were substituted the words "relevant subsequent week"; and
- (b) subject to sub-paragraph (9), the amount as re-determined has effect from the first week following the relevant subsequent week in question.

(8) The conditions are that--

- (a) a further application is made 26 or more weeks after--
 - (i) the date on which the applicant made an application in respect of which he was first treated as possessing the capital in question under paragraph 67(1);
 - (ii) in a case where there has been at least one re-determination in accordance with sub-paragraph (11), the date on which he last made an application which resulted in the weekly amount being re-determined, or

(iii) the date on which he last ceased to be entitled to a reduction under this scheme,

whichever last occurred; and

(b) the applicant would have been entitled to a reduction under this scheme but for paragraph 67(1).

(9) The amount as re-determined pursuant to sub-paragraph (7) must not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount must continue to have effect.

(10) For the purposes of this paragraph--

"part-week"--

(a) in relation to an amount mentioned in sub-paragraph (5)(a), means a period of less than a week for which a reduction in council tax under this scheme is allowed;

(b) in relation to an amount mentioned in sub-paragraph (5)(b), means a period of less than a week for which housing benefit is payable;

(c) in relation to an amount mentioned in sub-paragraph (5)(c), (d) or (e), means--

(i) a period of less than a week which is the whole period for which income support, an income-related employment and support allowance or, as the case may be, an income-based jobseeker's allowance is payable; and

(ii) any other period of less than a week for which it is payable;

"relevant week" means the reduction week or part-week in which the capital in question of which the applicant has deprived himself within the meaning of paragraph 67(1)--

(a) was first taken into account for the purpose of determining his entitlement to a reduction; or

(b) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to a reduction on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, a reduction;

and where more than one reduction week is identified by reference to paragraphs (a) and (b) of this definition, the later or latest such reduction week or, as the case may be, the later or latest such part-week is the relevant week;

"relevant subsequent week" means the reduction week or part-week which includes the day on which the further application or, if more than one further application has been made, the last such application was made.

Diminishing notional capital rule: persons who are not pensioners

69

(1) Where an applicant who is not a pensioner is treated as possessing capital under paragraph 67(1) (notional capital), the amount which he is treated as possessing--

(a) in the case of a week that is subsequent to--

(i) the relevant week in respect of which the conditions set out in sub-paragraph (2) are satisfied; or

(ii) a week which follows that relevant week and which satisfies those conditions,

is to be reduced by an amount determined under sub-paragraph (3);

- (b) in the case of a week in respect of which sub-paragraph (1)(a) does not apply but where--
 - (i) that week is a week subsequent to the relevant week; and
 - (ii) that relevant week is a week in which the condition in sub-paragraph (4) is satisfied,

is to be reduced by the amount determined under sub-paragraph (5).

(2) This sub-paragraph applies to a reduction week (or, in the case of persons who are not pensioners, part-week) where the applicant satisfies the conditions that--

- (a) he is in receipt of a reduction in council tax under this scheme; and
- (b) but for paragraph 67(1), he would have received a greater reduction in council tax under this scheme in that week.

(3) In a case to which sub-paragraph (2) applies, the amount of the reduction in the amount of capital he is treated as possessing for the purposes of sub-paragraph (1)(a) is equal to the aggregate of--

- (a) an amount equal to the additional amount of the reduction in council tax to which sub-paragraph (2)(b) refers;
- (b) where the applicant has also claimed housing benefit, the amount of any housing benefit or any additional amount of that benefit to which he would have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 49(1) of the Housing Benefit Regulations 2006 (notional capital);
- (c) where the applicant has also claimed income support, the amount of income support to which he would have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 51(1) of the Income Support (General) Regulations 1987 (notional capital);
- (d) where the applicant has also claimed a jobseeker's allowance, the amount of an income-based jobseeker's allowance to which he would have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 113 of the Jobseeker's Allowance Regulations 1996 (notional capital); and
- (e) where the applicant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the whole or part of the reduction week to which sub-paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations 2008 (notional capital).

(4) Subject to sub-paragraph (7), for the purposes of sub-paragraph (1)(b) the condition is that the applicant is not a pensioner and would have been entitled to a reduction in council tax in the relevant week but for paragraph 67(1).

(5) In such a case the amount of the reduction in the amount of capital he is treated as possessing must be equal to the aggregate of--

- (a) the amount of council tax benefit to which the applicant would have been entitled in the relevant week but for paragraph 67(1);
- (b) if the applicant would, but for regulation 49(1) of the Housing Benefit Regulations 2006, have been entitled to housing benefit or to an additional amount of housing benefit in respect of the benefit week which includes the last day of the relevant week, the amount which is equal to--

- (i) in a case where no housing benefit is payable, the amount to which he would have been entitled; or
- (ii) in any other case, the amount equal to the additional amount of housing benefit to which he would have been entitled;

(c) if the applicant would, but for regulation 51(1) of the Income Support (General) Regulations 1987, have been entitled to income support in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled;

(d) if the applicant would, but for regulation 113 of the Jobseeker's Allowance Regulations 1996, have been entitled to an income-based jobseeker's allowance in respect of the benefit week, within the meaning of regulation 1(3) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled; and

(e) if the applicant would, but for regulation 115 of the Employment and Support Allowance Regulations 2008, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled.

(6) But if the amount mentioned in paragraph (a), (b), (c), (d) or (e) of sub-paragraph (5) ("the relevant amount") is in respect of a part-week, the amount that is to be taken into account under that paragraph is to be determined by--

- (a) dividing the relevant amount by the number equal to the number of days in that part-week, and
- (b) multiplying the result of that calculation by 7.

(7) The amount determined under sub-paragraph (5) is to be re-determined under the appropriate sub-paragraph if the applicant makes a further application and the conditions in sub-paragraph (8) are satisfied, and in such a case--

- (a) paragraphs (a) to (e) of sub-paragraph (5) apply as if for the words "relevant week" there were substituted the words "relevant subsequent week"; and
- (b) subject to sub-paragraph (9), the amount as re-determined has effect from the first week following the relevant subsequent week in question.

(8) The conditions are that--

- (a) a further application is made 26 or more weeks after--
 - (i) the date on which the applicant made an application for a reduction under this scheme in respect of which he was first treated as possessing the capital in question under paragraph 67(1);
 - (ii) in a case where there has been at least one re-determination in accordance with sub-paragraph (7), the date on which he last made an application under this scheme which resulted in the weekly amount being re-determined, or
 - (iii) the date on which he last ceased to be entitled to a reduction under this scheme,

whichever last occurred; and

- (b) the applicant would have been entitled to a reduction under this scheme but for paragraph 67(1).

(9) The amount as re-determined pursuant to sub-paragraph (6) must not have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount must continue to have effect.

(10) For the purposes of this paragraph--

"part-week"--

(a) in relation to an amount mentioned in sub-paragraph (5)(a), means a period of less than a week for which a reduction under this scheme is allowed;

(b) in relation to an amount mentioned in sub-paragraph (5)(b), means a period of less than a week for which housing benefit is payable;

(c) in relation to an amount mentioned in sub-paragraph (5)(c), (d) or (e), means--

(i) a period of less than a week which is the whole period for which income support, an income-related employment and support allowance or, as the case may be, an income-based jobseeker's allowance is payable; and

(ii) any other period of less than a week for which it is payable;

"relevant week" means the reduction week or part-week in which the capital in question of which the applicant has deprived himself within the meaning of paragraph 67(1)--

(a) was first taken into account for the purpose of determining his entitlement to a reduction; or

(b) was taken into account on a subsequent occasion for the purpose of determining or re-determining his entitlement to a reduction on that subsequent occasion and that determination or re-determination resulted in his beginning to receive, or ceasing to receive, a reduction,

and where more than one reduction week is identified by reference to paragraphs (a) and (b) of this definition, the later or latest such reduction week or, as the case may be, the later or latest such part-week is the relevant week;

"relevant subsequent week" means the reduction week or part-week which includes the day on which the further application or, if more than one further application has been made, the last such application was made.

Capital jointly held

70

Except where an applicant possesses capital which is disregarded under paragraph 67(7) (notional capital), where an applicant and one or more persons are beneficially entitled in possession to any capital asset they must be treated, in the absence of evidence to the contrary, as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Chapter apply for the purposes of calculating the amount of capital which the applicant is treated as possessing as if it were actual capital which the applicant does possess.

Calculation of tariff income from capital: pensioners

71

The capital of an applicant who is a pensioner, calculated in accordance with this Part, is to be treated as if it were a weekly income of--

- (a) £1 for each £500 in excess of £10,000 but not exceeding £16,000; and
- (b) £1 for any excess which is not a complete £500.

Calculation of tariff income from capital: persons who are not pensioners

72

The capital of an applicant who is not a pensioner, calculated in accordance with this Part, is to be treated as if it were a weekly income of--

- (a) £1 for each £250 in excess of £6,000 but not exceeding £10,000;
- (b) £1 for any excess which is not a complete £250.

**Part 11
Students**

**Chapter 1
General**

Interpretation

73

- (1) In this Part--

"academic year" means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively but if students are required to begin attending the course during August or September and to continue attending through the autumn, the academic year of the course is to be considered to begin in the autumn rather than the summer;

"access funds" means--

- (a) grants made under section 68 of the Further and Higher Education Act 1992 for the purpose of providing funds on a discretionary basis to be paid to students;
- (b) grants made under sections 73(a) and (c) and 74(1) of the Education (Scotland) Act 1980;
- (c) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993 or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997 in each case being grants, or grants, loans or other payments as the case may be, for the purpose of assisting students in financial difficulties;
- (d) discretionary payments, known as "learner support funds", which are made available to students in further education by institutions out of funds provided by the Secretary of State under section 14 of the Education Act 2002, under sections 100 and 101 of the Apprenticeships, Skills, Children and Learning Act 2009; or
- (e) Financial Contingency Funds made available by the Welsh Ministers;

"college of further education" means a college of further education within the meaning of Part 1 of the Further and Higher Education (Scotland) Act 1992;

"contribution" means--

(a) any contribution in respect of the income of a student or any person which the Secretary of State, the Scottish Ministers or an education authority takes into account in ascertaining the amount of a student's grant or student loan; or

(b) any sums, which in determining the amount of a student's allowance or bursary in Scotland under the Education (Scotland) Act 1980, the Scottish Ministers or education authority takes into account being sums which the Scottish Ministers or education authority considers that it is reasonable for the following persons to contribute towards the holder's expenses--

- (i) the holder of the allowance or bursary;
- (ii) the holder's parents;
- (iii) the holder's parent's spouse, civil partner or a person ordinarily living with the holder's parent as if he or she were the spouse or civil partner of that parent; or
- (iv) the holder's spouse or civil partner;

"course of study" means any course of study, whether or not it is a sandwich course and whether or not a grant is made for attending or undertaking it;

"covenant income" means the gross income payable to a full-time student under a Deed of Covenant by his parent;

"education authority" means a government department, a local authority as defined in section 579 of the Education Act 1996 (interpretation), a local education authority as defined in section 123 of the Local Government (Scotland) Act 1973, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986, any body which is a research council for the purposes of the Science and Technology Act 1965 or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Great Britain;

"full-time course of study" means a full-time course of study which--

(a) is not funded in whole or in part by the Secretary of State under section 14 of the Education Act 2002, or under section 100 of the Apprenticeships, Skills, Children and Learning Act 2009 or by the Welsh Ministers or a full-time course of study which is not funded in whole or in part by the Scottish Ministers at a college of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Scottish Ministers;

(b) is funded in whole or in part by the Secretary of State under section 14 of the Education Act 2002, or under section 100 of the Apprenticeships, Skills, Children and Learning Act 2009 or by the Welsh Ministers if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out--

- (i) in the case of a course funded by the Secretary of State, in the student's learning agreement signed on behalf of the establishment which is funded by the Secretary of State for the delivery of that course; or
- (ii) in the case of a course funded by the Welsh Ministers, in a document signed on behalf of the establishment which is funded by that Council for the delivery of that course; or

(c) is not higher education and is funded in whole or in part by the Scottish Ministers at a college of further education and involves--

- (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or

- (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 hours per week, according to the number of hours set out in a document signed on behalf of the college;

"full-time student" means a person attending or undertaking a full-time course of study and includes a student on a sandwich course;

"grant" (except in the definition of "access funds") means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment from access funds or any payment to which paragraph 16 of Schedule 8 or paragraph 55 of Schedule 10 (allowances and payments for courses of study) applies;

"grant income" means--

- (a) any income by way of a grant;
- (b) any contribution whether or not it is paid;

"higher education" means higher education within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992;

"last day of the course" means--

- (a) in the case of a qualifying course, the date on which the last day of that course falls or the date on which the final examination relating to that course is completed, whichever is the later;
- (b) in any other case, the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

"period of study" means--

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course and ending with the last day of the course;
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, other than the final year of the course, the period beginning with the start of the course or, as the case may be, that year's start and ending with either--
 - (i) the day before the start of the next year of the course in a case where the student's grant or loan is assessed at a rate appropriate to his studying throughout the year or, if he does not have a grant or loan, where a loan would have been assessed at such a rate had he had one; or
 - (ii) in any other case, the day before the start of the normal summer vacation appropriate to his course;
- (c) in the final year of a course of study of more than one year, the period beginning with that year's start and ending with the last day of the course;

"periods of experience" means periods of work experience which form part of a sandwich course;

"qualifying course" means a qualifying course as defined for the purposes of Parts 2 and 4 of the Jobseeker's Allowance Regulations 1996;

"sandwich course" has the meaning prescribed in regulation 2(9) of the Education (Student Support) Regulations 2008, regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007 or regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007, as the case may be;

"standard maintenance grant" means--

- (a) except where paragraph (b) or (c) applies, in the case of a student attending or undertaking a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 ("the 2003 Regulations") for such a student;
- (b) except where paragraph (c) applies, in the case of a student residing at his parent's home, the amount specified in paragraph 3 thereof;
- (c) in the case of a student receiving an allowance or bursary under the Education (Scotland) Act 1980, the amount of money specified as "standard maintenance allowance" for the relevant year appropriate for the student set out in the Student Support in Scotland Guide issued by the Student Awards Agency for Scotland, or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority;
- (d) in any other case, the amount specified in paragraph 2(2) of Schedule 2 to the 2003 Regulations other than in sub-paragraph (a) or (b) thereof;

"student" means a person, other than a person in receipt of a training allowance, who is attending or undertaking--

- (a) a course of study at an educational establishment; or
- (b) a qualifying course;

"student loan" means a loan towards a student's maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998, section 73 of the Education (Scotland) Act 1980 or Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 and includes, in Scotland, a young student's bursary paid under regulation 4(1)(c) of the Students' Allowances (Scotland) Regulations 2007.

(2) For the purposes of the definition of "full-time student" in sub-paragraph (1), a person must be regarded as attending or, as the case may be, undertaking a full-time course of study or as being on a sandwich course--

- (a) subject to sub-paragraph (3), in the case of a person attending or undertaking a part of a modular course which would be a full-time course of study for the purposes of this Part, for the period beginning on the day on which that part of the course starts and ending--
 - (i) on the last day on which he is registered with the educational establishment as attending or undertaking that part as a full-time course of study; or
 - (ii) on such earlier date (if any) as he finally abandons the course or is dismissed from it;
- (b) in any other case, throughout the period beginning on the date on which he starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as he finally abandons it or is dismissed from it.

(3) For the purposes of paragraph (a) of sub-paragraph (2), the period referred to in that paragraph includes--

- (a) where a person has failed examinations or has failed successfully to complete a module relating to a period when he was attending or undertaking a part of the course as a full-time course of study, any period in respect of which he attends or undertakes the course for the purpose of retaking those examinations or that module;

(b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation immediately follows the last day on which he is required to attend or undertake the course.

(4) In sub-paragraph (2), "modular course" means a course of study which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

Treatment of students

74

This scheme has effect in relation to students who are not pensioners subject to the following provisions of this Part.

Students who are excluded from entitlement to a reduction under this scheme

75

(1) The students who are excluded from entitlement to a reduction under this scheme are, subject to sub-paragraphs (2) and (7)--

- (a) full-time students, and
- (b) students who are persons treated as not being in Great Britain.

(2) Sub-paragraph (1)(b) does not apply to a student--

- (a) who is a person on income support, an income-based jobseeker's allowance or an income-related employment and support allowance;
- (b) who is a lone parent;
- (c) whose applicable amount would, but for this paragraph, include the disability premium or severe disability premium;
- (d) whose applicable amount would include the disability premium but for his being treated as capable of work by virtue of a determination made in accordance with regulations made under section 171E of the SSCBA;
- (e) who is, or is treated as, incapable of work and has been so incapable, or has been so treated as incapable, of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA (incapacity for work) for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 56 days must be treated as one continuous period;
- (f) who has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations 2008 for a continuous period of not less than 196 days, and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;
- (g) who has a partner who is also a full-time student, if he or that partner is treated as responsible for a child or young person;
- (h) who is a single applicant with whom a child is placed by a local authority or voluntary organisation within the meaning of the Children Act 1989 or, in Scotland, boarded out within the meaning of the Social Work (Scotland) Act 1968;

(i) who is--

- (i) aged under 21 and whose course of study is not a course of higher education,
- (ii) aged 21 and attained that age during a course of study which is not a course of higher education, or
- (iii) a qualifying young person or child within the meaning of section 142 of the SSCBA (child and qualifying young person);

(j) in respect of whom--

- (i) a supplementary requirement has been determined under paragraph 9 of Part 2 of Schedule 2 to the Education (Mandatory Awards) Regulations 2003;
- (ii) an allowance, or as the case may be, bursary has been granted which includes a sum under paragraph (1)(d) of regulation 4 of the Students' Allowances (Scotland) Regulations 1999 or, as the case may be, under paragraph (1)(d) of regulation 4 of the Education Authority (Bursaries) (Scotland) Regulations 1995, in respect of expenses incurred;
- (iii) a payment has been made under or by virtue of regulations made under the Teaching and Higher Education Act 1998;
- (iv) a grant has been made under regulation 13 of the Education (Student Support) Regulations 2005 or under regulation 13 of the Education (Student Support) Regulations (Northern Ireland) 2000; or
- (v) a supplementary requirement has been determined under paragraph 9 of Schedule 6 to the Students Awards Regulations (Northern Ireland) 1999 or a payment has been made under Article 50(3) of the Education and Libraries (Northern Ireland) Order 1986,

on account of his disability by reason of deafness.

(3) Sub-paragraph (2)(i)(ii) only applies to an applicant until the end of the course during which the applicant attained the age of 21.

(4) For the purposes of sub-paragraph (2), once sub-paragraph (2)(e) applies to a full-time student, if he then ceases, for a period of 56 days or less, to be incapable, or to be treated as incapable, of work, that sub-paragraph must, on his again becoming so incapable, or so treated as incapable, of work at the end of that period, immediately thereafter apply to him for so long as he remains incapable or is treated as remaining incapable, of work.

(5) In sub-paragraph (2)(i) the reference to a course of higher education is a reference to a course of any description mentioned in Schedule 6 to the Education Reform Act 1988.

(6) A full-time student to whom sub-paragraph (2)(i) applies must be treated as satisfying that sub-paragraph from the date on which he made a request for the supplementary requirement, allowance, bursary or payment as the case may be.

(7) Sub-paragraph (1)(b) does not apply to a full-time student for the period specified in sub-paragraph (8) if--

(a) at any time during an academic year, with the consent of the relevant educational establishment, he ceases to attend or undertake a course because he is--

- (i) engaged in caring for another person; or
- (ii) ill;

(b) he has subsequently ceased to be engaged in caring for that person or, as the case may be, he has subsequently recovered from that illness; and

(c) he is not eligible for a grant or a student loan in respect of the period specified in sub-paragraph (8).

(8) The period specified for the purposes of sub-paragraph (7) is the period, not exceeding one year, beginning on the day on which he ceased to be engaged in caring for that person or, as the case may be, the day on which he recovered from that illness and ending on the day before--

- (a) the day on which he resumes attending or undertaking the course; or
- (b) the day from which the relevant educational establishment has agreed that he may resume attending or undertaking the course,

whichever first occurs.

Chapter 2

Income

Calculation of grant income

76

(1) The amount of a student's grant income to be taken into account in assessing his income must, subject to sub-paragraphs (2) and (3), be the whole of his grant income.

(2) There must be excluded from a student's grant income any payment--

- (a) intended to meet tuition fees or examination fees;
- (b) in respect of the student's disability;
- (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
- (d) on account of the student maintaining a home at a place other than that at which he resides during his course;
- (e) on account of any other person but only if that person is residing outside the United Kingdom and there is no applicable amount in respect of him;
- (f) intended to meet the cost of books and equipment;
- (g) intended to meet travel expenses incurred as a result of his attendance on the course;
- (h) intended for the child care costs of a child dependant;
- (i) of higher education bursary for care leavers made under Part 3 of the Children Act 1989.

(3) Where a student does not have a student loan and is not treated as possessing such a loan, there must be excluded from the student's grant income--

- (a) the sum of £303 per academic year in respect of travel costs; and
- (b) the sum of £390 per academic year towards the costs of books and equipment,

whether or not any such costs are incurred.

(4) There must also be excluded from a student's grant income the grant for dependants known as the parents' learning allowance paid pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 or section 22 of the Teaching and Higher Education Act 1998.

(5) Subject to sub-paragraphs (6) and (7), a student's grant income must be apportioned--

(a) subject to sub-paragraph (8), in a case where it is attributable to the period of study, equally between the weeks in that period beginning with the reduction week, the first day of which coincides with, or immediately follows, the first day of the period of study and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of the period of study;

(b) in any other case, equally between the weeks in the period beginning with the reduction week, the first day of which coincides with, or immediately follows, the first day of the period for which it is payable and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of the period for which it is payable.

(6) Any grant in respect of dependants paid under section 63(6) of the Health Services and Public Health Act 1968 (grants in respect of the provision of instruction to officers of hospital authorities) and any amount intended for the maintenance of dependants under Part 3 of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 must be apportioned equally over the period of 52 weeks or, if there are 53 reduction weeks (including part-weeks) in the year, 53.

(7) In a case where a student is in receipt of a student loan or where he could have acquired a student loan by taking reasonable steps but had not done so, any amount intended for the maintenance of dependants to which neither sub-paragraph (6) nor paragraph 80(2) (other amounts to be disregarded) applies, must be apportioned over the same period as the student's loan is apportioned or, as the case may be, would have been apportioned.

(8) In the case of a student on a sandwich course, any periods of experience within the period of study must be excluded and the student's grant income must be apportioned equally between the weeks in the period beginning with the reduction week, the first day of which immediately follows the last day of the period of experience and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of the period of study.

Calculation of covenant income where a contribution is assessed

77

(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of his covenant income to be taken into account for that period and any summer vacation immediately following must be the whole amount of the covenant income less, subject to sub-paragraph (3), the amount of the contribution.

(2) The weekly amount of the student's covenant must be determined--

(a) by dividing the amount of income which falls to be taken into account under sub-paragraph (1) by 52 or 53, whichever is reasonable in the circumstances; and

(b) by disregarding £5 from the resulting amount.

(3) For the purposes of sub-paragraph (1), the contribution must be treated as increased by the amount (if any) by which the amount excluded under paragraph 76(2)(g) falls short of the amount specified in paragraph 7(2) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 (travel expenditure).

Covenant income where no grant income or no contribution is assessed

78

(1) Where a student is not in receipt of income by way of a grant the amount of his covenant income must be calculated as follows--

- (a) any sums intended for any expenditure specified in paragraph 76(2)(a) to (e) necessary as a result of his attendance on the course must be disregarded;
- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded, must be apportioned equally between the weeks of the period of study;
- (c) there must be disregarded from the amount so apportioned the amount which would have been disregarded under paragraph 76(2)(f) and (3) had the student been in receipt of the standard maintenance grant; and
- (d) the balance, if any, must be divided by 52 or 53 whichever is reasonable in the circumstances and treated as weekly income of which £5 must be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of his covenanted income must be calculated in accordance with paragraphs (a) to (d) of sub-paragraph (1), except that--

- (a) the value of the standard maintenance grant must be abated by the amount of such grant income less an amount equal to the amount of any sums disregarded under paragraph 76(2)(a) to (e); and
- (b) the amount to be disregarded under sub-paragraph (1)(c) must be abated by an amount equal to the amount of any sums disregarded under paragraph 76(2)(f) and (g) and (3).

Relationship with amounts to be disregarded under Schedule 8

79

No part of a student's covenant income or grant income is to be disregarded under paragraph 19 of Schedule 8 (disregard of certain charitable and voluntary, etc, payments).

Other amounts to be disregarded

80

(1) For the purposes of ascertaining income other than grant income, covenant income and loans treated as income in accordance with paragraph 81 (treatment of student loans), any amounts intended for any expenditure specified in paragraph 76(2) (calculation of grant income), necessary as a result of his attendance on the course must be disregarded.

(2) But sub-paragraph (1) applies only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under paragraph 76(2) or (3), 77(3), 78(1)(a) or (c) or 81(5) (calculation of grant income, covenant income and treatment of student loans) on like expenditure.

Treatment of student loans

81

(1) A student loan is to be treated as income.

(2) In calculating the weekly amount of the loan to be taken into account as income--

- (a) in respect of a course that is of a single academic year's duration or less, a loan which is payable in respect of that period is to be apportioned equally between the weeks in the period beginning with--
 - (i) except in a case where sub-paragraph (ii) applies, the reduction week, the first day of which coincides with, or immediately follows, the first day of the single academic year;

(ii) where the student is required to start attending the course in August or where the course is less than an academic year's duration, the reduction week, the first day of which coincides with, or immediately follows, the first day of the course,

and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of the course;

(b) in respect of an academic year of a course which starts other than on 1st September, a loan which is payable in respect of that academic year is to be apportioned equally between the weeks in the period--

(i) beginning with the reduction week, the first day of which coincides with or immediately follows, the first day of that academic year, and

(ii) ending with the reduction week, the last day of which coincides with or immediately precedes, the last day of that academic year,

but excluding any reduction weeks falling entirely within the quarter during which, in the opinion of the authority, the longest of any vacation is taken and for the purposes of this paragraph, "quarter" has the same meaning as for the purposes of the Education (Student Support) Regulations 2005;

(c) in respect of the final academic year of a course (not being a course of a single year's duration), a loan which is payable in respect of that final academic year is to be apportioned equally between the weeks in the period beginning with--

(i) except in a case where sub-paragraph (ii) applies, the reduction week, the first day of which coincides with, or immediately follows, the first day of that academic year;

(ii) where the final academic year starts on 1st September, the reduction week, the first day of which coincides with, or immediately follows, the earlier of 1st September or the first day of the autumn term,

and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of the course;

(d) in any other case, the loan is to be apportioned equally between the weeks in the period beginning with the earlier of--

(i) the first day of the first reduction week in September; or

(ii) the reduction week, the first day of which coincides with, or immediately follows the first day of the autumn term,

and ending with the reduction week, the last day of which coincides with, or immediately precedes, the last day of June,

and, in all cases, from the weekly amount so apportioned £10 is to be disregarded.

(3) A student is to be treated as possessing a student loan in respect of an academic year where--

(a) a student loan has been made to him in respect of that year; or

(b) he could acquire such a loan in respect of that year by taking reasonable steps to do so.

(4) Where a student is treated as possessing a student loan under sub-paragraph (3), the amount of the student loan to be taken into account as income must be, subject to sub-paragraph (5)--

(a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to--

- (i) the maximum student loan he is able to acquire in respect of that year by taking reasonable steps to do so; and
 - (ii) any contribution whether or not it has been paid to him;
- (b) in the case of a student to whom a student loan is not made in respect of an academic year, the maximum student loan that would be made to the student if--
- (i) he took all reasonable steps to obtain the maximum student loan he is able to acquire in respect of that year; and
 - (ii) no deduction in that loan was made by virtue of the application of a means test.
- (5) There must be deducted from the amount of income taken into account under sub-paragraph (4)--
- (a) the sum of £303 per academic year in respect of travel costs; and
 - (b) the sum of £390 per academic year towards the cost of books and equipment,

whether or not any such costs are incurred.

(6) A loan for fees, known as a fee loan or a fee contribution loan, made pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998, section 22 of the Teaching and Higher Education Act 1998 or section 73(f) of the Education (Scotland) Act 1980, shall be disregarded as income.

Treatment of payments from access funds

82

- (1) This paragraph applies to payments from access funds that are not payments to which paragraph 85(2) or (3) (income treated as capital) applies.
- (2) A payment from access funds, other than a payment to which sub-paragraph (3) applies, must be disregarded as income.
- (3) Subject to sub-paragraph (4) of this paragraph and paragraph 40 of Schedule 8 (disregards in the calculation of income other than earnings: persons who are not pensioners)--
- (a) any payments from access funds which are intended and used for an item of food, ordinary clothing or footwear, household fuel, or rent of a single applicant or, as the case may be, of the applicant or any other member of his family, and
 - (b) any payments from access funds which are used for any council tax or water charges for which that applicant or member is liable,

must be disregarded as income to the extent of £20 per week.

- (4) Where a payment from access funds is made--
- (a) on or after 1st September or the first day of the course, whichever first occurs, but before receipt of any student loan in respect of that year and that payment is intended for the purpose of bridging the period until receipt of the student loan; or
 - (b) before the first day of the course to a person in anticipation of that person becoming a student,

that payment must be disregarded as income.

Disregard of contribution

83

Where the applicant or his partner is a student and, for the purposes of assessing a contribution to the student's grant or student loan, the other partner's income has been taken into account, an amount equal to that contribution must be disregarded for the purposes of assessing that other partner's income.

Further disregard of student's income

84

Where any part of a student's income has already been taken into account for the purposes of assessing his entitlement to a grant or student loan, the amount taken into account must be disregarded in assessing that student's income.

Income treated as capital

85

- (1) Any amount by way of a refund of tax deducted from a student's covenant income must be treated as capital.
- (2) An amount paid from access funds as a single lump sum must be treated as capital.
- (3) An amount paid from access funds as a single lump sum which is intended and used for an item other than food, ordinary clothing or footwear, household fuel or rent, or which is used for an item other than any council tax or water charges for which that applicant or member is liable, must be disregarded as capital but only for a period of 52 weeks from the date of the payment.

Disregard of changes occurring during summer vacation

86

In calculating a student's income the authority must disregard any change in the standard maintenance grant, occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of his period of study from the date on which the change occurred to the end of that vacation.

**Part 12
Extended Reductions**

**Chapter 1
Extended Reductions: Pensioners**

Extended reductions: pensioners

87

Paragraphs 88 to 93 apply in relation to applicants who are pensioners.

Extended reductions (qualifying contributory benefits): pensioners

88

(1) Except in the case of an applicant who is in receipt of state pension credit, an applicant who is entitled to a reduction under this scheme by virtue of falling within any of classes A to C is entitled to an extended reduction (qualifying contributory benefits) where--

- (a) the applicant or the applicant's partner was entitled to a qualifying contributory benefit;
- (b) entitlement to a qualifying contributory benefit ceased because the applicant or the applicant's partner--
 - (i) commenced employment as an employed or self-employed earner;
 - (ii) increased their earnings from such employment; or
 - (iii) increased the number of hours worked in such employment,

and that employment is or, as the case may be, those increased earnings or increased number of hours are expected to last five weeks or more;

(c) the applicant or the applicant's partner had been entitled to and in receipt of a qualifying contributory benefit or a combination of qualifying contributory benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying contributory benefit ceased; and

(d) the applicant or the applicant's partner was not entitled to and not in receipt of a qualifying income-related benefit in the last reduction week in which the applicant, or the applicant's partner, was entitled to a qualifying contributory benefit.

(2) An applicant must be treated as entitled to a reduction under this scheme by virtue of falling within any of classes A to C where--

- (a) the applicant ceased to be entitled to a reduction under this scheme because the applicant vacated the dwelling in which the applicant was resident;
- (b) the day on which the applicant vacated the dwelling was either in the week in which entitlement to a qualifying contributory benefit ceased, or in the preceding week; and
- (c) entitlement to the qualifying contributory benefit ceased in any of the circumstances listed in sub-paragraph (1)(b).

Duration of extended reduction period (qualifying contributory benefits): pensioners

89

(1) Where an applicant is entitled to an extended reduction (qualifying contributory benefits), the extended reduction period starts on the first day of the reduction week immediately following the reduction week in which the applicant, or the applicant's partner, ceased to be entitled to a qualifying contributory benefit.

(2) For the purpose of sub-paragraph (1), an applicant or an applicant's partner ceases to be entitled to a qualifying contributory benefit on the day immediately following the last day of entitlement to that benefit.

(3) The extended reduction period ends--

- (a) at the end of a period of four weeks; or
- (b) on the date on which the applicant who is receiving the extended reduction (qualifying contributory benefits) has no liability for council tax, if that occurs first.

Amount of extended reduction (qualifying contributory benefits): pensioners

90

(1) For any week during the extended reduction period the amount of the extended reduction (qualifying contributory benefits) the applicant is entitled to is the greater of--

- (a) the amount of council tax reduction to which the applicant was entitled by virtue of falling within any of classes A to C in the last reduction week before the applicant or the applicant's partner ceased to be entitled to a qualifying contributory benefit;
- (b) the amount of reduction under this scheme to which the applicant would be entitled under by virtue of falling within any of classes A to C for any reduction week during the extended reduction period, if paragraph 88 (extended reductions (qualifying contributory benefits): pensioners) did not apply to the applicant; or
- (c) the amount of reduction under this scheme to which the applicant's partner would be entitled by virtue of falling within any of classes A to C, if paragraph 88 did not apply to the applicant.

(2) Sub-paragraph (1) does not apply in the case of a mover.

(3) Where an applicant is in receipt of an extended reduction (qualifying contributory benefits) under this paragraph and the applicant's partner makes an application for a reduction under this scheme, the authority must not award a reduction in pursuance of that application during the extended reduction period.

Extended reductions (qualifying contributory benefits)--movers: pensioners

91

(1) This paragraph applies--

- (a) to a mover; and
- (b) from the Monday following the day of the move.

(2) The amount of the extended reduction (qualifying contributory benefits) awarded from the Monday from which this paragraph applies until the end of the extended reduction period is to be the amount of reduction under this scheme which was payable to the mover for the last reduction week before the mover, or the mover's partner, ceased to be entitled to a qualifying contributory benefit.

(3) Where a mover's liability to pay council tax in respect of the new dwelling is to a second authority, the extended reduction (qualifying contributory benefits) may take the form of a payment from this authority to--

- (a) the second authority; or
- (b) the mover directly.

Relationship between extended reduction (qualifying contributory benefits) and entitlement to a reduction by virtue of classes A to C

92

(1) Where an applicant's reduction under this scheme would have ended when the applicant ceased to be entitled to a qualifying contributory benefit in the circumstances listed in paragraph 88(1)(b), that reduction does not cease to have effect until the end of the extended reduction period.

(2) Part 13 (when entitlement begins and change of circumstances) does not apply to any extended reduction (qualifying contributory benefits) payable in accordance with paragraph 90(1)(a) or paragraph 91(2) (amount of extended reduction--movers: pensioners).

Continuing reductions where state pension credit claimed: pensioners

93

(1) This paragraph applies where--

- (a) the applicant is entitled to a reduction under this scheme;
- (b) sub-paragraph (2) is satisfied; and
- (c) either--
 - (i) the applicant has attained the qualifying age for state pension credit; or
 - (ii) the applicant's partner has actually claimed state pension credit.

(2) This sub-paragraph is only satisfied if the Secretary of State has certified to the authority that the applicant's partner has actually claimed state pension credit or that--

- (a) the applicant's award of--
 - (i) income support has terminated because the applicant has attained the qualifying age for state pension credit; or
 - (ii) income-based jobseeker's allowance or income-related employment and support allowance has terminated because the applicant has attained the qualifying age for state pension credit; and
- (b) the applicant has claimed or is treated as having claimed or is required to make a claim for state pension credit.

(3) Subject to sub-paragraph (4), in a case to which this paragraph applies, a person continues to be entitled to a reduction under this scheme for the period of 4 weeks beginning on the day following the day the applicant's entitlement to income support or, as the case may be, income-based jobseeker's allowance, income-related employment and support allowance, ceased, if and for so long as the applicant otherwise satisfies the conditions for entitlement to a reduction under this scheme.

(4) Where a reduction under this scheme is awarded for the period of 4 weeks in accordance with sub-paragraph (3) above, and the last day of that period falls on a day other than the last day of a reduction week, then a reduction under this scheme must continue to be awarded until the end of the reduction week in which the last day of that period falls.

(5) Throughout the period of 4 weeks specified in sub-paragraph (3) and any further period specified in sub-paragraph (4)--

- (a) the whole of the income and capital of the applicant is to be disregarded;
- (b) the maximum council tax reduction amount of the applicant is to be that which was applicable in his case immediately before that period commenced.

(6) The maximum reduction is to be calculated in accordance with paragraph 29(1) if, since the date it was last calculated--

- (a) the applicant's council tax liability has increased; or
- (b) a change in the deduction under paragraph 30 falls to be made.

Chapter 2
Extended Reductions: Persons Who are Not Pensioners

Extended reductions: persons who are not pensioners

94

Paragraphs 95 to 104 apply in relation to applicants who are not pensioners.

Extended reductions: persons who are not pensioners

95

(1) An applicant who is entitled to a reduction under this scheme by virtue of falling within any of classes D to F is entitled to an extended reduction where--

- (a) the applicant or the applicant's partner was entitled to a qualifying income-related benefit;
- (b) entitlement to a qualifying income-related benefit ceased because the applicant or the applicant's partner--
 - (i) commenced employment as an employed or self-employed earner;
 - (ii) increased their earnings from such employment; or
 - (iii) increased the number of hours worked in such employment,

and that employment is or, as the case may be, those increased earnings or increased number of hours are expected to last five weeks or more; and

(c) the applicant or the applicant's partner had been entitled to and in receipt of a qualifying income-related benefit, jobseeker's allowance or a combination of those benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying income-related benefit ceased.

(2) For the purpose of sub-paragraph (1)(c), an applicant or an applicant's partner is to be treated as having been entitled to and in receipt of a qualifying income-related benefit or jobseeker's allowance during any period of less than five weeks in respect of which the applicant or the applicant's partner was not entitled to any of those benefits because the applicant or the applicant's partner was engaged in remunerative work as a consequence of their participation in an employment zone programme.

(3) For the purpose of this paragraph, where an applicant or an applicant's partner is entitled to and in receipt of joint-claim jobseeker's allowance they must be treated as being entitled to and in receipt of jobseeker's allowance.

(4) An applicant must be treated as entitled to a reduction under this scheme by virtue of falling within any of classes D to F where--

- (a) the applicant ceased to be entitled to a reduction under this scheme because the applicant vacated the dwelling in which the applicant was resident;
- (b) the day on which the applicant vacated the dwelling was either in the week in which entitlement to a qualifying income-related benefit ceased, or in the preceding week; and
- (c) entitlement to the qualifying income-related benefit ceased in any of the circumstances listed in sub-paragraph (1)(b).

(5) This paragraph does not apply where, on the day before an applicant's entitlement to income support ceased, regulation 6(5) of the Income Support (General) Regulations 1987 (remunerative work: housing costs) applied to that applicant.

Duration of extended reduction period: persons who are not pensioners

96

(1) Where an applicant is entitled to an extended reduction, the extended reduction period starts on the first day of the reduction week immediately following the reduction week in which the applicant, or the applicant's partner, ceased to be entitled to a qualifying income-related benefit.

(2) For the purpose of sub-paragraph (1), an applicant or an applicant's partner ceases to be entitled to a qualifying income-related benefit on the day immediately following the last day of entitlement to that benefit.

(3) The extended reduction period ends--

- (a) at the end of a period of four weeks; or
- (b) on the date on which the applicant to whom the extended reduction is payable has no liability for council tax, if that occurs first.

Amount of extended reduction: persons who are not pensioners

97

(1) For any week during the extended reduction period the amount of the extended reduction to which an applicant is entitled is to be the higher of--

- (a) the amount of the reduction under this scheme to which the applicant was entitled by virtue of falling within any of classes D to F in the last reduction week before the applicant or the applicant's partner ceased to be entitled to a qualifying income-related benefit;
- (b) the amount of reduction under this scheme to which the applicant would be entitled by virtue of falling within any of classes D to F for any reduction week during the extended reduction period, if paragraph 95 (extended reductions: persons who are not pensioners) did not apply to the applicant; or
- (c) the amount of reduction under this scheme to which the applicant's partner would be entitled by virtue of falling within any of classes D to F, if paragraph 95 did not apply to the applicant.

(2) Sub-paragraph (1) does not apply in the case of a mover.

(3) Where an applicant is in receipt of an extended reduction under this paragraph and the applicant's partner makes an application for a reduction under this scheme, no amount of reduction under this scheme is to be awarded by the authority during the extended reduction period.

Extended reductions--movers: persons who are not pensioners

98

(1) This paragraph applies--

- (a) to a mover; and
- (b) from the Monday following the day of the move.

(2) The amount of the extended reduction awarded from the Monday from which this paragraph applies until the end of the extended reduction period is to be the amount of reduction under this scheme to which the mover would have been entitled had they, or their partner, not ceased to be entitled to a qualifying income-related benefit.

(3) Where a mover's liability to pay council tax in respect of the new dwelling is to a second authority, the extended reduction (qualifying contributory benefits) may take the form of a payment from this authority to--

- (a) the second authority; or
- (b) the mover directly.

Relationship between extended reduction and entitlement to a reduction by virtue of classes D to F

99

(1) Where an applicant's entitlement to a reduction under this scheme would have ended when the applicant ceased to be entitled to a qualifying income-related benefit in the circumstances listed in paragraph 95(1)(b), that entitlement does not cease until the end of the extended reduction period.

(2) Paragraphs 106 and 107 do not apply to any extended reduction payable in accordance with paragraph 95(1)(a) or 98(2) (amount of extended reduction--movers: persons who are not pensioners).

Extended reductions (qualifying contributory benefits): persons who are not pensioners

100

(1) An applicant who is entitled to a reduction under this scheme by virtue of falling within any of classes D to F is entitled to an extended reduction (qualifying contributory benefits) where--

- (a) the applicant or the applicant's partner was entitled to a qualifying contributory benefit;
- (b) entitlement to a qualifying contributory benefit ceased because the applicant or the applicant's partner--
 - (i) commenced employment as an employed or self-employed earner;
 - (ii) increased their earnings from such employment; or
 - (iii) increased the number of hours worked in such employment,

and that employment is or, as the case may be, those increased earnings or increased number of hours are expected to last five weeks or more;

(c) the applicant or the applicant's partner had been entitled to and in receipt of a qualifying contributory benefit or a combination of qualifying contributory benefits for a continuous period of at least 26 weeks before the day on which the entitlement to a qualifying contributory benefit ceased; and

(d) the applicant or the applicant's partner was not entitled to and not in receipt of a qualifying income-related benefit in the last reduction week in which the applicant, or the applicant's partner, was entitled to a qualifying contributory benefit.

(2) An applicant must be treated as entitled to a reduction under this scheme by virtue of falling within any of classes D to F where--

- (a) the applicant ceased to be entitled to a reduction under this scheme because the applicant vacated the dwelling in which the applicant was resident;
- (b) the day on which the applicant vacated the dwelling was either in the week in which entitlement to a qualifying contributory benefit ceased, or in the preceding week; and
- (c) entitlement to the qualifying contributory benefit ceased in any of the circumstances listed in sub-paragraph (1)(b).

Duration of extended reduction period (qualifying contributory benefits): persons who are not pensioners

101

- (1) Where an applicant is entitled to an extended reduction (qualifying contributory benefits), the extended reduction period starts on the first day of the reduction week immediately following the reduction week in which the applicant, or the applicant's partner, ceased to be entitled to a qualifying contributory benefit.
- (2) For the purpose of sub-paragraph (1), an applicant or an applicant's partner ceases to be entitled to a qualifying contributory benefit on the day immediately following the last day of entitlement to that benefit.
- (3) The extended reduction period ends--
 - (a) at the end of a period of four weeks; or
 - (b) on the date on which the applicant entitled to the extended reduction (qualifying contributory benefits) has no liability for council tax, if that occurs first.

Amount of extended reduction (qualifying contributory benefits): persons who are not pensioners

102

- (1) For any week during the extended reduction period the amount of the extended reduction (qualifying contributory benefits) payable to an applicant is to be the greater of--
 - (a) the amount of reduction under this scheme to which the applicant was entitled by virtue of falling within any of classes D to F in the last reduction week before the applicant or the applicant's partner ceased to be entitled to a qualifying contributory benefit;
 - (b) the amount of reduction under this scheme to which the applicant would be entitled by virtue of falling within any of classes D to F for any reduction week during the extended reduction period, if paragraph 100 (extended reductions (qualifying contributory benefits): persons who are not pensioners) did not apply to the applicant; or
 - (c) the amount of reduction under this scheme to which the applicant's partner would be entitled by virtue of falling within any of classes D to F, if paragraph 100 did not apply to the applicant.
- (2) Sub-paragraph (1) does not apply in the case of a mover.
- (3) Where an applicant is in receipt of an extended reduction (qualifying contributory benefits) under this paragraph and the applicant's partner makes an application for a reduction under this scheme, no amount of reduction may be allowed by the appropriate authority during the extended reduction period.

Extended reductions (qualifying contributory benefits)--movers: persons who are not pensioners

103

(1) This paragraph applies--

- (a) to a mover; and
- (b) from the Monday following the day of the move.

(2) The amount of the extended reduction (qualifying contributory benefit) payable from the Monday from which this paragraph applies until the end of the extended reduction period is to be the amount of reduction under this scheme which was awarded to the mover for the last reduction week before the mover, or the mover's partner, ceased to be entitled to a qualifying contributory benefit.

(3) Where a mover's liability to pay council tax in respect of the new dwelling is to a second authority, the extended reduction (qualifying contributory benefits) may take the form of a payment from this authority to--

- (a) the second authority; or
- (b) the mover directly.

Relationship between extended reduction (qualifying contributory benefits) and entitlement to reduction by virtue of classes D to F

104

(1) Where an applicant's reduction under this scheme would have ended when the applicant ceased to be entitled to a qualifying contributory benefit in the circumstances listed in paragraph 100(1)(b), that reduction does not cease until the end of the extended reduction period.

(2) Paragraphs 106 and 107 (dates on which entitlement begins and change of circumstances take effect) do not apply to any extended reduction (qualifying contributory benefits) payable in accordance with paragraph 102(1)(a) or 103(2) (amount of extended reduction--movers: persons who are not pensioners).

Chapter 3
Extended Reductions: Movers in the Authority's Area

Extended reductions: applicant moving into the authority's area

105

Where--

- (a) an application is made to the authority ("the current authority") for a reduction under this scheme, and
- (b) the applicant, or the partner of the applicant, is in receipt of an extended reduction from--
 - (i) another billing authority in England; or
 - (ii) a billing authority in Wales,

the current authority must reduce any reduction to which the applicant is entitled under this scheme by the amount of that extended reduction.

Part 13

When Entitlement Begins and Change of Circumstances

Date on which entitlement begins

106

(1) Subject to sub-paragraph (2), any person by whom or in respect of whom an application for a reduction under this scheme is made and who is otherwise entitled to that reduction is so entitled from the reduction week following the date on which that application is made or is treated as made.

(2) Where a person is otherwise entitled to a reduction under this scheme and becomes liable for the first time for the authority's council tax in respect of a dwelling of which he is a resident in the reduction week in which his application is made or is treated as made, he is so entitled from that reduction week.

Date on which change of circumstances is to take effect

107

(1) Except in cases where paragraph 60 (disregard of changes in tax, contributions, etc) applies and subject to the following provisions of this paragraph and (in the case of applicants who are pensioners) paragraph 108 (change of circumstance where state pension credit in payment), a change of circumstances which affects entitlement to, or the amount of, a reduction under this scheme ("change of circumstances"), takes effect from the first day of the reduction week following the date on which the change actually occurs.

(2) Where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs is the day immediately following the last day of entitlement to that benefit.

(3) Subject to sub-paragraph (4), where the change of circumstances is a change in the amount of council tax payable, it takes effect from the day on which it actually occurs.

(4) Where the change of circumstances is a change in the amount a person is liable to pay in respect of council tax in consequence of regulations under section 13 of the 1992 Act (reduced amounts of council tax) or changes in the discount to which a dwelling may be subject under section 11 or 11A of that Act (discounts), it takes effect from the day on which the change in amount has effect.

(5) Where the change of circumstances is the applicant's acquisition of a partner, the change takes effect on the day on which the acquisition takes place.

(6) Where the change of circumstances is the death of an applicant's partner or their separation, it takes effect on the day the death or separation occurs.

(7) If two or more changes of circumstances occurring in the same reduction week would, but for this paragraph, take effect in different reduction weeks in accordance with sub-paragraphs (1) to (6) they take effect from the day to which the appropriate sub-paragraph from (3) to (6) above refers, or, where more than one day is concerned, from the earlier day.

(8) Where the change of circumstances is that income, or an increase in the amount of income, other than a benefit or an increase in the amount of a benefit under the SSCBA, is paid in respect of a past period and there was no entitlement to income of that amount during that period, the change of circumstances takes effect from the first day on which such income, had it been paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of this scheme.

(9) Without prejudice to sub-paragraph (8), where the change of circumstances is the payment of income, or arrears of income, in respect of a past period, the change of circumstances takes effect from the first day on which such income, had it been timeously paid in that period at intervals appropriate to that income, would have fallen to be taken into account for the purposes of this scheme.

(10) Sub-paragraph (11) applies if--

- (a) the applicant or his partner has attained the age of 65; and
- (b) either--
 - (i) a non-dependant took up residence in the applicant's dwelling; or
 - (ii) there has been a change of circumstances in respect of a non-dependant so that the amount of the deduction which falls to be made under paragraph 30 increased.

(11) Where this sub-paragraph applies, the change of circumstances referred to in sub-paragraph (10)(b) takes effect from the effective date.

(12) In sub-paragraph (11), but subject to sub-paragraph (13), "the effective date" means--

- (a) where more than one change of a kind referred to in sub-paragraph (10)(b) relating to the same non-dependant has occurred since--
 - (i) the date on which the applicant's entitlement to a reduction under this scheme first began; or
 - (ii) the date which was the last effective date in respect of such a change,

whichever is the later, the date which falls 26 weeks after the date on which the first such change occurred;

- (b) where paragraph (a) does not apply, the date which falls 26 weeks after the date on which the change referred to in sub-paragraph (10)(b) occurred.

(13) If in any particular case the date determined under sub-paragraph (12) is not the first day of a reduction week, the effective date in that case is to be the first day of the next reduction week to commence after the date determined under that sub-paragraph.

(14) Sub-paragraphs (15) to (19) apply to persons who fall within classes D, E and F.

(15) Where--

- (a) the change of circumstances is a change of circumstances that is required by this scheme to be notified, and
- (b) that change of circumstances is notified more than one month after it occurs, or such longer period as may be allowed under sub-paragraph (16), and
- (c) the superseding decision is advantageous to the claimant

the date of notification of the change of circumstances shall be treated as the date on which the change of circumstances occurred.

(16) Subject to sub-paragraph (18), for the purposes of making a decision under this scheme a longer period of time may be allowed for the notification of a change of circumstances in so far as it affects the effective date of the change where the conditions specified in sub-paragraph (17) are satisfied. An application for the purposes of this sub-paragraph shall include:

- (a) particulars of the change of circumstances and the reasons for the failure to notify the change of circumstances on an earlier date, and
- (b) be made within 3 months of the date on which the change occurred.

(17) In determining whether it is reasonable to grant an application for the purposes of sub-paragraph (16), the authority shall have regard to the principle that the greater the amount of time that has elapsed between the date one month after the change of circumstances occurred and the date the application for a superseding decision is made, the more compelling should be the special circumstances on which the application is based. An application shall not be granted unless the authority is satisfied that—

- (a) it is reasonable to grant the application;
- (b) that change of circumstances notified by the applicant is relevant to the decision which is to be superseded; and
- (c) special circumstances are relevant and as a result of those special circumstances it was not practicable for the applicant to notify the change of circumstances within one month of the change occurring.

(18) In determining whether it is reasonable to grant an application, no account shall be taken of the following—

- (a) that the applicant was unaware of, or misunderstood, the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by this scheme); or
- (b) that the Valuation Tribunal or a court has taken a different view of the law from that previously understood and applied.

(19) An application under this part which has been refused may not be renewed.

Change of circumstances where state pension credit in payment

108

(1) Sub-paragraphs (2) and (3) apply where--

- (a) the applicant is in receipt of state pension credit;
- (b) the amount of state pension credit awarded to him is changed in consequence of a change in the applicant's circumstances or the correction of an official error; and
- (c) the change in the amount of state pension credit payable to the applicant results in a change in the amount of a reduction he receives under this scheme.

(2) Where the change of circumstance is that an increase in the amount of state pension credit payable to the applicant results in--

- (a) an increase in the reduction he receives under this scheme, the change takes effect from the first day of the reduction week in which state pension credit becomes payable at the increased rate; or
- (b) a decrease in the reduction he receives under this scheme, the change takes effect from the first day of the reduction week next following the date on which--
 - (i) the local authority receives notification from the Secretary of State of the increase in the amount of state pension credit; or
 - (ii) state pension credit is increased,

whichever is the later.

(3) Where the change of circumstance ("the relevant change") is that the applicant's state pension credit has been reduced and in consequence the reduction the applicant receives under this scheme reduces--

- (a) in a case where the applicant's state pension credit has been reduced because the applicant failed to notify the Secretary of State timeously of a change of circumstances, the relevant change takes effect from the first day of the reduction week from which state pension credit was reduced; or
- (b) in any other case the relevant change takes effect from the first day of the reduction week next following the date on which--
 - (i) the authority receives notification from the Secretary of State of the reduction in the amount of state pension credit; or
 - (ii) state pension credit is reduced,

whichever is the later.

(4) Where the change of circumstance is that state pension credit is reduced and in consequence of the change, the amount of a reduction he receives under this scheme is increased, the change takes effect from the first day of the reduction week in which state pension credit becomes payable at the reduced rate.

(5) Where a change of circumstance occurs in that an award of state pension credit has been made to the applicant or his partner and this would result in a decrease in the amount of reduction he receives under this scheme, the change takes effect from the first day of the reduction week next following the date on which--

- (a) the authority receives notification from the Secretary of State of the award of state pension credit; or
- (b) entitlement to state pension credit begins,

whichever is the later.

(6) Where, in the case of an applicant who, or whose partner, is or has been awarded state pension credit comprising only the savings credit, there is--

- (a) a change of circumstances of a kind described in any of sub-paragraphs (2) to (5) which results from a relevant calculation or estimate; and
- (b) a change of circumstances which is a relevant determination,

each of which results in a change in the amount of reduction the applicant receives under this scheme, the change of circumstances referred to in sub-paragraph (b) takes effect from the day specified in sub-paragraph (2), (3), (4) or (5) as the case may be, in relation to the change referred to in paragraph (a).

(7) Where a change of circumstance occurs in that a guarantee credit has been awarded to the applicant or his partner and this would result in an increase in the amount of a reduction the applicant receives under this scheme, the change takes effect from the first day of the reduction week next following the date in respect of which the guarantee credit is first payable.

(8) Where a change of circumstances would, but for this sub-paragraph, take effect under the preceding provisions of this paragraph within the 4 week period specified in paragraph 93 (continuing reductions where state pension credit claimed), that change takes effect on the first day of the first reduction week to commence after the expiry of the 4 week period.

(9) In this paragraph--

"official error" means an error made by--

(a) the authority or a person--

- (i) authorised to carry out any function of the authority relating to this scheme; or
- (ii) providing services relating to this scheme directly or indirectly to the authority; or

(b) an officer of--

- (i) the Department for Work and Pensions; or
- (ii) the Commissioners of Inland Revenue,

acting as such,

but excludes any error caused wholly or partly by any person or body not specified in paragraph (a) or (b) of this definition and any error of law which is shown to have been an error only by virtue of a subsequent decision of the court;

"relevant calculation or estimate" means the calculation or estimate made by the Secretary of State of the applicant's or, as the case may be, the applicant's partner's income and capital for the purposes of the award of state pension credit;

"relevant determination" means a change in the determination by the authority of the applicant's income and capital using the relevant calculation or estimate, in accordance with paragraph 36(1).

Part 14

Applications (Including Duties to Notify Authority of Change of Circumstances)

Making an application

109

(1) In the case of--

- (a) a couple or (subject to paragraph (b)) members of a polygamous marriage an application is to be made by whichever one of them they agree should so apply or, in default of agreement, by such one of them as the authority determines; or
- (b) in the case of members of a polygamous marriage to whom paragraph 37 (income and capital: award of universal credit) applies, an application is to be made by whichever one of the parties to the earliest marriage that still subsists they agree should so apply or, in default of agreement, by such one of them as the authority determines.

(2) Where a person who is liable to pay council tax in respect of a dwelling is unable for the time being to act, and--

- (a) a deputy has been appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf; or
- (b) in Scotland, his estate is being administered by a judicial factor or any guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000 who has power to apply or, as the case may be, receive benefit on his behalf; or

(c) an attorney with a general power or a power to apply or, as the case may be, receive benefit, has been appointed by that person under the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005 or otherwise,

that deputy, judicial factor, guardian or attorney, as the case may be, may make an application on behalf of that person.

(3) Where a person who is liable to pay council tax in respect of a dwelling is unable for the time being to act and sub-paragraph (2) does not apply to him, the authority may, upon written application made to them by a person who, if a natural person, is over the age of 18, appoint that person to exercise on behalf of the person who is unable to act, any right to which that person might be entitled under this scheme and to receive and deal on his behalf with any sums payable to him.

(4) Where a person who is liable to pay council tax in respect of a dwelling is for the time being unable to act and the Secretary of State has appointed a person to act on his behalf under regulation 33 of the Social Security (Claims and Payments) Regulations 1987 (persons unable to act), the authority may if that person agrees, treat him as if he had been appointed by them under sub-paragraph (3).

(5) Where the authority has made an appointment under sub-paragraph (3) or treated a person as an appointee under sub-paragraph (4)--

- (a) it may at any time revoke the appointment;
- (b) the person appointed may resign his office after having given 4 weeks notice in writing to the authority of his intention to do so;
- (c) any such appointment must terminate when the authority is notified of the appointment of a person mentioned in sub-paragraph (2).

(6) Anything required by this scheme to be done by or to any person who is for the time being unable to act may be done by or to the persons mentioned in sub-paragraph (2) above or by or to the person appointed or treated as appointed under this paragraph and the receipt of any such person so appointed shall be a good discharge to the authority for any sum paid.

(7) The authority must--

- (a) inform any person making an application of the duty imposed by paragraph 115(1)(a);
- (b) explain the possible consequences (including prosecution) of failing to comply with that duty; and
- (c) set out the circumstances a change in which might affect entitlement to the reduction or its amount.

Date on which an application is made

110

(1) Subject to sub-paragraph (7), the date on which an application is made is--

- (a) in a case where--
 - (i) an award of state pension credit which comprises a guarantee credit has been made to the applicant or his partner, and
 - (ii) the application is made within one month of the date on which the claim for that state pension credit which comprises a guarantee credit was received at the appropriate DWP office,

the first day of entitlement to state pension credit which comprises a guarantee credit arising from that claim;

(b) in a case where--

- (i) an applicant or his partner is a person in receipt of a guarantee credit,
- (ii) the applicant becomes liable for the first time to pay council tax in respect of the dwelling which he occupies as his home, and
- (iii) the application to the authority is received at the designated office within one month of the date of the change,

the date on which the change takes place;

(c) in a case where--

- (i) an award of income support, an income-based jobseeker's allowance or an income-related employment and support allowance or an award of universal credit has been made to the applicant or his partner, and
- (ii) the application is made within one month of the date on which the claim for that income support, jobseeker's allowance, employment and support allowance or universal credit was received,

the first day of entitlement to income support, an income-based jobseeker's allowance, an income-related employment and support allowance or universal credit arising from that claim;

(d) in a case where--

- (i) an applicant or his partner is a person on income support, an income-based jobseeker's allowance or an income-related employment and support allowance or has an award of universal credit,
- (ii) the applicant becomes liable for the first time to pay council tax in respect of the dwelling which he occupies as his home, and
- (iii) the application to the authority is received at the designated office within one month of the date of the change,

the date on which the change takes place;

(e) in a case where--

- (i) the applicant is the former partner of a person who was, at the date of his death or their separation, entitled to a reduction under this scheme, and
- (ii) where the applicant makes an application for a reduction under this scheme within one month of the date of the death or the separation,

the date of the death or separation;

(f) except where paragraph (a), (b) or (e) is satisfied, in a case where a properly completed application is received within one month (or such longer period as the authority considers reasonable) of the date on which an application form was issued to the applicant following the applicant first notifying, by whatever means, the authority of an intention to make an application, the date of first notification;

(g) in any other case, the date on which the application is received at the designated office.

(2) For the purposes only of sub-paragraph (1)(c) a person who has been awarded an income-based jobseeker's allowance or an income-related employment and support allowance is to be treated as entitled to that allowance for any days which immediately precede the first day in that award and on which he would, but for regulations made under--

(a) in the case of income-based jobseeker's allowance, paragraph 4 of Schedule 1 to the Jobseekers Act 1995 (waiting days); or

(b) in the case of income-related employment and support allowance, paragraph 2 of Schedule 2 to the Welfare Reform Act 2007 (waiting days),

have been entitled to that allowance.

(3) Where the defect referred to in paragraph 7 of Schedule 1 to this scheme (application by telephone)--

(a) is corrected within one month (or such longer period as the authority considers reasonable) of the date the authority last drew attention to it, the authority must treat the application as if it had been duly made in the first instance;

(b) is not corrected within one month (or such longer period as the authority considers reasonable) of the date the authority last drew attention to it, the authority must treat the application as if it had been duly made in the first instance where it considers it has sufficient information to decide on the application.

(4) The authority is to treat a defective application as if it had been validly made in the first instance if, in any particular case, the conditions specified in sub-paragraph (5)(a), (b) or (c) are satisfied.

(5) The conditions are that--

(a) where paragraph 4(a) of Schedule 1 (incomplete form) applies, the authority receives at its designated office the properly completed application or the information requested to complete it or the evidence within one month of the request, or such longer period as the authority may consider reasonable; or

(b) where paragraph 4(b) of Schedule 1 (application not on approved form or further information requested by authority) applies--

(i) the approved form sent to the applicant is received at the designated office properly completed within one month of it having been sent to him; or, as the case may be,

(ii) the applicant supplies whatever information or evidence was requested under paragraph 4 of that Schedule within one month of the request,

or, in either case, within such longer period as the authority may consider reasonable; or

(c) where the authority has requested further information, the authority receives at its designated office the properly completed application or the information requested to complete it within one month of the request or within such longer period as the authority considers reasonable.

(6) Except in the case of an application made by a person treated as not being in Great Britain, where a person has not become liable for council tax to the authority but it is anticipated that he will become so liable within the period of 8 weeks (the relevant period), he may apply for a reduction under this scheme at any time in that period in respect of that tax and, provided that liability arises within the relevant period, the authority is to treat the application as having been made on the day on which the liability for the tax arises.

(7) Except in the case of an application made by a person treated as not being in Great Britain, where the applicant is not entitled to a reduction under this scheme in the reduction week immediately following the date of his application but the authority is of the opinion that unless there is a change of

circumstances he will be entitled to a reduction under this scheme for a period beginning not later than--

- (a) in the case of an application made by--
 - (i) a pensioner, or
 - (ii) a person who has attained, or whose partner has attained, the age which is 17 weeks younger than the qualifying age for state pension credit,

the seventeenth reduction week following the date on which the application is made, or

- (b) in the case of an application made by a person who is not a pensioner, the thirteenth reduction week following the date on which the application is made,

the authority may treat the application as made on a date in the reduction week immediately preceding the first reduction week of that period of entitlement and award a reduction accordingly.

(8) In this paragraph "appropriate DWP office" means an office of the Department for Work and Pensions dealing with state pension credit or an office which is normally open to the public for the receipt of claims for income support, a jobseeker's allowance or an employment and support allowance.

Back-dating of applications: pensioners

111

(1) Subject to sub-paragraph (2), the time for the making of an application under this scheme by a pensioner is as regards any day on which, apart from satisfying the condition of making an application, the applicant is entitled to such a reduction, that day and the period of three months immediately following it.

(2) In any case where paragraph 110(1)(a) applies, sub-paragraph (1) does not entitle a person to apply for a reduction under this scheme in respect of any day earlier than three months before the date on which the claim for state pension credit is made (or treated as made by virtue of any provision of the Social Security (Claims and Payments) Regulations 1987).

Back-dating of applications: persons who are not pensioners

112

(1) Where an applicant who is a person who is not a pensioner--

- (a) makes an application under this scheme which includes (or which he subsequently requests should include) a period before the application is made; and
- (b) from a day in that period, up to the date he made the application (or subsequently requested that the application should include a past period), the applicant had continuous good cause for failing to make an application (or request that the application should include that period),

the application is to be treated as made on the date determined in accordance with sub-paragraph (2).

(2) That date is the latest of--

- (a) the first day from which the applicant had continuous good cause;
- (b) the day 6 months before the date the application was made;
- (c) the day 6 months before the date when the applicant requested that the application should include a past period.

Information and evidence

113

- (1) Subject to sub-paragraph (3), a person who makes an application for a reduction under this scheme must satisfy sub-paragraph (2) in relation both to himself and to any other person in respect of whom he is making the application.
- (2) This sub-paragraph is satisfied in relation to a person if--
 - (a) the application is accompanied by--
 - (i) a statement of the person's national insurance number and information or evidence establishing that that number has been allocated to the person; or
 - (ii) information or evidence enabling the authority to ascertain the national insurance number that has been allocated to the person; or
 - (b) the person has made an application for a national insurance number to be allocated to him and the application for the reduction is accompanied by--
 - (i) evidence of the application for a national insurance number to be so allocated; and
 - (ii) the information or evidence enabling it to be so allocated.
- (3) Sub-paragraph (2) does not apply--
 - (a) in the case of a child or young person in respect of whom an application for a reduction is made;
 - (b) to a person who--
 - (i) is a person treated as not being in Great Britain for the purposes of this scheme;
 - (ii) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act 1999; and
 - (iii) has not previously been allocated a national insurance number.
- (4) Subject to sub-paragraph (5), a person who makes an application, or a person to whom a reduction under this scheme has been awarded, must furnish such certificates, documents, information and evidence in connection with the application or the award, or any question arising out of the application or the award, as may reasonably be required by the authority in order to determine that person's entitlement to, or continuing entitlement to a reduction under this scheme and must do so within one month of the authority requiring him to do so or such longer period as the authority may consider reasonable.
- (5) Nothing in this paragraph requires a person to furnish any certificates, documents, information or evidence relating to a payment to which sub-paragraph (7) applies.
- (6) Where a request is made under sub-paragraph (4), the authority must--
 - (a) inform the applicant or the person to whom a reduction under this scheme has been awarded of his duty under paragraph 115 (duty to notify change of circumstances) to notify the authority of any change of circumstances; and
 - (b) without prejudice to the extent of the duty owed under paragraph 115, indicate to him either orally or by notice or by reference to some other document available to him on application and without charge, the kind of change of circumstances which is to be notified.
- (7) This sub-paragraph applies to any of the following payments--

(a) a payment which is--

(i) disregarded under paragraph 28 of Schedule 8 (sums disregarded in the calculation of income other than earnings: persons who are not pensioners) or paragraph 38 of Schedule 10 (capital disregards: persons who are not pensioners); or

(ii) made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, the London Emergencies Trust, the We Love Manchester Emergency Fund or the London Bombings Relief Charitable Fund;

(b) a payment which is disregarded under paragraph 16 of Schedule 9 (payments made under certain trusts and certain other payments), other than a payment under the Independent Living Fund (2006);

(c) a payment which is disregarded under paragraph 30(9)(b) or (c) (payment made under certain trusts etc) or paragraph 2(b) or (c) of Schedule 4 (payments made under certain trusts etc) other than a payment under the Independent Living Fund (2006).

(8) Where an applicant or a person to whom a reduction under this scheme has been awarded or any partner has attained the qualifying age for state pension credit and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, he must where the authority so requires furnish the following information--

(a) the name and address of the pension fund holder;

(b) such other information including any reference or policy number as is needed to enable the personal pension scheme to be identified.

Amendment and withdrawal of application

114

(1) A person who has made an application may amend it at any time before a decision has been made on it by a notice in writing delivered or sent to the designated office.

(2) Where the application was made by telephone in accordance with Part 1 of Schedule 1, the amendment may also be made by telephone.

(3) Any application amended in accordance with sub-paragraph (1) or (2) is to be treated as if it had been amended in the first instance.

(4) A person who has made an application may withdraw it by notice to the designated office at any time before a decision has been made on it.

(5) Where the application was made by telephone in accordance with Part 1 of Schedule 1, the withdrawal may also be made by telephone.

(6) Any notice of withdrawal given in accordance with sub-paragraph (4) or (5) has effect when it is received.

(7) Where a person, by telephone, amends or withdraws an application the person must (if required to do so by the authority) confirm the amendment or withdrawal by a notice in writing delivered or sent to the designated office.

Duty to notify changes of circumstances

115

- (1) Subject to sub-paragraphs (3), and (9), the applicant (or any person acting on his behalf) must comply with sub-paragraph (2) if there is a relevant change of circumstances at any time--
- (a) between the making of an application and a decision being made on it, or
 - (b) after the decision is made (where the decision is that the applicant is entitled to a reduction under this scheme) including at any time while the applicant is in receipt of such a reduction.
- (2) The applicant (or any person acting on his behalf) must notify any change of circumstances which the applicant (or that person) might reasonably be expected to know might affect his entitlement to, or the amount of, a reduction under this scheme (a "relevant change of circumstances") by giving notice to the authority--
- (a) in writing; or
 - (b) by telephone--
 - (i) where the authority has published a telephone number for that purpose or for the purposes of Part 1 of Schedule 1 unless the authority determines that in any particular case or class of case notification may not be given by telephone; or
 - (ii) in any case or class of case where the authority determines that notice may be given by telephone; or
 - (c) by any other means which the authority agrees to accept in any particular case,
- within a period of 21 days beginning with the day on which the change occurs, or as soon as reasonably practicable after the change occurs, whichever is later.
- (3) The duty imposed on a person by sub-paragraph (1) does not extend to notifying--
- (a) changes in the amount of council tax payable to the authority;
 - (b) changes in the age of the applicant or that of any member of his family;
 - (c) in the case of an applicant in receipt of a relevant benefit, changes in circumstances which affect the amount of the benefit but not the amount of the reduction under this scheme to which he is entitled, other than the cessation of that entitlement to the benefit.
- (4) For the purposes of sub-paragraph (3)(c) "relevant benefit" means income support, an income-based jobseeker's allowance or an income-related employment and support allowance or universal credit.
- (5) Notwithstanding sub-paragraph (3)(b) or (c) an applicant is required by sub-paragraph (1) to notify the authority of any change in the composition of his family arising from the fact that a person who was a member of his family is now no longer such a person because he has ceased to be a child or young person.
- (6) The duty imposed on a person by sub-paragraph (1) includes--
- (a) in the case of a person falling within class C (pensioners: alternative maximum council tax reduction) giving written notice to the authority of changes which occur in the number of adults in the dwelling or in their total gross incomes and, where any such adult ceases to be in receipt of state pension credit, the date when this occurs;
 - (b) in the case of a person falling within class F (persons who are not pensioners: alternative maximum council tax reduction) giving written notice to the authority of changes which occur in the number of adults in the dwelling or in their total gross incomes and, where any such adult ceases to be in receipt of income support, an income-based jobseeker's allowance or an income-related employment and support allowance, the date when this occurs.

(7) A person who has been awarded a reduction under this scheme who is also on state pension credit must report--

- (a) changes affecting the residence or income of any non-dependant normally residing with the applicant or with whom the applicant normally resides;
- (b) any absence from the dwelling which exceeds or is likely to exceed 13 weeks or where the absence is from Great Britain, which exceeds or is likely to exceed 4 weeks.

(8) In addition to the changes required to be reported under sub-paragraph (7), a person whose state pension credit comprises only the savings credit must also report--

- (a) changes affecting a child living with him which may result in a change in the amount of reduction under this scheme allowed in his case, but not changes in the age of the child;
- (b) any change in the amount of the applicant's capital to be taken into account which does or may take the amount of his capital to more than £16,000;
- (c) any change in the income or capital of--
 - (i) a non-dependant whose income and capital are treated as belonging to the applicant in accordance with paragraph 34 (circumstances in which income of a non-dependant is to be treated as applicant's); or
 - (ii) a person to whom paragraph 36(2)(e) (partner treated as member of the household under paragraph 8) refers,

and whether such a person or, as the case may be, non-dependant stops living or begins or resumes living with the applicant.

(9) A person who is entitled to a reduction under this scheme and on state pension credit need only report to the authority the changes specified in sub-paragraphs (7) and (8).

Part 15 Decisions by Authority

Decision by authority

116

The authority must make a decision on an application for a reduction under this scheme within 14 days of paragraphs 110 and 113 and Part 1 of Schedule 1 being satisfied, or as soon as reasonably practicable thereafter.

Notification of decision

117

(1) The authority must notify in writing any person affected by a decision made by it under this scheme--

- (a) in the case of a decision on an application, forthwith or as soon as reasonably practicable thereafter;
- (b) in any other case, within 14 days of that decision or as soon as reasonably practicable thereafter.

(2) Where the decision is to award a reduction the notification under sub-paragraph (1) must include a statement--

- (a) informing the person affected of the duty imposed by paragraph 115(1)(b);
- (b) explaining the possible consequences (including prosecution) of failing to comply with that duty; and
- (c) setting out the circumstances a change in which might affect entitlement to the reduction or its amount.

(3) Where the decision is to award a reduction, the notification under sub-paragraph (1) must include a statement as to how that entitlement is to be discharged.

(4) In any case, the notification under sub-paragraph (1) must inform the person affected of the procedure by which an appeal may be made and must refer the person to the provisions in this scheme relating to the procedure for making an appeal.

(5) A person affected to whom the authority sends or delivers a notification of decision may, within one month of the date of the notification of that decision request in writing the authority to provide a written statement setting out the reasons for its decision on any matter set out in the notice.

(6) The written statement referred to in sub-paragraph (5) must be sent to the person requesting it within 14 days or as soon as reasonably practicable thereafter.

(7) For the purposes of this paragraph a person is to be treated as a person affected by a decision of the authority under this scheme where the rights, duties or obligations of that person are affected by that decision and the person falls within sub-paragraph (8).

(8) This sub-paragraph applies to--

- (a) the applicant;
- (b) in the case of a person who is liable to pay council tax in respect of a dwelling and is unable for the time being to act--
 - (i) a deputy appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on his behalf; or
 - (ii) in Scotland, a judicial factor or any guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000 who has power to apply or, as the case may be, receive benefit on the person's behalf; or
 - (iii) an attorney with a general power or a power to apply or, as the case may be, receive benefit, has been appointed by that person under the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985 or the Mental Capacity Act 2005 or otherwise,
- (c) a person appointed by the authority under paragraph 109(3).

Part 16

Circumstances in Which a Payment May be Made

Payment where there is joint and several liability

118

(1) Where--

- (a) a person is entitled to a reduction under this scheme in respect of his liability for the authority's council tax as it has effect in respect of a financial year;
- (b) the person entitled to the reduction is jointly and severally liable for the council tax; and
- (c) the authority determines that discharging his entitlement by reducing the amount of his liability to which regulation 20(2) of the Council Tax (Administration and Enforcement) Regulations 1992 refers would be inappropriate,

it may make a payment to him of the amount of reduction to which he is entitled, rounded where necessary to the nearest penny.

(2) Subject to sub-paragraph (3), any payment made under sub-paragraph (1) must be made to the person who is entitled to the reduction.

(3) Where a person other than the person who is entitled to the reduction under this scheme made the application for the reduction and that first person is a person acting pursuant to an appointment under paragraph 109(3) (persons appointed to act for a person unable to act) or is treated as having been so appointed by virtue of paragraph 109(5), the amount of the reduction may be paid to that person.

SCHEDULE 1

PROCEDURAL MATTERS

Paragraph 11

Part 1

Procedure for an Application for a Reduction Under this Scheme

Procedure by which a person may apply for a reduction under this scheme

1

Paragraphs 2 to 7 apply to an application for a reduction under this scheme.

2

An application may be made--

- (a) in writing,
- (b) by means of an electronic communication in accordance with Part 4 of this Schedule, or
- (c) where the authority has published a telephone number for the purpose of receiving such applications, by telephone.

3

(1) An application which is made in writing must be made to the designated office on a properly completed form.

(2) The form must be provided free of charge by the authority for the purpose.

4

Where an application made in writing is defective because--

- (a) it was made on the form supplied for the purpose but that form is not accepted by the authority as being properly completed; or
- (b) it was made in writing but not on the form supplied for the purpose and the authority does not accept the application as being in a written form which is sufficient in the circumstances of the case having regard to the sufficiency of the written information and evidence,

the authority may, in a case to which sub-paragraph (a) applies, request the applicant to complete the defective application or, in the case to which sub-paragraph (b) applies, supply the applicant with the approved form or request further information and evidence.

- (2) An application made on a form provided by the authority is properly completed if completed in accordance with the instructions on the form, including any instructions to provide information and evidence in connection with the application.

5

- (1) If an application made by electronic communication is defective the authority must provide the person making the application with an opportunity to correct the defect.
- (2) An application made by electronic communication is defective if the applicant does not provide all the information the authority requires.

6

In a particular case the authority may determine that an application made by telephone is only valid if the person making the application approves a written statement of his circumstances provided by the authority.

7

- (1) If an application made by telephone is defective the authority must provide the person making the application with an opportunity to correct the defect.
- (2) An application made by telephone is defective if the applicant does not provide all the information the authority requests during the telephone call.

Part 2 Procedure for Making an Appeal

Procedure by which a person may make an appeal against certain decisions of the authority

8

A person who is aggrieved by a decision of the authority which affects--

- (a) the person's entitlement to a reduction under this scheme, or
- (b) the amount of any reduction under this scheme,

may serve a written notice on the authority stating the matter by which, and the grounds on which, he is aggrieved.

9

The authority must--

- (a) consider the matter to which the notice relates;
- (b) notify the aggrieved person in writing--
 - (i) that the ground is not well founded, giving reasons for that belief; or
 - (ii) that steps have been taken to deal with the grievance, stating the steps taken.

10

Where, following notification under paragraph 9(b)(i) or (ii), the person is still aggrieved, or if the authority fails to notify the person aggrieved in accordance with paragraph 9(b) within two months of the service of his notice, he may appeal to a valuation tribunal under section 16 of the 1992 Act.

Part 3
Procedure for Applying for a Discretionary Reduction

Procedure for an application to the authority for a reduction under section 13A(1)(c) of the 1992 Act

11

(1) An application to the authority for a reduction under section 13A(1)(c) of the 1992 Act may be made--

- (a) in writing;
- (b) by means of an electronic communication in accordance with Part 4 of this Schedule; or
- (c) where the authority has published a telephone number for the purposes of receiving such applications, by telephone.

(2) Where--

- (a) the authority has made a determination under section 13A(1)(c) in relation to a class of case in which liability is to be reduced; and
- (b) a person in that class would otherwise be entitled to a reduction under this scheme,

that person's application for a reduction under this scheme may also be treated as an application for a reduction under section 13A(1)(c).

Part 4
Electronic Communication

Interpretation

12

In this Part--

"information" includes an application, certificate, notice or other evidence;

"official computer system" means a computer system maintained by or on behalf of the authority for the sending, receiving, processing or storing of any information.

Conditions for the use of electronic communication

13

- (1) The authority may use an electronic communication in connection with applications for, and awards of, reductions under this scheme.
- (2) A person other than the authority may use an electronic communication in connection with the matters referred to in sub-paragraph (1) if the conditions specified in sub-paragraphs (3) to (6) are satisfied.
- (3) The first condition is that the person is for the time being permitted to use an electronic communication by an authorisation given by means of a direction of the Chief Executive of the authority.
- (4) The second condition is that the person uses an approved method of--
- (a) authenticating the identity of the sender of the communication;
 - (b) electronic communication;
 - (c) authenticating any application or notice delivered by means of an electronic communication; and
 - (d) subject to sub-paragraph (7), submitting to the authority any information.
- (5) The third condition is that any information sent by means of an electronic communication is in a form supplied for the purposes of this Part of this Schedule.
- (6) The fourth condition is that the person maintains such records in written or electronic form as may be specified in a direction given by the Chief Executive of the authority.
- (7) Where the person uses any method other than the method approved of submitting any information, that information is to be treated as not having been submitted.
- (8) In this paragraph "approved" means approved by means of a direction given by the Chief Executive of the authority for the purposes of this Part of this Schedule.

Use of intermediaries

14

The authority may use intermediaries in connection with--

- (a) the delivery of any information by means of an electronic communication; and
- (b) the authentication or security of anything transmitted by such means,

and may require other persons to use intermediaries in connection with those matters.

Effect of delivering information by means of electronic communication

15

(1) Any information which is delivered by means of an electronic communication is to be treated as having been delivered in the manner or form required by any provision of this scheme, on the day the conditions imposed--

- (a) by this Part; and
- (b) by or under an enactment,

are satisfied.

(2) The authority may determine that any information is to be treated as delivered on a different day (whether earlier or later) from the day provided for in sub-paragraph (1).

(3) Information must not be taken to have been delivered to an official computer system by means of an electronic communication unless it is accepted by the system to which it is delivered.

Proof of identity of sender or recipient of information

16

If it is necessary to prove, for the purpose of any legal proceedings, the identity of--

- (a) the sender of any information delivered by means of an electronic communication to an official computer system; or
- (b) the recipient of any such information delivered by means of an electronic communication from an official computer system,

the sender or recipient, as the case may be, is to be presumed to be the person whose name is recorded as such on that official computer system.

Proof of delivery of information

17

(1) If it is necessary to prove, for the purpose of any legal proceedings, that the use of an electronic communication has resulted in the delivery of any information this must be presumed to have been the case where--

- (a) any such information has been delivered to the relevant authority, if the delivery of that information has been recorded on an official computer system; or
- (b) any such information has been delivered by the relevant authority, if the delivery of that information has been recorded on an official computer system.

(2) If it is necessary to prove, for the purpose of any legal proceedings, that the use of an electronic communication has resulted in the delivery of any such information, this must be presumed not to be the case, if that information delivered to the relevant authority has not been recorded on an official computer system.

(3) If it is necessary to prove, for the purpose of any legal proceedings, when any such information sent by means of an electronic communication has been received, the time and date of receipt must be presumed to be that recorded on an official computer system.

Proof of content of information**18**

If it is necessary to prove, for the purpose of any legal proceedings, the content of any information sent by means of an electronic communication, the content must be presumed to be that recorded on an official computer system.

SCHEDULE 2
APPLICABLE AMOUNTS: PENSIONERS

Paragraph 25

Part 1
Personal Allowances

Personal allowance**1**

The amount specified in column (2) below in respect of each person or couple specified in column (1) is the amount specified for the purposes of paragraph 25(1)(a).

<i>Column (1)</i> <i>Person or couple</i>	<i>Column (2)</i> <i>Amount</i>
(1) Single applicant or lone parent who has attained pensionable age	£181.00
(2) Couple where one or both members have attained pensionable age	£270.60
(3) If the applicant is a member of a polygamous marriage and one or more of the members of the marriage has attained pensionable age—	
(a) for the applicant and the other party to the marriage;	(a) £270.60;
(b) for each additional spouse who is a member of the same household as the applicant.	(b) £89.60.

Child or young person amounts**2**

(1) The amounts specified in column (2) below in respect of each person specified in column (1) are the amounts, for the relevant period specified in column (1), specified for the purposes of paragraph 25(1)(b).

<i>Column (1)</i> <i>Child or young person</i>	<i>Column (2)</i> <i>Amount</i>
Person in respect of the period--	

- (a) beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday; (a) £66.90;
 - (b) beginning on the first Monday in September following that person's sixteenth birthday and ending on the day preceding that person's twentieth birthday. (b) £66.90.
-

(2) In column (1) of the table "the first Monday in September" means the Monday which first occurs in the month of September in any year.

Part 2 Family Premium

Family premium

3

The amount for the purposes of paragraph 25(1)(c) in respect of a family of which at least one member is a child or young person —

- (a) is £17.45 in respect of a reduction week which begins in the period beginning with 1st April 2016 and ending with 30th April 2016;
- (b) is nil in respect of a reduction week which begins after 1st May 2016.

Transitional provision

3 A

(1) Subject to paragraph (2), paragraph 3 does not apply to a person who, on 30th April 2016, is liable to pay council tax at a reduced rate by virtue of a council tax reduction under the authority's scheme established under section 13A(2) of the Act and is—

- (a) a member of a family of which at least one member is a child or young person; or
- (b) a partner in a polygamous marriage, where he or she, or another partner of the polygamous marriage, is responsible for a child or young person who is a member of the same household.

(2) Paragraph (1) does not apply if—

- (a) sub-paragraph (a) or (b) of that paragraph ceases to apply; or
- (b) the person makes a new application for a reduction under the authority's scheme under section 13A(2) of the Act.

(3) For the purposes of this paragraph—

- (a) "the Act" means the Local Government Finance Act 1992;
- (b) "child", "family", "partner", "polygamous marriage" and "young person" have the meanings given by Part 2 ('Interpretation') of this scheme.

**Part 3
Premiums**

4

The premiums specified in Part 4 are, for the purposes of paragraph 25(1)(d), applicable to an applicant who satisfies the condition specified in this Part in respect of that premium.

5

(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to an applicant under this Part, a person is to be treated as being in receipt of any benefit for--

(a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979 applies, any period during which, apart from the provision of those Regulations, he would be in receipt of that benefit; and

(b) any period spent by a person in undertaking a course of training or instruction provided or approved by the Secretary of State under section 2 of the Employment and Training Act 1973, or by Skills Development Scotland, Scottish Enterprise or Highland and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990 or for any period during which he is in receipt of a training allowance.

(2) For the purposes of the carer premium under paragraph 9, a person is to be treated as being in receipt of a carer's allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence payment paid at either rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012 or an AFIP.

Severe disability premium

6

(1) The condition is that the applicant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), an applicant is to be treated as being a severely disabled person if, and only if--

(a) in the case of a single applicant, a lone parent or an applicant who is treated as having no partner in consequence of sub-paragraph (3)--

(i) he is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence payment paid at either rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012, or an AFIP; and

(ii) subject to sub-paragraph (6), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing; and

(iii) no person is entitled to, and in receipt of, a carer's allowance under section 70 of the SSCBA or has an award of universal credit which includes the carer element under regulation 29 of the Universal Credit Regulations 2013 in respect of caring for him;

(b) in the case of an applicant who has a partner--

- (i) the applicant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence payment paid at either rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012, or an AFIP;
- (ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, each other member of that marriage is in receipt of such an allowance; and
- (iii) subject to sub-paragraph (6), the applicant has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing,

and either a person is entitled to and in receipt of a carer's allowance or has an award of universal credit that includes the carer element in respect of caring for only one of the couple or, if he is a member of a polygamous marriage, for one or more but not all the members of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance or has such an award of universal credit in respect of caring for either member of a couple or any of the members of the marriage.

(3) Where an applicant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of sub-paragraph (4), that partner is to be treated for the purposes of sub-paragraph (2) as if he were not a partner of the applicant.

(4) For the purposes of sub-paragraph (3), a person is blind if he is registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994.

(5) For the purposes of sub-paragraph (4), a person who has ceased to be registered as blind on regaining his eyesight is nevertheless to be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(6) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account is to be taken of--

- (a) a person receiving attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence payment paid at either rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012, or an AFIP; or
- (b) a person who is blind or is treated as blind within the meaning of sub-paragraphs (4) and (5).

(7) For the purposes of sub-paragraph (2)(b) a person is to be treated--

- (a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;
- (b) as being in receipt of the daily living component of personal independence payment paid at the rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012 if he would, but for his being a patient for a period exceeding 28 days, be so in receipt, notwithstanding section 86 of that Act and regulations made thereunder;
- (c) as being in receipt of an AFIP if he would be so in receipt but for a suspension of payment in accordance with any terms of the armed and reserve forces compensation scheme which allow for a suspension because a person is undergoing medical treatment in a hospital or similar institution;
- (d) as being entitled to and in receipt of a carer's allowance or having an award of universal credit which includes the carer element if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt or have such an award of universal credit.

(8) For the purposes of sub-paragraph (2)(a)(iii) and (b)--

- (a) no account is to be taken of an award of carer's allowance to the extent that payment of such an award is back-dated for a period before the date on which the award is first paid; and
- (b) a reference to a person being in receipt of a carer's allowance or as having an award of universal credit which includes the carer element include reference to a person who would have been in receipt of that allowance or had such an award of universal credit but for the application of a restriction under section 6B or 7 of the Social Security Fraud Act 2001 (loss of benefit).

Enhanced disability premium

7

(1) The condition is that--

- (a) the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations under section 113(2) of the SSCBA or but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 73(2) of that Act; or
- (b) (as the case may be) the daily living component of personal independence payment is, or would, but for a suspension of benefit in accordance with regulations under section 86 of the Welfare Reform Act 2012, be payable at the enhanced rate prescribed in accordance with section 78(2) of that Act,

in respect of a child or young person who is a member of the applicant's family.

(2) Where the condition in sub-paragraph (1) ceases to be satisfied because of the death of a child or young person, the condition is that the applicant or partner is entitled to child benefit in respect of that person under section 145A of the SSCBA (entitlement after death of child or qualifying young person).

Disabled child premium

8

The condition is that a child or young person for whom the applicant or a partner of his is responsible and who is a member of the applicant's household--

- (a) is in receipt of disability living allowance, personal independence payment or is no longer in receipt of such allowance or payment because he is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind within the meaning of paragraph 6(4) or treated as blind in accordance with paragraph 6(5); or
- (c) is a child or young person in respect of whom section 145A of the SSCBA (entitlement after death of child or qualifying young person) applies for the purposes of entitlement to child benefit but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the applicant's applicable amount immediately before the death of that child or young person, or ceased to be included in the applicant's applicable amount because of that child or young person's death.

Carer premium

9

- (1) The condition is that the applicant or his partner is, or both of them are, entitled to a carer's allowance.
- (2) Where a carer premium has been awarded but--
- (a) the person in respect of whose care the carer's allowance has been awarded dies; or
 - (b) the person in respect of whom the premium was awarded ceases to be entitled, or ceases to be treated as entitled, to a carer's allowance,

this paragraph is to be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

- (3) The relevant date for the purposes of sub-paragraph (2) is--
- (a) in a case within sub-paragraph (2)(a), the Sunday following the death of the person in respect of whose care the carer's allowance has been awarded (or beginning with the date of death if the date occurred on a Sunday);
 - (b) in a case within sub-paragraph (2)(b), the date on which that person who was entitled to a carer's allowance ceases to be entitled to it.

- (4) For the purposes of this paragraph, a person is to be treated as being entitled to and in receipt of a carer's allowance for any period not covered by an award but in respect of which a payment is made in lieu of an award.

Persons in receipt of concessionary payments

10

For the purpose of determining whether a premium is applicable to a person under paragraphs 6 to 9, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs is to be treated as if it were a payment of that benefit.

Person in receipt of benefit

11

For the purposes of this Part of this Schedule, a person is to be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and is to be so regarded only for any period in respect of which that benefit is paid.

Part 4

Amounts of Premium Specified in Part 3

12

- (1) Severe Disability Premium--

<i>Provision</i>	<i>Amount</i>
(a) where the applicant satisfies the condition in paragraph 6(2)(a);	(a) £65.85;
(b) where the applicant satisfies the condition in paragraph 6(2)(b)--	(b)
(i) in a case where there is someone in receipt of a carer's allowance or who has an award of universal credit which includes the carer element under regulation 29 of	(i) £65.85;

the Universal Credit Regulations 2013 or if he or any partner satisfies that condition only by virtue of paragraph 6(7);

(ii) in a case where there is no-one in receipt of such an allowance or such an award of universal credit.	(ii) £131.70.
(2) Enhanced disability premium.	(2) £26.04 in respect of each child or young person in respect of whom the conditions specified in paragraph 7 are satisfied.
(3) Disabled Child Premium.	(3) £64.19 in respect of each child or young person in respect of whom the condition specified in paragraph 8 is satisfied
(4) Carer Premium.	(4) £36.85 in respect of each person who satisfies the condition specified in paragraph 9.

SCHEDULE 3
APPLICABLE AMOUNTS: PERSONS WHO ARE NOT PENSIONERS

Paragraph 26

Part 1
Personal Allowances

1

The amounts specified in column (2) below in respect of each person or couple specified in column (1) are the amounts specified for the purposes of paragraphs 26(1)(a) and 27(1)(a) and (b)--

<i>Column (1)</i> <i>Person or couple</i>	<i>Column (2)</i> <i>Amount</i>
(1) A single applicant who--	
(a) is entitled to main phase employment and support allowance;	
(b) is aged not less than 25;	
(c) is aged not less than 18 but less than 25.	<i>Amounts as specified in the Housing Benefit Regulations 2006 as amended from time to time</i>
(2) Lone parent.	
(3) Couple.	

2

For the purposes of paragraph 1 an applicant is entitled to main phase employment and support allowance if--

- (a) paragraph 18 is satisfied in relation to the applicant; or
- (b) the applicant is entitled to a converted employment and support allowance.

3

(1) The amounts specified in column (2) below in respect of each person specified in column (1) are, for the relevant period specified in column (1), the amounts specified for the purposes of paragraphs 26(1)(b) and 27(1)(c)--

<i>Column (1)</i> <i>Child or Young person</i>	<i>Column (2)</i> <i>Amount</i>
Person in respect of the period--	
(a) beginning on that person's date of birth and ending on the day preceding the first Monday in September following that person's sixteenth birthday;	
(b) beginning on the first Monday in September following that person's sixteenth birthday and ending on the day preceding that person's twentieth birthday.	<i>Amounts as specified in the Housing Benefit Regulations 2006 as amended from time to time</i>

(2) In column (1) of the table in sub-paragraph (1), "the first Monday in September" means the Monday which first occurs in the month of September in any year.

Part 2 Family Premium

4

(1) The amount for the purposes of paragraphs 26(1)(c) and 27(1)(d) in respect of a family of which at least one member is a child or young person is--

- (a) where the applicant is a lone parent to whom sub-paragraph (2) applies,
- (b) in any other case,

in both cases, the amounts as specified in the Housing Benefit Regulations 2006 as amended from time to time

(2) The amount in sub-paragraph (1)(a) is applicable to a lone parent--

- (a) who was entitled to council tax benefit on 5th April 1998 and whose applicable amount on that date included the amount applicable under paragraph 3(1)(a) of Schedule 1 to the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 as in force on that date; or
- (b) on becoming entitled to council tax benefit where that lone parent--
 - (i) had been treated as entitled to that benefit in accordance with sub-paragraph (3) as at the day before the date of claim for that benefit; and
 - (ii) was entitled to housing benefit as at the date of claim for council tax benefit or would have been entitled to housing benefit as at that date had that day not fallen during a rent free period as defined in regulation 81 of the Housing Benefit Regulations 2006,

and in respect of whom, all of the conditions specified in sub-paragraph (3) have continued to apply.

(3) The conditions specified for the purposes of sub-paragraph (2) are that, in respect of the period commencing on 6th April 1998--

- (a) the applicant has not ceased to be entitled, or has not ceased to be treated as entitled, to
 - (i) council tax benefit (in relation to the period prior to 1st April 2013), and

- (ii) a reduction under a scheme made by this authority (in relation to the period commencing on 1st April 2013);
 - (b) the applicant has not ceased to be a lone parent;
 - (c) where the applicant was entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, he has continuously, since that date, been entitled to income support, an income-based jobseeker's allowance or income-related employment and support allowance or a combination of those benefits;
 - (d) where the applicant was not entitled to income support or to an income-based jobseeker's allowance on 5th April 1998, he has not become entitled to income support, an income-based jobseeker's allowance or an income-related employment and support allowance; and
 - (e) a premium under paragraph 9 or a component under paragraph ~~21~~ or 22 has not become applicable to the applicant.
- (4) For the purposes of sub-paragraphs (2)(b)(i) and (3)(a), an applicant is to be treated as entitled to council tax benefit during any period where he was not, or had ceased to be, so entitled and--
- (a) throughout that period, he had been awarded housing benefit and his applicable amount included the amount applicable under paragraph 3(1)(a) of Schedule 3 to the Housing Benefit Regulations 2006 (lone parent rate of family premium); or
 - (b) he would have been awarded housing benefit during that period had that period not been a rent free period as defined in regulation 81 of the Housing Benefit Regulations 2006 and his applicable amount throughout that period would have included the amount applicable under paragraph 3(1)(a) of Schedule 3 to those Regulations.

Part 3 Premiums

5

Except as provided in paragraph 6, the premiums specified in Part 4 are, for the purposes of paragraphs 26(1)(d) and 27(1)(e) (premiums), applicable to an applicant who satisfies the condition specified in paragraphs 9 to 14 in respect of that premium.

6

Subject to paragraph 7, where an applicant satisfies the conditions in respect of more than one premium in this Part of this Schedule, only one premium is applicable to him and, if they are different amounts, the higher or highest amount applies.

7

The following premiums, namely--

- (a) a severe disability premium to which paragraph 11 applies;
- (b) an enhanced disability premium to which paragraph 12 applies;
- (c) a disabled child premium to which paragraph 13 applies; and
- (d) a carer premium to which paragraph 14 applies,

may be applicable in addition to any other premium which may apply under this Schedule.

8

(1) Subject to sub-paragraph (2), for the purposes of this Part of this Schedule, once a premium is applicable to an applicant under this Part, a person is to be treated as being in receipt of any benefit for--

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979 applies, any period during which, apart from the provisions of those Regulations, he would be in receipt of that benefit; and
- (b) any period spent by a person in undertaking a course of training or instruction provided or approved by the Secretary of State under section 2 of the Employment and Training Act 1973 or by Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990 for any period during which he is in receipt of a training allowance.

(2) For the purposes of the carer premium under paragraph 14, a person is to be treated as being in receipt of carer's allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA or the daily living component of personal independence payment payable under Part 4 of the Welfare Reform Act 2012.

Disability premium**9**

The condition is that--

- (a) where the applicant is a single applicant or a lone parent, he has not attained the qualifying age for state pension credit and the additional condition specified in paragraph 10 is satisfied; or
- (b) where the applicant has a partner, either--
 - (i) the applicant has not attained the qualifying age for state pension credit and the additional condition specified in paragraph 10(1)(a) or (b) is satisfied by him; or
 - (ii) his partner has not attained the qualifying age for state pension credit and the additional condition specified in paragraph 10(1)(a) is satisfied by his partner.

Additional condition for the disability premium**10**

(1) Subject to sub-paragraph (2) and paragraph 8, the additional condition referred to in paragraph 9 is that either--

- (a) the applicant or, as the case may be, his partner--
 - (i) is in receipt of one or more of the following benefits: attendance allowance, disability living allowance, personal independence payment, an AFIP, the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, mobility supplement, long-term incapacity benefit under Part 2 of the SSCBA or severe disablement allowance under Part 3 of that Act but, in the case of long-term incapacity benefit or severe disablement allowance, only where it is paid in respect of him; or

(ii) was in receipt of long-term incapacity benefit under Part 2 of the SSCBA when entitlement to that benefit ceased on account of the payment of a retirement pension under that Act or a state pension under Part 1 of the Pensions Act 2014 and the applicant remained continuously entitled to--

(aa) council tax benefit (in relation to the period prior to 1st April 2013, or

(bb) a reduction under a scheme made by this authority (in relation to the period commencing on 1st April 2013), and

if the long-term incapacity benefit was payable to his partner, the partner is still a member of the family; or

(iii) was in receipt of attendance allowance or disability living allowance but payment of benefit has been suspended in accordance with regulations made under section 113(2) of the SSCBA or otherwise abated as a consequence of the applicant or his partner becoming a patient within the meaning of paragraph 58(11)(i) (treatment of child care charges); or

(iv) was in receipt of personal independence payment, but payment of that benefit has been suspended in accordance with section 86 of the Welfare Reform Act 2012 as a consequence of the applicant becoming a patient within the meaning of paragraph 58(11)(i) (treatment of child care charges); or

(v) was in receipt of an AFIP, but payment has been suspended in accordance with any terms of the armed and reserve forces compensation scheme which allow for suspension because a person is undergoing medical treatment in a hospital or similar institution; or

(vi) he has an invalid carriage or other vehicle provided to him by the Secretary of State or a clinical commissioning group under paragraph 9 of Schedule 1 to the National Health Service Act 2006 or under section 46 of the National Health Service (Scotland) Act 1978 or provided by the Department of Health, Social Services and Public Safety in Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972; or

(vii) is blind and in consequence registered in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or

(b) the applicant--

(i) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA (incapacity for work); and

(ii) has been incapable, or has been treated as incapable, of work for a continuous period of not less than--

(aa) in the case of an applicant who is terminally ill within the meaning of section 30B(4) of the SSCBA, 196 days;

(bb) in any other case, 364 days.

(2) For the purposes of sub-paragraph (1)(a)(vii), a person who has ceased to be registered as blind on regaining his eyesight is nevertheless to be treated as blind and as satisfying the additional condition set out in that sub-paragraph for a period of 28 weeks following the date on which he ceased to be so registered.

(3) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to an applicant by virtue of his satisfying the additional condition specified in that provision, if he then ceases, for a period of 8 weeks or less, to be treated as incapable of work or to be incapable of work he is, on

again becoming so incapable of work, immediately thereafter to be treated as satisfying the condition in sub-paragraph (1)(b).

(4) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to an applicant by virtue of his satisfying the additional condition specified in that provision, he is to continue to be treated as satisfying that condition for any period spent by him in undertaking a course of training provided under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990 or for any period during which he is in receipt of a training allowance.

(5) For the purposes of sub-paragraph (1)(b), where any two or more periods of incapacity are separated by a break of not more than 56 days, those periods are to be treated as one continuous period.

(6) For the purposes of this paragraph, a reference to a person who is or was in receipt of long-term incapacity benefit includes a person who is or was in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the Act (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to him is or was equal to or greater than the long-term rate.

(7) In the case of an applicant who is a welfare to work beneficiary (a person to whom regulation 13A(1) of the Social Security (Incapacity for Work) (General) Regulations 1995 applies, and who again becomes incapable of work for the purposes of Part 12A of the SSCBA)--

- (a) the reference to a period of 8 weeks in sub-paragraph (3); and
- (b) the reference to a period of 56 days in sub-paragraph (5),

in each case is to be treated as a reference to a period of 104 weeks.

(8) The applicant is not entitled to the disability premium if he has, or is treated as having, limited capability for work.

Severe disability premium

11

(1) The condition is that the applicant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), an applicant is to be treated as being a severely disabled person if, and only if--

- (a) in the case of a single applicant, a lone parent or an applicant who is treated as having no partner in consequence of sub-paragraph (3)--
 - (i) he is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence payment payable at either rate under Part 4 of the Welfare Reform Act 2012, or an AFIP; and
 - (ii) subject to sub-paragraph (4), he has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing; and
 - (iii) no person is entitled to, and in receipt of, a carer's allowance under section 70 of the SSCBA in respect of caring for him;
- (b) in the case of an applicant who has a partner--
 - (i) the applicant is in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA or the daily living component of personal independence payment payable at either rate under Part 4 of the Welfare Reform Act 2012, or an AFIP; and

- (ii) his partner is also in receipt of such an allowance or, if he is a member of a polygamous marriage, all the partners of that marriage are in receipt of such an allowance; and
- (iii) subject to sub-paragraph (4), the applicant has no non-dependants aged 18 or over normally residing with him or with whom he is normally residing,

and either a person is entitled to and in receipt of a carer's allowance in respect of caring for only one of a couple or, in the case of a polygamous marriage, for one or more but not all the partners of the marriage, or as the case may be, no person is entitled to and in receipt of such an allowance in respect of caring for either member of a couple or any partner of a polygamous marriage.

(3) Where an applicant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii), and that partner is blind or is treated as blind within the meaning of paragraph 10(1)(a)(vii) and (2), that partner is to be treated for the purposes of sub-paragraph (2)(b)(ii) as if he were not a partner of the applicant.

(4) For the purposes of sub-paragraph (2)(a)(ii) and (2)(b)(iii) no account is to be taken of--

(a) a person receiving attendance allowance, or disability living allowance by virtue of the care component at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence payment payable at either rate prescribed in accordance with Part 4 of the Welfare Reform Act 2012; or

(b) a person who is blind or is treated as blind within the meaning of paragraph 10(1)(a)(vii) and (2).

(5) For the purposes of sub-paragraph (2)(b) a person is to be treated--

(a) as being in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the SSCBA, or the daily living component of personal independence payment payable at either rate under Part 4 of the Welfare Reform Act 2012, or an AFIP if he would, but for his being a patient for a period exceeding 28 days, be so in receipt;

(b) as being entitled to and in receipt of a carer's allowance if he would, but for the person for whom he was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.

(6) For the purposes of sub-paragraph (2)(a)(iii) and (2)(b), no account is to be taken of an award of carer's allowance to the extent that payment of such an award is back-dated for a period before the date on which the award is first paid.

(7) In sub-paragraph (2)(a)(iii) and (b), references to a person being in receipt of a carer's allowance include references to a person who would have been in receipt of that allowance but for the application of a restriction under section 6B or 7 of the Social Security Fraud Act 2001 (loss of benefit provisions).

Enhanced disability premium

12

(1) Subject to sub-paragraph (2), the condition is that--

(a) the Secretary of State has decided that the applicant has, or is to be treated as having, limited capability for work-related activity; or

(b) the care component of disability living allowance is, or would be payable at the highest rate prescribed under section 72(3) of the SSCBA, but for a suspension of benefit in accordance with regulations made under section 113(2) of the SSCBA or but for an abatement as a consequence of

hospitalisation be payable at the highest rate prescribed under section 72(3) of the SSCBA in respect of--

- (i) the applicant; or
- (ii) a member of the applicant's family,

who has not attained the qualifying age for state pension credit; or

(c) the daily living component of personal independence payment is, or would be payable at either rate under Part 4 of the Welfare Reform Act 2012, but for a suspension of benefit in accordance with section 86 of the Welfare Reform Act 2012 in respect of--

- (i) the applicant; or
- (ii) a member of the applicant's family,

who has not attained the qualifying age for state pension credit.

(2) Where the condition in sub-paragraph (1) ceases to be satisfied because of the death of a child or young person, the condition is that the applicant or partner is entitled to child benefit in respect of that person under section 145A of the SSCBA (entitlement after death of child or qualifying young person).

(3) The condition is not satisfied if the person to whom sub-paragraph (1) refers is--

- (a) an applicant who--
 - (i) is not a member of a couple or a polygamous marriage; and
 - (ii) is a patient within the meaning of paragraph 58(11)(i) (treatment of child care charges) and has been for a period of more than 52 weeks; or
- (b) a member of a couple or a polygamous marriage where each member is a patient within the meaning of paragraph 58(11)(i) and has been for a period of more than 52 weeks.

Disabled child premium

13

The condition is that a child or young person for whom the applicant or a partner of his is responsible and who is a member of the applicant's household--

- (a) is in receipt of disability living allowance or personal independence payment or is no longer in receipt of such allowance because he is a patient, provided that the child or young person continues to be a member of the family; or
- (b) is blind or treated as blind within the meaning of paragraph 10; or
- (c) is a child or young person in respect of whom section 145A of the SSCBA (entitlement after death of child or qualifying young person) applies for the purposes of entitlement to child benefit but only for the period prescribed under that section, and in respect of whom a disabled child premium was included in the applicant's applicable amount immediately before the death of that child or young person, or ceased to be included in the applicant's applicable amount because of that child or young person's death.

Carer premium

14

(1) The condition is that the applicant or his partner is, or both of them are, entitled to a carer's allowance under section 70 of the SSCBA.

(2) Where a carer premium is awarded but--

- (a) the person in respect of whose care the carer's allowance has been awarded dies; or
- (b) in any other case the person in respect of whom a carer premium has been awarded ceases to be entitled to a carer's allowance,

the condition for the award of the premium is to be treated as satisfied for a period of eight weeks from the relevant date specified in sub-paragraph (3).

(3) The relevant date for the purposes of sub-paragraph (2) is--

- (a) where sub-paragraph (2)(a) applies, the Sunday following the death of the person in respect of whose care a carer's allowance has been awarded or the date of death if the death occurred on a Sunday;
- (b) in any other case, the date on which the person who has been entitled to a carer's allowance ceases to be entitled to that allowance.

(4) Where a person who has been entitled to a carer's allowance ceases to be entitled to that allowance and makes an application for a reduction, the condition for the award of the carer premium is to be treated as satisfied for a period of eight weeks from the date on which--

- (a) the person in respect of whose care the carer's allowance has been awarded dies; or
- (b) in any other case, the person who has been entitled to a carer's allowance ceased to be entitled to that allowance.

Persons in receipt of concessionary payments

15

For the purpose of determining whether a premium is applicable to a person under paragraphs 10 to 14, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs is to be treated as if it were a payment of that benefit.

Persons in receipt of benefit for another

16

For the purposes of this Part of this Schedule, a person is to be regarded as being in receipt of any benefit if, and only if, it is paid in respect of him and is to be so regarded only for any period in respect of which that benefit is paid.

Part 4 **Amounts of Premiums Specified in Part 3**

17

(1) Disability Premium--

<i>Premium</i>	<i>Amount</i>
(a) where the applicant satisfies the condition in paragraph 9(a);	
(b) where the applicant satisfies the condition in paragraph 9(b).	
(2) Severe Disability Premium--	
(a) where the applicant satisfies the condition in paragraph 11(2)(a);	
(b) where the applicant satisfies the condition in paragraph 11(2)(b)--	<i>Amounts as specified in the Housing Benefit Regulations 2006 as amended from time to time</i>
(i) in a case where there is someone in receipt of a carer's allowance or if he or any partner satisfies that condition only by virtue of paragraph 11(5);	
(ii) in a case where there is no-one in receipt of such an allowance.	
(3) Disabled Child Premium.	
(4) Carer Premium.	
(5) Enhanced disability premium	

Part 5 The Component

18

Subject to paragraph 20 the applicant is entitled to the support component in paragraph 22 if--

- (a) the applicant or the applicant's partner has made a claim for employment and support allowance;
- (b) the Secretary of State has decided that the applicant or the applicant's partner has, or is to be treated as having, limited capability for work-related activity; and
- (c) either--
 - (i) the assessment phase as defined in section 24(2) of the Welfare Reform Act has ended; or
 - (ii) regulation 7 of the Employment and Support Allowance Regulations 2008 (circumstances where the condition that the assessment phase has ended before entitlement to the support component arises does not apply) applies.

19

Subject to paragraph 20, the applicant is entitled the support component in paragraph 22 if the applicant or his partner is entitled to a converted employment and support allowance.

20

(1) The applicant has no entitlement under paragraph ~~21~~ or 22 if the applicant is entitled to the disability premium under paragraphs 9 and 10.

(2) Where the applicant and the applicant's partner each satisfies paragraph ~~21~~ or 22, the component to be included in the applicant's applicable amount is that which relates to the applicant.

The work-related activity component

21

Not in use

The support component

22

The applicant is entitled to the support component if the Secretary of State has decided that the applicant or the applicant's partner has, or is to be treated as having, limited capability for work-related activity.

**Part 6
Amount of Component**

23

Not in use

24

The amount of the support component is the amount as specified in the Housing Benefit Regulations 2006 as amended from time to time.

**Part 7
Transitional Addition**

25

(1) The applicant is entitled to the transitional addition calculated in accordance with paragraph 28 where the applicant or the applicant's partner ("the relevant person")--

(a) is entitled to a converted employment and support allowance; or

(b) is appealing a conversion decision as described in regulation 5(2)(b) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No 2) Regulations 2008 and--

(i) is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations 2008 as modified by the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No 2) Regulations 2008; and

- (ii) is not in receipt of an income-related employment and support allowance,

unless the amount of the transitional addition calculated in accordance with paragraph 28 would be nil.

(2) The applicant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following--

- (a) the reduction of the transitional addition to nil in accordance with paragraph 29;
- (b) the termination of the applicant's award of reduction under this scheme;
- (c) the relevant person ceasing to meet the requirements of sub-paragraph (1)(a) or (b), as the case may be;
- (d) the applicant or the applicant's partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support;
- (e) 5th April 2020.

26

(1) This paragraph applies where--

(a) the applicant's entitlement to a transitional addition ends, by virtue of the termination of the applicant's award of reduction, under--

- (i) paragraph 25(2)(b);
- (ii) sub-paragraph (3)(b); or
- (iii) paragraph 27(3)(b);

(b) within 12 weeks of that termination but before 5th April 2020 the applicant again becomes entitled to a reduction under this scheme;

(c) in the reduction week in which the applicant again becomes entitled to a reduction under this scheme the relevant person is entitled to an employment and support allowance which is not income-related; and

(d) at the date on which the applicant again becomes entitled to a reduction under this scheme, neither the applicant nor the applicant's partner is entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support.

(2) Where this paragraph applies, the applicant is entitled, with effect from the day on which the applicant again becomes entitled to a reduction under this scheme, to a transitional addition of the amount of the transitional addition that would have applied had the applicant's entitlement to a transitional addition not ended (but taking account of the effect which any intervening change of circumstances would have had by virtue of paragraph 29), unless the amount of the transitional addition would be nil.

(3) The applicant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following--

- (a) the reduction of the transitional addition to nil in accordance with paragraph 29;
- (b) the termination of the applicant's award of a reduction under this scheme;
- (c) the relevant person no longer being entitled to the employment and support allowance referred to in sub-paragraph (1)(c);
- (d) the applicant or the applicant's partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support;

- (e) 5th April 2020.

27

(1) This paragraph applies where--

(a) the applicant's entitlement to a transitional addition ends, by virtue of the relevant person ceasing to be entitled to an employment and support allowance, under--

- (i) paragraph 25(2)(c);
- (ii) paragraph 26(3)(c); or
- (iii) sub-paragraph (3)(c);

(b) before 5th April 2020 the relevant person again becomes entitled to an employment and support allowance which is not income-related;

(c) at the date on which the relevant person again becomes entitled to an employment support allowance which is not income-related regulation 145(1) of the Employment and Support Allowance Regulations 2008 applies to the relevant person; and

(d) at the date on which the relevant person again becomes entitled to an employment support allowance which is not income-related, neither the applicant nor the applicant's partner is entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support.

(2) Where this paragraph applies, the applicant is entitled, with effect from the day that the relevant person's entitlement to employment and support allowance takes effect for the purposes of a reduction under this scheme, to a transitional addition of the amount of the transitional addition that would have applied had the applicant's entitlement to a transitional addition not ended (but taking account of the effect which any intervening change of circumstances would have had by virtue of paragraph 29), unless the amount of the transitional addition would be nil.

(3) The applicant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following--

- (a) the reduction of the transitional addition to nil in accordance with paragraph 29;
- (b) the termination of the applicant's award of a reduction under this scheme;
- (c) the relevant person no longer being entitled to the employment and support allowance referred to in sub-paragraph (1)(b);
- (d) the applicant or the applicant's partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support;
- (e) 5th April 2020.

Part 8

Amount of Transitional Addition

28

(1) Subject to paragraph 29, the amount of the transitional addition is the amount by which Amount A exceeds Amount B.

(2) Where a conversion decision as described in regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No 2) Regulations 2010 ("the 2010 Regulations") is made in respect of the relevant person--

- (a) Amount A is the basic amount that would have applied on the day that decision took effect had that decision not been made; and
 - (b) Amount B is the basic amount that applied on that day as a result of that decision.
- (3) Where the relevant person is appealing a conversion decision as described in regulation 5(2)(b) of the 2010 Regulations and is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations 2008 as modified by the 2010 Regulations--
- (a) Amount A is the basic amount that would have applied on the day the relevant person was first treated as having limited capability for work if the relevant person had not been so treated; and
 - (b) Amount B is the basic amount that applied on that day as a result of the relevant person being so treated.
- (4) In this paragraph and paragraph 29, "basic amount" means the aggregate of such amounts as may apply in the applicant's case in accordance with paragraph 26(1)(a) to (e) or paragraph 27(1)(a) to (f) (applicable amounts).

29

- (1) Subject to sub-paragraph (2), where there is a change of circumstances which leads to an increase in the applicant's basic amount, the transitional addition that applies immediately before the change of circumstances must be reduced by the amount by which Amount C exceeds Amount D.
- (2) If Amount C exceeds Amount D by more than the amount of the transitional addition that applies immediately before the change of circumstances, that transitional addition must be reduced to nil.
- (3) Amount C is the basic amount that applies as a result of the increase.
- (4) Amount D is the basic amount that applied immediately before the increase.

SCHEDULE 4

AMOUNT OF ALTERNATIVE MAXIMUM COUNCIL TAX REDUCTION: PENSIONERS AND PERSONS WHO ARE NOT PENSIONERS

Paragraph 31

1

- (1) Subject to paragraphs 2 and 3, the alternative maximum council tax reduction in respect of a day for the purpose of paragraph 31 (alternative maximum council tax reduction: pensioners and persons who are not pensioners) is determined in accordance with Table 1 and Table 2 and in these Tables--
 - (a) "second adult" means any person or persons residing with the applicant to whom paragraph 15(2) (class C) or 18(2) (class F) (as the case may be) applies; and
 - (b) "persons to whom paragraph 75(1) of this scheme applies" includes any person to whom that paragraph would apply were they, and their partner if they had one, below the qualifying age for state pension credit.
- (2) In this Schedule "council tax due in respect of that day" means the council tax payable under section 10 of the 1992 Act less--
 - (a) any reductions made in consequence of any enactment in, or under, the 1992 Act (other than a reduction under this scheme); and

(b) in a case to which sub-paragraph (c) in column (1) of Table 1 or Table 2 below applies, the amount of any discount which may be appropriate to the dwelling under the 1992 Act.

Table 1**Pensioners**

(1) <i>Second adult</i>	(2) <i>Alternative maximum council tax reduction</i>
(a) Where the second adult or all second adults are in receipt of income support, an income-related employment and support allowance or state pension credit or are persons on an income-based jobseeker's allowance;	(a) 25 per cent of the council tax due in respect of that day;
(b) where the gross income of the second adult or, where there is more than one second adult, their aggregate gross income disregarding any income of persons on income support, an income-related employment and support allowance, state pension credit or an income-based jobseeker's allowance--	(b)
(i) is less than £206.00 per week;	(i) 15 per cent of the council tax due in respect of that day;
(ii) is not less than £206.00 per week but less than £266.00 per week;	(ii) 7.5 per cent of the council tax due in respect of that day;
(c) where the dwelling would be wholly occupied by one or more persons to whom paragraph 75(1) of this scheme applies but for the presence of one or more second adults who are in receipt of income support, state pension credit, an income-related employment and support allowance or are persons on an income-based jobseeker's allowance.	(c) 100 per cent of the council tax due in respect of that day.

Table 2**Persons who are not pensioners**

(1) <i>Second adult</i>	(2) <i>Alternative maximum council tax reduction</i>
(a) Where the second adult or all second adults are in receipt of income support, an income-related employment and support allowance or state pension credit or are persons on an income-based jobseeker's allowance;	(a) 25 per cent of the council tax due in respect of that day;
(b) where the gross income of the second adult or, where there is more than one second adult, their aggregate gross income disregarding any income of persons on income support, an income-related employment and support allowance, state pension credit or an income-based jobseeker's allowance--	(b)
(i) is less than the amount specified above in Table 1 per week;	(i) 15 per cent of the council tax due in respect of that day;
(ii) is in accordance with the amounts specified above in Table 1 per week;	(ii) 7.5 per cent of the council tax due in respect of that day;

(c) where the dwelling would be wholly occupied by one or more persons to whom paragraph 75(1) of this scheme applies but for the presence of one or more second adults who are in receipt of income support, state pension credit, an income-related employment and support allowance or are persons on an income-based jobseeker's allowance.	(c) 100 per cent of the council tax due in respect of that day.
-

2

In determining a second adult's gross income for the purposes of this Schedule, the following must be disregarded from that income--

- (a) any attendance allowance, any disability living allowance, any personal independence payment under Part 4 of the Welfare Reform Act 2012 or an AFIP;
- (b) any payment made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006) which, had his income fallen to be calculated under paragraph 54 (calculation of income other than earnings: persons who are not pensioners), would have been disregarded under paragraph 28 of Schedule 8 (income in kind); and
- (c) any payment which, had his income fallen to be calculated under paragraph 54, would have been disregarded under paragraph 41 of Schedule 8 (payments made under certain trusts and certain other payments).

3

Where there are two or more second adults residing with the applicant for a reduction under this scheme and any such second adult falls to be disregarded for the purposes of discount in accordance with Schedule 1 to the 1992 Act, his income must be disregarded in determining the amount of any alternative maximum council tax reduction, unless that second adult is a member of a couple and his partner does not fall to be disregarded for the purposes of discount.

SCHEDULE 5 SUMS DISREGARDED FROM APPLICANT'S EARNINGS: PENSIONERS

Paragraph 40

1

Where two or more of paragraphs 2 to 5 apply in any particular case the overall maximum sum which falls to be disregarded in that case under those paragraphs is restricted to--

- (a) £25 in the case of a lone parent;
- (b) £20 in any other case.

2

In a case where an applicant is a lone parent, £25 of earnings.

3

(1) In a case of earnings from any employment or employments to which sub-paragraph (2) applies, £20.

(2) This paragraph applies to employment--

- (a) as a part-time fire-fighter employed by a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies;
- (b) a part-time fire-fighter employed by the Scottish Fire and Rescue Service established under section 1A of the Fire (Scotland) Act 2005;
- (c) as an auxiliary coastguard in respect of coast rescue activities;
- (d) in the manning or launching of a lifeboat if the employment is part-time;
- (e) as a member of any territorial or reserve force prescribed in Part I of Schedule 6 to the Social Security (Contributions) Regulations 2001.

(3) If--

- (a) any of the earnings of the applicant or, if he has a partner, his partner, or both of them, are disregarded under sub-paragraph (1); and
- (b) either of them has, or both of them have, other earnings,

so much of those other earnings as would not, in the aggregate with the earnings disregarded under that sub-paragraph, exceed £20.

4

(1) If the applicant or, if he has a partner, his partner is a carer, or both are carers, £20 of any earnings received from his or their employment.

(2) Where the carer premium is awarded in respect of the applicant and of any partner of his, their earnings must for the purposes of this paragraph be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) must not exceed £20 of the aggregated amount.

(3) In this paragraph the applicant or his partner is a carer if paragraph 14 of Part 3 of Schedule 3 (amount applicable for carers) is satisfied in respect of him.

5

(1) £20 is disregarded if the applicant or, if he has a partner, his partner--

(a) is in receipt of--

- (i) long-term incapacity benefit under section 30A of the SSCBA;
- (ii) severe disablement allowance under section 68 of that Act;
- (iii) attendance allowance under sections 64 of that Act;
- (iv) disability living allowance;
- (v) personal independence payment;
- (vi) an AFIP;
- (vii) any mobility supplement under article 20 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983;

- (viii) the disability element or the severe disability element of working tax credit under Schedule 2 to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002; or
- (ix) main phase employment and support allowance; or

(b) is or are registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 (welfare services) or, in Scotland, has been certified as blind and in consequence is registered in a register maintained by or on behalf of a council constituted under section 2 of the Local Government (Scotland) Act 1994; or

(c) is, or is treated as, incapable of work in accordance with the provisions of, and regulations made under, Part 12A of the SSCBA (incapacity for work), and has been incapable, or has been treated as incapable, of work for a continuous period of not less than--

- (i) in the case of an applicant who is terminally ill within the meaning of section 30B(4) of the Act, 196 days;
- (ii) in any other case, 364 days; or

(d) has, or is treated as having, limited capacity for work within the meaning of section 1(4) of the Welfare Reform Act 1997 or limited capability for work-related activity within the meaning of section 2(5) of that Act and either--

- (i) the assessment phase as defined in section 24(2) of the Welfare Reform Act has ended; or
- (ii) regulation 7 of the Employment and Support Allowance Regulations 2008 or Regulation 7 of the Employment and Support Allowance Regulations 2013 (circumstances where the condition that the assessment phase has ended before entitlement to the support component arising does not apply) applies.

(2) Subject to sub-paragraph (3), £20 is disregarded if the applicant or, if he has a partner, his partner has, within a period of 8 weeks ending on the day in respect of which the applicant or his partner attains the qualifying age for state pension credit, had an award of housing benefit or council tax benefit or been in receipt of a reduction under this scheme and--

- (a) £20 was disregarded in respect of earnings taken into account in that award; and
- (b) the person whose earnings qualified for the disregard continues in employment after the termination of that award.

(3) The disregard of £20 specified in sub-paragraph (2) applies so long as there is no break, other than a break which does not exceed 8 weeks, in a person's--

- (a) entitlement to housing benefit; or
- (b) receipt of a reduction under a council tax reduction scheme; or
- (c) employment,

following the first day in respect of which that benefit is awarded under this scheme.

(4) £20 is the maximum amount which may be disregarded under this paragraph, notwithstanding that, where the applicant has a partner, both the applicant and his partner satisfy the requirements of this paragraph.

6

(1) Where--

- (a) the applicant (or if the applicant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;
- (b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and
- (c) paragraph 35 (applicant in receipt of guarantee credit: pensioners) does not apply,

the amount specified in sub-paragraph (7) ("the specified amount").

- (2) Where this paragraph applies, paragraphs 1 to 5 and 8 do not apply; but in any case where the applicant is a lone parent, and the specified amount would be less than the amount specified in paragraph 2, then paragraph 2 applies instead of this paragraph.
- (3) Notwithstanding paragraph 33 (calculation of income and capital of members applicant's family and of a polygamous marriage), if sub-paragraph (1) applies to one member of a couple ("A") it does not apply to the other member of that couple ("B") except to the extent provided in sub-paragraph (4).
- (4) Where A's earnings are less than the specified amount, there is also to be disregarded so much of B's earnings as would not when aggregated with A's earnings exceed the specified amount; but the amount of B's earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work.
- (5) This sub-paragraph applies to a person who is--
 - (a) in receipt of a contributory employment and support allowance;
 - (b) in receipt of incapacity benefit;
 - (c) in receipt of severe disablement allowance;
 - (d) being credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975.
- (6) "Exempt work" means work of the kind described in--
 - (a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations 2008 or Regulation 39(1)(a), (b) or (c) of the Employment and Support Allowance Regulations 2013; or (as the case may be); or
 - (b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995,

and, in determining for the purposes of this paragraph whether an applicant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or their partner is also undertaking other work.

- (7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).

7

Any amount or the balance of any amount which would fall to be disregarded under paragraph 18 or 19 of Schedule 6 had the applicant's income which does not consist of earnings been sufficient to entitle him to the full amount disregarded thereunder.

8

Except where the applicant or his partner qualifies for a £20 disregard under the preceding provisions of this Schedule--

- (a) £5 is to be disregarded if an applicant who has no partner has earnings;
- (b) £10 is to be disregarded if an applicant who has a partner has earnings.

9

Any earnings, other than earnings referred to in paragraph 40(9)(b), derived from employment which ended before the day in respect of which the applicant first satisfies the conditions for entitlement to a reduction under this scheme.

10

(1) In a case where the applicant is a person who satisfies at least one of the conditions set out in sub-paragraph (2), and his net earnings equal or exceed the total of the amounts set out in sub-paragraph (3), the amount of his earnings that falls to be disregarded under this Schedule is to be increased by £17.10.

(2) The conditions of this sub-paragraph are that--

- (a) the applicant, or if he has a partner, either the applicant or his partner, is a person to whom regulation 20(1)(c) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 applies; or
- (b) the applicant--
 - (i) is, or any partner of his is, aged at least 25 and is engaged in remunerative work for on average not less than 30 hours per week; or
 - (ii) if he is a member of a couple--
 - (aa) at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week; and
 - (bb) his family includes at least one child or young person; or
 - (iii) is a lone parent who is engaged in remunerative work for on average not less than 16 hours per week; or
 - (iv) is, or if he has a partner, one of them is, engaged in remunerative work for on average not less than 16 hours per week and paragraph 5(1) above is satisfied in respect of that person.

(3) The following are the amounts referred to in sub-paragraph (1)--

- (a) any amount disregarded under this Schedule;
- (b) the amount of child care charges calculated as deductible under paragraph 57(1)(c) (deductions from income of certain child care charges); and
- (c) £17.10.

(4) The provisions of paragraph 10 (remunerative work) apply in determining whether or not a person works for on average not less than 30 hours per week, but as if the reference to 16 hours in sub-paragraph (1) of that paragraph was a reference to 30 hours.

11

Where a payment of earnings is made in a currency other than Sterling, any banking charge or commission payable in converting to that payment into Sterling.

SCHEDULE 6

AMOUNTS TO BE DISREGARDED IN THE CALCULATION OF INCOME OTHER THAN EARNINGS: PENSIONERS

Paragraph 40

A1

The whole of any amount of the following--

- (a) a war disablement pension;
- (b) a war widow's pension or war widower's pension.

1

In addition to any sum which falls to be disregarded in accordance with paragraphs 2 to 6, £10 of any of the following--

- (a) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- (b) a guaranteed income payment and, if the amount of that payment has been abated to less than £10 by a pension or payment falling within article 39(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011, so much of that pension or payment as would not, in aggregate with the amount of any guaranteed income payment disregarded, exceed £10;
- (c) a payment made to compensate for the non-payment of such a pension or payment as is mentioned in any of the preceding sub-paragraphs;
- (d) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in sub-paragraphs (a) to (d) above;
- (e) a pension paid by a government to victims of National Socialist persecution

2

The whole of any amount included in a pension to which paragraph 1 relates in respect of--

- (a) the applicant's need for constant attendance;
- (b) the applicant's exceptionally severe disablement.

3

Any mobility supplement under article 20 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983 or any payment intended to compensate for the non-payment of such a supplement.

4

Any supplementary pension under article 23(2) of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (pensions to surviving spouses and surviving civil partners)

and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under that Order.

5

In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

6

(1) Any payment which is--

(a) made under any of the Dispensing Instruments to a widow, widower or surviving civil partner of a person--

(i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and

(ii) whose service in such capacity terminated before 31st March 1973; and

(b) equal to the amount specified in article 23(2) of the Naval, Military and Air Forces Etc (Disability and Death) Service Pensions Order 2006.

(2) In this paragraph "the Dispensing Instruments" means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances).

7

£15 of any widowed parent's allowance to which the applicant is entitled under section 39A of the SSCBA.

8

£15 of any widowed mother's allowance to which the applicant is entitled under section 37 of the SSCBA.

9

Where the applicant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to--

(a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20, 100 per cent. of such payments; or

(b) where the aggregate of any such payments exceeds £20, £20 and 50 per cent. of the excess over £20.

10

If the applicant--

(a) owns the freehold or leasehold interest in any property or is a tenant of any property; and

- (b) occupies a part of that property; and
- (c) has an agreement with another person allowing that person to occupy another part of that property on payment of rent and--
 - (i) the amount paid by that person is less than £20 per week, the whole of that amount; or
 - (ii) the amount paid is £20 or more per week, £20.

11

Where an applicant receives income under an annuity purchased with a loan, which satisfies the following conditions--

- (a) that the loan was made as part of a scheme under which not less than 90 per cent. of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons (in this paragraph referred to as "the annuitants") who include the person to whom the loan was made;
- (b) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65, or, if it was higher at the time, pensionable age;
- (c) that the loan was secured on a dwelling in Great Britain and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling;
- (d) that the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as his home at the time the interest is paid; and
- (e) that the interest payable on the loan is paid by the person to whom the loan was made or by one of the annuitants,

the amount, calculated on a weekly basis, equal to--

- (i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988 (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;
- (ii) in any other case, the interest which is payable on the loan without deduction of such a sum.

12

(1) Any payment, other than a payment to which sub-paragraph (2) applies, made to the applicant by Trustees in exercise of a discretion exercisable by them.

(2) This sub-paragraph applies to payments made to the applicant by Trustees in exercise of a discretion exercisable by them for the purpose of--

- (a) obtaining food, ordinary clothing or footwear or household fuel;
- (b) the payment of rent, council tax or water charges for which that applicant or his partner is liable;
- (c) meeting housing costs of a kind specified in Schedule 2 to the State Pension Credit Regulations 2002.

(3) In a case to which sub-paragraph (2) applies, £20 or--

- (a) if the payment is less than £20, the whole payment;

(b) if, in the applicant's case, £10 is disregarded in accordance with paragraph 1(a) to (g), £10 or the whole payment if it is less than £10; or

(c) if, in the applicant's case, £15 is disregarded under paragraph 7 or paragraph 8 and--

(i) he has no disregard under paragraph 1(a) to (g), £5 or the whole payment if it is less than £5;

(ii) he has a disregard under paragraph 1(a) to (g), nil.

(4) For the purposes of this paragraph, "ordinary clothing or footwear" means clothing or footwear for normal daily use, but does not include school uniforms, or clothing and footwear used solely for sporting activities.

13

Any increase in pension or allowance under Part 2 or 3 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 paid in respect of a dependent other than the pensioner's partner.

14

Any payment ordered by a court to be made to the applicant or the applicant's partner in consequence of any accident, injury or disease suffered by the person or a child of the person to or in respect of whom the payments are made.

15

Periodic payments made to the applicant or the applicant's partner under an agreement entered into in settlement of a claim made by the applicant or, as the case may be, the applicant's partner for an injury suffered by him.

16

Any income which is payable outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of that income.

17

Any banking charges or commission payable in converting to Sterling payments of income made in a currency other than Sterling.

18

Where the applicant makes a parental contribution in respect of a student attending a course at an establishment in the United Kingdom or undergoing education in the United Kingdom, which contribution has been assessed for the purposes of calculating--

(a) under, or pursuant to regulations made under powers conferred by, section 22 of the Teaching and Higher Education Act 1998, that student's award;

(b) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980, that student's bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section; or

- (c) the student's student loan,

an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

19

- (1) Where the applicant is the parent of a student aged under 25 in advanced education who either--
- (a) is not in receipt of any award, grant or student loan in respect of that education; or
 - (b) is in receipt of an award bestowed by virtue of the Teaching and Higher Education Act 1998, or regulations made thereunder, or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

and the applicant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 18, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

- (2) For the purposes of sub-paragraph (1), the amount is to be equal to--
- (a) the weekly amount of the payments; or
 - (b) £57.90 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b),

whichever is less.

20

- (1) Where an applicant's family includes at least one child or young person, £15 of any payment of maintenance, whether under a court order or not, which is made or due to be made by the applicant's spouse, civil partner, former spouse or former civil partner or the applicant's partner's spouse, civil partner, former spouse, or former civil partner.
- (2) For the purposes of sub-paragraph (1), where more than one maintenance payment falls to be taken into account in any week, all such payments must be aggregated and treated as if they were a single payment.

21

Except in a case which falls under paragraph 10 of Schedule 5, where the applicant is a person who satisfies any of the conditions of sub-paragraph (2) of that paragraph, any amount of working tax credit up to £17.10.

22

Where the total value of any capital specified in Part 2 (capital disregarded only for the purposes of determining deemed income) of Schedule 9 does not exceed £10,000, any income actually derived from such capital.

23

Except in the case of income from capital specified in Part 2 of Schedule 9, any actual income from capital.

24

Where the applicant, or the person who was the partner of the applicant on 31st March 2003, was entitled on that date to income support or an income-based jobseeker's allowance but ceased to be so entitled on or before 5th April 2003 by virtue only of regulation 13 of the Housing Benefit (General) Amendment (No 3) Regulations 1999 as in force at that date, the whole of his income.

SCHEDULE 7

SUMS DISREGARDED IN THE CALCULATION OF EARNINGS: PERSONS WHO ARE NOT PENSIONERS

Paragraph 53

1

In the case of an applicant who has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged--

(a) where--

- (i) the employment has been terminated because of retirement; and
- (ii) on retirement he is entitled to a retirement pension under the Act or a state pension under Part 1 of the Pensions Act 2014, or is not so entitled solely because of his failure to satisfy the contribution conditions or to have the minimum number of qualifying years,

any earnings paid or due to be paid in respect of that employment, but only for a period commencing on the day immediately after the date on which the employment was terminated;

(b) where before the first day of entitlement to a reduction under this scheme the employment has been terminated otherwise than because of retirement, any earnings paid or due to be paid in respect of that employment except--

(i) any payment of the nature described in--

- (aa) paragraph 51(1)(e) (retainer), or
- (bb) section 28, 64 or 68 of the Employment Rights Act 1996 (guarantee payments, suspension from work on medical or maternity grounds); and

(ii) any award, sum or payment of the nature described in--

- (aa) paragraph 51(1)(g) or (i) (compensation etc relating to employment), or
- (bb) section 34 or 70 of the Employment Rights Act 1996 (guarantee payments and suspension from work: complaints to employment tribunals),

including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings;

(c) where before the first day of entitlement to a reduction under this scheme--

- (i) the employment has not been terminated, but
- (ii) the applicant is not engaged in remunerative work,

any earnings paid or due to be paid in respect of that employment except any payment or remuneration of the nature described in paragraph (b)(i) or (ii)(bb) or paragraph 51(1)(j) (statutory sick pay etc).

2

In the case of an applicant who, before the first day of entitlement to a reduction under this scheme--

(a) has been engaged in part-time employment as an employed earner or, where the employment has been outside Great Britain, would have been so engaged had the employment been in Great Britain; and

(b) has ceased to be engaged in that employment, whether or not that employment has been terminated,

any earnings paid or due to be paid in respect of that employment except--

(i) where that employment has been terminated, any payment of the nature described in paragraph 1(b)(i) or (ii)(bb);

(ii) where that employment has not been terminated, any payment or remuneration of the nature described in paragraph 1(b)(i) or (ii)(bb) or paragraph 51(1)(j) (statutory sick pay etc).

3

In the case of an applicant who has been engaged in remunerative work or part-time employment as a self-employed earner or, had the employment been in Great Britain, would have been so engaged and who has ceased to be so employed, from the date of the cessation of his employment, any earnings derived from that employment except earnings to which paragraph 53(3) and (4) (earnings of self-employed earners) apply.

4

(1) In a case to which this paragraph applies and paragraph 5 does not apply, £20; but notwithstanding paragraph 33 (calculation of income and capital of members of an applicant's family and of a polygamous marriage) if this paragraph applies to an applicant it does not apply to his partner except where, and to the extent that, the earnings of the applicant which are to be disregarded under this paragraph are less than £20.

(2) This paragraph applies where the applicant's applicable amount includes an amount by way of the disability premium, severe disability premium, ~~work-related activity component~~ or support component under Schedule 3 (applicable amounts: persons who are not pensioners) or where the applicant or the applicant's partner is a member of the work-related activity group.

(3) This paragraph applies where--

(a) the applicant is a member of a couple and his applicable amount includes an amount by way of the disability premium under Schedule 3; and

(b) he or his partner has not attained the qualifying age for state pension credit and at least one is engaged in employment.

5

In a case where the applicant is a lone parent, £25.

6

(1) In a case to which neither paragraph 4 nor paragraph 5 applies to the applicant and, subject to sub-paragraph (2), where the applicant's applicable amount includes an amount by way of the carer premium under Schedule 3 (applicable amounts: persons who are not pensioners), £20 of the earnings of the person who is, or at any time in the preceding eight weeks was, in receipt of carer's allowance or treated in accordance with paragraph 14(2) of that Schedule as being in receipt of carer's allowance.

(2) Where the carer premium is awarded in respect of the applicant and of any partner of his, their earnings must for the purposes of this paragraph be aggregated, but the amount to be disregarded in accordance with sub-paragraph (1) must not exceed £20 of the aggregated amount.

7

Where the carer premium is awarded in respect of an applicant who is a member of a couple and whose earnings are less than £20, but is not awarded in respect of the other member of the couple, and that other member is engaged in an employment--

- (a) specified in paragraph 9(1), so much of the other member's earnings as would not when aggregated with the amount disregarded under paragraph 6 exceed £20;
- (b) other than one specified in paragraph 9(1), so much of the other member's earnings from such other employment up to £10 as would not when aggregated with the amount disregarded under paragraph 5 exceed £20.

8

In a case where paragraphs 4, 6, 7 and 9 do not apply to the applicant and he is one of a couple and a member of that couple is in employment, £10; but, notwithstanding paragraph 33 (calculation of income and capital of members of applicant's family and of a polygamous marriage), if this paragraph applies to an applicant it must not apply to his partner except where, and to the extent that, the earnings of the applicant which are to be disregarded under this paragraph are less than £10.

9

(1) In a case where paragraphs 4, 6, 7 and 9 do not apply to the applicant, £20 of earnings derived from one or more employments as--

- (a) a part-time fire-fighter employed by a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies;
- (b) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;
- (c) an auxiliary coastguard in respect of coast rescue activities;
- (d) a person engaged part-time in the manning or launching of a life boat;
- (e) a member of any territorial or reserve force prescribed in Part I of Schedule 6 to the Social Security (Contributions) Regulations 2001;

but, notwithstanding paragraph 33 (calculation of income and capital of members of applicant's family and of a polygamous marriage), if this paragraph applies to an applicant it must not apply to his partner except to the extent specified in sub-paragraph (2).

(2) If the applicant's partner is engaged in employment--

- (a) specified in sub-paragraph (1), so much of his earnings as would not in aggregate with the amount of the applicant's earnings disregarded under this paragraph exceed £20;
- (b) other than one specified in sub-paragraph (1), so much of his earnings from that employment up to £10 as would not in aggregate with the applicant's earnings disregarded under this paragraph exceed £20.

10

Where the applicant is engaged in one or more employments specified in paragraph 9(1), but his earnings derived from such employments are less than £20 in any week and he is also engaged in any other employment, so much of his earnings from that other employment, up to £5 if he is a single applicant, or up to £10 if he has a partner, as would not in aggregate with the amount of his earnings disregarded under paragraph 9 exceed £20.

11

In a case to which none of the paragraphs 4 to 10 applies, £5.

12

(1) Where--

- (a) the applicant (or if the applicant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;
- (b) the Secretary of State is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and
- (c) paragraph 14 does not apply,

the amount specified in sub-paragraph (7) ("the specified amount").

(2) Where this paragraph applies, paragraphs 4 to 11 do not apply; but in any case where the applicant is a lone parent, and the specified amount would be less than the amount specified in paragraph 5, then paragraph 5 applies instead of this paragraph.

(3) Notwithstanding paragraph 33 (calculation of income and capital of members of applicant's family and of a polygamous marriage), if sub-paragraph (1) applies to one member of a couple ("A") it does not apply to the other member of that couple ("B") except to the extent provided in sub-paragraph (4).

(4) Where A's earnings are less than the specified amount, there must also be disregarded so much of B's earnings as would not when aggregated with A's earnings exceed the specified amount; but the amount of B's earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Secretary of State is satisfied that B is also undertaking exempt work.

(5) This sub-paragraph applies to a person who is--

- (a) in receipt of a contributory employment and support allowance;
- (b) in receipt of incapacity benefit;
- (c) in receipt of severe disablement allowance; or
- (d) being credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975.

(6) "Exempt work" means work of the kind described in--

- (a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations 2008; or (as the case may be)
- (b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations 1995,

and, in determining for the purposes of this paragraph whether an applicant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or their partner is also undertaking other work.

(7) The specified amount is the amount of money from time to time mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).

13

Any amount or the balance of any amount which would fall to be disregarded under paragraph 23 or 24 of Schedule 8 had the applicant's income which does not consist of earnings been sufficient to entitle him to the full disregard thereunder.

14

Where an applicant is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance, his earnings.

15

Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

16

Where a payment of earnings is made in a currency other than Sterling, any banking charge or commission payable in converting that payment into Sterling.

17

Any earnings of a child or young person.

18

(1) In a case where the applicant is a person who satisfies at least one of the conditions set out in sub-paragraph (2), and his net earnings equal or exceed the total of the amounts set out in sub-paragraph (3), the amount of his earnings that falls to be disregarded under paragraphs 4 to 12 must be increased by £17.10.

(2) The conditions of this sub-paragraph are that--

- (a) the applicant, or if he is a member of a couple, either the applicant or his partner, is a person to whom regulation 20(1)(c) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 applies; or
- (b) the applicant--

- (i) is, or if he is a member of a couple, at least one member of that couple is aged at least 25 and is engaged in remunerative work for on average not less than 30 hours per week; or
- (ii) is a member of a couple and--
 - (aa) at least one member of that couple, is engaged in remunerative work for on average not less than 16 hours per week; and
 - (bb) his applicable amount includes a family premium under paragraph 4 of Schedule 3; or
- (iii) is a lone parent who is engaged in remunerative work for on average not less than 16 hours per week; or
- (iv) is, or if he is a member of a couple, at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week; and--
 - (aa) the applicant's applicable amount includes a disability premium under paragraph 9, the support component under paragraph 22 of Schedule 3 respectively;
 - (bb) where he is a member of a couple, at least one member of that couple satisfies the qualifying conditions for the disability premium or the support component above and is engaged in remunerative work for on average not less than 16 hours per week;
 - (cc) is a member of the work-related activity group; or
- (c) the applicant is, or if he has a partner, one of them is, a person to whom regulation 18(3) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (eligibility for 50 plus element) applies, or would apply if an application for working tax credit were to be made in his case.

(3) The following are the amounts referred to in sub-paragraph (1)--

- (a) the amount calculated as disregardable from the applicant's earnings under paragraphs 4 to 12;
- (b) the amount of child care charges calculated as deductible under paragraph 57(1)(c); and
- (c) £17.10.

(4) The provisions of paragraph 10 (remunerative work) apply in determining whether or not a person works for on average not less than 30 hours per week, but as if the reference to 16 hours in sub-paragraph (1) of that paragraph were a reference to 30 hours.

19

In this Schedule "part-time employment" means employment in which the person is engaged on average for less than 16 hours a week.

SCHEDULE 8

SUMS DISREGARDED IN THE CALCULATION OF INCOME OTHER THAN EARNINGS: PERSONS WHO ARE NOT PENSIONERS

Paragraph 54

1

Any payment made to the applicant in respect of any child care, travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Work for Your Benefit Pilot Scheme.

2

Any payment made to the applicant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Mandatory Work Activity Scheme.

3

Any payment made to the applicant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Employment, Skills and Enterprise Scheme.

4

Any amount paid by way of tax on income which is to be taken into account under regulation 30 (calculation of income other than earnings).

5

Any payment in respect of any expenses incurred or to be incurred by an applicant who is--

- (a) engaged by a charitable or voluntary organisation, or
- (b) a volunteer,

if he otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under paragraph 56(5) (notional income: persons who are not pensioners).

6

Any payment in respect of expenses arising out of the applicant's participation in a service user group.

7

In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

8

Where an applicant is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance, the whole of his income.

9

Where the applicant is a member of a joint-claim couple for the purposes of the Jobseekers Act and his partner is on an income-based jobseeker's allowance, the whole of the applicant's income.

10

Where the applicant, or the person who was the partner of the applicant on 31st March 2003, was entitled on that date to income support or an income-based jobseeker's allowance but ceased to be so entitled on or before 5th April 2003 by virtue only of regulation 13 of the Housing Benefit (General) Amendment (No 3) Regulations 1999 as in force at that date, the whole of his income.

11

Any disability living allowance, personal independence payment or an AFIP.

12

Any concessionary payment made to compensate for the non-payment of--

- (a) any payment specified in paragraph 11 or 14;
- (b) income support;
- (c) an income-based jobseeker's allowance;
- (d) an income-related employment and support allowance.

13

Any mobility supplement under article 20 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (including such a supplement by virtue of any other scheme or order) or under article 25A of the Personal Injuries (Civilians) Scheme 1983 or any payment intended to compensate for the non-payment of such a supplement.

14

Any attendance allowance.

15

Any payment to the applicant as holder of the Victoria Cross or of the George Cross or any analogous payment.

16

(1) Any payment--

- (a) by way of an education maintenance allowance made pursuant to--
 - (i) regulations made under section 518 of the Education Act 1996 (payment of school expenses; grant of scholarships etc);
 - (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 (power to assist persons to take advantage of educational facilities);
 - (iii) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992;
- (b) corresponding to such an education maintenance allowance, made pursuant to--
 - (i) section 14 or section 181 of the Education Act 2002 (power of Secretary of State and the Welsh Ministers to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or
 - (ii) regulations made under section 181 of that Act; or

(c) in England, by way of financial assistance made pursuant to section 14 of the Education Act 2002.

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to--

- (a) regulations made under section 518 of the Education Act 1996;
- (b) regulations made under section 49 of the Education (Scotland) Act 1980; or
- (c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992,

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance or other payment made pursuant to any provision specified in sub-paragraph (1).

17

Any payment made to the applicant by way of a repayment under regulation 11(2) of the Education (Teacher Student Loans) (Repayment etc) Regulations 2002.

18

(1) Any payment made pursuant to section 2 of the 1973 Act or section 2 of the Enterprise and New Towns (Scotland) Act 1990 except a payment--

- (a) made as a substitute for income support, a jobseeker's allowance, incapacity benefit, severe disablement allowance or an employment and support allowance;
- (b) of an allowance referred to in section 2(3) of the Employment and Training Act 1973 or section 2(5) of the Enterprise and New Towns (Scotland) Act 1990; or
- (c) intended to meet the cost of living expenses which relate to any one or more of the items specified in sub-paragraph (2) whilst an applicant is participating in an education, training or other scheme to help him enhance his employment prospects unless the payment is a Career Development Loan paid pursuant to section 2 of the 1973 Act and the period of education or training or the scheme, which is supported by that loan, has been completed.

(2) The items specified in this sub-paragraph for the purposes of sub-paragraph (1)(c) are food, ordinary clothing or footwear, household fuel or rent of the applicant or, where the applicant is a member of a family, any other member of his family, or any council tax or water charges for which that applicant or member is liable.

19

(1) Subject to sub-paragraph (2), any of the following payments--

- (a) a charitable payment;
- (b) a voluntary payment;
- (c) a payment (not falling within paragraph (a) or (b) above) from a trust whose funds are derived from a payment made in consequence of any personal injury to the applicant;
- (d) a payment under an annuity purchased--
 - (i) pursuant to any agreement or court order to make payments to the applicant; or

- (ii) from funds derived from a payment made,

in consequence of any personal injury to the applicant; or

- (e) a payment (not falling within paragraphs (a) to (d)) received by virtue of any agreement or court order to make payments to the applicant in consequence of any personal injury to the applicant.

- (2) Sub-paragraph (1) does not apply to a payment which is made or due to be made by--

- (a) a former partner of the applicant, or a former partner of any member of the applicant's family; or
- (b) the parent of a child or young person where that child or young person is a member of the applicant's family.

19A

The whole of any amount of the following--

- (a) a war disablement pension;
- (b) a war widow's pension or war widower's pension.

20

Subject to paragraph 40, £10 of any of the following, namely--

- (a) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- (b) a guaranteed income payment and, if the amount of that payment has been abated to less than £10 by a pension or payment falling within article 31(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, so much of that pension or payment as would not, in aggregate with the amount of any guaranteed income payment disregarded, exceed £10;
- (c) a payment made to compensate for the non-payment of such a pension or payment as is mentioned in any of the preceding sub-paragraphs;
- (d) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in paragraphs (a) to (d) above;
- (e) pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria.

21

Subject to paragraph 40, £15 of any--

- (a) widowed mother's allowance paid pursuant to section 37 of the SSCBA;
- (b) widowed parent's allowance paid pursuant to section 39A of the SSCBA.

22

(1) Any income derived from capital to which the applicant is or is treated under paragraph 70 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraphs 4, 5, 7, 11, 17 or 30 to 33 of Schedule 10.

(2) Income derived from capital disregarded under paragraphs 5, 7 or 30 to 33 of Schedule 10 but only to the extent of--

(a) any mortgage repayments made in respect of the dwelling or premises in the period during which that income accrued; or

(b) any council tax or water charges which the applicant is liable to pay in respect of the dwelling or premises and which are paid in the period during which that income accrued.

(3) The definition of "water charges" in paragraph 2(1) (interpretation) applies to sub-paragraph (2) of this paragraph with the omission of the words "in so far as such charges are in respect of the dwelling which a person occupies as his home".

23

Where the applicant makes a parental contribution in respect of a student attending a course at an establishment in the United Kingdom or undergoing education in the United Kingdom, which contribution has been assessed for the purposes of calculating--

(a) under, or pursuant to regulations made under powers conferred by, section 22 of the Teaching and Higher Education Act 1998, that student's award;

(b) under regulations made in exercise of the powers conferred by section 49 of the Education (Scotland) Act 1980, that student's bursary, scholarship, or other allowance under that section or under regulations made in exercise of the powers conferred by section 73 of that Act of 1980, any payment to that student under that section; or

(c) the student's student loan,

an amount equal to the weekly amount of that parental contribution, but only in respect of the period for which that contribution is assessed as being payable.

24

(1) Where the applicant is the parent of a student aged under 25 in advanced education who either--

(a) is not in receipt of any award, grant or student loan in respect of that education; or

(b) is in receipt of an award bestowed by virtue of the Teaching and Higher Education Act 1998, or regulations made thereunder, or a bursary, scholarship or other allowance under section 49(1) of the Education (Scotland) Act 1980, or a payment under section 73 of that Act of 1980,

and the applicant makes payments by way of a contribution towards the student's maintenance, other than a parental contribution falling within paragraph 23, an amount specified in sub-paragraph (2) in respect of each week during the student's term.

(2) For the purposes of sub-paragraph (1), the amount must be equal to--

(a) the weekly amount of the payments; or

(b) the amount by way of a personal allowance for a single applicant under 25 less the weekly amount of any award, bursary, scholarship, allowance or payment referred to in sub-paragraph (1)(b),

whichever is less.

25

Any payment made to the applicant by a child or young person or a non-dependant.

26

Where the applicant occupies a dwelling as his home and the dwelling is also occupied by a person other than one to whom paragraph 25 or 27 refers and there is a contractual liability to make payments to the applicant in respect of the occupation of the dwelling by that person or a member of his family--

- (a) where the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family, is less than £20, the whole of that amount; or
- (b) where the aggregate of any such payments is £20 or more per week, £20.

27

Where the applicant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation, an amount, in respect of each person for which such accommodation is provided for the whole or any part of a week, equal to--

- (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20, 100 per cent of such payments;
- (b) where the aggregate of any such payments exceeds £20, £20 and 50 per cent of the excess over £20.

28

- (1) Any income in kind, except where paragraph 54(10)(b) (provision of support under section 95 or 98 of the Immigration and Asylum Act 1999 in the calculation of income other than earnings) applies.
- (2) The reference in sub-paragraph (1) to "income in kind" does not include a payment to a third party made in respect of the applicant which is used by the third party to provide benefits in kind to the applicant.

29

Any income which is payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of that income.

30

- (1) Any payment made to the applicant in respect of a person who is a member of his family--
 - (a) pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002 or in accordance or with a scheme approved by the Scottish Ministers under section 51A of the Adoption (Scotland) Act 1978 (schemes for payments of allowances to adopters) or in accordance with an adoption allowance scheme made under section 71 of the Adoption and Children (Scotland) Act 2007 (adoption allowances schemes);
 - (b) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 (local authority contribution to a child's maintenance

where the child is living with a person as a result of a residence order) or in Scotland section 50 of the Children Act 1975 (payments towards maintenance of children);

(c) which is a payment made by an authority, as defined in Article 2 of the Children (Northern Ireland) Order 1995, in pursuance of Article 15 of, and paragraph 17 of Schedule 1 to, that Order (contribution by an authority to child's maintenance);

(d) in accordance with regulations made pursuant to section 14F of the Children Act 1989 (special guardianship support services);

(2) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made to the applicant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.

31

Any payment made to the applicant with whom a person is accommodated by virtue of arrangements made--

(a) by a local authority under--

(i) section 23(2)(a) of the Children Act 1989 (provision of accommodation and maintenance for a child whom they are looking after),

(ii) section 26 of the Children (Scotland) Act 1995 (manner of provision of accommodation to child looked after by local authority), or

(iii) regulations 33 or 51 of the Looked After Children (Scotland) Regulations 2009 (fostering and kinship care allowances and fostering allowances); or

(b) by a voluntary organisation under section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations).

32

Any payment made to the applicant or his partner for a person ("the person concerned"), who is not normally a member of the applicant's household but is temporarily in his care, by--

(a) a health authority;

(b) a local authority but excluding payments of housing benefit made in respect of the person concerned;

(c) a voluntary organisation;

(d) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948;

(e) a primary care trust established under section 16A of the National Health Service Act 1977 or established by an order made under section 18(2)(c) of the National Health Service Act 2006; or

(f) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.

33

Any payment made by a local authority in accordance with section 17, 23B, 23C or 24A of the Children Act 1989 or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 or section 22, 29 or 30 of the Children (Scotland) Act 1995 (provision of services for children and their families and advice and assistance to certain children).

34

(1) Subject to sub-paragraph (2), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989 or section 29 of the Children (Scotland) Act 1995 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person ("A") which A passes on to the applicant.

(2) Sub-paragraph (1) applies only where A--

- (a) was formerly in the applicant's care, and
- (b) is aged 18 or over, and
- (c) continues to live with the applicant.

35

(1) Subject to sub-paragraph (2), any payment received under an insurance policy taken out to insure against the risk of being unable to maintain repayments--

- (a) on a loan which is secured on the dwelling which the applicant occupies as his home; or
- (b) under a regulated agreement as defined for the purposes of the Consumer Credit Act 1974 or under a hire-purchase agreement or a conditional sale agreement as defined for the purposes of Part 3 of the Hire-Purchase Act 1964.

(2) A payment referred to in sub-paragraph (1) is only to be disregarded to the extent that the payment received under that policy does not exceed the amounts, calculated on a weekly basis, which are used to--

- (a) maintain the repayments referred to in sub-paragraph (1)(a) or, as the case may be, (1)(b); and
- (b) meet any amount due by way of premiums on--
 - (i) that policy; or
 - (ii) in a case to which sub-paragraph (1)(a) applies, an insurance policy taken out to insure against loss or damage to any building or part of a building which is occupied by the applicant as his home and which is required as a condition of the loan referred to in sub-paragraph (1)(a).

36

Any payment of income which by virtue of paragraph 64 (income treated as capital: persons who are not pensioners) is to be treated as capital.

37

Any--

- (a) social fund payment made pursuant to Part 8 of the SSCBA (the social fund); or
- (b) occasional assistance.

38

Any payment under Part 10 of the SSCBA (Christmas bonus for pensioners).

39

Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

40

The total of an applicant's income or, if he is a member of a family, the family's income and the income of any person which he is treated as possessing under paragraph 33(3) (calculation of income and capital of members of applicant's family and of a polygamous marriage) to be disregarded under paragraph 77(2)(b) and paragraph 78(1)(d) (calculation of covenant income where a contribution assessed, covenant income where no grant income or no contribution is assessed), paragraph 81(2) (treatment of student loans), paragraph 82(3) (treatment of payments from access funds) and paragraphs 20 and 21 must in no case exceed £20 per week.

41

(1) Any payment made under or by any of the Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006).

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under or by any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of--

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the applicant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the applicant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under or by any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of--

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the applicant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the applicant's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under or by any of the Trusts to which sub-paragraph (1) refers, where--

- (a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either--

- (i) to that person's parent or step-parent, or
- (ii) where that person at the date of the payment is a child, a young person or a student who has not completed his education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under or by any of the Trusts to which sub-paragraph (1) refers, where--

- (a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who was or had been a member of his family; and
- (b) the payment is made either--
 - (i) to that person's parent or step-parent, or
 - (ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts is to be construed as including a reference to the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation and the London Bombings Relief Charitable Fund.

42

Any housing benefit.

43

Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

44

Any payment to a juror or witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

45

Any payment in consequence of a reduction of council tax under section 13 of the 1992 Act (reduction of liability for council tax).

46

(1) Any payment or repayment made--

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (travelling expenses and health service supplies);
- (b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (travelling expenses and health service supplies);
- (c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Regulations 2003 (travelling expenses and health service supplies).

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1).

47

Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988 in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins).

48

Any payment made by either the Secretary of State for Justice or by the Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody.

49

- (1) Where an applicant's applicable amount includes an amount by way of family premium, £15 of any payment of maintenance, other than child maintenance, whether under a court order or not, which is made or due to be made by the applicant's former partner, or the applicant's partner's former partner.
- (2) For the purpose of sub-paragraph (1) where more than one maintenance payment falls to be taken into account in any week, all such payments must be aggregated and treated as if they were a single payment.
- (3) A payment made by the Secretary of State in lieu of maintenance must, for the purpose of sub-paragraph (1), be treated as a payment of maintenance made by a person specified in sub-paragraph (1).

50

(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the applicant's family, except where the person making the payment is the applicant or the applicant's partner.

(2) In sub-paragraph (1)--

"child maintenance" means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under--

- (a) the Child Support Act 1991;
- (b) the Child Support (Northern Ireland) Order 1991;
- (c) a court order;

- (d) a consent order;
- (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;

"liable relative" means a person listed in regulation 54 (interpretation) of the Income Support (General) Regulations 1987, other than a person falling within sub-paragraph (d) of that definition.

51

Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944 to assist disabled persons to obtain or retain employment despite their disability.

52

Any guardian's allowance.

53

(1) If the applicant is in receipt of any benefit under Part 2, 3 or 5 of the SSCBA, any increase in the rate of that benefit arising under Part 4 (increases for dependants) or section 106(a) (unemployability supplement) of that Act, where the dependant in respect of whom the increase is paid is not a member of the applicant's family.

(2) If the applicant is in receipt of any pension or allowance under Part 2 or 3 of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006, any increase in the rate of that pension or allowance under that Order, where the dependant in respect of whom the increase is paid is not a member of the applicant's family.

54

Any supplementary pension under article 23(2) of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006 (pensions to surviving spouses and surviving civil partners) and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under that Order.

55

In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

56

(1) Any payment which is--

- (a) made under any of the Dispensing Instruments to a widow, widower or surviving civil partner of a person--
 - (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
 - (ii) whose service in such capacity terminated before 31st March 1973; and

(b) equal to the amount specified in article 23(2) of the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006.

(2) In this paragraph "the Dispensing Instruments" means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances).

57

Any council tax benefit to which the applicant is entitled.

58

Except in a case which falls under sub-paragraph (1) of paragraph 18 of Schedule 7, where the applicant is a person who satisfies any of the conditions of sub-paragraph (2) of that paragraph, any amount of working tax credit up to £17.10.

59

Any payment made under section 12B of the Social Work (Scotland) Act 1968, or under sections 12A to 12D of the National Health Service Act 2006 (direct payments for health care) or under regulations made under section 57 of the Health and Social Care Act 2001 (direct payments).

60

(1) Subject to sub-paragraph (2), in respect of a person who is receiving, or who has received, assistance under the self-employment route, any payment to that person--

- (a) to meet expenses wholly and necessarily incurred whilst carrying on the commercial activity;
- (b) which is used or intended to be used to maintain repayments on a loan taken out by that person for the purpose of establishing or carrying on the commercial activity,

in respect of which such assistance is or was received.

(2) Sub-paragraph (1) applies only in respect of payments which are paid to that person from the special account.

61

(1) Any payment of a sports award except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or rent of the applicant or where the applicant is a member of a family, any other member of his family, or any council tax or water charges for which that applicant or member is liable.

(3) For the purposes of sub-paragraph (2) "food" does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made.

62

Where the amount of subsistence allowance paid to a person in a reduction week exceeds the amount of income-based jobseeker's allowance that person would have received in that reduction week had it been payable to him, less 50p, that excess amount.

63

In the case of an applicant participating in an employment zone programme, any discretionary payment made by an employment zone contractor to the applicant, being a fee, grant, loan or otherwise.

64

Any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001.

65

(1) Any payment made by a local authority or by the Welsh Ministers, to or on behalf of the applicant or his partner relating to a service which is provided to develop or sustain the capacity of the applicant or his partner to live independently in his accommodation.

(2) For the purposes of sub-paragraph (1) "local authority" includes, in England, a county council.

66

Any payment of child benefit.

SCHEDULE 9
CAPITAL DISREGARDS: PENSIONERS

Paragraph 63

Part 1
Capital to be Disregarded

1

Any premises acquired for occupation by the applicant which he intends to occupy as his home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the applicant to obtain possession and commence occupation of the premises.

2

Any premises which the applicant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.

3

Any premises which the applicant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the

date on which the applicant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

4

Any premises occupied in whole or in part--

- (a) by a person who is a relative of the applicant or his partner as his home where that person has attained the qualifying age for state pension credit or is incapacitated;
- (b) by the former partner of the applicant as his home; but this provision does not apply where the former partner is a person from whom the applicant is estranged or divorced or with whom he had formed a civil partnership that has been dissolved.

5

Any future interest in property of any kind, other than land or premises in respect of which the applicant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.

6

Where an applicant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from his former partner or the dissolution of a civil partnership with his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling or, where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

7

Any premises where the applicant is taking reasonable steps to dispose of the whole of his interest in those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.

8

All personal possessions.

9

The assets of any business owned in whole or in part by the applicant and for the purposes of which he is engaged as a self-employed earner or, if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of those assets.

10

The assets of any business owned in whole or in part by the applicant if--

- (a) he is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but
- (b) he intends to become engaged (or, as the case may be, re-engaged) as a self-employed earner in that business as soon as he recovers or is able to become engaged, or re-engaged, in that business,

for a period of 26 weeks from the date on which the application for a reduction under this scheme is made or, if it is unreasonable to expect him to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so engaged or re-engaged.

11

The surrender value of any policy of life insurance.

12

The value of any funeral plan contract; and for this purpose, "funeral plan contract" means a contract under which--

- (a) the applicant makes one or more payments to another person ("the provider");
- (b) the provider undertakes to provide, or secure the provision of, a funeral in the United Kingdom for the applicant on his death; and
- (c) the sole purpose of the plan is to provide or secure the provision of a funeral for the applicant on his death.

13

Where an ex-gratia payment has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or internment of--

- (a) the applicant;
- (b) the applicant's partner;
- (c) the applicant's deceased spouse or deceased civil partner; or
- (d) the applicant's partner's deceased spouse or deceased civil partner,

by the Japanese during the Second World War, an amount equal to that payment.

14

(1) Subject to sub-paragraph (2), the amount of any trust payment made to an applicant or an applicant's partner who is--

- (a) a diagnosed person;
- (b) a diagnosed person's partner or was a diagnosed person's partner at the time of the diagnosed person's death; or
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death.

(2) Where a trust payment is made to--

- (a) a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph applies for the period beginning on the date on which the trust payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph applies for the period beginning on the date on which the trust payment is made and ending two years after that date.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to an applicant or an applicant's partner who is--

- (a) the diagnosed person;
- (b) a diagnosed person's partner or was a diagnosed person's partner at the date of the diagnosed person's death; or
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death.

(4) Where a payment such as referred to in sub-paragraph (3) is made to--

- (a) a person referred to in sub-paragraph (3)(a) or (b), that sub-paragraph applies for the period beginning on the date on which the payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (3)(c), that sub-paragraph applies for the period beginning on the date on which the payment is made and ending two years after that date.

(5) In this paragraph, a reference to a person--

- (a) being the diagnosed person's partner;
- (b) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death includes a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a care home or an independent hospital.

(6) In this paragraph--

"diagnosed person" means a person who has been diagnosed as suffering from, or who, after his death, has been diagnosed as having suffered from, variant Creutzfeldt-Jakob disease;

"relevant trust" means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

"trust payment" means a payment under a relevant trust.

15

The amount of any payment, other than a war pension, to compensate for the fact that the applicant, the applicant's partner, the applicant's deceased spouse or civil partner or the applicant's partner's deceased spouse or civil partner--

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

during the Second World War.

16

(1) Any payment made under or by--

(a) the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No 2) Trust, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, the Scottish Infected Blood Support Scheme, an approved blood scheme, the London Emergencies Trust, the We Love Manchester Emergency Fund, or the London Bombings Relief Charitable Fund (collectively referred to in this paragraph as "the Trusts"); or

(b) the Independent Living Fund (2006).

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under or by any of the Trusts and which is made to or for the benefit of that person's partner or former partner--

(a) from whom he is not, or where that person has died was not, estranged or divorced, or

(b) with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person which derives from a payment made under or by any of the Trusts and which is made to or for the benefit of the person who is suffering from haemophilia or who is a qualifying person.

(4) Sub-paragraph (3) does not apply if--

(a) the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, or

(b) where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death.

(5) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under or by any of the Trusts, where--

(a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child who is or had been a member of that person's household; and

(b) the payment is made either--

(i) to that person's parent or step-parent; or

(ii) where that person at the date of the payment is a child or a student who has not completed his full-time education and has no parent or step-parent, to any person standing in the place of his parent,

but only for a period from the date of the payment until the end of two years from that person's death.

(6) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under or by any of the Trusts, where--

(a) that person at the date of his death ("the relevant date") had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, nor any child who was or had been a member of his household; and

(b) the payment is made either--

- (i) to that person's parent or step-parent; or
- (ii) where that person at the relevant date was a child or a student who had not completed his full-time education and had no parent or step-parent, to any person standing in place of his parent,

but only for a period of two years from the relevant date.

(7) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

16A

Any payment made under, or by, a trust which is approved by the Secretary of State and which is established for the purpose of giving relief and assistance to a disabled person whose disabilities were caused by their mother having taken a preparation containing the drug known as Thalidomide during her pregnancy.

17

(1) An amount equal to the amount of any payment made in consequence of any personal injury to the applicant or, if the applicant has a partner, to the partner.

(2) Where the whole or part of the payment is administered--

- (a) by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998, or the Court of Protection, or on behalf of a person where the payment can only be disposed of by order or direction of any such court;
- (b) in accordance with an order made under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of those Rules; or
- (c) in accordance with the terms of a trust established for the benefit of the applicant or his partner,

the whole of the amount so administered.

18

Any amount specified in paragraph 19, 20, 21 or 25 for a period of one year beginning with the date of receipt.

19

Amounts paid under a policy of insurance in connection with the loss of or damage to the property occupied by the applicant as his home and to his personal possessions.

20

So much of any amounts paid to the applicant or deposited in the applicant's name for the sole purpose of--

- (a) purchasing premises which the applicant intends to occupy as his home; or

- (b) effecting essential repairs or alterations to the premises occupied or intended to be occupied by the applicant as his home.

21

(1) Subject to paragraph 22 any amount paid--

- (a) by way of arrears of benefit;
- (b) by way of compensation for the late payment of benefit;
- (c) in lieu of the payment of benefit;
- (d) to rectify, or compensate for, an official error, as defined for the purposes of paragraph 22, being an amount to which that paragraph does not apply;
- (e) by a local authority out of funds provided under either section 93 of the Local Government Act 2000 under a scheme known as "Supporting People" or section 91 of the Housing (Scotland) Act 2001;
- (f) by way of occasional assistance including arrears and payments in lieu of occasional assistance (and in this paragraph "occasional assistance" has the same meaning as in paragraph 16 of Schedule 1).

(2) In sub-paragraph (1), "benefit" means--

- (a) attendance allowance under section 64 of the Act;
- (b) disability living allowance;
- (c) personal independence payment;
- (d) an AFIP;
- (e) income support;
- (f) income-based jobseeker's allowance;
- (g) state pension credit;
- (h) housing benefit;
- (i) council tax benefit;
- (j) child tax credit;
- (k) an increase of a disablement pension under section 104 of the SSCBA (increase where constant attendance is needed), and any further increase of such a pension under section 105 of the Act (increase for exceptionally severe disablement);
- (l) any amount included on account of the applicant's exceptionally severe disablement or need for constant attendance in a war disablement pension or a war widow's or widower's pension;
- (m) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001;
- (n) working tax credit;
- (o) income-related employment and support allowance;
- (p) social fund payments under Part 8 of the SSCBA; or
- (q) universal credit.

22

(1) Subject to sub-paragraph (3), any payment of £5,000 or more which has been made to rectify, or to compensate for, an official error or an error on a point of law relating to a relevant benefit and which has been received by the applicant in full on or after the day on which he became entitled to a reduction under this scheme.

(2) Subject to sub-paragraph (3), the total amount of any payments disregarded under--

- (a) paragraph 7(2) of Schedule 10 to the Income Support (General) Regulations 1987;
- (b) paragraph 12(2) of Schedule 8 to the Jobseeker's Allowance Regulations 1996;
- (c) paragraph 9(2) of Schedule 5 to the Council Tax Benefit Regulations 2006;
- (d) paragraph 20A of Schedule 5 to the State Pension Credit Regulations 2002,
- (e) paragraph 11(2) of Schedule 9 to the Employment and Support Allowance Regulations 2008,
- (f) paragraph 18 of Schedule 10 to the Universal Credit Regulations 2013;

where the award in respect of which the payments last fell to be disregarded under those Regulations either terminated immediately before the relevant date or is still in existence at that date.

(3) Any disregard which applies under sub-paragraph (1) or (2) has effect until the award comes to an end.

(4) In this paragraph--

"the award", except in sub-paragraph (2), means--

- (a) the award of a reduction under the authority's scheme during which the relevant sum or, where it is paid in more than one instalment, the first instalment of that sum is received; and
- (b) where that award is followed by one or more further awards which, or each of which, begins immediately after the previous award ends, such further awards until the end of the last such award, provided that, for such further awards, the applicant--
 - (i) is the person who received the relevant sum;
 - (ii) is the partner of that person; or
 - (iii) was the partner of that person at the date of his death;

"official error"--

- (a) where the error relates to housing benefit, or council tax benefit (in respect of any period before 1st April 2013), has the meaning given by regulation 1(2) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001; and
- (b) where the error relates to any other relevant benefit, has the meaning given by regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999;

"the relevant date" means the date on which the application for a reduction under this scheme was made;

"relevant benefit" means any benefit specified in paragraph 21(2); and

"the relevant sum" means the total amount referred to in sub-paragraph (1).

23

Where a capital asset is held in a currency other than Sterling, any banking charge or commission payable in converting that capital into Sterling.

24

The value of the right to receive income from an occupational pension scheme or a personal pension scheme.

25

Any arrears of supplementary pension which is disregarded under paragraph 4 of Schedule 6 (amounts to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 5 or 6 of that Schedule.

26

The dwelling occupied as the home; but only one dwelling is to be disregarded under this paragraph.

27

(1) Subject to sub-paragraph (2), where an applicant falls within class C (alternative maximum council tax reduction: pensioners), the whole of his capital.

(2) Sub-paragraph (1) does not apply where an applicant falls within class B and class C.

28

Where a person elects to be entitled to a lump sum under Schedule 5 or 5A to SSCBA or under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005, or is treated as having made such an election, and a payment has been made pursuant to that election, an amount equal to--

- (a) except where sub-paragraph (b) applies, the amount of any payment or payments made on account of that lump sum;
- (b) the amount of that lump sum,

but only for so long as that person does not change that election in favour of an increase of pension or benefit.

28A

Where a person chooses a lump sum under section 8(2) of the Pensions Act 2014 or in accordance with Regulations made under section 10 of that Act which include provision corresponding or similar to section 8(2) of that Act, or fails to make a choice, and a lump sum payment has been made, an amount equal to—

- (a) except where sub-paragraph (b) applies, the amount of any payment or payments made on account of that lump sum; or
- (b) the amount of that lump sum,

but only for so long as that person does not alter that choice in favour of an increase of pension.

29

Any payments made --

- (a) by virtue of regulations made under section 57 of the Health and Social Care Act 2001 (direct payments);
- (b) ...
- (c) by virtue of regulations made under sections 12A to 12C of the National Health Service Act 2006 (direct payments for health care);
- (d) by virtue of regulations made under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (general social welfare); or
- (e) by virtue of regulations made under section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002 (direct payments);
- (f) under sections 31 to 33 of the Care Act 2014 (direct payments); or
- (g) by virtue of regulations made under section 50 or 52 of the Social Services and Well-being (Wales) Act 2014 (direct payments).

29A

A payment made under the Age-Related Payments Regulations 2013.

29B

Any payments to an applicant made under section 49 of the Children and Families Act 2014 (personal budgets and direct payments).

29C

- (1) Any payment made by a local authority in accordance with section 26A of the Children (Scotland) Act 1995 (duty to provide continuing care).
- (2) Any payment or part of a payment made by a local authority in accordance with that section to a person ("A") which A passes on to the applicant where A—
 - (a) was formerly in the applicant's care;
 - (b) is aged 16 or over; and
 - (c) continues to live with the applicant.

Part 2

Capital Disregarded Only for the Purposes of Determining Deemed Income

30

The value of the right to receive any income under a life interest or from a life rent.

31

The value of the right to receive any rent except where the applicant has a reversionary interest in the property in respect of which rent is due.

32

The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

33

Where property is held under a trust, other than--

- (a) a charitable trust within the meaning of the Charities Act 1993; or
- (b) a trust set up with any payment to which paragraph 16 applies,

and under the terms of the trust, payments fall to be made, or the trustees have a discretion to make payments, to or for the benefit of the applicant or the applicant's partner, or both, that property.

SCHEDULE 10
CAPITAL DISREGARDS: PERSONS WHO ARE NOT PENSIONERS

Paragraph 63

1

Any payment made to the applicant in respect of any child care, travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Work for Your Benefit Scheme but only for 52 weeks beginning with the date of receipt of the payment.

2

Any payment made to the applicant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Mandatory Work Activity Scheme but only for 52 weeks beginning with the date of receipt of the payment.

3

Any payment made to the applicant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Employment, Skills and Enterprise Scheme but only for 52 weeks beginning with the date of receipt of the payment.

4

The dwelling together with any garage, garden and outbuildings, normally occupied by the applicant as his home including any premises not so occupied which it is impracticable or unreasonable to sell separately, but, notwithstanding paragraph 33 (calculation of income and capital of members of applicant's family and of a polygamous marriage), only one dwelling is to be disregarded under this paragraph.

5

Any premises acquired for occupation by the applicant which he intends to occupy as his home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the applicant to obtain possession and commence occupation of the premises.

6

Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the applicant as his home which is to be used for the purchase of other premises intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the applicant to complete the purchase.

7

Any premises occupied in whole or in part--

- (a) by a partner or relative of a single applicant or any member of the family as his home where that person has attained the qualifying age for state pension credit or is incapacitated;
- (b) by the former partner of the applicant as his home; but this provision does not apply where the former partner is a person from whom the applicant is estranged or divorced or with whom he had formed a civil partnership that has been dissolved.

8

Where an applicant is on income support, an income-based jobseeker's allowance or an income-related employment and support allowance, the whole of his capital.

9

Where the applicant is a member of a joint-claim couple for the purposes of the Jobseekers Act 1995 and his partner is on income-based jobseeker's allowance, the whole of the applicant's capital.

10

Any future interest in property of any kind, other than land or premises in respect of which the applicant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.

11

- (1) The assets of any business owned in whole or in part by the applicant and for the purposes of which he is engaged as a self-employed earner, or if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of any such asset.
- (2) The assets of any business owned in whole or in part by the applicant where--
 - (a) he is not engaged as a self-employed earner in that business by reason of some disease or bodily or mental disablement; but
 - (b) he intends to become engaged or, as the case may be, re-engaged as a self-employed earner in that business as soon as he recovers or is able to become engaged or re-engaged in that business,

for a period of 26 weeks from the date on which the application for a reduction under this scheme is made, or is treated as made, or, if it is unreasonable to expect him to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable him to become so engaged or re-engaged.

- (3) In the case of a person who is receiving assistance under the self-employment route, the assets acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is being received.

(4) In the case of a person who has ceased carrying on the commercial activity in respect of which assistance was received as specified in sub-paragraph (3), the assets relating to that activity for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

12

(1) Subject to sub-paragraph (2), any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of--

- (a) any payment specified in paragraphs 11, 13 or 14 of Schedule 8;
- (b) an income-related benefit under Part 7 of the SSCBA;
- (c) an income-based jobseeker's allowance;
- (d) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001;
- (e) working tax credit and child tax credit;
- (f) an income-related employment and support allowance,

but only for a period of 52 weeks from the date of the receipt of arrears or of the concessionary payment.

(2) In a case where the total of any arrears and, if appropriate, any concessionary payment referred to in sub-paragraph (1) relating to one of the specified payments, benefits or allowances amounts to £5,000 or more (referred to in this sub-paragraph and in sub-paragraph (3) as "the relevant sum") and is--

- (a) paid in order to rectify or to compensate for, an official error as defined in regulation 1(2) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001; and
- (b) received by the applicant in full on or after 14th October 2001,

sub-paragraph (1) has effect in relation to such arrears or concessionary payment either for a period of 52 weeks from the date of receipt, or, if the relevant sum is received in its entirety during the period of an award of a reduction under this scheme, for the remainder of that period if that is a longer period.

(3) For the purposes of sub-paragraph (2), "the period of an award of a reduction under this scheme" means--

- (a) the award in which the relevant sum is first received (or the first part thereof where it is paid in more than one instalment); and
- (b) where that award is followed by one or more further awards which, or each of which, begins immediately after the end of the previous award, such further award provided that for that further award the applicant--
 - (i) is the person who received the relevant sum; or
 - (ii) is the partner of the person who received the relevant sum, or was that person's partner at the date of his death.

13

Any sum--

- (a) paid to the applicant in consequence of damage to, or loss of the home or any personal possession and intended for its repair or replacement; or

- (b) acquired by the applicant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvement to the home,

which is to be used for the intended purpose, for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to effect the repairs, replacement or improvement.

14

Any sum--

- (a) deposited with a housing association as defined in section 1(1) of the Housing Associations Act 1985 as a condition of occupying the home;
- (b) which was so deposited and which is to be used for the purchase of another home,

for the period of 26 weeks or such longer period as may be reasonable in the circumstances to enable the applicant to complete the purchase.

15

Any personal possessions except those which have been acquired by the applicant with the intention of reducing his capital in order to secure entitlement to a reduction under this scheme or to increase the amount of that reduction.

16

The value of the right to receive any income under an annuity or the surrender value (if any) of such an annuity.

17

Where the funds of a trust are derived from a payment made in consequence of any personal injury to the applicant or applicant's partner, the value of the trust fund and the value of the right to receive any payment under that trust.

18

(1) Any payment made to the applicant or the applicant's partner in consequence of any personal injury to the applicant or, as the case may be, the applicant's partner.

(2) But sub-paragraph (1)--

- (a) applies only for the period of 52 weeks beginning with the day on which the applicant first receives any payment in consequence of that personal injury;
- (b) does not apply to any subsequent payment made to him in consequence of that injury (whether it is made by the same person or another);
- (c) ceases to apply to the payment or any part of the payment from the day on which the applicant no longer possesses it;
- (d) does not apply to any payment from a trust where the funds of the trust are derived from a payment made in consequence of any personal injury to the applicant.

(3) For the purposes of sub-paragraph (2)(c), the circumstances in which an applicant no longer possesses a payment or a part of it include where the applicant has used a payment or part of it to purchase an asset.

(4) References in sub-paragraphs (2) and (3) to the applicant are to be construed as including references to his partner (where applicable).

19

The value of the right to receive any income under a life interest or from a life rent.

20

The value of the right to receive any income which is disregarded under paragraph 15 of Schedule 7 or paragraph 29 of Schedule 8.

21

The surrender value of any policy of life insurance.

22

Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

23

Any payment made by a local authority in accordance with section 17, 23B, 23C or 24A of the Children Act 1989 or, as the case may be, section 12 of the Social Work (Scotland) Act 1968 or sections 22, 29 or 30 of the Children (Scotland) Act 1995 (provision of services for children and their families and advice and assistance to certain children).

24

(1) Subject to sub-paragraph (2), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989 or section 29 of the Children (Scotland) Act 1995 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person ("A") which A passes on to the applicant.

(2) Sub-paragraph (1) applies only where A--

- (a) was formerly in the applicant's care, and
- (b) is aged 18 or over, and
- (c) continues to live with the applicant.

25

Any--

- (a) social fund payment made pursuant to Part 8 of the SSCBA (the social fund); or
- (b) occasional assistance.

26

Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988 (deduction of tax from certain loan interest) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements to the home.

27

Any capital which by virtue of paragraph 55 or 81 (capital treated as income: persons who are not pensioners, treatment of student loans) is to be treated as income.

28

Where any payment of capital is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

29

(1) Any payment made under or by the Trusts, the Fund, the Eileen Trust, MFET Limited, the Independent Living Fund (2006), the Skipton Fund, the Caxton Foundation or the London Bombings Relief Charitable Fund.

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person, which derives from a payment made under or by any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of--

- (a) that person's partner or former partner from whom he is not, or where that person has died was not, estranged or divorced or with whom he has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the applicant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the applicant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person which derives from a payment made under or by any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of--

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the applicant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the applicant's family.

(4) Sub-paragraph (3) does not apply if--

- (a) the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced, or
- (b) where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death.

(5) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under or by any of the Trusts to which sub-paragraph (1) refers, where--

(a) that person has no partner or former partner from whom he is not estranged or divorced or with whom he has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and

(b) the payment is made either--

(i) to that person's parent or step-parent; or

(ii) where that person at the date of the payment is a child, a young person or a student who has not completed his full-time education and has no parent or step-parent, to his guardian,

but only for a period from the date of the payment until the end of two years from that person's death.

(6) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under or by any of the Trusts to which sub-paragraph (1) refers, where--

(a) that person at the date of his death (the relevant date) had no partner or former partner from whom he was not estranged or divorced or with whom he had formed a civil partnership that had not been dissolved, nor any child or young person who was or had been a member of his family; and

(b) the payment is made either--

(i) to that person's parent or step-parent; or

(ii) where that person at the relevant date was a child, a young person or a student who had not completed his full-time education and had no parent or step-parent, to his guardian,

but only for a period of two years from the relevant date.

(7) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any capital resource which derives from any payment of income or capital made under or deriving from any of the Trusts.

(8) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts is to be construed as including a reference to the Fund, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation, and the London Bombings Relief Charitable Fund.

30

(1) Where an applicant has ceased to occupy what was formerly the dwelling occupied as the home following his estrangement or divorce from, or dissolution of his civil partnership with, his former partner, that dwelling for a period of 26 weeks from the date on which he ceased to occupy that dwelling or, where the dwelling is occupied as the home by the former partner who is a lone parent, for so long as it is so occupied.

(2) In this paragraph "dwelling" includes any garage, garden and outbuildings, which were formerly occupied by the applicant as his home and any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated.

31

Any premises where the applicant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises.

32

Any premises which the applicant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.

33

Any premises which the applicant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the applicant first takes steps to effect those repairs or alterations, or such longer period as is necessary to enable those repairs or alterations to be carried out.

34

Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

35

The value of the right to receive an occupational or personal pension.

36

The value of any funds held under a personal pension scheme.

37

The value of the right to receive any rent except where the applicant has a reversionary interest in the property in respect of which rent is due.

38

Any payment in kind made by a charity or under or by the Trusts, the Fund, MFET Limited, the Skipton Fund, the Caxton Foundation or the Independent Living Fund (2006).

39

Any payment made pursuant to section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990, but only for the period of 52 weeks beginning on the date of receipt of the payment.

40

Any payment in consequence of a reduction of council tax under section 13 of the 1992 Act (reduction of liability for council tax), but only for a period of 52 weeks from the date of the receipt of the payment.

41

Any grant made in accordance with a scheme made under section 129 of the Housing Act 1988 or section 66 of the Housing (Scotland) Act 1988 (schemes for payments to assist local housing authority and local authority tenants to obtain other accommodation) which is to be used--

- (a) to purchase premises intended for occupation as his home; or
- (b) to carry out repairs or alterations which are required to render premises fit for occupation as his home,

for a period of 26 weeks from the date on which he received such a grant or such longer period as is reasonable in the circumstances to enable the purchase, repairs or alterations to be completed and the applicant to commence occupation of those premises as his home.

42

Any arrears of supplementary pension which is disregarded under paragraph 54 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraph 55 or 56 of that Schedule, but only for a period of 52 weeks from the date of receipt of the arrears.

43

(1) Any payment or repayment made--

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 (travelling expenses and health service supplies);
- (b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (travelling expenses and health service supplies);
- (c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Regulations 2003 (travelling expenses and health service supplies),

but only for a period of 52 weeks from the date of receipt of the payment or repayment.

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1), but only for a period of 52 weeks from the date of receipt of the payment or repayment.

44

Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988 in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins), but only for a period of 52 weeks from the date of receipt of the payment.

45

Any payment made under Part 8A of the SSCBA (entitlement to health in pregnancy grant).

46

Any payment made either by the Secretary of State for Justice or by Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody, but only for a period of 52 weeks from the date of the receipt of the payment.

47

Any payment (other than a training allowance) made, whether by the Secretary of State or any other person, under the Disabled Persons (Employment) Act 1944 to assist disabled persons to obtain or retain employment despite their disability.

48

Any payment made by a local authority under section 3 of the Disabled Persons (Employment) Act 1958 to homeworkers assisted under the Blind Homeworkers' Scheme.

49

(1) Subject to sub-paragraph (2), where an applicant falls within class F (alternative maximum council reduction: persons who are not pensioners), the whole of his capital.

(2) Sub-paragraph (1) does not apply where an applicant falls within class E and class F.

50

(1) Any sum of capital to which sub-paragraph (2) applies and--

(a) which is administered on behalf of a person by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998 or by the Court of Protection;

(b) which can only be disposed of by order or direction of any such court; or

(c) where the person concerned is under the age of 18, which can only be disposed of by order or direction prior to that person attaining age 18.

(2) This sub-paragraph applies to a sum of capital which is derived from--

(a) an award of damages for a personal injury to that person; or

(b) compensation for the death of one or both parents where the person concerned is under the age of 18.

51

Any sum of capital administered on behalf of a person in accordance with an order made under section 13 of the Children (Scotland) Act 1995, or under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of those Rules, where such sum derives from--

(a) award of damages for a personal injury to that person; or

(b) compensation for the death of one or both parents where the person concerned is under the age of 18.

52

Any payment to the applicant as holder of the Victoria Cross or George Cross.

53

In the case of a person who is receiving, or who has received, assistance under the self-employment route, any sum of capital which is acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is or was received but only for a period of 52 weeks from the date on which that sum was acquired.

54

(1) Any payment of a sports award for a period of 26 weeks from the date of receipt of that payment except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel or rent of the applicant or, where the applicant is a member of a family, any other member of his family, or any council tax or water charges for which that applicant or member is liable.

(3) For the purposes of sub-paragraph (2) "food" does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made.

55

(1) Any payment--

(a) by way of an education maintenance allowance made pursuant to--

(i) regulations made under section 518 of the Education Act 1996;

(ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980;

(iii) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992;

(b) corresponding to such an education maintenance allowance, made pursuant to--

(i) section 14 or section 181 of the Education Act 2002 (power of Secretary of State and the Welsh Ministers to give financial assistance for purposes related to education or childcare, and allowances in respect of education or training); or

(ii) regulations made under section 181 of that Act; or

(c) in England, by way of financial assistance made pursuant to section 14 of the Education Act 2002.

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to--

(a) regulations made under section 518 of the Education Act 1996;

(b) regulations made under section 49 of the Education (Scotland) Act 1980; or

(c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992,

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance or other payment made pursuant to any provision specified in sub-paragraph (1).

56

In the case of an applicant participating in an employment zone programme, any discretionary payment made by an employment zone contractor to the applicant, being a fee, grant, loan or otherwise, but only for the period of 52 weeks from the date of receipt of the payment.

57

Any arrears of subsistence allowance paid as a lump sum but only for the period of 52 weeks from the date of receipt of the payment.

58

Where an ex-gratia payment of £10,000 has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or internment of--

- (a) the applicant;
- (b) the applicant's partner;
- (c) the applicant's deceased spouse or deceased civil partner; or
- (d) the applicant's partner's deceased spouse or deceased civil partner,

by the Japanese during the Second World War, £10,000.

59

(1) Subject to sub-paragraph (2), the amount of any trust payment made to an applicant or a member of an applicant's family who is--

- (a) a diagnosed person;
- (b) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;
- (c) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (d) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death.

(2) Where a trust payment is made to--

- (a) a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph applies for the period beginning on the date on which the trust payment is made and ending on the date on which that person dies;

(b) a person referred to in sub-paragraph (1)(c), that sub-paragraph applies for the period beginning on the date on which the trust payment is made and ending two years after that date;

(c) a person referred to in sub-paragraph (1)(d), that sub-paragraph applies for the period beginning on the date on which the trust payment is made and ending--

(i) two years after that date; or

(ii) on the day before the day on which that person--

(aa) ceases receiving full-time education; or

(bb) attains the age of 20,

whichever is the latest.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to an applicant or a member of an applicant's family who is--

(a) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;

(b) a parent of a diagnosed person, a person acting in place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or

(c) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death,

but only to the extent that such payments do not exceed the total amount of any trust payments made to that person.

(4) Where a payment as referred to in sub-paragraph (3) is made to--

(a) a person referred to in sub-paragraph (3)(a), that sub-paragraph applies for the period beginning on the date on which that payment is made and ending on the date on which that person dies;

(b) a person referred to in sub-paragraph (3)(b), that sub-paragraph applies for the period beginning on the date on which that payment is made and ending two years after that date; or

(c) person referred to in sub-paragraph (3)(c), that sub-paragraph applies for the period beginning on the date on which that payment is made and ending--

(i) two years after that date; or

(ii) on the day before the day on which that person--

(aa) ceases receiving full-time education; or

(bb) attains the age of 20,

whichever is the latest.

(5) In this paragraph, a reference to a person--

(a) being the diagnosed person's partner;

(b) being a member of a diagnosed person's family;

(c) acting in place of the diagnosed person's parents,

at the date of the diagnosed person's death includes a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a care home, an Abbeyfield Home or an independent hospital on that date.

(6) In this paragraph--

"diagnosed person" means a person who has been diagnosed as suffering from, or who, after his death, has been diagnosed as having suffered from, variant Creutzfeld-Jakob disease;

"relevant trust" means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeld-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

"trust payment" means a payment under a relevant trust.

60

The amount of any payment, other than a war pension, to compensate for the fact that the applicant, the applicant's partner, the applicant's deceased spouse or deceased civil partner or the applicant's partner's deceased spouse or deceased civil partner--

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

during the Second World War.

61

(1) Any payment made by a local authority, or by the Welsh Ministers, to or on behalf of the applicant or his partner relating to a service which is provided to develop or sustain the capacity of the applicant or his partner to live independently in his accommodation.

(2) For the purposes of sub-paragraph (1) "local authority" includes in England a county council.

62

Any payment made under regulations made under section 57 of the Health and Social Care Act 2001 or under section 12B of the Social Work (Scotland) Act 1968, or under sections 12A to 12D of the National Health Service Act 2006 (direct payments for health care).

63

Any payment made to the applicant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.

64

Any payment made to the applicant in accordance with regulations made pursuant to section 14F of the Children Act 1989 (special guardianship support services).

EXPLANATORY NOTE

(This note is not part of the Scheme)

Section 13A of the Local Government Finance Act 1992 ("the 1992 Act"), substituted by section 10 of the Local Government Finance Act 2012 ("the 2012 Act"), requires each billing authority in England to make a scheme specifying the reductions which are to apply to amounts of council tax payable by persons, or classes of person, whom the authority considers are in financial need.

Haringey Council's Scheme as set out above was approved by the authority on 31 January 2019. It is based upon the default scheme prescribed by the Secretary of State, with local amendment.

The Scheme

Parts 1 and 2 contain introductory provisions and definitions of key words and phrases. Part 3 and Schedule 1 contains the procedure for reduction applications and appeals. Parts 4 and 5 specify the classes of person entitled and not entitled to a reduction under the scheme, respectively. At Part 4 a minimum weekly Council Tax Support award of £1 has been introduced.

Parts 6 to 9 and Schedules 2 to 4 set out matters relevant to determining eligibility for a reduction and the amount of reduction under the scheme. Part 7 provides for applicants of working-age to have their Council Tax support assessed against 80.2% of their council tax liability, save for those in receipt of defined disability benefits or responsible for a child in the same household.

Part 10 and Schedules 5 to 10 set out how income and capital of the applicant and others is treated in calculating eligibility for a reduction, including in cases where an applicant or partner has an award of universal credit. Schedules 6 and 8 provide for war pensions to be fully disregarded for the purposes of calculating income for all claimants. Part 11 provides for the application of the scheme to students. Part 12 provides for extended reductions in certain circumstances and Part 13 sets out when entitlement begins and how a change in circumstances affects any reduction.

Part 14 of the scheme provides for the making of an application for a reduction. Part 15 sets out the time within which an authority must make its decision on the application and provides for notification of the decision. Part 16 makes provisions about the payment of a reduction in certain circumstances.

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EQUALITY IMPACT ASSESSMENT

The **Equality Act 2010** places a '**General Duty**' on all public bodies to have '**due regard**' to the need to:

- Eliminating discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advancing equality of opportunity between those with a 'relevant protected characteristic' and those without one;
- Fostering good relations between those with a 'relevant protected characteristic' and those without one.

In addition, the Council complies with the Marriage (Same Sex Couples) Act 2013.

Stage 1 – Screening

Please complete the equalities screening form. If screening identifies that your proposal is likely to impact on protect characteristics, please proceed to stage 2 and complete a full Equality Impact Assessment (EqIA).

Stage 2 – Full Equality Impact Assessment

An EqIA provides evidence for meeting the Council's commitment to equality and the responsibilities under the Public Sector Equality Duty.

When an EqIA has been undertaken, it should be submitted as an attachment/appendix to the final decision-making report. This is so the decision maker (e.g. Cabinet, Committee, senior leader) can use the EqIA to help inform their final decision. The EqIA once submitted will become a public document, published alongside the minutes and record of the decision.

Please read the Council's Equality Impact Assessment Guidance before beginning the EqIA process.

1. Responsibility for the Equality Impact Assessment

Name of proposal	Approval of Council Tax Reduction Scheme for 2020/21
Service area	Finance Revenues and Benefits
Officer completing assessment	Carla Segel, Head of Service Delivery
Equalities/ HR Advisor	Emma Carroll, Policy and Equalities Officer

Cabinet meeting date (if applicable)	Full Council, 18 November 2019
Director/Assistant Director	Jon Warlow, Director of Finance

2. Summary of the proposal

Please outline

- *The proposal which is being assessed*
- *The key stakeholders who may be affected by the policy or proposal*
- *The decision-making route being taken*

Proposal

As per the information contained within the main report, the proposal to maintain the current Council Tax Reduction Scheme into 2020/21, this will mean that all working-age non protected claimants will have to pay something towards their Council Tax bill. Pensioners, those in receipt of certain disability benefits and working age claimants with children will continue to be protected

Process

The Council is seeking agreement from Full Council to continue the scheme unchanged into 2020/21. There is a statutory obligation for the scheme to be approved by Full Council each year, regardless of whether or not there are any changes.

Key Stakeholders

As detailed in this EQIA, there is mitigation in place for those in receipt of CTRS, however it is recognised and understood that the reduction of Council Tax Support has had and will continue to have a negative impact on many vulnerable groups. As no change is proposed for 2020/21, it is expected that people will be similarly affected as at present, so we will continue to use existing support mechanisms such as signposting to other sources of help including the CAB and voluntary groups for our customers and will seek to build upon these. We will routinely check our progress with those customers who tell us they have difficulty in paying, to ensure that we can come up with the best solution to meet their needs.

Duty to vulnerable groups

In 'Localising Support for Council Tax: Vulnerable People – key local authority duties', the government was clear that in addition to their public sector equality duty, there were additional duties of the Council in regards to developing its CTRS. The duties are described in the aforementioned document and include the following key areas:

- Duty under the Child Poverty Act 2010
- Public sector equality duty – disability
- Armed Forces Covenant – war pension and compensation payments
- Duty to prevent homelessness

The EqIA reviews each of these areas in more detail and provides data where they are held. Although equality data is routinely requested in new applications, this data is not mandatory and so the information the Council holds does not provide a comprehensive overview of CTRS claimants.

Unrecorded protected characteristics

The protected characteristics of gender reassignment, sexual orientation, marriage and civil partnership, religion and belief and pregnancy and maternity are not currently recorded in the Council's CTRS database as they do not form part of the application criteria. Prior to the Equality Act 2010, the aforementioned characteristics were not covered by the public sector equality duty, and no historical data exists relating to them. The Council takes routine steps to request the data as part of new application processes. As below, data available to the Council has been used in considering the effect of the proposal on the protected groups.

3. What data will you use to inform your assessment of the impact of the proposal on protected groups of service users and/or staff?

Identify the main sources of evidence, both quantitative and qualitative, that supports your analysis. Please include any gaps and how you will address these

This could include, for example, data on the Council's workforce, equalities profile of service users, recent surveys, research, results of relevant consultations, Haringey Borough Profile, Haringey Joint Strategic Needs Assessment and any other sources of relevant information, local, regional or national. For restructures, please complete the restructure EqIA which is available on the HR pages.

Protected group	Service users	Staff
Sex	The Council's CTRS database, September	N/A

	2019; Census, 2011;	
Gender Reassignment	No Council data recorded; EHRC national data;	N/A
Age	The Council's CTRS database, September 2019 GLA Population Projection, 2015;	N/A
Disability	The Council's CTRS database, September 2019 ONS Disability in England & Wales, 2011;	N/A
Race & Ethnicity	The Council's CTRS database, September 2019 Census, 2011;	N/A
Sexual Orientation	No Council data recorded; ONS Sub-National Sexual Identity Data, 2013-15;	N/A
Religion or Belief (or No Belief)	No Council data recorded; Census, 2011;	N/A
Pregnancy & Maternity	No Council data recorded; Census, 2011	N/A
Marriage and Civil Partnership	No Council data recorded Census, 2011;	N/A
Outline the key findings of your data analysis. Which groups are disproportionately affected by the proposal? How does this compare with the impact on wider service users and/or the borough's demographic profile? Have any inequalities been identified? <i>Explain how you will overcome this within the proposal.</i> <i>Further information on how to do data analysis can be found in the guidance.</i>		
As of September 2019, there were 25,278 claimants in receipt of Council Tax Reduction in Haringey. This total has fallen year on year since Council Tax Benefit was abolished in 2013. Table 1.0 summarises the breakdown of the Council's CTRS caseload. Table 1.0 – Total CTRS caseload (September 2019)		

September 2019 CTRS caseload	Pensionable	Protected/disability-related	Protected/child in household	Non-protected/other Working Age	Total CTR Claimants	Total Working Age (excluding pensioners & protected Working Age)	% All CCTR Claimants	% Total Working Age (excluding pensioners & protected Working Age)
	8108	7396	5667	4107	25278	4107	100%	16.25%

32.08% of the Council's CTRS caseload is of **pensionable age**. Those claimants in the pensionable category are assessed against a maximum 100% of their Council Tax liability, which mirrors all Local Authorities in England and Wales. When Council Tax Benefit was abolished, the government stipulated that pensioners would receive the same level of protection under the new CTRS. The Council is not proposing to change any aspect of the CTRS therefore this protection will continue.

29.26% of the Council's CTRS caseload is of **working age but in receipt of a specific disability benefit**, and therefore the Council has 'protected'. Those claimants in the 'protected' category are also assessed against a maximum 100% of their Council Tax liability. The Council is not proposing to change any aspect of the CTRS therefore this protection will continue.

22.42% of the Council's CTRS caseload is of **working age with children**, and therefore the Council has 'protected'. Those claimants in the 'protected' category are also assessed against a maximum 100% of their Council Tax liability. The Council is not proposing to change any aspect of the CTRS therefore this protection will continue.

16.25% of the Council's CTRS caseload is of **working age and not 'protected'** under the scheme. This group is assessed against a maximum 80.2% of their Council Tax liability.

Data definitions:

- Protected = working age claimants who are in receipt of a prescribed disability related benefit or premium or working age claimants with children and therefore subject to up to a maximum 100% CTR
- Pensionable = pensionable age claimants – subject to up to a maximum 100% CTR
- Working Age Employed = working age claimants who are currently in employment
- Working Age Other = working age claimants who are currently not in employment

1. Sex

Table 1.1 – Total CTRS caseload by Sex (September 2019)

Sex	Pensionable	Protected/di sability	Protected/ch ild in household	Non- prtected/ot her Working Age	Total CTR Claimants	% All CCTR Claimants	Haringey ¹	London ²
Female	4556	4139	4157	1904	14756	58.37%	50.5%	50.9%
Male	3390	3074	1365	2123	9952	39.37%	49.5%	49.1%
Unknown	162	183	145	80	570	2.25%	N/A	N/A
Total	8108	7396	5667	4107	25278	100%	100%	100%

There are disproportionately more women in receipt of CTR than the Haringey and London population as a whole. This is the case both for working age claimants (protected and non-protected) and all claimants. Maintaining the current CTRS into 2020/21 will continue to disproportionately impact women more than men.

2. Gender Reassignment

We do not hold data on the number of people who are seeking, receiving or have received gender reassignment surgery, and there is not national data collected for this protected characteristic. The Equality and Human Rights Commission estimate that there is

¹ 2011 Census

² 2011 Census

between 300,000-500,000 transgender people in the UK³.

At this stage, we do not have any data to suggest that this group would be any more or less likely than the rest of the population to be in receipt of CTRS. Therefore, it is anticipated that the continuation of the current scheme will not have a disproportionate impact on this protected characteristic.

3. Age

Table 1.2 – Total CTRS caseload by Age

Age	Pensionable	Protected/di sability	Protected/c hild in household	Non- protected/ot her Working Age	Total CTR Claimants	Total Working Age (excluding pensioners & protected Working Age)	% All CCTR Claimants	% Total Working Age (excluding pensioners & protected Working Age)
18-24	0	57	202	85	344	85	1.36%	0.34%
25-44	<10	1822	3779	985	6590	985	26.07%	3.90%
45-59	48	4176	1623	2312	8159	2312	32.28%	9.15%
60-64	77	1152	59	662	1950	662	7.71%	2.62%
65+	7979	145	<10	63	8191	63	32.40%	0.25%
Not provided	0	44	0	0	44	0	0.17%	0.0%
Total	8108	7396	5667	4107	25278	4107	100%	16.25%

40.12% of the Council's CTRS caseload is aged 60 or over, which is higher than the Haringey and London averages.

Table 1.3 – Age breakdown in Haringey and London⁴

Age	Haringey	London
0-15	19.4%	20%

³ <https://www.equalityhumanrights.com/en/trans-inequalities-reviewed/introduction-review>

⁴ GLA population projection, 2015

16-64	71.6%	68.6%
65+	9%	11.4%

The percentage of particular age brackets of the population in Haringey broadly match that of the wider London population.

For households where a claimant or their partner is of state pensionable age, the claimant is categorised as 'pensionable' and receives up to 100% Council Tax Reduction under the scheme.

Working age claimants in receipt of a prescribed disability benefit or premium, and working age claimants with children will continue to be 'protected' under the scheme and receive up to 100% maximum Council Tax Reduction.

Therefore, the only impact on the continuation of the scheme will be on non-protected working age claimants. This group is predominantly aged between 25 and 44. However, this group is unlikely to be disproportionately impacted as a whole because it appears to be under-represented in the CTRS caseload when compared to the wider Haringey and London populations.

4. Disability

Table 1.5 – Total CTRS caseload by Disability

In receipt of a prescribed disability benefit?	Pensionable	Protected/disability	Protected/child in household	Non-protected/other Working Age	Total CTR Claimants	% All CTR Claimants
Yes	1602	7396	0	0	8998	35.60%
No	6506	N/A	5667	4107	16280	64.40%

Table 1.6 – Disability data in Haringey, London and England & Wales

	Haringey	London	England & Wales
Day-to-day activity limited a lot	6.8%	6.7%	8.3%
Day-to-day activity limited a little	7.2%	7.4%	9.3%
Day-to-day activity not limited	86.0%	85.8%	82.4%

Day-to-day activity limited a lot: Age 16-64	3.8%	3.4%	3.6%
Day-to-day activity limited a little: Age 16-64	4.6%	4.2%	4.6%
Day-to-day activity not limited: Age 16-64	62.4%	61.5%	56.5%

Working age CTRS claimants in receipt of a prescribed disability related benefit or premium will continue to receive up to a maximum 100% CTR under the existing CTRS. Therefore, this protected characteristic will not be disproportionately impacted on by maintaining the current CTRS in 2020/21.

5. Race & Ethnicity

Table 1.6 – Total CTRS caseload by Ethnicity

Ethnicity	Pensionable	Protected/disability	Protected/care in household	Non-protected/other Working Age	Total CTR Claimants	Total Working Age (excluding pensioners & protected Working Age)	% All CCTR Claimants	Working Age (excluding pensioners & protected Working Age)
White British	232	393	335	283	1243	283	4.92%	1.12%
White Other	228	366	425	190	1209	190	4.78%	0.75%
Non White	408	697	832	637	2574	637	10.18%	2.52%
Unknown	7240	5940	4075	2997	20252	2997	80.12%	11.86%
Total	8108	7396	5667	4107	25278	4107	100%	16.25%

Table 1.7 – Ethnicity in Haringey and London⁵

Area	Black and Minority Ethnic
Haringey	39.5%
London	40.2%

Race and ethnicity data was not historically recorded as part of the CTRS application process. Therefore, the data provided in table 1.6 does not give a complete overview of the current caseload.

The data in Table 1.7 shows that the Black and Minority Ethnic population in Haringey is approximately the same as for London as a whole.

For those CTRS claimants who provided an ethnicity (see Table 1.6), the majority of working age non-protected claimants and all claimants were 'White Other' and 'Non White'. Therefore, it is likely that the Black and Minority Ethnic population will be disproportionately impacted by any changes to the CTRS, including the continuation of the current scheme.

6. Sexual Orientation

We do not hold ward or borough level data on sexual orientation, and it is not collected nationally through the Census. However, the ONS estimates that 3.7% of Haringey's population are lesbian, gay or bisexual (LGB), which is the 15th largest LGB community in the country⁶.

Parliament estimates that in the UK there are around 20,000 dependent children living in same-sex couple families⁷. It is unclear what the figure would be for same-sex single parents.

At this stage, we do not have any data to suggest that this group would be any more or less likely than the rest of the population to be in receipt of CTRS. Therefore, it is anticipated that the continuation of the current scheme will not have a disproportionate impact on this protected characteristic.

⁵ 2011 Census

⁶ <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/sexuality/articles/subnationalsexualidentityestimates/uk2013to2015#introduction>

⁷ <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN03372#fullreport>

7. Religion or Belief (or No Belief)

We do not hold data on religion or belief among Haringey's CTR caseload. However, the borough and region's data can be summarised as the following:

Table 1.8 – Religion in Haringey and London

Religion/Belief	Haringey	London
Christian	45.0%	48.9%
Buddhist	1.1%	1.0%
Hindu	1.8%	5.0%
Jewish	3.0%	1.8%
Muslim	14.2%	12.4%
Sikh	0.3%	1.5%
Other religion	0.5%	0.6%
No religion	25.2%	20.7%
Religion not stated	8.9%	8.5%

The distribution of religions in Haringey broadly tallies with London. There is a slightly higher proportion of residents with no religion than in London.

At this stage, we do not have any data to suggest that this group would be any more or less likely than the rest of the population to be in receipt of CTRS. Therefore, it is anticipated that the continuation of the current scheme will not have a disproportionate impact on this protected characteristic.

8. Pregnancy & Maternity

Table 1.9 – CTRS caseload by Dependant Category

Dependents Categories	Pensionable	Protected/disability	Protected/child in household	Non-protected/other Working Age	Total CTR Claimants	Total Working Age (excluding pensioners & protected Working Age)	% Total CTR Claimants	% Total Working Age (excluding pensioners & protected Working Age)
Those with dependants aged 1 and under	<10	107	813	11	932	11	3.69%	1.18%
Those with dependants aged 5 and under	<10	455	2556	13	3037	13	12.01%	0.43%
Those with dependants aged 16 and under	64	1682	5430	16	7200	16	28.48%	0.22%
Those with more than 3 dependants	<10	471	1606	<10	2084	<10	8.24%	0.10%
Count of All Lone Parents with dependants	26	1102	3603	<10	4746	<10	18.78%	0.15%

Table 2.0 – Proportion of 0-4 year olds in Haringey and London

	Haringey	London
Proportion of 0-4 year olds	7.1%	7.2%

Table 1.9 provides statistics on a number of scenarios regarding dependants. It should be noted that there will be considerable overlap between the different scenarios (for example, the number of claimants with dependants aged 1 and under is accumulated in the number of claimants with dependants aged 5 and under, etc).

A significant proportion of households on the CTRS scheme are single-parent households, a continuation of the scheme will continue to disproportionately impact on this group. However, the scheme currently protects working age claimants with children and there are no proposed changes to this.

9. Marriage and Civil Partnership

We do not hold data on marriage and civil partnership among Haringey's CTR caseload. However, the borough and region's data can be summarised as follows:

Table 2.1 – Marital and civil partnership status in Haringey and London

Marital and civil partnership status	Haringey	London
Married (heterosexual couples)	32.2%	40%
Civil Partnership	0.6%	0.4%

At this stage, we do not have any data to suggest that this group would be any more or less likely than the rest of the population to be in receipt of CTRS. Therefore, it is anticipated that the continuation of the current scheme will not have a disproportionate impact on this protected characteristic.

4. a) How will consultation and/or engagement inform your assessment of the impact of the proposal on protected groups of residents, service users and/or staff?

Please outline which groups you may target and how you will have targeted them

Further information on consultation is contained within accompanying EqIA guidance

Public consultation exercises took place in 2012 and 2018 to shape the current CTRS, which is proposed to continue unchanged into 2020/21. The consultation aimed to be inclusive and not discriminate on the basis of any protected characteristics and included open ended questions and free text boxes to allow respondents to provide information about equalities issues if they had any concerns.

Overall, the equality data sources from consultation in 2018, did not suggest that individuals or groups who share a protected characteristic would be negatively impacted on by changes to the CTRS. As the proposal is to continue the current CTRS for 2020/21 it is not anticipated that there will be any negative impacts.

The 2018 consultation also showed that residents were broadly in support of the changes to the CTRS, details on how to access the full results of the consultation can be found

<https://www.haringey.gov.uk/council-tax-and-benefits/council-tax/council-tax-reductions/proposed-changes-201920-council-tax-reduction-scheme>

As there are no proposed changes to the CTRS there is no requirement to conduct any further consultation exercises, however the council will routinely check progress with customers to ensure the scheme continues to support and respond to the needs of residents.

We will routinely check our progress with those customers who tell us they have difficulty in paying, to ensure that we can come up with the best solution to meet their needs.

4. b) Outline the key findings of your consultation / engagement activities once completed, particularly in terms of how this relates to groups that share the protected characteristics

Explain how will the consultation's findings will shape and inform your proposal and the decision making process, and any modifications made?

As above, given that there are no proposed changes to the CTRS for 2020/21, and that consultation took place in 2018 to inform the scheme there is no requirement to conduct any further consultation exercises at present.

Full details of the 2018 consultation can be found:

<https://www.haringey.gov.uk/council-tax-and-benefits/council-tax/council-tax-reductions/proposed-changes-201920-council-tax-reduction-scheme>

5. What is the likely impact of the proposal on groups of service users and/or staff that share the protected characteristics?

Please explain the likely differential impact on each of the 9 equality strands, whether positive or negative. Where it is anticipated there will be no impact from the proposal, please outline the evidence that supports this conclusion.

Further information on assessing impact on different groups is contained within accompanying EqIA guidance

1. Sex

Women are overrepresented in the current CTRS caseload and so are likely to positively affected by the continuation of the scheme as is.

It seems likely from the data that most single parents in the Haringey CTRS caseload are women, as women are overrepresented in the caseload. Maintaining the scheme as is means additional financial support to households with children for non-protected working age claimants.

There may be some women who do not qualify for up to 100% maximum CTR as a result of not being pensioners, entitled to certain disability benefits or having children.

Positive	X	Negative		Neutral impact		Unknown Impact	

2. Gender reassignment

Overall, maintaining the scheme as is would leave most affected claimants financially better off.

At this stage, we do not have any data to suggest that this group would be any more or less likely than the rest of the population to be in receipt of CTRS. Therefore, it is anticipated that the continuation of the current scheme will not have a disproportionate impact on this protected characteristic.

Positive		Negative		Neutral impact	X	Unknown Impact	

3. Age

Maintaining the scheme as is will have a positive impact on pensioners, working age claimants in receipt of certain disability premiums, working age claimants with children and children themselves.

Children

Child poverty is a significant issue in the borough and maintaining the scheme as is will continue to reduce the financial contribution that working households with children are required to pay towards their Council Tax.

Therefore, it is considered likely that the preferred option will have a positive impact for children.

Adults aged between 25 and 44

There may be some individuals in this group who do not qualify for up to 100% maximum CTR as a result of not being entitled to certain disability benefits or having children.

However, on balance it is considered that the overall impact on this protected characteristic would be positive.

Positive	X	Negative		Neutral impact		Unknown Impact	

4. Disability

Maintaining the scheme as is will have a positive impact on working age claimants in receipt of certain disability premiums, as they will continue to be protected.

Positive	X	Negative		Neutral impact		Unknown Impact	

5. Race and ethnicity

The borough profile data suggests that the Black and Minority Ethnic population is overrepresented.

Generally, maintaining the scheme as-is is likely to have a positive financial impact on most CTRS claimants. There may be some

who do not qualify for up to 100% maximum CTR, however, the number of people affected is likely to be comparatively small.

Therefore, it is thought likely that maintaining the scheme would also have an overall positive impact on the Black and Minority Ethnic CTRS claimants.

Positive	X	Negative		Neutral impact		Unknown Impact	

6. Sexual orientation

Overall, maintaining the scheme as is would leave most affected claimants financially better off.

At this stage, we do not have any data to suggest that this group would be any more or less likely than the rest of the population to be in receipt of CTRS. Therefore, it is anticipated that the continuation of the current scheme will not have a disproportionate impact on this protected characteristic.

Positive		Negative		Neutral impact	X	Unknown Impact	

7. Religion or belief (or no belief)

Overall, maintaining the scheme as is would leave most affected claimants financially better off.

At this stage, we do not have any data to suggest that this group would be any more or less likely than the rest of the population to be in receipt of CTRS. Therefore, it is anticipated that the continuation of the current scheme will not have a disproportionate impact on this protected characteristic.

Positive		Negative		Neutral impact	X	Unknown Impact	

8. Pregnancy and maternity

Maintaining the scheme as is will have a positive impact on working age claimants with children. Child poverty is a significant issue in the borough and maintaining the scheme as is will continue to reduce the financial contribution that working households with children are required to pay towards their Council Tax.

Therefore, it is considered likely that the preferred option will have a positive impact for this group.

Positive	X	Negative		Neutral impact		Unknown Impact	

9. Marriage and Civil Partnership

Overall, maintaining the scheme as is would leave most affected claimants financially better off.

At this stage, we do not have any data to suggest that this group would be any more or less likely than the rest of the population to be in receipt of CTRS. Therefore, it is anticipated that the continuation of the current scheme will not have a disproportionate impact on this protected characteristic.

Positive		Negative		Neutral impact	X	Unknown Impact	

10. Groups that cross two or more equality strands e.g. young black women

- Female-headed single parents;
- BAME women;

The data suggests that female-headed single parents and BAME women are more likely to be disproportionately positively impacted by maintaining the scheme as-is, as the equality strands are overrepresented in the CTRS caseload.

There is nothing to suggest that these groups will be negatively impacted by the preferred option.

Overall, the preferred option would leave most affected claimants financially better off.

Positive	X	Negative		Neutral impact		Unknown Impact	

Outline the overall impact of the policy for the Public Sector Equality Duty:

- Could the proposal result in any direct/indirect discrimination for any group that shares the relevant protected characteristics?
- Will the proposal help to advance equality of opportunity between groups who share a relevant protected characteristic and those who do not?
This includes:
 - a) Remove or minimise disadvantage suffered by persons protected under the Equality Act
 - b) Take steps to meet the needs of persons protected under the Equality Act that are different from the needs of other groups
 - c) Encourage persons protected under the Equality Act to participate in public life or in any other activity in which participation by such persons is disproportionately low
- Will the proposal help to foster good relations between groups who share a relevant protected characteristic and those who do not?

The scheme is not changing for 2020/21, therefore all those currently protected will continue to be so.

This therefore has a positive impact on the groups that share protected characteristics:

- Sex
- Age
- Disability
- Race and Ethnicity
- Pregnancy and Maternity

Duties to particular groups

As above, continuing the scheme is considered likely to have a positive impact on child poverty and persons with a disability. As most CTRS claimants are considered likely to financially benefit from continuing the scheme it is thought likely that this would

reduce the risk of homelessness by reducing the financial burden on groups in particular need.

Since 2013, the Council's CTRS has reflected armed forces benefits.

Outside the CTRS, the Council holds a range of Council Tax Discounts, Exemptions and Disregards. These powers include complete Council Tax exemption for residents who are "Severely Mentally Impaired".

Additional powers to support vulnerable residents:

The Council has the discretionary power, under S13A(1)(c) of the Local Government Finance Act, to eliminate the Council Tax liability for residents in extenuating circumstances.

6. a) What changes if any do you plan to make to your proposal as a result of the Equality Impact Assessment?

Further information on responding to identified impacts is contained within accompanying EqIA guidance

Outcome	Y/N
No major change to the proposal: the EqIA demonstrates the proposal is robust and there is no potential for discrimination or adverse impact. All opportunities to promote equality have been taken. <u>If you have found any inequalities or negative impacts that you are unable to mitigate, please provide a compelling reason below why you are unable to mitigate them.</u>	Yes
Adjust the proposal: the EqIA identifies potential problems or missed opportunities. Adjust the proposal to remove barriers or better promote equality. Clearly <u>set out below</u> the key adjustments you plan to make to the policy. If there are any adverse impacts you cannot mitigate, please provide a compelling reason below	No
Stop and remove the proposal: the proposal shows actual or potential avoidable adverse impacts on different protected characteristics. The decision maker must not make this decision.	No

6 b) Summarise the specific actions you plan to take to remove or mitigate any actual or potential negative impact and to further the aims of the Equality Duty

Impact and which relevant protected characteristics are impacted?	Action	Lead officer	Timescale
N/A	N/A	N/A	N/A

Please outline any areas you have identified where negative impacts will happen as a result of the proposal but it is not possible to mitigate them. Please provide a complete and honest justification on why it is not possible to mitigate them.

N/A

6 c) Summarise the measures you intend to put in place to monitor the equalities impact of the proposal as it is implemented:

The Council will continue to provide support to Council Tax payers where vulnerabilities are identified and respond appropriately. This includes:

- Supportive and flexible payment arrangements
- Promotion of wider support available in the Council and with our Voluntary and Community Sector partners across the borough
- Signposting to Citizens Advice Haringey

7. Authorisation

EqlA approved by: Jon Warlow, Director of Finance

Date

8. Publication

Please ensure the completed EqlA is published in accordance with the Council's policy.

This EQIA will be published along with all papers relating to the report

Please contact the Policy & Strategy Team for any feedback on the EqlA process.

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Report for: Full Council 26 November 2019

Title: Dockless Bicycles – Pan London Bylaw

Report authorised by: Dan Hawthorn, Director of Housing, Regeneration & Planning

Lead Officer: Emma Williamson, Assistant Director for Planning, Building Standards & Sustainability
Rob Krzyszowski, Head of Planning Policy, Transport & Infrastructure

Ward(s) affected: All

**Report for Key/
Non Key Decision:** N/A

1. Describe the issue under consideration

- 1.1. Dockless bicycles are a new way to share bicycles without the docking station infrastructure required by bike share schemes such as Santander Cycle Hire. Customers can pick up and drop off bicycles anywhere at the start and end of their journeys, paying a fee per minute. Customers hire and unlock Dockless Bikes using a mobile phone app and use the same app to end the hire and lock the bike as the bike has its own self-contained locking mechanism. This means that local authorities currently have very little control of the parking of dockless bicycles.
- 1.2. Local authorities currently have no powers to regulate the distribution and operation of Dockless Bikes. Powers are currently limited to impounding bikes that are parked in such a way as to create a highway obstruction or are considered a danger. No formal agreement currently exists stopping Dockless Bike operators operating in the borough. Currently, Dockless Bike operators in neighbouring boroughs do not place the bikes in Haringey but may allow their bikes to end their journey in the borough, however, if they are not rehired within 12 hours the operator must collect the bike.
- 1.3. This report sets out a pan London approach to regulating the use of Dockless Bikes. The new approach, agreed in principle between Transport for London and the Boroughs, is to create a new pan London bylaw. For the bylaw to be created, each borough needs to delegate authority to the London Councils Transport and Environment Committee (TEC) to make the bylaw.
- 1.4. Getting more residents and businesses in Haringey making journeys by bicycle is a key priority of the 2018 Haringey Transport Strategy. A well regulated Dockless Bike operation in Haringey would help deliver the ambitious Transport Strategy. This pan London Bylaw is considered to be the most appropriate approach to achieving this.

- 1.5. This report recommends Full Council to agree in principle to the making of a pan-London Bylaw that will regulate the use of Dockless Bicycles and to delegate the function of making the Bylaw to London Councils TEC.
- 1.6. TfL have asked the boroughs to delegate authority by the 5th December 2019 to ensure a swift process making the bylaw.
- 1.7. Once established, the bylaw provides a framework for boroughs to opt into at a later date. Consultations and decisions on where dockless parking spaces may be (or may not be allowed) would be subject to future borough decisions.

2. Cabinet Member Introduction

- 2.1. There are currently several Dockless Bike operators working in London, or about to launch, as the Dockless Bike market continues to evolve at a rapid pace:
 - Mobike continues to provide pedal bikes, mostly in Central and Inner London
 - Lime provides electrically assisted 'e-bikes' through agreements with several London Boroughs and at selected Thameslink rail stations
 - JUMP launched its first e-bikes in May in Islington and is expanding into Hackney later this year
 - Freebike and Beryl were chosen by the City for a 6-month trial last July; and
 - Youon have yet to launch but have been in contact with boroughs with regard to launching a fleet of pedal bikes.
- 2.2. Haringey has not yet launched with any Dockless Bike operators. Officers have met with most of the operators and have asked the operators not to deploy (or place) bikes in the borough but users from other boroughs can terminate hires in Haringey. These bikes need to be re-hired within an agreed timeframe or removed by the operators themselves.
- 2.3. Councils have no legal power to force the operators to do this. For most part, the operators have abided by this instruction which most boroughs without launches have adopted.
- 2.4. In the absence of legislation to regulate the bikes, Transport for London (TfL) and the boroughs have produced a Code of Practice (<http://content.tfl.gov.uk/dockless-bike-share-code-of-practice.pdf>) which the operators have agreed to follow. This is often supplemented with individual borough Memoranda of Understanding (MoUs) which set out expectations on both sides. These are not legally binding. The MoUs and the Code of Practice cover issues such as parking, maintenance, management and the redistribution of bikes to avoid overconcentration.
- 2.5. Although the Council hasn't launched with an operator, any bikes operating in Haringey will need to meet the TfL code of practice.

2.6. This approach however is not sustainable. Haringey has an aspiration to launch with an operation in the future. This could be through an MoU but to ensure the operations meet the expectations of residents and ensure a consistent experience across borough boundaries, the pan London bylaw is considered to be the best solution.

2.7. TfL have indicated that a full Equality Impact Assessment will be carried out on the Bylaw ahead of it being made. This will include engagement with disability groups. Haringey's Equalities Officer has also assessed the Equality impacts of the bylaw and a summary is provided in section 8 of this report. The Council is aware of the 'Inclusion London' campaign regarding bikes being obstacles to the highway, particularly for disabled people and the draft bylaw will help address the group's concerns by bringing in a formal mechanism for control.

3. Recommendations

3.1. It is recommended that Full Council agrees:

- i) in principle to the making of a pan-London bylaw to regulate dockless vehicles on the highway and/or public places (including making it an offence for a dockless vehicle operator to cause or permit their dockless vehicle to be left on the highway or public place other than in an approved location in the Borough);
- ii) to delegate the Council's functions (as referred to in paragraph 8.3.5 below) to the London Councils TEC to make a bylaw to regulate dockless vehicles in the Borough; and
- iii) to authorise the Assistant Director of Corporate Governance to sign any necessary documents to give effect to the above recommendations, including authorising changes to the London Councils TEC Governing Agreement dated 13 December 2001 (as amended).

4. Reasons for decision

4.1. To deliver the Haringey Transport Strategy objective of enabling more journeys in Haringey to be made by cycling and in the absence of an alternative approach to regulating Dockless Bike sharing, this is considered to be the most appropriate and effective approach.

5. Alternative options considered

5.1. The alternative option considered is to continue with boroughs entering into individual non-binding (MoU) agreements. However, to ensure the operators manage their operations to the benefit of Haringey businesses and residents, and have a legal framework to fine the operators, a bylaw is necessary. Different operators in each borough with different operations can be complicated for the users and might prohibit them from making journeys by bicycle.

- 5.2. The second alternative option is to do nothing. This option will not help getting residents and businesses in Haringey using bicycles and will not assist in achieving the aims of the Haringey Transport Strategy.

6. Background Information

The London Councils' Transport and Environment Committee (TEC)

- 6.1. London Councils holds a number of committees of which the TEC is one. Under their powers of delegation from the boroughs and the City of London, TEC performs a number of road and traffic functions on behalf of all 33 authorities. It is now proposed that the TEC has the power to make bylaws across London in respect of dockless vehicles but in order to do so all London boroughs and the City of London must agree to delegate the making of a bylaw. A number of other London boroughs have already agreed to delegate the making of a bylaw to the TEC.
- 6.2. Within the Haringey Constitution, the decision to make a bylaw is reserved for Full Council. Article 10.5 allows the Council to delegate non-executive functions to other organisations or boards where legislation allows. The legislative authority to delegate the making of a bylaw on to London Councils TEC is contained in section 101(5) of the Local Government Act 1972 Act which provides that two or more local authorities may discharge any of their functions by a joint committee. The London Councils TEC is such a joint committee that has been appointed by the 33 London local authorities.

The Greater London Dockless Vehicle Hire Bylaw

- 6.3. TEC has agreed that the correct future approach for Dockless Bike sharing is to move away from the current approach where boroughs reach individual agreements with specific operators and move to a borderless operation throughout London which would be regulated and controlled by a pan London bylaw. This would allow users to take full advantage of the benefits of Dockless Bicycle schemes for journeys across borough boundaries, and also secure more control for local authorities over the operation of these schemes.
- 6.4. Controlling Dockless Bikes can be achieved by adopting a pan-London bylaw on behalf of all boroughs that prohibits Dockless Bike operators and their customers from parking Dockless Bikes other than at designated dockless parking spaces.
- 6.5. "Dockless parking space" is defined in the proposed bylaw as meaning a parking place for dockless vehicles designated by a Local Authority or Transport for London under section 45 of the Road Traffic Regulation Act 1984 or any Public Place where a parking area for Dockless Vehicles has been approved in writing by the Local Authority as an area where dockless Vehicles may be placed and made available for hire. Designation of spaces does not necessarily mean signs and markings on the footway and the Council would have absolute discretion as to whether or not it will designate Dockless Bike parking spaces, either by identifying specific places or by allowing a larger area

to be used with “no parking” places identified. The Council could also decide not to designate any parking places at all.

6.6. TEC has asked boroughs to agree the following:

- that it wishes to make the Bylaw in principle (to compel dockless operators to use designated parking spaces, and prohibit bikes being left anywhere not agreed by boroughs); and
- that the actual making of the Bylaw is delegated to the TEC so as to ensure that an appropriate Pan London Bylaw can be made in accordance with the advice received by London Councils.

6.7. Each individual Council will then be able to use existing powers to designate parking spaces for Dockless Bikes. It is up to the boroughs to decide how to designate parking spaces. This will need to be considered alongside any operational requirements for community safety and enforcement.

6.8. The final wording of the bylaw has not yet been determined by TEC. Ministerial approval still has to be sought thereafter and there will be a formal consultation exercise undertaken with stakeholders.

6.9. It is anticipated that the Bylaw will place responsibility on dockless operators to ensure that the terms of hire for dockless vehicles prohibit hirers from leaving a dockless vehicle on any highway or public place other than a dockless parking space. The Bylaw may also require that the hire period may not be terminated unless the dockless vehicle is located at a dockless parking space. This prevention can be via a device fitted to the bicycle, or a technological solution via the app e.g. if the bike is deposited at a place other than a dockless parking space, the user will be unable to end the hire and so keep paying the hire charge.

6.10. If the Bylaw is approved, each participating Council will be able to decide whether to ensure that appropriate parking spaces are designated, or opt to provide no parking provision at all. TfL will be providing guidance documentation for helping the boroughs and operators implement and abide by the bylaw. This includes a draft Order that can be made pursuant to section 45 of the Road Traffic Regulation Act 1984. However, there may be other means by which parking spaces can be designated.

6.11. Once the Bylaw is enacted it will become an offence for dockless operators to place or allow their bikes to be parked anywhere other than at a location agreed by the local authority. It is anticipated that the penalty for breaching the Bylaw will be a fine not exceeding level 2 on the standard scale (currently £500).

6.12. The draft text of the Bylaw has not been agreed with boroughs by TEC yet so this report can only set out the headline terms of the draft bylaw:

- Defines several terms used in the draft Bylaw currently undefined in legislation (e.g. a dockless operator);
- States that the Bylaw applies throughout Greater London;
- Sets out minimum safety standards for Dockless Bikes;
- Requires all Dockless Bikes to be chipped to ensure their whereabouts can always be tracked;
- Requires all Dockless Bikes to be parked (whether by dockless operators or their customers) only in places agreed by the relevant local authority, and makes it an offence for dockless operators to place or allow their bikes to be parked anywhere other than at a location agreed by the local authority; and sets a penalty for a dockless operator committing the offence.

6.13. Local issues, such as how many or how few parking places to approve and where they should be located, are all left for individual authorities to decide, depending on their local circumstances. It is envisaged that designated dockless parking spaces would not be exclusive to specific operators, but would be open to all dockless companies, to facilitate journeys across borough boundaries.

6.14. The additional work, which is to be developed in partnership with borough officers, will cover:

- Preparation of guidance on how enforcement will be undertaken and managed.
- The collection, management and provision of data that informs dockless bike customers and other highway users where dockless bicycles may and may not be parked.
- Proposed procedures for designating or approving dockless parking spaces.
- How boroughs may charge operators for the use of the parking spaces they make available.

6.15. The draft wording covers Dockless Bikes and Dockless E-bikes and is also worded to apply to electric kick scooters or other micromobility vehicles, in the event that these become legalised for use on roads in the UK.

7. Contribution to strategic outcomes

7.1. Place Priority Outcome 9 (Healthier, active and greener place),

- Objective b to Increase the levels of physical activity across the borough, to support people to be active by cycling, walking, playing, and participating in sport and to bring about a shift from car use to walking and cycling by promoting the concept of 'active travel'.
- Objective c to encourage residents to make choices that minimise air pollution such as travelling by walking, cycling and using public transport.

7.2. Place Priority Outcome 11 (A culturally engaged place)

- Objective b to improve connectivity around the borough especially for pedestrians and cyclists and to improve walking and cycling and bus networks as well as public transport interchanges, enabling people to move easily around the borough and through the borough.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8.1. Finance

- 8.1.1 The recommendation in this report is for Cabinet to agree in principle to the making of the bylaw and delegates the function of making the bylaw to the London Councils TEC.
- 8.1.2 There are no immediate financial implications in terms of delegating the Byelaw making powers. There may be financial implications in due course if there are costs associated with providing dockless parking spaces, but there is potential to charge operators for the use of those spaces.
- 8.1.3 Once the Byelaw is enacted it will become an offence for dockless operators to place or allow their bikes to be parked anywhere other than at a location agreed by the local authority.
- 8.1.4 It is anticipated that the penalty for breaching the Byelaw will be a fine not exceeding level 2 on the standard scale (currently £500).

8.2. Procurement

- 8.2.1 There is an intention in the future for Haringey Council to engage with a suitable supplier (via a competitive process) to provide a dockless bike service, once the issue of the Pan London Bylaw is resolved. There are discussions taking place to run a potential trial with a preferred supplier to ascertain whether such a scheme in the Council will be a viable proposition. However, for the purposes of this Decision Report, as there is no actual procurement activity involved, procurement comments are not applicable (SS)

8.3. Legal

- 8.3.1 The Assistant Director of Corporate Governance has reviewed and noted this report.
- 8.3.2 The Council has the power to make a bylaw in respect of dockless bikes under section 235 of the Local Government Act 1972 (the power to make bylaws for Good Rule and Government and Suppression of Nuisances). The procedure for doing so is set out in section 236 of the 1972 Act.
- 8.3.3 Within the Council's Constitution, the decision to make a bylaw is reserved for Full Council. Article 10.5 allows the Council to delegate non-executive functions to other organisations or boards where legislation allows. The legislative authority to delegate the making of a bylaw on to London Councils TEC is contained in section 101(5) of the Local Government Act 1972 Act which provides that two or more local authorities may discharge any of their functions by a joint committee. The

London Councils TEC is such a joint committee that has been appointed by the 33 London local authorities.

8.3.4 All London local authorities have asked to determine if: (i) it wishes to make such a bylaw in principle to regulate dockless vehicles on the highway and/or public places (including by making it an offence for a dockless vehicle operator to cause or permit their dockless vehicle to be left on the highway or public place other than in an approved location in the Borough); and (ii) if it agrees to delegate the functions of making any such bylaw to the London Councils TEC so as to ensure that appropriate Pan London Bylaws can be made in accordance with the advice received by London Councils.

8.3.5 If Full Council and the other London local authorities agree to delegate the function in respect of the bylaw, then it is proposed that Schedule 2 of the London Councils TEC Governing Agreement shall be amended as follows:

“2(c)(i) the making of byelaws under section 235 of the Local Government Act 1972 (and, in respect of the City of London Corporation, under section 39 of the City of London (Various Powers) Act 1961) for the purpose of regulating dockless vehicles on the highway and/or public places (including by making it an offence for a dockless vehicle operator to cause or permit their dockless vehicle to be left on the highway or public place other than in an approved location), including taking all related steps to promote, make, amend and revoke any such byelaw.

2(c)(ii) The exercise of powers under Section 1 of the Localism Act 2011 for the purposes of giving effect to (i) above, including but not limited to oversight and management of the arrangements (but excluding prosecution or other enforcement).”

8.4 Equalities

8.4.1 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

8.4.2 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

8.4.3 The proposal is to agree to the making of a pan-London bylaw on dockless bicycles and delegate the function of making the bylaw to the

London Councils TEC. The making of the bylaw is likely to have several impacts on Haringey residents, assessed below.

- 8.4.4 Firstly, the bylaw's provision of designated parking spaces for dockless bicycles is likely to prevent dockless bicycles becoming obstructions on pavements. This is likely to have a positive impact for individuals with disabilities, and particularly those with visual impairments, as well as parents of young children who use pushchairs.
- 8.4.5 Secondly, to the extent that the bylaw enables Haringey residents to take up cycling where they would not otherwise have done so, it is likely to enable positive impacts in terms of air quality and physical health. The impacts for both are detailed in the equalities impact assessments for the draft Haringey Air Quality Action Plan, and the Haringey Transport Strategy.
- 8.4.6 In summary, increased cycling is likely to have a positive impact on air quality, which is in turn likely to have a positive impact on young people, those with disabilities and/or long-term health conditions, and BAME communities. Increased cycling is also likely to have a positive impact on physical health among groups who are underrepresented among current cyclists, including women and BAME communities.

9. Use of Appendices

None

10. Local Government (Access to Information) Act 1985

Haringey Borough Plan 2019

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