

Further information regarding the implications of guidance by Her Majesty's Revenue and Customs (HMRC) regarding the taxation of members' home to County Hall travel claims

1. Financial Appraisal

1.1 Calculating the financial implications in relation to member travel claims to a precise figure is not possible for the following reasons:

- a) Without examining every Member's travel claim for every month, home to office mileage is not known with precise accuracy
- b) National Insurance Contributions due are dependant upon age of the Member and if they contribute to the Local Government Pension Scheme.
- c) The marginal rate of income tax individual Members are liable to pay is either 20%, 40% or 45%

The following figures should therefore be seen in the context of a best estimate.

1.2 Step 1 below is a 'must-do', the estimated cost which is £3,000, comprising the additional employer Class 1 National Insurance contributions (NICs) the Council will have to make. This cost is unavoidable whichever other option is adopted. Step 1 is mandatory as the authority must administer a compliant scheme.

1.3 Option 1 would have no cost to the Council other than the £3,000 shown at Step 1, but would cost individual Members a total of around £6,900. For some members the impact would be significant while for others there would be no impact. It is estimated that the maximum annual impact for a higher rate tax payer is approximately £1,200.

1.4 Option 2 shows an estimated additional cost of £10,200 based on an increased mileage rate for home to work journeys. This is based on the following:

- 2013/14 travel claim for home to County Hall mileage
- For the tax and NICs to have nil impact on Members who pay basic rate tax and are under state retirement age, the rate per mile would need to increase from 45p to 66.2p per mile, an increase of 47%.

2. Supporting Information

2.1 Members may claim travel expenses when representing the Council on official business, subject to certain provisions set out in the Members' Allowances Scheme adopted by the County Council.

2.2 The current mileage rate for a Member undertaking ESCC business is 45p per mile which is the maximum permitted by HMRC (up to 10,000 miles per annum) without being subject to income tax. Public transport costs can be fully reimbursed for business travel.

2.3 As office holders, Elected Members are normally regarded as having two places of work: their own home and the strategic headquarters of the authority, which is why

Members (unlike officers) can claim the cost of mileage between their own home and County Hall.

2.4 The view of the HMRC is that where Councillors do not routinely see constituents in their home (irrespective of whether they undertake correspondence and preparation at home) then any allowance paid for travel between home and the council offices will be taxable in the normal way. The fact that a councillor chooses to do work at home - for example reading council papers or completing correspondence - does not, in the view of HMRC, make that home a distinct place of work for the purpose of claiming tax relief on travel expenses.

2.5 On behalf of Local Authorities the Chief Executive of the Local Government Association wrote to the HMRC to seek clarification regarding the perceived change of interpretation in the application of HMRC guidance regarding this issue. The HMRC response reiterated existing guidance. The LGA has lobbied the Treasury who are maintaining their view.

2.6 If the mileage rate remains at the current level (45p per mile) then there would be a significant negative impact for a number of councillors.

2.7 The Independent Remuneration Panel (IRP) was asked to consider whether member mileage allowances should be altered in light of this. One option is that the travel allowance for home to work should be grossed up (from 45p per mile to 66.2p per mile) to take into account the amount of tax, and ensure that the net amount received by members remains the same as the current level. Ultimately this is a matter for decision by the County Council, but having regard to the views of the Panel. Any increase in travel allowance subsequently agreed could be back dated

2.8 The current estimated annual cost of members travel of home to work journeys at 45p per mile is £21,700. Should the amount be grossed up to 66.2p per mile then the estimated cost will be £31,900. (excluding Employer Class 1 National Insurance Contributions)

2.9 Reimbursement of travel expenses from a Member's home to other ESCC offices or other places when representing the Council on official business is not subject to tax. However:

- Members must be able to show that attendance at the particular place was necessary to perform their representative duties; and
- If such a journey is substantially the same as travel from home to County Hall, then HMRC will not accept that it qualifies as a business journey.

3. Negotiations with HMRC

3.1 Various representations have been made to HMRC with regard their interpretation of these rules on a number of reasons including:

- Some Members travel approximately 9000 miles per year and deducting tax from those home to County Hall expenses penalises individuals and could deter others from serving the public by being or becoming an elected representative. In this respect, the rules penalise large County areas, compared to small District or London

Borough areas, which are often significantly smaller and may have better public transport links.

- Members of the UK Parliament, the Welsh National Assembly, the Scottish Parliament and the Northern Ireland Assembly, in defined circumstances, are all able to claim tax relief on constituency to Parliament mileage claims whereas local government councillors cannot claim tax relief on home to office claims.
- A common sense approach to health and safety means that it is questionable for elected Members to routinely open up their own homes to members of the public not known to them.
- Members undertake a significant part of their duties at home – reading Council papers, preparing for meetings, undertaking research, dealing with correspondence etc
- The public cost of administering the rules will increase even after taking into account the additional revenue raised and the complexity of the rules may result in inadvertently incorrect submissions.

3.2 All of these arguments have been rejected by HMRC who have confirmed the view that Members can treat their own home as a workplace only if they routinely see constituents there. It is therefore clear that ESCC must apply the relevant HMRC regulations relating to home to office mileage, which for most Members will mean that such journeys are subject to deductions for income tax and National Insurance.

3.3 A failure to comply with the Regulations would expose the Council and individual Members to fines and liability for tax arrears.

4. Options for implementing Regulation

4.1 Options that could be considered include:

Steps / Options	Impact
Step 1. Comply with the HMRC rules and deduct tax from home to office mileage claims unless the Member routinely sees constituents in their own home	<ul style="list-style-type: none"> • We have to do this, regardless of any other options we consider. This will make us legally compliant • Compliance with the rules will cost ESCC an estimated additional £3,000 for employer Class 1 NICs
Option 1. Do not mitigate the impact of the tax and NICs deductions	<ul style="list-style-type: none"> • This will increase the cost of being an elected representative, particularly for those who travel long distances to County Hall and may deter some people from seeking election/re-election • The maximum impact on any Member, based on 2013/14 travel claims, would result in a reduction of their 'take home' amount, including their basic allowance, of 15% (assumption based on maximum recorded home to work miles of 450 per month and higher rate tax applied (40%) with no personal tax allowance)

	<ul style="list-style-type: none"> ● The average impact (although no one Member fits the 'average') for an individual on basic rate tax and in receipt of the full personal tax allowance, would result in a reduction of their 'take home' amount, including their basic allowance, of 2%. (assumption based on average recorded home to work miles of 126 per month) ● In a county of this size the impact on members will vary greatly. It is estimated that the greatest annual impact would be approximately £1200. ● It would have a nil impact on a handful of Members
<p>Option 2. Increase the mileage rate payable to Councillors for home to work journeys. Rate for business journeys would remain at 45p per mile</p>	<ul style="list-style-type: none"> ● As close to cost-neutral as possible for Members (without multiple rates and huge complexity) with a cost for the Council of approximately £11,600 in addition to Step 1