

**Report to:** Governance Committee

**Date:** 26 April 2016

**Title:** Ordinary Commuting – employees with more than one permanent workplace

**By:** Chief Operating Officer

**Purpose of report:** To agree amendments to the travel process to enable ordinary commuting costs to be met by the Council where employees are required to have more than one permanent workplace

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## RECOMMENDATIONS

The Governance Committee is recommended to:

- 1) agree that the relevant staff travel policies are amended as set out in Section 3 of the report to allow the payment to existing employees of a ‘workplace travel allowance’ for the reimbursement of additional ordinary commuting costs, including tax and National Insurance (NI), associated with attendance at a secondary workplace, where an employee would otherwise suffer a significant financial detriment; and
  - 2) agree that such reimbursement only applies to existing employees; staff appointed from outside of the County Council will not have an entitlement.
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### 1. Background

1.1 A tax compliance issue has recently been identified in relation to employees who are required, by reason of their employment, to have two or more permanent workplaces concurrently. In these circumstances, the employees are currently being reimbursed the cost of mileage or being provided with rail warrants for travel to the secondary workplace on the basis (incorrectly) that the journeys are for business travel.

1.2 It is important to understand the difference between business travel (where full tax relief for the cost of travel is allowable) and ordinary commuting (where tax relief is not allowable)

1.2.1 The term “**ordinary commuting**” means any travel an employee makes between a permanent workplace and home (home to work travel) or any place that is not a workplace. Costs incurred travelling between home and a workplace would not normally be reimbursable.

1.2.2 The term “**business travel**” means a journey that is “on the job” as opposed to a journey that is “to the job”. Business travel is allowable only where the journey is in the actual performance of the employee’s duty or where it is necessary – in a real sense – for the employee to attend the particular place on that occasion to perform the duties of employment.

1.3 Any travel to a permanent workplace, satisfying the ordinary commuting definition, is not allowable for tax relief. It makes no difference regarding the number of permanent workplaces applicable to an individual, the same rule applies.

1.4 Where the ordinary commuting travel costs are met directly by the Council, or reimbursed to the employee, the payments need to be considered for income tax and National Insurance purposes. This is not what is happening at present.

## 2. Supporting Information

2.1 The information noted in this report refers to the HM Revenues and Customs guidance and how they determine if travel undertaken in relation to business is allowable or not for tax relief. An employee's terms and conditions or custom and practice have no relevance to the determination of taxable status.

2.2 It is important to differentiate between employees who genuinely have more than one permanent workplace and are affected by the ordinary commuting issue and those that attend secondary work locations for a **temporary purpose or for a limited duration** – for the latter, the journeys satisfy business travel rules (and full tax relief is allowable). Attached at Appendix 1 is a table setting out the indicators that determine the difference between a permanent workplace and a temporary workplace.

2.3 The term "limited duration" refers to circumstances where an employee may be seconded or re-deployed to an alternative workplace for a temporary period but where the duration is not expected to or does not (in actuality) exceed 24 months.

2.4 Any period of secondment or redeployment that exceeds 24 months or at any point when it is known that the period will exceed 24 months (eg an end date that was originally intended to not exceed 24 months but is changed at any point to exceed 24 months) immediately initiates a change of status from a limited duration to a permanent workplace and tax relief is no longer allowable.

2.5 The HMRC apply strict rules to safeguard against abuse of the limited duration rule to prevent the continuous extension of periods of redeployment or secondment, this applies even where a limited duration ceases but is then re-instated a short time later.

2.6 Safeguarding is also applied to prevent what is an ordinary commuting journey (no tax relief) being turned into a business journey (with tax relief) simply by a journey passing near to the primary permanent workplace on route to a secondary permanent workplace eg – Home (Eastbourne) to permanent primary workplace (Lewes, County Hall) when the purpose of the ordinary commuting journey was to the secondary permanent workplace (Kingston, County Hall). For the status of the journey to change, attendance at the primary location on that day must have been a genuine business purpose and actually occurred. Where attendance was required at the primary permanent workplace and did occur for a reasonable period of time – any subsequent journey workplace to workplace would be an allowable business journey (with tax relief).

2.7 Employees whom are determined as attending secondary workplaces for a temporary purpose can be ignored from any further consideration. This is because they can continue to claim business travel for these journeys.

## 3. Conclusion and Recommendations

3.1 In considering the position in East Sussex, this issue is most immediately apparent for staff within Orbis. A small number (approximately 30) of posts have been identified as 'true partnership' roles i.e. roles requiring a regular physical presence in both Council's HQ locations of Lewes and Kingston. For staff employed by East Sussex County Council in these roles, travel to Kingston – the secondary workplace – cannot be deemed as business travel and is not, therefore, eligible for tax relief. The position is equally true for the reverse i.e. staff employed by Surrey County Council who travel to Lewes as the secondary workplace.

3.2 In view of the significance of this issue, an Opinion from a tax expert has been sought. Based on this advice, it is clear that going forward, these staff will have to pay tax on any reimbursement of travel costs (either mileage payments or train fares), which will effectively be a 'cut in pay'.

3.3 In light of the (unanticipated) costs of this for individuals, it is proposed that the relevant travel policies are amended to allow the reimbursement of additional ordinary commuting costs, including tax and national insurance, associated with attendance at a secondary workplace,

where an employee would otherwise suffer a significant financial detriment. Such reimbursement will only apply to existing employees; staff appointed from outside of the Council will not be entitled to this on the basis that attendance at the two HQ locations will be part of their terms and conditions of employment.

3.4 It is proposed that this reimbursement is paid in the form of 'workplace travel allowance' which is 'grossed up' in order to account for the additional tax and national insurance due. This approach is consistent with how benefits in kind are treated with the employee meeting their personal tax liability.

3.5 The 'workplace travel allowance' will be calculated based on the expected number of days each week that an individual will travel to the secondary permanent workplace. It will be subject to annual review or, amended immediately when an exceptional or significant change to working arrangements occurs. The value will be calculated by reference to the current approved mileage rate (presently 45p per mile) and will be reduced to account for non-working days such as annual leave, public holidays etc. Payment will be made as a supplement to an employee's monthly salary and will be taxable and nic'able, but not pensionable.

3.6 Attached at Appendix 2 is a worked example of the travel allowance, together with the financial implications for the Council.

3.7 Attached at Appendix 3 is a copy of the 'Travelling on County Council Business Policy' which has been amended to allow for the payment of the proposed travel allowance. A new section at paragraph 15 has been written which, for ease of reference, is highlighted in yellow (pages 9 and 10 of the Policy).

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<b>Permanent Workplace</b>	<b>Temporary Workplace</b>
The employee performs a significant part of their duties there	An employee goes there only to perform a task of limited duration or for a temporary purpose
People would expect to be able to contact the employee at the workplace	The primary purpose of attendance is to undertake non routine work tasks such as meetings, workshops or project work
The employee has a workspace and support services at the workplace which he or she regularly uses	Attendance at the workplace is not an objective requirement of employment
The employee performs similar tasks at each workplace	If it is a temporary arrangement, the duration is not expected to exceed or does not exceed 24 months
Attendance at the workplace is regular or follows a pattern and accounts for 40% of their working time	Even if attendance is regular (eg the same day each week) the workplace is a temporary workplace if the primary reason for attendance was for a temporary purpose
The employee does not attend the workplace solely to undertake specific tasks such as attendance at a specially arranged meeting	An employee may, whilst at a temporary workplace, undertake some routine work activities under “agile” working arrangements if it is convenient for business efficiency purposes to do so (eg have a lap top, mobile phone and remote access to the Council’s IT network)
Is for all or almost all of the period for which they hold or are likely to hold the employment	
If it is a temporary arrangement, the duration is expected to or does exceed 24 months	

### Worked Example – Workplace Travel Supplement

David lives in Lewes and used to work only in Lewes. He will now be working in Kingston 2 days per week. The travel supplement is calculated as follows:

1	Original commute	= 0 miles
2	New commute	= 55 miles
3	Reimbursable element of new commute	= 55 miles
4	To allow for a return journey	$55 \times 2 = 110$ miles
5	Adjust for annual leave and public holidays	$52 \text{ weeks} - 5 \text{ weeks} = 47 \text{ weeks worked}$
6	Number of journeys per year (journeys per week x weeks worked)	$= 2 \times 47 = 94$
7	Total reimbursable distance per year	$= 94 \times 110 = 10,340$ miles
8	Annual supplement = £0.45 x miles per year	$= 0.45 \times 10,340 = £4,653 = £4,600$
9	Monthly supplement	$£4,600 / 12 = £383.33$

### Financial Impact

Current Arrangement – reimbursed with full tax relief (not permitted)		Proposed ‘Grossed up’ Allowance	
Annual cost of travel reimbursement	<b>£4600</b>	Workplace travel allowance	<b>£4600</b>
Primary NI (employee)	£0	Primary NI (employee)	£159
Income tax	£0	Income tax (assumes 40% tax payer)	£3174
		Grossed up travel allowance	£7931
Secondary NI (employer)	£0	Secondary NI (employer)	£1094
		Cost to the Council	<b>£9025</b>
Amount actually received by employee	<b>£4600</b>	Amount actually received by employee	<b>£4600</b>