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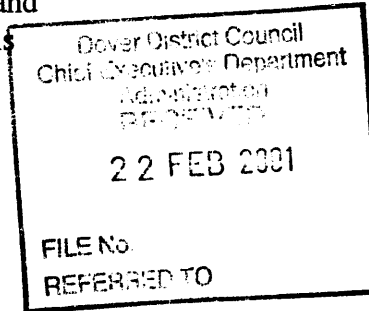
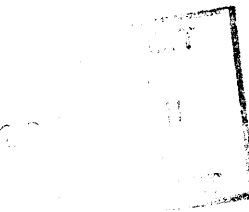
The Chief Executive

County Councils in England
District Councils in England
London Borough Councils

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19 FEBRUARY 2001



Dear Chief Executive,

**LOCAL GOVERNMENT ACT 2000: NEW CONSTITUTIONS:
ALLOWANCES FOR MEMBERS OF LOCAL AUTHORITIES**

The Local Government Act 2000 provides for reforms to the regime of allowances for elected members, in particular for the establishment and maintenance of independent remuneration panels, the abolition of attendance allowances and the provision of pensions to elected members. I am enclosing a copy of draft statutory guidance on which we are consulting the Local Government Association, the Association of London Government and other representative local government organisations. If your council wishes to make any comments on the proposed guidance they should be sent to the Department by 20 March as described below.

The draft guidance covers the establishment and maintenance of independent remuneration panels and the other changes it is necessary to make to the current allowances regime given the introduction of new constitutions. In particular, it describes the allowances which can be paid, the appointment of an independent remuneration panel, the work of the panel and publicity requirements. There will be a separate consultation on detailed proposals for pensions.

The draft is prepared on the basis of the guidance, together with the regulations underpinning the detail, being in place in time to inform councils of the new requirements at their annual meeting in May. This timetable will mean that councils will be able to establish an independent remuneration panel when they adopt new constitutions. It will also mean that councils will be able to prepare for the abolition of attendance allowance in July

I am also enclosing a copy of The Local Government Act 2000 (Commencement No.6) Order 2001 which was made on 15 February. Article 2(a) of this order brings into force from 19 February 2001 all the provisions in the 2000 Act which relate to allowances and pensions except the abolition of attendance allowance. In essence, therefore, the order brings into force all the enabling powers necessary for regulations to be made which give effect to the policy in the enclosed guidance.



INVESTOR IN PEOPLE

Under section 108(4) of the 2000 Act attendance allowance will be abolished with effect from 28 July (unless those provisions are commenced earlier by Order, which the Government does not intend to do). Councils will have time, therefore, to consider the recommendations of an independent remuneration panel and be in a position to make any revision to their scheme of allowances necessary due to the abolition of attendance allowance.

Article 2(b) of the enclosed Commencement Order also commences from 19 February 2001 the rest of section 45 of the Act (the enabling powers in that section were previously commenced on 7 August 2000). The rest of section 45 simply makes technical provision about referendums (i.e. that no two referendums under Part II of the Act can be held within 5 years of each other; the requirement that all such referendums are binding; specifying who can vote in such a referendum; and the definition of "referendum"). These provisions need to be in force before the forthcoming regulations under section 45 are made and have therefore, for convenience, been included in this Commencement Order.

If your Council has any comments on the draft guidance they should be sent to Sara Charnell, Local Government Sponsorship Division, Room 5/A1, Eland House, Bressenden Place, London SW1E 5DU, or electronically to sara_chnell@detr.gsi.gov.uk by **Tuesday 20 March 2001**. The paper will also be available on the DETR website at www.local-regions.detr.gov.uk/index.

Your sincerely
P. Rowsell

P ROWSELL

DRAFT

Guidance on Members'
Allowances
for
County Councils, District
Councils and London
Borough Councils

February 2001

Guidance on Members' Allowances for County Councils, District Councils and London Borough Councils

Introduction

1. This Guidance is issued to English county councils, English district councils and London borough councils. All subsequent references to “local authorities” and “councils” in this Guidance are, unless the context requires otherwise, references to these councils. The Guidance deals with:
 - the allowances which can be paid to elected members of these local authorities under the Local Government and Housing Act 1989: and
 - the establishment and maintenance of independent remuneration panels.
2. This guidance contains a combination of description of the main statutory provisions, statutory guidance (under section 18(5A) of the Local Government and Housing Act 1989, “the 1989 Act”) to which local authorities must have regard and non-statutory guidance. The statutory guidance to which local authorities must have regard is presented in maroon text with a “tick” in the left hand margin to distinguish it from the descriptive text and non-statutory guidance. In the draft document statutory guidance is printed in *italics*.

Main statutory provisions

3. Section 18 of the 1989 Act, as amended by section 99 of the Local Government Act 2000 (“the 2000 Act”), makes provision in relation to allowances and pensions for members of local authorities. Regulations have been made under this section requiring local authorities to make a scheme of allowances for their members and to establish and maintain a panel to make recommendations to the council about the scheme. The relevant regulations are:
 - The Local Authorities (Members' Allowances) Regulations 1991 No. 351
 - The Local Authorities (Members' Allowances)(Amendment) Regulations 1995 No. 553
 - The Local Authorities (Members' Allowances)(Miscellaneous Provisions) Regulations 2001

4. The Regulations provide that it is for each local authority to decide its scheme and the amounts to be paid under that scheme. The Local Authorities (Members' Allowances)(Miscellaneous Provisions) Regulations 2001("the 2001 Regulations") require councils to establish and maintain an independent remuneration panel which will broadly have the functions of providing the local authority with advice on its scheme, the amounts to be paid and the pensionability of allowances where relevant. Local authorities must have regard to this advice.
5. The approach, therefore, is one where questions as to the amounts payable to members are matters for local determination. In this way, councils can take full account of their particular circumstances, including the precise form of their new constitution, and be directly accountable to their electorate. This accountability is sharpened through each council being advised on its own allowances scheme by a local panel whose members are required to be independent.
6. Section 99(4) of the 2000 Act inserts subsection (1A) into section 18 of the 1989 Act which abolishes attendance allowance in relation to the local authorities to which this guidance is issued. The Government does not intend to make an Order under section 108(5) of the 2000 Act commencing this provision. Therefore, in accordance with section 108(4), section 99(4) will come into force on 28 July 2001.
7. The 2001 Regulations make transitional provision for local authorities which have included an attendance allowance in their scheme of allowances which has effect from 1 April 2001. The payment of attendance allowances will not be possible on or after 28 July 2001. In such a case it will be open to a local authority, during the course of 2001-2002, to revoke its scheme of allowances and replace it with a new scheme. Such a new scheme may be brought into effect at any time in that year and will run to 31 March 2002. A local authority making such a new scheme will be required to first obtain advice from its independent remuneration panel.
8. *Accordingly, such a local authority will need to have established its panel in good time before it considers making the new scheme.*
9. Local authorities must include in their scheme of allowances a basic allowance, payable to all members and may include provision for the payment of special responsibility allowances. By virtue of the amendments made to section 18 of the 1989 Act by section 99 of the 2000 Act regulations can now be made to allow the inclusion of a childcare and

dependent carers' allowance within an allowances scheme. This allowance is also discretionary.

10. In addition to the above, certain allowances are payable by local authorities under the Local Government Act 1972. Section 174 of that Act provides for the payment of travel and subsistence allowances and section 175 for the payment of allowances for attendance at certain meetings and conferences. Expenses for the chairman and vice chairman can be paid under sections 3 and 5 respectively.
11. The Government intends to review the allowances which continue to be paid under the Local Government Act 1972 (but not the expenses for chair and vice chair). This guidance does not cover these allowances and expenses except to the extent that a council may wish to ask its panel for informal advice on these matters.
12. The Government intends to make regulations under section 7 of the Superannuation Act 1972 which, by virtue of section 99(1) of the 2000 Act, will make provision for or in connection with the provision of pensions, allowances or gratuities to certain members of a local authority. It also intends to make regulations under sections 18(3A), (3B) and (3C) of the 1989 Act in connection with the role of independent remuneration panels in advising councils about which of their members should be entitled to pensionable remuneration.
13. The Government intends to consult widely on its detailed proposals for these regulations. The Government is currently minded that these regulations should provide that pensionable remuneration through the Local Government Pension Scheme should be available to the members of a local authority's executive and certain chairs of its overview and scrutiny committees. It is also minded that the regulations should provide that a member's remuneration should be pensionable only where a panel has made recommendation to that effect.

What allowances can be paid?

14. In summary, the allowances which are or may be payable to elected members of local authorities are as follows:
 - basic allowance
 - special responsibility allowance
 - attendance allowance (until 28 July 2001)
 - childcare and dependent carers' allowance

- travel and subsistence allowances
- conference and meetings allowance

Basic allowance

15. Each local authority must make provision in its scheme of allowances for a basic, flat rate allowance payable to all members. The allowance must be the same for each councillor. The allowance may be paid in a lump sum, or in instalments through the year.

16. *Basic allowance is intended to recognise the time commitment of all councillors, including such inevitable calls on their time as meetings with officers and constituents and attendance at political group meetings. It is also intended to cover incidental costs such as the use of their homes and private telephones.*

Special responsibility allowance

17. Each local authority may also make provision in its scheme for the payment of special responsibility allowances for those councillors who have significant responsibilities. The authority, or the panel, has to identify the special responsibilities for which the allowance is to be paid, and the amounts of allowance to be paid for each such responsibility.

18. Where one political group is in control, and where an authority has decided to pay special responsibility allowances, the authority must make provision for the payment of a special responsibility allowance to at least one member of a minority group.

19. The 1991 Regulations provide that special responsibility allowances may be paid for special responsibilities within one or more of the following categories:

- membership of the executive where the authority is operating executive arrangements
- acting as leader or deputy leader of a political group within the authority
- presiding at meetings of a committee or sub committee of the authority, or a joint committee of the authority and one or more other authorities, or a sub-committee of such a joint committee
- representing the authority at meetings of, or arranged by, any other body

- membership of a committee or sub-committee of the authority which meets with exceptional frequency or for exceptionally long periods
- acting as spokesperson of a political group on a committee or sub-committee of the authority
- such other activities in relation to the discharge of the authority's functions as require of the member an amount of time and effort equal to or greater than would be required of him by any one of the activities mentioned above whether or not that activity is specified in the scheme.

Childcare and Dependent Carers' allowance

20. A scheme of allowances may also include the payment of a childcare and dependent carers' allowance to those councillors who incur expenditure for the care of dependent relatives or children whilst undertaking approved duties. "Approved duties" are specified in legislation and are as follows:

- a meeting of the executive.
- a meeting of a committee of the executive.
- a meeting of the authority.
- a meeting of a committee or sub-committee of the authority.
- a meeting of some other body to which the authority make appointments or nominations, or
- a meeting of a committee or sub-committee of a body to which the authority make appointments or nominations.
- a meeting which has both been authorised by the authority, a committee, or sub-committee of the authority or a joint committee of the authority and one or more other authorities, or a sub-committee of a joint committee and to which representatives of more than one political group have been invited (if the authority is divided into several political groups) or to which two or more councillors have been invited (if the authority is not divided into political groups).
- a meeting of a local authority association of which the authority is a member.
- duties undertaken on behalf of the authority in pursuance of any standing order requiring a member or members to be present while tender documents are opened.
- duties undertaken on behalf of the authority in connection with the discharge of any function of the authority conferred by or under any enactment and empowering or requiring the authority to inspect or authorise the inspection of premises.

- duties undertaken on behalf of the authority in connection with arrangements made by the authority for the attendance of pupils at a school approved for the purposes of section 342 of the Education Act 1996.

The independent remuneration panel

21. The 2000 Act provides for local authorities to establish and maintain an independent remuneration panel. The purpose of this panel is to make recommendations to the authority, or authorities in the case of a joint panel, about the allowances to be paid to elected members. In the case of a panel established by the Association of London Government (ALG), such a panel will make recommendations about the allowances to be paid to elected members in two or more London borough councils. Independent remuneration panels will make recommendations about the level of basic allowance for all members, a recommendation about the categories of special responsibility for which a special responsibility allowance should be paid, the levels of these allowances and the rate of childcare and dependent carers' allowance.
22. Any further reference to "the panel" will include a joint panel or a panel established by the ALG. Any further reference to "the appointing authority" will include appointing authorities in circumstances where a panel has been appointed by two or more local authorities, or, for a panel established by the ALG, to the two or more London borough council to whom that panel is making recommendations

Setting up of an independent remuneration panel

23. Under the 2001 Regulations a local authority is required to establish and maintain an independent remuneration panel. The regulations come into force on 4 May 2001 and from that date local authorities will be under a duty to set up their independent remuneration panel.
24. *A local authority may wish to begin the process of establishing the panel and making appointments to it in advance of this date.*
25. From 4 May 2001 any decision of the local authority to amend a scheme of allowances, to revoke and replace such a scheme with a new one, and to make its new annual scheme must be taken having regard to the recommendations of an independent remuneration panel. As under the current committee arrangements, the function of agreeing and adopting a scheme is a function of the whole council, whether an authority is

operating executive arrangements or alternative arrangements.

26. The regulations provide that a local authority may revoke and replace a scheme in the following circumstances:
- when attendance allowance had been included in a scheme but is no longer payable
 - when a local authority is adopting a new constitution
 - when a local authority changes the form of executive including its executive arrangements
 - when a local authority is moving from executive arrangements to alternative arrangements or vice versa
27. *Before adopting executive arrangements or alternative arrangements a local authority will need to have made a scheme of allowances tailored to those arrangements. A council should ensure that where this requires revoking and replacing an existing scheme, the independent remuneration panel is established in good time to consider the issues and to make recommendations.*
28. *Where a local authority has anticipated the adoption of a new constitution in their scheme of allowances the council may consider it is not necessary to amend, or revoke and replace the scheme. In such cases the scheme will run to 31 March 2002. The council will need, however, under the 2001 regulations, to begin the process of establishing and appointing its panel from 4 May 2001.*
29. Two or more local authorities are able under the regulations to establish and maintain a joint independent remuneration panel to advise them on their schemes.
30. *Such a panel must make separate recommendations to the appointing authorities. Local authorities should consider whether establishing such a joint panel would be an appropriate and cost effective arrangement in their local circumstances. In particular, where councils are considering a joint panel they will need to ensure that it would command public confidence in the areas of the local authorities concerned.*
31. The regulations also provide for the ALG to establish and maintain an independent remuneration panel to make recommendations to two or more London borough councils on their allowances schemes. Where the ALG has established such a panel to make recommendations to any particular London borough council, that council is not required to establish its own

panel, although it may do so if it so chooses. Where a London borough council receives recommendations from an independent remuneration panel established by the ALG and does not set up its own panel (or a joint panel) it must have regard to the recommendations from the ALG panel.

Appointment of the Panel

32. The 2001 regulations require that independent remuneration panels have at least three members.
33. *A local authority will need to consider the appropriate size for its panel to discharge its functions effectively given the particular local circumstances. Councils should avoid unduly large panels which would be unable to be an effective and publicly accountable source of clear recommendations.*
34. The members of the independent remuneration panel cannot be elected members of any local authority. Anyone who would be disqualified from being an elected member of a local authority (see section 80 of the Local Government Act 1972) is also disqualified from being a member of an independent panel.
35. *The regulations do not specify how a local authority may go about finding members of its remuneration panel. A local authority will need to consider carefully and plan its appointments process having regard to this guidance and the need to ensure that this process commands public confidence throughout all the communities in the local authority's area.*
36. *The council should adopt an appointments process which it considers is best able to result in the membership of its independent remuneration panel being truly independent, well qualified to discharge the functions of the panel and representative of the diversity of the communities in the local authority's area.*
37. *Local authorities may wish to advertise for candidates in local papers or may wish to ask particular stakeholders, eg the voluntary sector or the local business community, if they wish to put forward candidates. Councils may consider it best to use a combination of advertising and inviting the putting forward of candidates. In all cases the local authority will need to ensure that its appointment process is open to public scrutiny.*
38. *A local authority should give very serious consideration not only to ensuring the independence of its independent remuneration panel but also*

the public perception of this independence. To maintain the credibility of its panel a local authority will need to consider the extent to which some, if not all, of its panel members are recognisable members of the local community. Political appointments, and appointments which are made through friendship or any other personal association of any members of the council should always be avoided.

39. *Local authorities should consider very carefully the extent of any candidate's connections to a political party and whether these are such as to risk the effective discharge of the panel's functions were the candidate to be appointed.*
40. *In appointing its panel, a local authority should consider candidates' knowledge of local government and the way it works although lack of familiarity with the functions of councils should not be a bar to appointment.*
41. *The local authority will need to consider whether to appoint one member of the independent remuneration panel as chair, or whether to allow the panel itself to decide which of its member will act as chair.*
42. *The local authority will need to consider the term of office of members of the panel. As set out in paragraph 25 above the panel will be required to make recommendations to the Council every year from 2002, and at any time during any year when the Council decides to, within the limits of the law, either revoke or amend its current scheme. The panel may become more effective as its knowledge and understanding of members' allowances is increased.*
43. *Accordingly local authorities may wish to consider appointing members of the panel for a term of office of several years, perhaps 3-5 years. Local authorities may also wish to consider phasing appointments to ensure that there is always one member of the panel who has some experience. Transitionally, on setting up the independent remuneration panel this would need different periods of office. This could be achieved by differing lengths of appointment. A local authority will also need to consider the relationship between appointment dates and the electoral cycle and the benefits of continuity in the panel's membership.*
44. *Local authorities will wish to ensure that the terms and conditions of appointment of members of the independent remuneration panel include provision for circumstances where the local authority may wish to remove a discredited member from the panel. For example, a member of the panel*

may become discredited due to being found guilty of a criminal offence. The local authority will wish to ensure that this provision to change panel members is not itself abused for political or vexatious ends.

45. *The time commitment of members of the panel will vary but it is likely that members will need to meet on a number of occasions when determining their recommendations for a new annual scheme. Local authorities will need to consider the likely time commitment they expect and should make this clear to candidates before appointments are made.*
46. *The regulations provide that the local authority is able to pay allowances to panel members. These allowances are a matter for the local authority to determine. The local authority should tell prospective panel members about these allowances before they are appointed.*
47. The local authority should provide the panel with appropriate administrative support.

The work of the panel

48. The regulations provide for independent remuneration panels to have the following functions:
- to make recommendations to the authority as to the amount of basic allowances should be payable to its elected members
 - to make recommendations to the authority about the categories of members who should receive a special responsibility allowance and as to the amount of such an allowance
 - to make recommendations as to whether the authority's allowances scheme should include an allowances in respect of the expenses of arranging for the care of children and dependants and if it does make such a recommendation, the amount of this allowance and the means by which it is determined.
49. *The local authority will need to ensure that the panel is clear about its remit and the timetable in which it is working. The local authority will need to provide the panel with information about the roles of councillors in the authority and the way in which the authority operates and discharges its functions. The panel will need information about the business of the council.*
50. The panel will need to have regard to this information. In addition, the panel may itself consider recent research on the role of councillors, or

perhaps seek information about the work of other independent remuneration panels.

51. *The council should provide the panel with the necessary resources to do this where it so chooses and should also provide the panel with copies of this guidance.*
52. The independent remuneration panel will need to take into account this Guidance, in particular the factors highlighted in paragraphs 53-65 below, when making its recommendations to the council.

Making a scheme of allowances

53. *In making the scheme of allowances a council should have regard to factors and issues in paragraphs 54-65 below.*

Basic allowance

54. *Paragraph 16 details the sorts of things basic allowance is intended to cover. Having established what local councillors do, and the hours which are devoted to these tasks the local authorities will need to take a view on the rate at which, and the number of hours for which, councillors ought to be remunerated.*
55. *It is important that some element of the work of members continues to be voluntary – that some hours are not remunerated. This must be balanced against the need to ensure that financial loss is not suffered by elected members, and further to ensure that, despite the input required, people are encouraged to come forward as elected members and that their service to the community is retained.*
56. *The local authority may wish to agree an index for remuneration. They may chose to be guided by the LGA daily rate which is based on the national (male) median white-collar wage. Alternatively they may wish to look at local and regional wage rates as these may seem more appropriate as measures for the allowances paid to members of its community. Local authorities may also wish to consider the allowances and remuneration which is paid to other members of the voluntary sector eg members of local health trusts.*

Special responsibility allowance

57. Special responsibility allowance (SRA) may be paid to those members of the council who have significant additional responsibilities, over and above the generally accepted duties of a councillor. These special responsibilities must fall into one of the categories which are specified in the 1991 Regulations and which are detailed at paragraph 19 above.
58. The 1991 Regulations do not limit the number of special responsibility allowances which may be paid, nor do the regulations prohibit the payment of more than one special responsibility allowance to any one member.
59. *However, these are important considerations for local authorities. If the majority of members of a council receive a special responsibility allowance the local electorate may rightly question whether this was justified. Local authorities will wish to consider very carefully the additional roles of members and the significance of these roles, both in terms of responsibility and real time commitment before deciding which will warrant the payment of a special responsibility allowance.*
60. *It does not necessarily follow that a particular responsibility which is vested to a particular member is a significant additional responsibility for which a special responsibility allowance should be paid. Local authorities will need to consider such particular responsibilities very carefully. Whilst such responsibilities may be unique to a particular member it may be that all or most members have some such responsibility to varying degrees. Such duties may not lead to a significant extra workload for any one particular member above another. These sorts of responsibilities should be recognised as a time commitment to council work which is acknowledged within the basic allowance and not responsibilities for which a special responsibility allowance should be recommended.*
61. *In addition, any particular local authority will need to look carefully at the nature of its constitution when determining its scheme. New arrangements will mean that there are inevitable changes in the positions of responsibility on the Council, both in terms of number and workload. Some councillors will be spending significantly more of their time on council duties than has ever previously been the case. On the other hand, changes in the traditional committee structure will mean that there are far fewer committees and, as a consequence, fewer councillors engaged as chairs and vice-chairs of numerous committees.*

62. *In a case where a local authority has agreed that the holder of the chair of its overview and scrutiny committees should be rotated that local authority will need to assure itself of the additional responsibilities of the temporary chairs before determining what allowances to recommend.*
63. *Having determined which duties should be acknowledged as significant additional responsibilities, the local authority will need to consider the levels of special responsibility allowance which are attached to each post. A good starting point in determining special responsibility allowances may be to agree the allowance which should be attached to the most time consuming post on the Council (this maybe the elected mayor or the leader) and pro rata downwards for the other roles which it has agreed ought to receive an extra allowance. One way of calculating special responsibility allowances may be to take the agreed level of basic allowance and recommend a multiple of this allowance as an appropriate special responsibility allowance for either the elected mayor or the leader.*

Childcare and Dependent Carers' Allowance

64. This is a new allowance. The panel may recommend that such an allowance is made available to elected members of the authority. It may also recommend a level for this allowance.
65. *Local authorities will wish to consider whether this allowance should be set at an hourly rate which may vary depending on the sort of care which has been required. They may wish to consider whether the allowance should be subject to a maximum cap or alternatively, whether the allowances paid will be equal to the costs incurred.*

Publicity

66. The 2001 regulations place certain duties on local authorities in connection with publicising the recommendations made by their independent remuneration panel, their scheme of allowances and the actual allowances paid to members in any given year. These requirements replace the provisions in regulation 26A of the 1991 regulations.
67. The regulations require that as soon as reasonably practicable after receiving a report from their panel which sets out the panels recommendations, local authorities must ensure that copies of the report are available for inspection at their principal office at all reasonable hours. Local authorities must also, as soon as reasonably practicable after receive

the report publish a notice in at least one newspaper circulating in their area which:

- states that the authority have received recommendations from an independent panel about their scheme of allowances;
- states that copies of the report detailing the panels recommendations are available for inspection at their principal office at all reasonable hours;
- states the address of their principal office; and
- describes the main features of the panel's recommendations including the amounts of allowances the panel has recommended should be payable to elected members.

68. The regulations also require that members of the public may take copies of the panel's report on payment of such reasonable fee as the local authority may determine.

69. In respect of a local authority's scheme of allowances the regulations require that as soon as reasonably practicable after determining a scheme of allowances, local authorities must ensure that copies of the scheme are available for inspection at their principal office at all reasonable hours. Local authorities must also, as soon as reasonably practicable after determining the scheme publish a notice in at least one newspaper circulating in their area which:

- states that the authority has adopted a scheme of allowances and the period for which that scheme has effect;
- states that copies of the scheme are available for inspection their principal office at all reasonable hours;
- states the address of their principal office;
- describes the main features of the scheme including the amounts of allowances payable to elected members under the scheme;
- states that in determining the scheme the authority had regard to the recommendations of an independent remuneration panel; and
- describes the main features of the panel's recommendations including the amounts of allowances the panel has recommended should be payable to elected members.

70. The regulations also require that members of the public may take copies of the scheme on payment of such reasonable fee as the local authority may determine.

71. The final publicity requirement in the regulations is that as soon as reasonably practicable after the end of a year to which scheme relates local authorities must make arrangements for the publication in their area of the total sum paid by it to each member in respect of basic, special responsibility and childcare and dependent carers' allowances.

72. *All these publicity requirements are statutory minimum requirements. Local authorities should publicise more widely the report from their panel, their scheme of allowances and the sums paid to each member. This should include, where possible, publishing this information on their website and in the council's own newspaper (where they have one).*