

SUMMONS ITEM 6

LONDON BOROUGH OF BRENT

Meeting of the Full Council and
Meeting of Alcohol and Entertainment Licensing Committee
29th November 2004

Report from the Director of Environment
and Borough Solicitor

For action

Wards affected:
ALL

Adoption of Statement of Licensing Policy and New Licensing Arrangements

1.0 Summary

1.1 This report submits a 'Statement of Licensing Policy' to Full Council for adoption prior to the Council undertaking licensing functions under the Licensing Act 2003 ('the Act'). The report also requests that Full Council establish an Alcohol and Entertainment Licensing Committee to discharge functions under the Act and requests that the new committee itself establish three sub-committees to hear matters referred to under the Act.

2.0 Recommendations

2.1 Members of Full Council are recommended to:

- (a) adopt the Council's Draft Statement of Licensing Policy as set out in **Appendix A**;
- (b) establish a new committee to be known as the Alcohol and Entertainment Licensing Committee to undertake functions under the Licensing Act 2003 set out in terms of reference at **Appendix B**;
- (c) appoint a Chair and members of the Council (consisting of 8 Labour / 4 Conservative / 3 Liberal Democrat) to the Alcohol and Entertainment Licensing Committee and agree alternates for those members;

- (d) rename the Licensing Sub-Committee 'A' to be known as the 'General Purposes Licensing Sub-Committee' and to dissolve the Licensing Sub-Committee 'B';
- (e) agree the consequential amendments to the terms of reference of the General Purposes Licensing Sub-Committee set out in **Appendix C**;
- (f) note that once established, the new Alcohol and Entertainment Licensing Committee will itself establish 3 Alcohol and Entertainment Licensing Sub-Committees to hear matters referred to it under the Act;
- (g) agree a Special Responsibility Allowance to be given to members of the newly established Alcohol and Entertainment Licensing Sub-Committees; and

2.2 Members of the newly established Alcohol and Entertainment Licensing Committee are recommended to:

- (a) establish 3 new sub-committees (A, B and C) to deal with the new licensing functions;
- (b) agree terms of reference for the sub-committees as set out in **Appendix D**;
- (c) appoint a Chair and members to each sub-committee (consisting of 2 Labour / 1 Conservative for Sub-Committees A & B and 2 Labour / 1 Liberal Democrat for Sub-Committee C), each member being appointed from the membership of the main Alcohol and Entertainment Licensing Committee;
- (d) appoint alternates for sub-committee members drawn from the remaining members of the main Licensing Committee;
- (e) delegate to officers power to determine all matters under the Act other than those reserved to the Alcohol and Entertainment Licensing Committee and its sub-committees; and
- (f) agree to adopt the Council's standing orders to regulate the business of the committee and its sub-committees subject to any minor amendments which may be necessary, such amendments to be made by the Chair.

3.0 Detail

Introduction

3.1 The Licensing Act 2003 essentially brings together different forms of licensable activity which were previously contained in different statutes under one regulatory regime. A major change identified in the Act is the responsibility for alcohol licensing has been taken away from the Licensing Justices and given to local authorities.

3.2 The Act specifies four types of activity as licensable:

- (a) The sale by retail of alcohol;
- (b) The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club;
- (c) The provision of regulated entertainment; and
- (d) The provision of late night refreshment.

- 3.3 The Act also introduces a split licensing system where applicants need a premises licence authorising a variety of licensable activities to be carried on at the specified premises and, where necessary, a personal licence authorising an individual to sell or supply alcohol.
- 3.4 Key aspects of the Act include the setting up of a new and separate committee and sub-committees to deal with matters which arise under the Act, including the grant and/or refusal of applications for licences where relevant representations are made. The new committee and sub-committees cannot deal with any other licensing functions of the authority not included in the Licensing Act 2003 and so it is necessary to retain a general Licensing Sub-Committee (there are two in existence at present) to deal with these other functions which include applications for sex establishments, street trading and similar licensing and registration functions.
- 3.5 When hearing applications for licences under the new Act, members on the new sub-committees will only be able to make decisions based on the full licensing objectives. These are:
- i) The prevention of Crime and Disorder;
 - ii) Public Safety;
 - iii) The prevention of Public Nuisance; and
 - iv) The Protection of Children from Harm.
- 3.6 The Act contains transitional arrangements which commence on 7th February 2005. These transitional arrangements give existing licensees an opportunity to apply to the authority to convert their existing Justices' Licences / Public Entertainment Licences to a Premises Licence within 6 months of the first appointed date. The transitional provisions also allow current holders of Justices' Licences to apply for personal licences without fulfilling the requirements that new personal licence holders will have to comply with upon commencement of the second appointed date.
- 3.7 There are approximately 800 existing Justices' Licences and 200 Public Entertainment Licences within the borough at present. Should these premises wish to operate after November 2005, they will need to either transfer their existing conditions or vary them. Applications which do not entail a variation to existing licence conditions (for example, an extension of hours) are unlikely to give rise to the need for a hearing. However, if an existing licensee seeks to vary their existing licence and this application is objected to by relevant authorities, a hearing will need to be held to determine the application. It is estimated that the newly established Alcohol and Entertainment Sub-Committees could hear approximately 250 hearings over 9 months from the first appointed date.
- 3.8 Once the second appointed date is announced (estimated to be sometime during November 2005), the Act will come into force completely and the current licensing regime will end. All licences determined by the Council over the transitional period will have effect and local authorities will become the only licensing authority to issue licences under the Licensing Act 2003.

Statement of Licensing Policy

- 3.9 The Licensing Act 2003 requires every Local Authority to prepare, consult and publish "a Statement of Licensing Policy". This Statement must be approved by Full Council by 7th January 2005.

- 3.10 The Statement of Licensing Policy is a statement of how Brent as the licensing authority intends to exercise the licensing functions imposed upon it by the Act. It may state the Council's general approach to the making of licensing decisions and the regulation of licensing activities. It should provide transparency for all those affected by the licensing regime which means not only applicants for licences but also local residents who are able to make representations to Brent in opposition to certain applications for a licence.
- 3.11 Brent's Statement of Licensing Policy was drafted by Health, Safety and Licensing and Legal Services officers. Public consultation was held over a period of 8 weeks from 6th August 2004 to 1st October 2004.
- 3.12 A copy of the draft statement and a table showing the responses to the Council's consultation and actions to be taken by officers as a result of those responses was presented to the Executive on 11th October 2004. The Executive recommended that the draft statement be amended to reflect officers' recommendations in response to the public consultation.
- 3.13 The Policy then went to the Overview Committee for consideration on 27th October 2004. Comments made by the Overview Committee were reported to the Executive on 15th November 2004 which requested that further changes to the draft statement be made to reflect those comments. Full Council is now asked to adopt the Statement as recommended.
- 3.14 The Government has set 7th January 2005 the date by which all licensing authorities have to publish their statement of licensing policy. Given that this is the last Full Council Meeting before that date, it is important that the policy is adopted at this meeting.

The New Committee

- 3.15 Under the Licensing Act 2003, Brent must establish a licensing committee to discharge its functions concerning the supply of alcohol, provision of regulated entertainment and provision of late night refreshment under the Licensing Act 2003.
- 3.16 The committee must be set up by Full Council and the committee must establish and appoint sub-committees to undertake the various licensing functions. The Act specifies that the committee must consist of at least 10 and no more than 15 members of the authority. The Act also specifies that the sub-committees set up by the Committee must consist of 3 members drawn from their membership.
- 3.17 The Licensing Committee may regulate its own procedures and that of its sub-committees, subject to secondary legislation. While draft regulations establishing rules for hearing licensing matters by sub-committees have been published for consultation, nothing as yet has been published in respect of the parent licensing committee. In the absence of regulations (or until such regulations are finalised) it is recommended that standing orders apply to the main and sub-committees with amendments where necessary.

The Existing Licensing Sub-Committee

- 3.18 The Licensing Act 2003 will come into full effect sometime in November 2005. The introduction of these functions will have an effect on the discharge of those functions already regulated by the Council. Since the present licensing sub-committees will cease to hear Public Entertainment Licences (as this is now covered by the Licensing

Act 2003) after the second appointed date, it is considered unnecessary to have two licensing sub-committees to deal with the few licensing functions outside of the Licensing Act 2003 such as street trading and sex establishments. It is therefore recommended that Licensing Sub-Committee 'A' be retained under the name 'General Purposes Licensing Sub-Committee' and the Licensing Sub-Committee 'B' be dissolved. The terms of reference for this Committee will remain largely unchanged but for the exclusion of the Licensing Act 2003 functions. These terms of reference (as amended) are set out in **Appendix C**.

Political Balance

3.19 The new committee and sub-committees are established specifically under the 2003 Act, not the Local Government Act 1972, and as such must be treated differently to ordinary committees (i.e. those set up under s101 of the Local Government Act 1972). In particular the rules of political balance do not apply to the committee or sub-committee. However, it is recommended that the rules of political balance apply to the new committee and apply as far as possible to its sub-committees. It is recommended that the maximum membership allowed by the Act (15) should be used with 3 sub-committees of 3 members each. As applied to a committee of 15 members, the political balance would be:

- Labour Group: 8
- Conservative Group: 4
- Liberal Democrat Group: 3

The political balance as applied in modified form to the 3 sub-committees would look as follows:

Alcohol & Entertainment Licensing Sub-Committee A and B:

- Labour Group: 2
- Conservative Group: 1

Alcohol & Entertainment Licensing Sub-Committee C:

- Labour Group: 2
- Liberal Democrat Group: 1

It is anticipated that these sub-committees will meet once a week during the first and second appointed dates (the 'transitional period').

Quorum

3.20 Although the Act allows for regulations to be made which sets a quorum for the parent committee and sub-committees, the current draft DCMS regulations do not do so. In the absence of the government setting a quorum, it is up to the Alcohol & Entertainment Licensing Committee to govern its own procedure. It is recommended that the Committee adopts a quorum of 2 for meetings of the sub-committees. The standing orders in the Constitution will be amended to reflect this.

Further Changes Needed

3.21 It is envisaged that once regulations are finalised regarding hearings, notice periods and procedures for sub-committees generally, any further amendments to standing

orders and to the Licensing Code of Practice (Part 7 of the Constitution) will be made at a later meeting of Full Council. The procedure for hearings is strictly a matter for the Alcohol & Entertainment Licensing Committee to determine. It is envisaged that local guidance (similar to the local guidance on procedure for Standards Committee hearings) will also need to be agreed by the new Committee.

Members' Allowances

- 3.22 It is proposed that a special responsibility allowance be given to each member of the sub-committee during the transitional period. This is to reflect the workload anticipated during the transitional period (addressed in paragraph 3.7 above).
- 3.23 The review of allowances undertaken by the ALG Independent Panel in the summer of 2003 suggested that members carrying out quasi-judicial functions could be considered as recipients to an allowance due to the nature of that function and workload. When considering an allowance for each member of the new sub-committee members are asked to take into account the ALG Panel's recommendations (attached at **Appendix E**), in particular, their recommendation that no more than 50% of members of the Council should be in receipt of an Special Responsibility Allowance (currently just over 50% of the members at Brent receive an SRA) and to take into account the likely workloads for the new sub-committees (each sub-committee will probably meet once per week during the transitional period and meetings could last up to 6 hours each). Members should note that, under the Brent Members' Allowance Scheme, only one Special Responsibility Allowance will be payable to any one member. Members are also asked to take into account the scale of allowances currently being paid to members as Special Responsibility Allowances including, by way of example, Chairs of the current Licensing and Pension Fund Sub-Committees and Vice Chairs of council committees (£1,920) and Chairs of the Overview and Scrutiny Sub-Committees (£4,340).

Officer Delegations

- 3.24 The Department of Culture, Media and Sport Guidance recommends that the principle of delegation to sub-committees and officers should be adopted in the interest of speed, efficiency and cost effectiveness as many of the decisions will be purely administrative in nature. There is a degree of discretion open to the main committee and whether certain functions are delegated. The Statement of Licensing Policy sets out the delegation of functions under the Act and specifically sets out which applications may be decided by officers. Essentially, all matters will be dealt with by officers other than those reserved to the new Alcohol and Entertainment Licensing Committee and its Sub-Committees as set out in the attached terms of reference.

4. Financial Implications

- 4.1 The government are currently consulting on draft fees regulations. Responses are to be submitted by 23rd December 2004. Early analysis of the draft regulations appears to show the income falling well below the anticipated costs. Until the regulations are published it is impossible to be precise about the financial implications of the new regime. Nevertheless, the Council has no choice but to adopt a Statement of Licensing Policy and to establish a new Committee and Sub-Committees. A further report will be brought before Members setting out the financial implications once the regulations have been published.

5. Legal Implications

- 5.1 The legal implications specific to the Licensing Act 2003 are contained in the body of the report. However, it is helpful to explain the status of the newly established Alcohol and Entertainment Licensing Committee in more detail. A Local Authority normally discharges its functions by means of an “ordinary committee” or sub-committee or an officer of that Authority under Section 101 of the Local Government Act 1972 (“the 1972 Act”). Present licensing and registration functions of the Authority are discharged by Licensing Sub-Committees A and B which are set up by s101 of the 1972 Act.
- 5.2 Schedule 6 (Minor and Consequential Amendments) of the 2003 Act amends section 101 of the 1972 Act so that nothing in that section applies in relation to any function under the Licensing Act 2003 of a Licensing Authority. This means, in effect, that the existing Licensing Sub-Committees ‘A’ and ‘B’ cannot consider any matters under the 2003 Act and in the same way, the new 2003 committee cannot consider any matters not under the 2003 Act (unless those matters are related to those 2003 functions). This is the reason why the existing Licensing Sub-Committee ‘A’ has been retained.
- 5.3. That said, there would be nothing to prevent the Licensing Authority from appointing the same members of the Licensing Committees, or some of them, to act on the main Alcohol and Entertainment Licensing Act 2003 Committee. The two could meet jointly or concurrently. While it is open to the Council to retain both of these existing Licensing Sub-Committees, it is recommended that only one sub-committee be retained and its terms of reference amended.

6. Diversity Implications

- 6.1 Part 10 of the Statement of Licensing Policy addresses diversity and equality matters.
- 6.2 An equality impact assessment has been prepared and is being submitted to the Corporate Diversity team.

7. Staffing Implications

- 7.1. There are no staffing implications arising directly from the adoption of the Statement of Licensing Policy. However, Legal and Democratic Services are currently recruiting a lawyer to deal with Licensing and a Democratic Services Officer to deal with clerking the meetings of the new structures.

8.0 Environmental Implications

- 8.1 Three of the four objectives in the Licensing Act largely address environmental implications. The fourth objective concerns the protection of children and is mainly concerned with the well-being of individuals.
- 8.2 The other objectives are crime and disorder (see paragraph 9.0) public safety and prevention of nuisance. These objectives form part of any application for a premises licence and will be included in the operating schedules attached to applications.
- 8.3 All four objectives are addressed in part 4 of the Statement of Licensing Policy.

9.0 Crime and Disorder

- 9.1 This is probably the main objective of the Licensing Act and is the one that is likely to attract the greatest number of representations at hearings.
- 9.2 As with the other objectives crime and disorder must be addressed in applications for a premises licence.
- 9.3 The Act also contains additional powers for police officers to close premises to prevent or control imminent disturbances.

Background Papers

Papers	Location
The Licensing Act 2003 and Draft regulations	HSL Library
Guidance issued under Section 182 of the Licensing Act 2003	HSL Library
The Remuneration of Councillors in London:2003 Review	Legal and Democratic Services, THA

Contact Officers

Any person wishing to inspect the above papers should contact Alan Howarth, Health Safety & Licensing, Brent House, High Road, Wembley, 020 8937 5369 or Helen Keep, Legal and Democratic Services, Town Hall Annexe, 020 8937 1368.

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LONDON BOROUGH OF BRENT

**STATEMENT OF
LICENSING POLICY**

Issued by
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Statement of support

Foreword

The Licensing Act 2003 is the biggest change in licensing laws for 40 years. The Act sees the change of responsibility for licensing pubs, clubs and other premises selling alcohol from the Magistrates' Courts to local authorities. Also affected are nightclubs, and other places of entertainment, cinemas, theatres, off-licences, restaurants, hotels, guest houses, shops selling alcohol and businesses selling hot food or drink between 11:00 p.m. and 5:00 a.m. the following morning.

The Act aims to lessen binge drinking by encouraging a "café culture" and a more continental style of drinking.

Councillors and officers will ensure applicants address the Act's four objectives that are:

- the prevention of crime and disorder,
- prevention of public nuisance,
- public safety
- and the protection of children from harm.

Premises licenses issued under the Licensing Act 2003 will, amongst other things, document the trading days, times and the activities allowed on premises, together with any conditions imposed by the Council to promote the licensing objectives.

Brent is a place where residents and visitors to the Borough can enjoy their leisure time, but this should not be at the expense of people's rights to a peaceful and clean environment. To achieve this we will carefully balance the wishes of the applicants for greater freedom and flexibility (subject to their clear responsibilities) with protecting residents from disturbance. This policy gives guidance on how that balance may be achieved.

Statement of Licensing Policy

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DRAFT

LONDON BOROUGH OF BRENT STATEMENT OF LICENSING POLICY

1. Introduction

1.1 Brent Council (“the Council”) is the licensing authority under the Licensing Act 2003 (“the Act”) and is responsible for granting premises licences, club premises certificates, temporary event notices and personal licences in the London Borough of Brent.

1.2 Activities covered by legislation and this Policy include the:

- retail sale of alcohol;
- supply of alcohol to, by or on behalf of a club or to the order of a club member;
- supply of hot food or drink between 11:00 p.m. and 05:00 a.m. the following day;
- provision of entertainment for profit, including charity, where the entertainment involves:
 - a) Theatrical performance
 - b) Film exhibition
 - c) Indoor sporting event
 - d) Boxing or wrestling (indoor and outdoor)
 - e) Live music performance
 - f) Playing of recorded music
 - g) Dance performance
 - h) Provision of facilities for making music
 - i) Provision of dancing facilities

2. The Policy

2.1 The Licensing Act 2003 requires the Council to publish a “Statement of Licensing Policy” that sets out the policies the Council will generally apply to meet the licensing objectives when determining applications. This Policy will guide the authority when considering personal licences, premises licences (including provisional statements), variations, transfers, interim authorities and reviews, club premises certificates, designated premises supervisors and temporary event notices.

2.2 This statement has been developed in accordance with the provisions of the Act, having regard to the Guidance issued under s182 of the Act. Before

publishing this statement the Council shall consult with, and have regard to, the views of all statutory consultees such as the police, fire service, representatives of licence holders, local businesses and their representatives and local residents.

2.3 In addition to the statutory consultees, the following persons or bodies shall be consulted:

- Brent Ambulance Service
- Accident and Emergency Services
- The Council's Transport and Planning services
- Brent's Crime and Disorder and Community Safety Partnership
- The local Transport Authorities
- Equity
- Brent's Cultural Strategy Officer
- Assistant Director, Children's Services
- Head Teachers of Brent Schools

2.4 Due consideration will be given to all replies and a record of persons/organisations consulted and replies received will be kept by the Council's Licensing Unit.

2.5 A copy of the policy will be placed on the Council's web site and periods of consultation will be advertised on the site.

2.6 This policy will come into force on 7th January 2005 once approved by Full Council and will be reviewed and published every three years. A full consultation will be undertaken every three years. The policy will also be under review in the interim period and should any revision be required to the policy during the three year period, such revision will be subject to full consultation and approval by Full Council.

2.7 In accordance with the Act, the Council will seek to promote the following objectives when determining an application:

- The prevention of crime and disorder
- Public Safety
- The prevention of public nuisance
- The protection of children from harm

3. Main Principles

3.1 This policy sets out the general approach the Council will take when considering applications for licences. When determining applications and reviewing licences, the Council will have regard to:

- the Licensing Act 2003 and related regulations;
- government guidance issued under s182 of the Act; and
- this Statement of Licensing Policy.

- 3.2 When determining an application under these considerations, the overriding principle adopted by the Council will be that each application will be determined on its merits.
- 3.3 Applicants will be expected to address the licensing objectives in their operating schedule with particular regard to the nature of the location, type of premises, entertainment to be provided and operational procedures. It is important that all operating schedules should be precise and clear about the measures that is proposed to take to promote each of the licensing objectives.
- 3.4 Only conditions necessary to promote the licensing objectives will be attached to any licence and the Council will have regard to the individual style and characteristics of the particular premises and events concerned. Licence conditions will not be imposed where other regulations or legislation exists to provide sufficient protection.
- 3.5 Licensees will be expected to comply with the Code of Practice of the Portman Group. The stocking or supplying of products featured in the Portman Group's "Retailer Alert Bulletin" could lead to review of the premises licence and ultimately a suspension or revocation of that licence if the Council considers that such action would undermine one or more of the licensing objectives, if a valid complaint is received.
- 3.6 The Council recognises that, in addition to the licensing objectives, it also has a duty under section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the Borough.
- 3.7 The Council will not take "need" (commercial demand) into account when determining an application. This is not a matter for a licensing authority in discharging its licensing functions, or its statement of licensing policy, as this is a matter for the Planning Committee and the market.
- 3.8 "Cumulative impact" means the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. Although "cumulative impact" will not be considered by itself when determining an application under the Act, the Council does recognise that the cumulative impact of a number of premises in a location may negatively impact on one or more of the licensing objectives. In particular, it is recognised that cumulative impact may lead to serious problems of nuisance and disorder in that area. In these circumstances the Council may consider cumulative impact when granting a new licence or club premises certificate and may refuse an application where relevant representations show that there is strong evidence that the new premises will undermine one or more of the licensing objectives by exacerbating existing problems linked to crime and disorder or another of the licensing objectives.
- 3.9 The Council has not adopted a special policy relating to cumulative impact but may consider such a policy where an area is saturated with licensed premises and the granting of new licences would undermine one or more of the

licensing objectives. The Council will consult on the need for a special policy and/or review and revise any special saturation policy or policies as may be identified in the Statement of Licensing Policy as appropriate and in any event every three years.

4. Licensing Objectives

The Act provides a clear focus on the four statutory objectives which the Council must seek to promote when determining an application. These objectives are the prevention of crime and disorder, public safety, prevention of public nuisance, and protection of children from harm. Because of the wide variety of premises and activities to which this policy applies, applications will be expected to address all aspects relevant to the individual style and character of their premises and events. These objectives are set out in more detail below:

4.1 The Prevention of Crime and Disorder

4.1.1 The Council recognises that licensed premises, especially those offering late night/early morning entertainment for large numbers of people, can be a source of crime and disorder problems.

4.1.2 The Council will expect operating Schedules to satisfactorily address the prevention of crime and disorder from the design of the premises through to the daily operation of the business.

4.1.3 Applicants are recommended to seek advice from Council Licensing Officers and the local Police as well as taking account of local planning policies, transport policies and crime prevention strategies when preparing their operating schedules. Applicants should note that conditions addressing the crime and disorder objective may also promote the other licensing objectives such as setting capacity limits addressed in paragraph 4.2.3.

4.1.4 Where there is relevant representation and the Council considers that crime and disorder has not been fully addressed in the operating schedule, it will consider attaching conditions to licences to deter and prevent crime and disorder inside and immediately outside the premises.

4.2 Public Safety

4.2.1 The Act covers a wide range of premises and activities and each of these present a mixture of risks. Some of these risks will be common to most premises and others unique to specific operations. It is essential that premises are constructed or adapted and managed so as to safeguard occupants against these risks. The Council will expect operating plans to satisfactorily address the objective of public safety in their operating schedule.

4.2.2 Applicants should note that the public safety objective is concerned with the physical safety of the people using the premises and not with public health

which is covered by other legislation. Applicants are advised to seek advice from Licensing Technical Officers, Health and Safety Officers and Fire Safety Officers before preparing their operating schedules.

- 4.2.3 Premises or activities that present a risk to the public either because of the way they are designed, the large numbers expected to attend in comparison to the size of the venue or because there are special effects involved will be required to set an occupancy figure for those premises or activities. Examples of this are discos and other dances attracting large numbers of young people, public houses close to Wembley National Stadium where large numbers of people may attend on special days and activities that involve entertainments such as novelty acts involving pyrotechnics and other special effects. While the character and nature of the premises will determine capacity limits, the Council recommends that occupancy figures should be set at one person for every 0.3m² of available floor space for standing areas and one person for every 0.5m² for dance areas.
- 4.2.4 Where there is relevant representation and the Council considers that public safety has not been fully addressed in the operating schedule, it will consider attaching conditions to licences in order to achieve this licensing objective.

4.3 **Prevention of Public Nuisance**

- 4.3.1 The Council recognises that licensed premises, especially those operating late at night or in the early hours of the morning, can cause a range of nuisances that impact on people living, working or sleeping in the vicinity of the premises.
- 4.3.2 As public nuisance is not given a statutory meaning in the Act, the Council will consider nuisance in its common law meaning. Issues that may constitute common law nuisance could include noise nuisance, light pollution, water pollution, smoke, smells, waste, litter and other similar issues. The Council will expect operating schedules to satisfactorily address these issues. Applicants are advised to seek advice from the Council's Environmental Health Unit when preparing their operating schedules.
- 4.3.3 Where there is relevant representation and the Council considers that the prevention of nuisance has not been fully addressed in the operating schedule it will consider attaching conditions to licences and temporary event notices to prevent nuisance.

4.4 **Protection of Children from Harm**

- 4.4.1 The wide range of premises that require licensing means that children can be expected to visit many of these, often on their own, for food and/or entertainment.
- 4.4.2 Generally the Council will not seek to limit the access of children to licensed premises unless it is necessary to protect children from harm.
- 4.4.3 The council will judge the merits of each application before deciding whether to impose conditions limiting the access of children to individual premises. While the Council wishes to see the development of family friendly environments, it may consider imposing conditions in the following circumstances:
- Where adult entertainment is provided;
 - Where there have been convictions of current management for serving alcohol or with a reputation for allowing under-age drinking;
 - Where there is a known association with drug taking or dealing;
 - Where there is a strong element of gambling on the premises;
 - Where the exclusive or primary purpose of the service provided is the consumption of alcohol.
- 4.4.4 The Council will consider all or any of the following options when dealing with a licence application where limiting the access of children is considered necessary to promote the prevention of children from harm:
- Limitations on the hours when children may be present;
 - Limitations on ages below 18;
 - Limitations or exclusion when certain activities are taking place;
 - Presence of sufficient adults to control the access and egress of children and to ensure their safety;
 - Full exclusion of people under 18 when any licensable activities are taking place
 - Limitations to parts of the premises to which children may have access.
- 4.4.5 Where a significant number of children are likely to be present, a licensee should ensure that an adequate number of staff are present to control their access, egress and safety. The number of staff required should be assessed by the licensee taking in to account the number of children to be present, the type of event, characteristics of the premises and any other relevant factor. The Council recommends that, while the aforementioned factors will determine the number of staff required, the sufficient number of adults present should be calculated at a rate of one adult for every 50 children or part thereof. Where there is a balcony the rate shall be one adult for every 30 children or part thereof.
- 4.4.6 Nothing in this policy shall seek to override or duplicate child supervision requirements contained in other legislation. However, the Council will take

into consideration (where appropriate) the measures taken by applicants to ensure that staff who have any contact with children are appropriately checked to ensure that they pose no risk to children. It may be appropriate to obtain enhanced disclosure checks from the Criminal Records Bureau in some cases.

- 4.4.7 Brent Council supports the Portman Group's Proof of Age Scheme or similar proof of age schemes and will expect applicants to address this within their risk assessment in respect of determining access to premises or sale of alcohol to young persons.
- 4.4.8 Where an entertainment includes the showing of any film the Council will impose conditions requiring licensees to restrict children from viewing age-restricted films classified according to the recommendations of the British Board of Film Classifications or by the licensing authority itself.
- 4.4.9 Where there is relevant representation and the Council considers that the licensing objective regarding protection of children has not been fully addressed in the operating schedule it will consider attaching conditions to licences and temporary event notices to protect children from harm.

5. Licensing Hours

- 5.1 The council recognises that longer licensing hours should discourage binge drinking and avoid large numbers of people leaving premises at the same time which should reduce the pressure on late night fast food outlets, taxi ranks, minicab offices and other sources of transport which in turn will lead to a reduction in disorder and disturbance.
- 5.2 Fixed trading hours within designated areas will not be set by the Council as the Council recognises that this could lead to significant movements of people from one area to another seeking later hours leading to peaks of disorder and disturbance. The setting of fixed trading hours in certain areas may also lead to the Council treating one group of residents less favourably than another group.
- 5.3 The Council will generally consider licensing shops, stores or supermarkets to sell alcohol for consumption off the premises at any times they are open for shopping. However, it may consider there are very good reasons to restrict the hours alcohol may be served, for example where police representation is made in respect of isolated shops known to be the focus of disorder and disturbance and evidence supports this.

6. Al Fresco

- 6.1 The provision of tables and chairs outside the premises can enhance the attractiveness of a venue or area and encourage a continental style café culture. Where applicants wish to place tables and chairs on a public highway they will require to be licensed for such an activity by Brent Council's Health Safety & Licensing Unit.

- 6.2 Where applicants intend to use private land for al fresco meals or refreshments they will be required to explain how possible nuisance or crime and disorder from late night use of table and chairs will be controlled. This may include such matters restricting music or other forms of entertainment, providing additional supervision or installing CCTV

7. Integrating Strategies and Avoiding Duplication

- 7.1 The Council recognises the need to avoid duplication with other regulatory regimes as far as possible and will not seek to impose conditions where it can be demonstrated by applicants that the licensing objectives can be met by existing legislation. These regulatory regimes include (but are not limited to) the Disability Discrimination Act 1995, the Health and Safety at Work Act 1974 and associated legislation, Fire Safety Legislation, Race Relations Act (as amended 2002) and the Environmental Protection Act 1990.
- 7.2 The Council recognises that there should be a clear separation of the planning and licensing regimes and licensing applications should not be a re-run of the planning application. In order to ensure this, the Council recommends that applicants should have the appropriate planning permission in respect of their application. In addition the Licensing Committee will keep the Planning Committee informed of the situation regarding licensed premises within the London Borough of Brent.
- 7.3 Applicants will be expected to have taken local crime prevention strategies, transport and planning policies and tourism and cultural strategies into account when submitting their operational Schedules.

8. Licence Conditions

- 8.1 Where responsible authorities and interested parties do not raise any relevant representations regarding the application made to the Council, the Council will grant the licence or certificate subject only to the conditions that are consistent with the operating schedule or club operating schedule and any mandatory conditions prescribed in the Act itself.
- 8.2 Where responsible authorities and interested parties raise relevant representations, the Council may, if it is satisfied at a hearing or otherwise, impose conditions where considered necessary for the promotion of the licensing objectives.
- 8.3 Any conditions attached by the Council or submitted by the applicant must focus on the direct impact of the activities taking place at licensed premises, on those attending the premises and residents and persons working in the area.
- 8.4 Any conditions attached to licences will be tailored to the individual needs, style and characteristics of the particular premises and events concerned and will be drawn from a 'model pool of conditions' (where appropriate) to

the particular premises.

9. Live Music, Dancing and Theatre

- 9.1 The Council recognises the need to encourage and promote live music, dance and theatre for the wider cultural benefit of the community, particularly for children. Live performance is central to the development of cultural diversity and vibrant, exciting communities, particularly traditional entertainment such as circus and street arts.
- 9.2 When considering applications for such events and the imposition of conditions on licences or certificates, the Council will carefully consider the cultural benefit to the community when seeking to promote the licensing objectives.
- 9.3 Consideration will be given to the particular characteristics of any event including the type, scale, duration and regularity of the proposed entertainment, especially where limited disturbance only may be caused.

10. Diversity and Equality

- 10.1 Brent is a diverse borough and this is recognised by Members and Officers. The Council is aware that some applications may have a greater impact on groups, organisations or associations in respect of their race, gender, age, disability, sexuality or religious beliefs. With a view to eliminating unlawful discrimination, applicants will be expected (where appropriate) to address these concerns in their application.
- 10.2 Brent Council is keen to see comprehensive facilities for people with disabilities wherever reasonably practicable and therefore applicants will be expected (where appropriate) to address the needs of disabled persons in their operating schedules.
- 10.3 Where applications made by these groups or organisations representing them highlight special needs or customs that may affect their application, the Council, in recognising its duty to promote good relations between persons of different racial groups¹, will give consideration to supporting those needs or customs whilst seeking to promote the licensing objectives.
- 10.4 As part of our policy review we will consider the impact of this policy on these groups.

11. Human Rights

¹ The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 places a duty on public authorities to have due regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons of different race groups. A copy of the Council's Race Equality Scheme Summary can be found under Diversity on the Council's Website: www.brent.gov.uk/HumanRes.nsf

- 11.1 The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way that is incompatible with a Convention right. Brent Council will have particular regard to its rights and responsibilities under the Human Rights Act 1998 when determining applications and reviewing this policy. The Council will have particular regard to:

Article 6 that in the determination of civil rights everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 8 that everyone has the right to respect for his home and private life; and

Article 1 of the First Protocol that every person is entitled to peaceful enjoyment of his or her possessions.

12. Enforcement

- 12.1 It is essential that premises are managed so as to ensure the promotion of the licensing objectives and compliance with the specific requirements of the Licensing Act 2003. The Council will make arrangements to monitor premises and take appropriate action to ensure that licensing objectives are adhered to.
- 12.2 The Council's Licensing Officers will work closely with local Police Officers to ensure a more effective and efficient deployment of Officers and to avoid any duplication of duties.
- 12.3 Brent Council has adopted the Government's Enforcement Concordat designed to ensure effective and efficient public protection services. It is based on the principles that businesses should:
- receive clear explanations from enforcers of what they need to do and by when;
 - have opportunities to resolve differences before enforcement action is taken - unless immediate action is needed;
 - receive an explanation of their rights of appeal.
- 12.4 Where necessary, enforcement action will be taken in accordance with the principles of the Enforcement Concordat and any protocol between the Police, Fire Authority and other statutory bodies for joint working and enforcement.
- 12.5 Inspections and enforcement will be undertaken on a risk basis if and when judged necessary.

13. Reviews

- 13.1 The Council recognises that the review procedure set out in the Act provides an effective mechanism to address concerns relating to the licensing

objectives raised by relevant authorities and interested parties which arise after the grant or variation of premises licences.

- 13.2 When a request for a review is submitted to the Council, the Council must first be satisfied that the request is not vexatious, frivolous or repetitious especially if the request relates to a recent hearing on application or review of a licence.
- 13.3 Where a relevant representation is received, the Council may hold a hearing to review a licence and consider evidence relating to problems occurring on the premises associated with crime and disorder, public safety, public nuisance or the protection of harm from children.
- 13.4 Following a review the Council may take a number of steps including the modification of conditions of the premises licence, exclusion of a licensable activity from the scope of the licence, removal of the Designated Premises Supervisor, suspension the licence for a period not exceeding three months, revocation of the licence and a finding that no action is necessary.

14. Administration, Exercise and Delegation of Functions

- 14.1 Brent Council has established a Licensing Committee to administer its licensing functions under the Licensing Act 2003.
- 14.2 To provide a speedy, efficient and cost-effective service the Committee has established a number of Sub-Committees and delegated certain functions and decisions to those Sub-Committees.
- 14.3 Many of the decisions are largely administrative in nature such as, the grant of non-contentious applications, including for example, those licences and certificates where no representations have been made. These will be delegated to Council Officers by the Licensing Committee.
- 14.4 All decisions taken by the Sub-Committees and officers will be reported for information to the next full Committee meeting.
- 14.5 Applications where there are relevant representations will be dealt with by the Licensing Committee/sub-committees unless such representations are considered irrelevant, frivolous or vexatious or unless the Council, the applicant and all those persons who have made representations agree that a hearing is not necessary.
- 14.6 The table on the following page sets out the delegation of functions under the Licensing Act 2003 to the Licensing Committee, Sub-Committees and Officers and where appropriate Officers may refer any matter to a Sub-Committee or a Sub-Committee to Full Committee.

TABLE OF DELEGATION OF LICENSING FUNCTIONS

Matter to be Dealt With	Decision Maker		
	Full Committee	Sub-Committee	Officers
Application for Personal Licence		If police representation made	If no relevant representation made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for a provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club registration certificate		If a relevant representation made	If no relevant representation made
Application to vary designated personal licence holder		If a police representation made	All other cases
Request to be removed as a designated personal licence holder			All cases
Application for transfer of premises licence		If a police representation made	All other cases
Application for Interim Authorities		If a police representation made	All other cases
Application to review premises licence/club premises registration		All cases	
Decision on whether a complaint is irrelevant, frivolous or vexatious			All cases
Decision to object when local authority is a consultee and not the lead authority			All cases
Determination of a police representation to a temporary event notice		All cases	

CONTACT DETAILS

The Council's Licensing Officers can be contacted in any of the following ways:

In Person

Visit us at Health Safety & Licensing, Brent House, 349-357 High Road, Wembley, Middlesex.

By Post

Write to The Licensing Officer, Health Safety & Licensing, P.O. Box 411, Brent House, 349-357 High Road, Wembley, Middlesex HA9 6EP

By Fax

To the Licensing Officer on 020 8937 5357

By E-mail

To the Licensing Officer at hsl@brent.gov.uk

By Telephone

Call 020 8937 5359

OTHER USEFUL CONTACTS

Police	Wembley Police Station, 603 Harrow Road, Wembley, Middlesex HA0 2HH
Fire Authority	Brent Borough Team, London Fire Brigade, 591a Harrow Road, Wembley, Middlesex HA0 2EG tel: 020 7587 2778
Planning	Planning Service, Brent House, 349-357 High Road, Wembley, Middlesex HA9 6BZ tel; 020 8937 5210
Environmental Health	Environmental Health, Brent House, 349-357 High Road, Wembley, Middlesex HA9 6BZ tel: 020 8937 5252
Trading Standards	Quality House, 249 Willesden Lane, London, NW10 tel: 020 8937 5555
Brent Magistrates	448 High Road, London, NW10 2DZ tel: 020 8955 0555
Portman Group	www.portmangroup.org.uk e-mail info@portmangroup.org.uk tel: 020 7907 3700

ALCOHOL AND ENTERTAINMENT LICENSING COMMITTEE

Membership

- The Committee is comprised of 15 members

Terms of Reference

1. To oversee the discharge of all licensing functions of the Council as the licensing authority under the Licensing Act 2003, except the determination of the Council's Statement of Licensing Policy and the publication of that Statement.
2. To establish and appoint to sub-committees to determine matters regarding personal licences, premises licences, club premises certificates, provisional statements, variation of the designated premises supervisor, interim authorities, police objections to temporary event notices and any applications requiring a hearing under the Licensing Act 2003.
3. To arrange for the discharge of the functions governed by the Licensing Act 2003 by its sub-committees or by officers except where prohibited by the Licensing Act 2003.
4. To receive and consider annual reports, where appropriate, on the needs of the local tourist economy, employment and investment in the area and any other matter directly related to the licensing functions in the borough.
5. To direct officers to report to the Planning Committee, where appropriate, on the situation regarding licensed premises in the area, including the general impact of alcohol related crime and disorder.

Appendix C

GENERAL PURPOSES LICENSING SUB-COMMITTEE

Deleted: S A AND B

Membership

The sub-committee is comprised of 5 councillors.

Deleted: NB: There are two sub-committees which will meet on an ad hoc basis

Deleted: in rotation or as determined by the Democratic Services Manager.

Terms of Reference

Deleted: when necessary.¶

Inserted: when necessary.

1. To hear and determine applications under licensing legislation other than the Licensing Act 2003 once the Act or the relevant parts of it are in force which are considered significantly contentious by the Director of Environment or in respect of which an applicant is entitled to be heard by a committee or sub-committee of members.
2. To consider and determine any other licensing matter where considered appropriate by the Director of Environment.

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Appendix D

Alcohol and Entertainment Licensing Sub-Committee 'A' / 'B' / 'C'

Membership

- Each sub-committee is comprised of 3 members drawn from the Alcohol and Entertainment Licensing Committee.
- Alternate members shall also be drawn from the Alcohol and Entertainment Licensing Committee.

Terms of Reference

1. To determine applications for personal licences where the police have served an objection notice.
2. To determine applications for premises licences, club premises certificates and provisional statements where a relevant representation is made.
3. To determine applications to vary premises licences and club premises certificates where a relevant representation is made.
4. To determine applications to vary a designated premises supervisor where a police objection is received.
5. To determine applications for transfer of a premises licences where a police objection is received.
6. To determine applications to review premises licences and club premises certificates.
7. To determine applications for interim authorities where a police objection is received.
8. To determine a police objection to a temporary event notice.
9. To determine any application or variation which is capable of being determined by officers but which the Director of Environment considers appropriate for the Sub-Committee to consider.

**The Remuneration
of Councillors in London: 2003 Review**

**A report by the Independent Panel to the Association of
London Government**

Summer 2003

**Professor Malcolm Grant
Bridget Rosewell
Rodney Brooke**

Preface

This is a report from the Independent Panel appointed by the Association of London Government (ALG). We were originally appointed in 1998. Our first report was published in February 1999. It recommended to the London councils (the 32 borough councils and the City Corporation) that the time had come for them to make fundamental changes in the way they compensated councillors for their time and work. A second report from the Panel in the same year reviewed other related issues, including pensions and childcare allowances. A third report in 2001 revisited all these issues in light of the major changes that occurred since 1999 in London local government. New rules had come into force concerning councillors' allowances, and the Government had issued fresh guidance. Councils were in the process of introducing completely new structures for their internal political management, and this was having a major impact on the London boroughs.

Our report of February 1999 recommended a wholly new approach to allowances. It proposed that councillors should no longer be paid primarily by the time they spent on committees. It recommended that the old attendance allowance should be scrapped. Councillors should instead be paid a reasonable annual allowance at a standard-rate which properly reflected the levels of time and responsibility that their office entailed. That approach is now confirmed by law. The law also now requires councils to establish independent panels before reviewing levels of councillors' allowances in their areas. It makes special provision for London by allowing for the continuance of the ALG's single Independent Panel for all London boroughs. Our report of Summer 2001 reviewed the recommendations of the 1999 report in light of experience in London and proposed several enhancements and amendments.

This new report assesses what has happened in London in light of our earlier reports and asks what further changes are now needed. It also considers some new questions, in light of the changes in national legislation that allow pensions to be paid to councillors, and make new requirements of allowances schemes.

We remain convinced that realistic and reasonable allowances should form an integral part of modern local government. Proper allowances can help enhance the status of councillors and encourage a new generation of citizens to stand for election as councillors and serve their communities in this way. We do not want to encourage the emergence of a new corps of full-time councillors. A few senior councillors in every London council will need to devote a large part or all of their working time to council business. But they will be the exception. Councillors in general will continue to bring to their council responsibilities their continuing experience in other employment and other roles.

The schemes for allowances must therefore reflect three general principles: that being a councillor is for most people a part-time commitment, often undertaken by people who are already very busy in other roles; that councillors are not, and should not be, inspired to do this job by the attraction of financial reward, but primarily by a commitment to the principle of voluntary public service; and that, subject to those principles, the community should ensure that those who do serve them in this way are properly compensated.

**Malcolm Grant
Brooke**

Bridget Rosewell

Rodney

London, Summer 2003

The Independent Panel

The Chair

Professor Malcolm Grant CBE is Provost and President of UCL (University College London) from August 1, 2003. He was previously Head of the Department of Land Economy and Pro-Vice-Chancellor at the University of Cambridge and Professorial Fellow of Clare College. He was from 1996 to 2002 the Chairman of the Local Government Commission for England, and is currently Chairman of the Agriculture and Environment Biotechnology Commission, and of the Steering Board for the Public Debate on Genetic Modification; and he is the Deputy Chairman of the Greater London Authority's Standards Committee. Professor Grant is the author of several works on local government finance and organisation.

Members

Bridget Rosewell is the Chairman of Volterra Consulting and Chief Economic Adviser to the British Retail Consortium as well as a Member of the Research Priorities Board for the Economic and Social Research Council (ESRC). She is also a non-executive Director of Britannia Building Society.

Rodney Brooke CBE was the Chief Executive of a metropolitan county council (West Yorkshire) and a London borough (Westminster) before becoming Secretary to the Association of Metropolitan Authorities. He is Chairman of the General Social Care Council.

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Executive summary

This report is required by law to address the questions set out in italics below. Our recommendations are in bold type.

(a) as to the responsibilities or duties in respect of which the following should be available -

- (i) special responsibility allowance;*
- (ii) travelling and subsistence allowance; and*
- (iii) co-optees' allowance;*

We recommend that :

- (1) special responsibility allowances should continue to be paid in respect of the responsibilities recommended in our last report;**
- (2) the basic allowance should be treated as covering all intra-Borough travel costs and subsistence, but with local variations to this rule to meet different local conditions;**
- (3) the annual allowance for co-optees should be calculated in each case with reference to the number of meetings per year, at a standard rate per meeting**

(b) as to the amount of such allowances and as to the amount of basic allowance;

- (4) special responsibility allowances should continue to be paid on the basis of the bands and the ranges of allowance within each band, recommended by us in our last report, uprated for subsequent increases in the cost of living by reference to the appropriate index proposed below;**
- (5) where travel and subsistence allowances are payable, having regard to Recommendation (2) above, they should be in accordance with the current scheme for travel and subsistence applicable to the Borough's officers;**
- (6) travel allowances should extend to travel by bicycle;**
- (7) the standard rate of allowance for statutory co-optees should be £100 per meeting, translated into an annual allowance by multiplying by the anticipated number of meetings;**

- (8) co-optees should be reimbursed for all travel costs in accordance with Recommendation (5) above, whether the travel is within or outside the Borough, but co-optees should not be paid subsistence;
- (9) the amount of the basic allowance should remain as recommended in our last Report as £8,500, but uprated for subsequent increases in the cost of living by reference to the appropriate index proposed below;

(c) as to whether dependants' carers' allowance should be payable to members of an authority, and as to the amount of such an allowance;

- (10) dependants' carers' allowances should be payable, and we recommend a flexible approach;
- (11) in particular, boroughs should have regard, when setting appropriate levels, to their local social service departments' levels of reimbursement. We restate the principles in our last report, that:
- (a) a maximum rate should be set locally to reflect local costs, in accordance with social service departments levels;
 - (b) payment should be claimable in respect of children aged 15 or under or in respect of other dependants where there is medical or social work evidence that care is required;
 - (c) only one weekly payment should be claimable in respect of the household of each member, except in special circumstances to be judged by the Council's Standards Committee;
 - (d) the allowance should be paid as a reimbursement of incurred expenditure against receipts;
 - (e) the allowance should not be payable to a member of the claimant's own household;
 - (f) any dispute as to entitlement and any allegation of abuse should be referred to the Council's Standards Committee for adjudication; and
 - (g) the scheme should be reviewed after not more than twelve months' operation.

(d) as to whether, in the event that the scheme is amended at any time so as to affect an allowance payable for the year in which the amendment is made, payment of allowances may be backdated in accordance with regulation 10(6);

- (12) schemes should make appropriate provision to ensure that, where an amendment to the scheme results in an increase in any allowance, payment of it may, if the resolution effecting the amendment so provides, be backdated for a specified period, not extending beyond the beginning of the year to which the scheme applies.

(e) as to whether adjustments to the level of allowances may be determined according to an index and if so which index and how long that index should apply, subject to a maximum of four years, before its application is reviewed;

- (13) schemes should provide for all allowances to be automatically uprated annually with reference to the annual Local Government Pay Settlement;
- (14) the LGPS index should apply for the next four years unless reviewed earlier by the Panel;

(f) as to which members of an authority are to be entitled to pensions in accordance with a scheme made under section 7 of the Superannuation Act 1972; and

- (15) all Members under the age of 70 should in principle be entitled to apply for inclusion in a pensions scheme, without satisfying any period of qualification;

(g) as to treating basic allowance or special responsibility allowance, or both, as amounts in respect of which such pensions are payable in accordance with a scheme made under section 7 of the Superannuation Act 1972.

- (16) both the basic allowance and any special responsibility allowance should be pensionable.

Other matters:

- (17) **Quasi-judicial work:** the Panel sees no reason to alter the recommendations it made in its 2001 report in relation to quasi-judicial work, such as adoption panels, licensing and development control committees. Councils should consider setting up a panel of non-executive members to sit on such bodies and make provision for payment of a special allowance to all members of that panel.
- (18) **Accountability:** the current system of Members' remuneration allowances, with its principle of annualised allowances rather than attendance allowances, places a high premium on trust. We therefore regard accountability for this use of public money as being of the highest importance. We welcome the new provisions in the regulations which require boroughs to keep a record of all payments made under their schemes of allowances, and for these records to be available for inspection upon request. We further welcome the requirement for a full report to be made at the end of the year, of the total sum paid by a Borough in the year under the scheme to each recipient in respect of each of the following: (a) basic allowance; (b) special responsibility allowance; (c) dependants' carers' allowance; (d) travelling and subsistence allowance; and (e) co-optees' allowance. We recommend that Members themselves should go further. We have advised in our previous reports on the drafting of job descriptions, and we expect them

to be used as the basis for reporting by members on their activities on behalf of their electors and their boroughs. Councillors should see making such reports as a way of broadcasting the extensive range of tasks and duties which they undertake on behalf of the electorate. We would like them to give an account of what services they have provided to their constituents; what their objectives have been; and their success in achieving them; as well as some record of their general industry.

- (19) Withholding allowances: We recommend that boroughs should include in their Allowances Scheme provision for their Standards Committee to withdraw allowances in whole or in part in the event of a member being suspended or partially suspended. All allowances should be withheld for the period of total suspension, and in the case of partial suspension the basic allowance should continue to be paid (though we would expect a member voluntarily to abate their claim according to the extent to which they were able to continue to perform the functions of a non-executive member), and to the extent that the partial suspension made it impossible or impracticable for a member to undertake activities in respect of which a special responsibility allowance was payable, that allowance should be withdrawn. It is likely that this would occur in any event, because of the need to appoint another member to undertake the functions concerned, who then become entitled to the allowance.
- (20) Electing to forgo allowances: we recommend in accordance with reg 13 of the regulations that allowances schemes should provide that a person may by notice in writing given to the proper officer of the authority, elect to forgo his entitlement or any part of his entitlement to allowances.
- (21) Time limit for claims and payments: we recommend, in accordance with reg 14 of the regulations, that schemes of allowances should impose a time of limit of six months for the making of claims for payment of: (a) dependants' carers' allowance; (b) travelling and subsistence allowance; and (c) co-optees' allowance.

1. Appointment of the Independent Panel

The Association of London Government first appointed the Independent Panel in December 1998, to undertake a comprehensive review of the remuneration of councillors throughout London. In February 1999 the Panel published the first of two reports. It recommended that attendance allowances should be replaced by fixed annual payments made up of a basic allowance, with additional payments for special responsibilities. The second report, published in November that year, looked in closer detail at the legal framework for allowances.

The Local Government Act 2000 introduced major changes to the internal political management of local government, including London councils. The Act also changed the way in which councils could set the allowances to be paid to councillors. Attendance allowances, which paid people according to their attendance at meetings and other council activities, were abolished in favour of annual allowances.

A requirement was also introduced that councils should set up independent panels, and take account of their advice, before changing their allowances schemes. Special arrangements were made for London. The ALG was authorised to establish an independent panel serving all London councils. In July 2001 the ALG decided to appoint the members of its existing informal panel as its new statutory Independent Panel. On the recommendation of the Panel, in order to ensure that future appointments to the Panel were staged, it appointed Professor Malcolm Grant as the chair for three years, and to appoint as members Rodney Brooke for four years and Bridget Rosewell for five years.

2. Introduction

Experience in London with allowances

Our consultations with the London councils in the course of this review have established that the recommendations made in our successive reports have helped streamline and modernise local remuneration schemes and have proved influential in the movement away from attendance allowances towards a more rational system that recognises and pays councillors for the work they actually do and the responsibilities they bear on behalf of their communities.

The average allowances in London are set out in Table 1 below, alongside those paid in other types of authority nationally. The Table shows that allowances across London are relatively closely aligned to those paid by the shire counties for the basic allowance, but the London average is higher for Leaders, for executive members and for chairs of scrutiny committees.

Table 1: national summary of members' allowances (£)

	Basic	Leader	Cabinet member	Scrutiny chair
<i>London borough</i>	7,605	25,585	13,154	8,435
Met district	8,015	21,755	10,274	6,434
Shire county	7,673	21,215	11,247	7,111
Shire district	3,153	8,428	4,458	2,801
Unitary	5,673	14,707	8,327	4,372
All Types	4,754	13,223	7,110	4,278

Source: Improvement and Development Agency (I&DEA). Figures are as at 13 January 2003

The figures are further broken down in Table 2, which shows actual allowances paid in 27 of the 32 London boroughs. We detect some significant changes remain over the past two years. There has been a steady uplift in the basic allowance across London. When we last reported, in 2001, we observed basic allowances ranging from just £515 in Newham (though with every councillor receiving also a special responsibility allowance), to £2,500 in Hillingdon and Merton and to £7,800 in Croydon. The range for council leaders went from £2,600 in Hounslow and £8,700 in Enfield, to £15,200 in Islington, £25,000 in Southwark and Lewisham, £30,000 in Hammersmith and Fulham and £32,000 in Lewisham.

The majority of London boroughs are now paying a basic allowance at the level recommended by the Panel in our last report, £8,500. No borough is paying more than this; and the lowest reported figures are £5,000 (Richmond upon Thames) and £5,150 (Merton).

The range of special responsibility allowances for Leaders is much wider. One borough has a directly elected Mayor, whose allowance is £65,000 (but not receiving a separate basic allowance); two others have allowances over £40,000 (Hillingdon and Havering). Five boroughs offer Leaders' allowances below £20,000: Enfield (£8,742); Merton (£10,300); Richmond upon Thames (£14,000); Tower Hamlets (£14,750) and Harrow (£18,450).

Table 2: allowances currently paid by London boroughs

	Basic	Leader	Deputy	Executive member	Scrutiny chair	Scrutiny vice-chair	Opposition leader	Area Committee chair	Chair planning
Panel's recommendations	8,500	43,500	Band 3: 27,900 to 33,100		Band 1: 1,900 to 7,100; Band 2: 12,300 to 27,200				
Barnet	8,500	25,500	8,500	12,750	4,250	2,125	12,750	2,125	2,833
Bexley	7,000	21,600	14,400	10,800	7,200	3,600	10,800	12,265	2,400
Brent	7,000	32,000	22,400	13,600	11,000	11,500	4,434	1,920	
Bromley	7,500	21,750		13,950	12,650	2,250	6,150	1,600	7,450
Camden	8,073	24,327	13,563	13,563	13,563	13,563	4,521		
Enfield	6,000	8,742	4,371	1,203	1,203		4,371		1,203
Greenwich	8,500	32,000	13,500	12,000	12,000	4,000	9,000	4,000	
Haringey	8,500	21,500		12,500	12,500	9,500	12,500		9,500
Harrow	5,000	18,450	12,300	12,300	6,150	6,150	6,150		950
Havering	8,500	43,500		27,900	12,300	4,250	20,000	7,100	8,500
Hillingdon	8,500	32,500	25,000	20,000	12,500	12,300	15,000		10,000
Islington	8,500	43,500	31,500	31,500	16,500	16,500	5,500	5,500	
Kensington and Chelsea	8,500	34,800	19,300	18,300	10,500	13,150			10,500
Kingston upon Thames	5,000	27,500	15,000	10,000	10,000	13,750	10,000	5,000	
Lambeth	8,000	25,000	15,000	15,000	2,000	5,000	15,000		7,500
Merton	5,150	10,300	5,150	2,575	2,575				2,575
Newham	9,200	65,000 ²			6,000			3,000	6,000
Richmond upon Thames	7,995	14,000	11,000	8,000	8,000	8,000			8,000
Sutton	8,500	33,100	22,700	12,300	8,660	12,300	8,660		8,660
Tower Hamlets	8,500	14,750	11,750	7,250	5,750	11,750	5,750	5,750	

² Directly Elected Mayor

Waltham Forest	8,001	21,300	15,981	10,651	5,961	2,130	10,650	5,961	
Wandsworth	8,500	21,750		15,250	8,750	4,500	15,250	8,750	
Westminster	6,000	35,000	10,000	8,000	4,000	1,000	4,000	1,500	

Source: extracted from Improvement and Development Agency (I&DEA). Figures are as at 13 January 2003

The Greater London Authority

The Greater London Authority is responsible for strategic citywide government for London and is made up of a directly elected Mayor—the Mayor of London—and a separately elected chamber, the London Assembly.

The Mayor's post is full-time and the salary was initially decided by the Government on the recommendation of the Review Body on Senior Salaries. A further review was conducted by them in 2002. The salaries paid initially to the Mayor, Deputy Mayor and Assembly Members, and subsequently following the 2002 review, are set out in Table 3. The post of Assembly Member is also regarded as full-time, although there is no legal restriction upon an Assembly Member undertaking other paid employment. The Review Body did, however, recommend a specific abatement of one-third of salary allowance in the case of any Member who was also a Member of the Westminster Parliament or the European Parliament or who was a salaried Office-holder in the House of Lords.

Table 3: salaries for Mayor, Deputy Mayor and GLA Assembly Members

	From 2000	From 2002
Mayor	91,763	108,000
Deputy Mayor	56,212	67,150
Assembly Member	37,413	45,950

Source: Review Body on Senior Salaries, Report No. 53; Greater London Authority: Review of pay, expenses, pensions and severance arrangements for the Mayor of London and London Assembly Members (Chairman: Sir Michael Perry, GBE); May 2002

Notes: (1) The Deputy Mayor's salary includes the salary received as an Assembly Member.

(2) The 2002 Report also recommended that, with effect from 1 April 2003, the salary of the Mayor, the Deputy Mayor and Assembly Members should be uprated each year by the same percentage as the average of the movements in the mid-points of the Senior Civil Service pay bands below permanent secretary.

3. The New Regulations for Allowances

The legal provisions

The legal framework for councillors' allowances is established by the Local Government and Housing Act 1989, section 18. It establishes the general principles, and empowers the Secretary of State to make regulations governing the detail. This section was amended by the Local Government Act 2000, s.99. That section, and section 18 as amended, are set out in Appendix 1.

The main regulations have now changed. They are now the Local Authorities (Members' Allowances) (England) Regulations 2003 No 1021, which have superseded the Local Authorities (Members' Allowances) England Regulations 1991 (SI 1991 No 351) on which our last report was based. The new regulations are reproduced in Appendix 2.

The function of the Panel

The new regulations (reg 21) spell out the duty of the Independent Panel, which is to produce a report for the London boroughs making recommendations:

- (a) as to the responsibilities or duties in respect of which the following should be available -
 - (i) special responsibility allowance;
 - (ii) travelling and subsistence allowance; and
 - (iii) co-optees' allowance;
- (b) as to the amount of such allowances and as to the amount of basic allowance;
- (c) as to whether dependants' carers' allowance should be payable to members of an authority, and as to the amount of such an allowance;
- (d) as to whether, in the event that the scheme is amended at any time so as to affect an allowance payable for the year in which the amendment is made, payment of allowances may be backdated in accordance with regulation 10(6);
- (e) as to whether adjustments to the level of allowances may be determined according to an index and if so which index and how long that index should apply, subject to a maximum of four years, before its application is reviewed;
- (f) as to which members of an authority are to be entitled to pensions in accordance with a scheme made under section 7 of the Superannuation Act 1972; and
- (g) as to treating basic allowance or special responsibility allowance, or both, as amounts in respect of which such pensions are payable in accordance with a scheme made under section 7 of the Superannuation Act 1972.

We are empowered to make different recommendations in relation to each of the authorities for which it exercises functions. We have not done so, partly because we do not have the detailed information of the circumstances of each Borough that would be needed to support such an approach, and partly because we believe it to be important to set general principles and limits, and to leave to the Boroughs themselves the adaptation of them to their own circumstances.

The Regulations also requires that there should not be more than one panel which makes recommendations in respect of an authority (reg 21(1)).

4. Specific issues

The principal questions that we posed for this review were the following:

- (1) have the Panel's recommended allowances satisfactorily accommodated the new structures for internal political management?
- (2) should there be any change in the level of basic allowance?
- (3) should there be any change in the structures and levels of special responsibility allowances?
- (4) which councillors and which allowances should be pensionable?
- (5) how should travel and subsistence issues be treated in an allowances scheme?
- (6) what allowances should be payable to independent and co-opted members?
- (7) other issues

We had a letter sent to all the Boroughs with a series of questions along these lines, and a request for any further information or issues they wished the Panel to consider. We had 22 responses.

(1) Fit with the new structures

We asked the London boroughs:

"Has your council found the principles and recommendations of the Panel's 2001 report to be broadly consistent with its new executive regimes?"

All answered yes. Several had adapted our recommendations to their local circumstances, and welcomed the broad bandings we proposed, and the flexibility they retained to allocate posts to particular bands.

(2) The basic allowance

Every local authority is expected to have a basic, flat rate allowance which is payable to all members. The basic allowance recognises the time commitment of councillors, including meetings with council managers and constituents and attendance at political group meetings. It is also intended to cover incidental costs such as the use of councillors' homes. It must be the same for each councillor and may be paid either as a lump sum or in instalments through the year.

We asked the London boroughs:

"Does your council believe the general level of allowances recommended by the Panel on that occasion to be about right, or would it wish the Panel to undertake a wholly fresh appraisal, noting that some independent panels elsewhere in England have recommended higher levels of non-executive allowances?"

No borough pressed for a complete review. The common theme of many responses was that they had set allowances, particularly special responsibility allowances, below the level we had recommended. This was on the grounds of perceived

affordability rather than principle. The question of affordability is, of course, a matter wholly for each borough. Some asked for further information as to what allowances were being paid in other London boroughs, and this is therefore set out in Table 2, where the figures confirm the tendency to award SRAs generally towards the bottom of the ranges of allowance recommended by us.

We recommend no change to the basic allowance recommended in our last report, except for a cost of living uprating.

(3) Special responsibility allowances

We received some comments about the structure we had recommended, including the number of bands and the overall proportion of members (50%) to whom we felt that SRAs should be limited. On this, we remain firmly of the view that there should be a clear limit. SRAs are, by definition, special. We stressed in our last report that higher level bands should be restricted to those posts where there are clear additional responsibilities and time commitments such as a cabinet member, with the very top bands limited to a full-time council leader, chair of scrutiny or directly elected mayor. We accepted in that Report that a cabinet model that involved a large number of cabinet members and/or scrutiny committees might require going beyond the one-third limit we proposed in 1999. Proper scrutiny requires strong opposition commitment. We therefore proposed that the upper limit should rise to 50 percent, while stressing again the importance of the general principle of limiting tightly, as a matter of good practice, the proportion of councillors entitled to SRAs.

If a borough finds this too restrictive, it should ask whether the basic allowance is at an appropriate level, and whether the responsibility the Borough wishes to recognise is not already adequately catered for by the basic allowance, or could be properly reflected by making an increase in the basic allowance.

Another representation asked whether there might not be different levels of allowance for full and part-time Members. On this, our view is that the allowance should reflect the role rather than the mode in which it is performed. We expect that the role of Leader or elected Mayor will, in most boroughs, be full-time, and the allowance takes that into account. Executive members may or may not be full-time, but if their roles are of comparable responsibility, we recommend that they should be remunerated at the same rate, irrespective of whether they are actually undertaken in part-time or full-time mode. Otherwise there would be an incentive to Members to shift from part-time to full-time service for the sake of an enhanced allowance.

We propose no change to the approach in our last report to special responsibility allowances.

(4) Uprating of allowances

The regulations, picking up an approach which we proposed in our First Report in 1999, introduce power for an allowances scheme to include provision for automatic uprating, allowing allowances to keep up with changes in the cost of living without requiring a report from an Independent Panel. The regulations allow this to be

done by reference to an index specified by scheme. The operation of the automatic uprating provision thereafter is deemed not to constitute an amended to the scheme. However, a borough may only rely upon the index for four years before seeking a further recommendation from the Panel (reg 10(4) and (5)).

We asked the London boroughs:

“The panel is considering using the provision in the guidance that allows an annual formula upgrade. It is considering using the Local Government Pay Settlement as its formula (currently 3½ %). Would you consider the use of a formula upgrade useful and do you think the use of the Local Government Pay Settlement appropriate?”

The responses were clear that our report should make such a recommendation, and the LGPS was the strongly favoured index. There are currently some differences in local practice: one borough has used a London non-manual workers rate from the New Earnings Survey; another has used the market movement agreed for staff on local management grades; another has used the average daily earnings for all occupations as calculated in Labour Market trends in January each year. Our preference is to adopt the LGPS as the appropriate index, because it treats Members on the same basis as employees.

We recommend that Schemes of Allowances should include an automatic uprating provision, and that this should be tied to the annual Local Government Pay Settlement as its index. Table 4 shows the allowances proposed in our 2001 report uprated in this way to April 2003.

Table 4: the Panel's 2001 recommended allowances, uprated as from 1 April 2003

	SRA Band One		SRA Band Two		SRA Band Three		SRA Band Four	Elected Mayors
	From	To	From	To	From	To		
SRA	£1,900.00	£7,100.00	£12,300.00	£22,700.00	£27,900.00	£33,100.00	£43,500.00	
With Basic Allowance £8,500	£10,400.00	£15,600.00	£20,800.00	£31,200.00	£36,400.00	£41,000.00	£52,000.00	£65,000.00
3% increase from 1 st April 2002	£312.00	£468.00	£624.00	£936.00	£1,092.00	£1,230.00	£1,560.00	£1,950.00
1% increase from 1 st October 2002 calculated with reference to the salary as at 31 st March 2002	£104.00	£156.00	£208.00	£312.00	£364.00	£410.00	£520.00	£650.00
3.5% increase from 1 st April 2003	£378.56	£567.84	£757.12	£1,135.68	£1,324.96	£1,492.40	£1,892.80	£2,366.00
Total increase	£794.56	£1,191.84	£1,589.12	£2,383.68	£2,780.96	£3,132.40	£3,972.80	£4,966.00
Total Allowance	£11,194.56	£16,791.84	£22,389.12	£33,583.68	£39,180.96	£44,132.40	£55,972.80	£69,966.00

(4) Pensions

We are pleased that the Government has now agreed that pensions should, in principle, be payable to Members in respect of their allowances. This is an approach we recommended in our First Report in 1999. The new regulations now require that a borough's Scheme of Allowances should set out:

“(a) which members of the authority are to be entitled to pensions in accordance with a scheme made under section 7 of the Superannuation Act 1972; and

(b) whether the basic allowance or the special responsibility allowance, or both, may be treated as amounts in respect of which such pensions are payable in accordance with a scheme made under section 7 of the Superannuation Act 1972.”

The Scheme may only include someone who has first been recommended by the Independent Remuneration Panel.

Our approach to eligibility was first set out in a response we submitted, as an Independent Panel, to the Government's consultation on the issue in 2001. We said then:

“We detect a great deal of resentment in local government about separation of councillors into sheep and goats through the Cabinet system. An arbitrary approach to pensions entitlement is likely to exacerbate the ill-feeling.”

We believe that this is an important principle, and we started from the proposition that all Members under the age of 70 should be eligible for pensionability of their allowance, and that this should apply both to the basic allowance and to special responsibility allowances.

We asked the London boroughs:

The Government is introducing a power whereby councillors will be able to become part of the Local Government Pension Scheme. Would your council like to introduce such a scheme? If so to which categories of councillor do you think it should apply?

The majority of respondents reported that their boroughs had not yet formally considered the proposal, and awaited the Panel's recommendations. Our view is that all Members should be eligible, and that there should not be any qualifying period of membership. As with our recommendations on allowances,

the question of affordability is for the boroughs themselves to determine, not the Panel.

We recommend that Allowances Schemes should provide for allowances to be pensionable through the Local Government Pensions Scheme, and that all Members under the age of 70 should in principle be eligible to join the scheme, in respect of all allowances paid to them, and without reference to any qualifying period of service as a Member.

(5) Dependents' carers' allowances

The new regulations set out the circumstances for these allowances. This is a discretionary allowance. It can only be paid if provision is made for it in the borough's Scheme of Allowances. The regulations (reg 7) specify that such an allowance is payable in respect of such expenses of arranging for the care of their children or dependants as are necessarily incurred in -

- (a) the attendance at a meeting of the authority or of any committee or sub-committee of the authority, or of any other body to which the authority makes appointments or nominations, or of any committee or sub-committee of such a body;
 - (b) the attendance at any other meeting, the holding of which is authorised by the authority, or a committee or sub-committee of the authority, or a joint committee of the authority and at least one other local authority within the meaning of section 270(1) of the Local Government Act 1972, or a sub-committee of such a joint committee, provided that -
 - (i) where the authority is divided into two or more political groups it is a meeting to which members of at least two such groups have been invited; or
 - (ii) if the authority is not so divided, it is a meeting to which at least two members of the authority have been invited;
 - (c) the attendance at a meeting of any association of authorities of which the authority is a member;
 - (d) the attendance at a meeting of the executive or a meeting of any of its committees, where the authority is operating executive arrangements;
 - (e) the performance of any duty in pursuance of any standing order made under section 135 of the Local Government Act 1972 requiring a member or members to be present while tender documents are opened;
 - (f) the performance of any duty 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;
-

(g) the performance of any duty in connection with arrangements made by the authority for the attendance of pupils at any school approved for the purposes of section 342 of the Education Act 1996 (approval of non-maintained special schools); and

(h) the carrying out of any other duty approved by the authority, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the authority or any of its committees or sub-committees.

We said in our last report that, in principle, we believed that it was right that such allowances should be paid. They may make it possible for people to serve as councillors who would not otherwise be able to contribute of their time because of their other responsibilities. However, we believed that a cautious approach was advisable, especially if the council was paying a basic allowance at the levels we propose, because the basic allowance was intended to provide reasonable recompense for every councillor's contribution. We also believed that London boroughs should take appropriate measures to safeguard against abuse of such a scheme, of which there has been evidence elsewhere. In particular, carers' allowances should not be payable in respect of care by a member of the claimant's own household, nor should an allowance be claimable separately in respect more than one dependent, except in exceptional circumstances.

For this report, we asked the London boroughs:

Do you currently offer Childcare or Dependent Carers Allowances? The Panel is considering recommending a flexible approach whereby allowances reflect local social services departments' levels for different circumstances, does your council agree with this approach?

Four boroughs said they did not pay such allowances, though one of them said they agreed with the Panel's proposed approach. Our suggestion of a flexible approach reflecting local social services departments' different levels found widespread acceptance. Some boroughs are using other measures at present: a flat rate based on the minimum wage; a flat rate of £6 per hour; a rate "based on historical factors" and then grossed-up for tax purposes so as not to leave the Member out of pocket. One borough provides childcare directly through its "early years" scheme.

We recommend a flexible approach to childcare and dependent carer's allowances, but especially recommend that boroughs have regard, when setting appropriate levels, to their local social service departments' levels of reimbursement. We restate the principles in our last report, that:

- (a) a maximum rate should be set locally to reflect local costs, in accordance with social service departments levels;**
 - (b) payments should be subject to a maximum weekly payment of £30, equivalent to seven-and-a-half hours of care per week;**
-

- (c) payment should be claimable in respect of children aged 15 or under or in respect of other dependants where there is medical or social work evidence that care is required;
 - (d) only one weekly payment should be claimable in respect of the household of each member, except in special circumstances to be judged by the Council's Standards Committee;
 - (e) the allowance should be paid as a reimbursement of incurred expenditure against receipts;
 - (f) the allowance should not be payable to a member of the claimant's own household;
 - (g) any dispute as to entitlement and any allegation of abuse should be referred to the Council's Standards Committee for adjudication; and
 - (h) the scheme should be reviewed after not more than twelve months' operation.
-

(6) Travel and subsistence

We asked the London boroughs:

In its 2001 report the Panel stated that it considered that the basic allowance it was intended to cover all 'intra-Borough travel costs and subsistence.' It does, however, consider that the cost of travel to meetings transacted outside the Borough should be reimbursed. Does your Borough agree with these approaches?

This approach appears to have been adopted by most if not all boroughs, though with some variations on the basic theme. One borough allows Cabinet Members to claim for taxi fares in respect of their duties for events in different parts of the Borough; another allows travel and subsistence to be claimable for approved duties at venues other than the two town halls; another pays out-of-borough travel costs for approved duties; another pays all travel costs providing it's more than three miles from the Member's home; another has decided that the basic allowance should be regarded as covering all transport and subsistence costs within London. Only one borough thought that travel costs and subsistence should be allowed to be claimed separately and not lumped into the basic allowance.

Nothing in these responses persuades us to change our recommendation, which has won widespread acceptance, with sensible local variations. It is wasteful and time-consuming for councillors to make claims for small sums, and for councils to process them and pay them. If the regime seems too restrictive, the better approach may be to review the basic allowance.

The new regulations require us to provide advice on levels of travel and subsistence. We strongly recommend that the same rules and scales of claims should apply both to Members and to officers. This approach offers efficiency by providing a uniform model for the handling of claims, and it also conveys equal treatment of officers and members.

We recommend that the basic allowance should be treated as covering all intra-Borough travel costs and subsistence, but with local variations to this rule to meet different local conditions. We also recommend that the rules and entitlements for reimbursement of travel expenses, and for travel by bicycle, should be the same for officers, members and co-opted members.

(7) Co-opted members

Co-opted members are those who are not elected members of the authority but who are invited to become members of committees, particularly in practice the Education Committee and the Standards Committee, for which statutory provision is made. It does not include members of the Independent Panel on Remuneration, whose expenses and allowances are determined by the council(s) concerned. The regulations require that, should an allowance be paid, it must be paid on an annualised basis. This is a difficult objective. In our opinion, the role of a co-opted member is different from that of an elected

member, and it would have been more appropriate to have allowed for an attendance allowance in such cases. Our approach to calculation of an appropriate allowance therefore follows that line. We propose that boroughs should first adopt a standard sum per meeting, for which we suggest £100, and then multiply it by the anticipated meeting load for the year. The allowance would then cover not only attendance at the meetings of the committee concerned, and any related and incidental activity.

An exception to this approach arises in the case of a co-opted member entrusted with the task of presiding at a meeting of the overview and scrutiny committee for education, who must be paid an allowance equal to that of an elected member undertaking the equivalent function. This is a reference to the special responsibility allowance payable to such a member, but not extending to the basic allowance. It also raises the question of the co-opted member who is invited to perform this function on an occasional basis, and only in the absence of the person who normally presides. The relevant regulation provides:

- (4) The amount of co-optees' allowance payable to any member who presides at a meeting of an overview and scrutiny committee, where that committee's functions under section 21 of the Local Government Act 2000 relate wholly or partly to any education functions which are the responsibility of the authority's executive, shall not be less than the minimum amount of any special responsibility allowance payable under that authority's scheme to a person who presides at meetings of any other [of the] authority's committees or sub-committees.

The provision is poorly drafted. Although it refers to presiding "at a meeting", such an additional allowance should in our view be paid only to those co-opted members for whom provision is made in statute and have been formally appointed to preside, on the same basis as those elected members presiding at other committees, because the SRA is intended to reflect the workload and responsibility of the office, not just the function of presiding at meetings.

We recommend that schemes of allowance should provide for allowances to be paid to co-opted members. The normal approach should be to set an annual allowance for such members based upon a sum of £100 per meeting, multiplied by the total number of meetings expected each year. Where a co-opted member has been appointed to preside as chair of an overview or scrutiny committee for education, that member must by law be paid a special responsibility allowance not less than the minimum SRA paid to an elected member undertaking the equivalent responsibility. Co-opted members should be entitled to reimbursement in full of their reasonable travel expenses.

(8) Other recommendations

Quasi-judicial work: the Panel sees no reason to alter the recommendations it made in its 2001 report in relation to quasi-judicial work, such as adoption panels, licensing and development control committees. Councils should consider setting up a panel of non-executive members to sit on such bodies and make provision for payment of a special allowance to all members of that panel.

Accountability: the current system of Members' remuneration allowances, with its principle of annualised allowances rather than attendance allowances, places a high premium on trust. We therefore regard accountability for this use of public money as being of the highest importance. We welcome the new provisions in the regulations which require boroughs to keep a record of all payments made under their schemes of allowances, and for these records to be available for inspection upon request. We further welcome the requirement for a full report to be made at the end of the year, of the total sum paid by a Borough in the year under the scheme to each recipient in respect of each of the following: (a) basic allowance; (b) special responsibility allowance; (c) dependants' carers' allowance; (d) travelling and subsistence allowance; and (e) co-optees' allowance. We recommend that Members themselves should go further. We have advised in our previous reports on the drafting of job descriptions, and we expect them to be used as the basis for reporting by members on their activities on behalf of their electors and their boroughs. Councillors should see making such reports as a way of broadcasting the extensive range of tasks and duties which they undertake on behalf of the electorate. We would like them to give an account of what services they have provided to their constituents; what their objectives have been; and their success in achieving them; as well as some record of their general industry.

Withholding allowances: We recommend that boroughs should include in their Allowances Scheme provision for their Standards Committee to withdraw allowances in whole or in part in the event of a member being suspended or partially suspended. All allowances should be withheld for the period of total suspension, and in the case of partial suspension the basic allowance should continue to be paid (though we would expect a member voluntarily to abate their claim according to the extent to which they were able to continue to perform the functions of a non-executive member), and to the extent that the partial suspension made it impossible or impracticable for a member to undertake activities in respect of which a special responsibility allowance was payable, that allowance should be withdrawn. It is likely that this would occur in any event, because of the need to appoint another member to undertake the functions concerned, who then become entitled to the allowance.

Electing to forgo allowances: we recommend in accordance with reg 13 of the regulations that allowances schemes should provide that a person may by notice in writing given to the proper officer of the authority, elect to forgo his entitlement or any part of his entitlement to allowances.

Time limit for claims and payments: we recommend, in accordance with reg 14 of the regulations, that schemes of allowances should impose a time of limit of six months for the making of claims for payment of: (a) dependants' carers' allowance; (b) travelling and subsistence allowance; and (c) co-optees' allowance.

Appendix 1: primary legislation governing members' allowances

Local Government and Housing Act 1989, s.18, as amended by Local Government Act 2000, s.99

Schemes for basic, attendance and special responsibility allowances for local authority members.

18.—(1) [Subject to subsection (1A)] the Secretary of State may by regulations authorise or require any such relevant authority as may be specified or described in the regulations to make a scheme providing for the payment of—

- (a) a basic allowance for every member of the authority who is a councillor;
- (b) an attendance allowance in relation to the carrying out by any such member of such duties as may be specified in or determined under the regulations; and
- (c) a special responsibility allowance for any such member who has such special responsibilities in relation to the authority as may be so specified or determined.

[(1A) In relation to a district council, county council, county borough council or London borough council, subsection (1) above shall have effect with the omission of paragraph (b).]

(2) Regulations under this section may also authorise or require a scheme made by a relevant authority under the regulations to include provision for the payment to appointed members of allowances in respect of such losses of earnings and expenses as—

- (a) are necessarily sustained or incurred in the carrying out, in connection with their membership of the authority or any committee or sub-committee of the authority, of duties specified in or determined under the regulations; and
- (b) are not of a description in respect of which provision is made for an allowance under any of sections 174 to 176 of the Local Government Act 1972 or sections 46 to 48 of the Local Government (Scotland) Act 1973.

[(2A) Regulations under this section may authorise or require a scheme made by a district council, county council, county borough council or London borough council to include provision for the payment to members of the council of allowances in respect of such expenses of arranging for the care of children or dependants as are necessarily incurred in the carrying out of their duties as members.]

(3) Without prejudice to the generality of the powers conferred by subsections (1) [to (2A)] above, regulations under this section may contain such provision as the Secretary of State considers appropriate for requiring a scheme made by a relevant authority under the regulations—

(a) to make it a condition of any payment by way of allowance that, in the financial year to which the payment would relate, the aggregate amount which the authority has paid out or is already liable to pay out under the scheme does not exceed such maximum amount as may be specified in or determined under the regulations;

(b) to make provision for different maximum amounts to be applicable, for the purposes of any such condition, in relation to different allowances or in relation to different members or members of different groups;

(c) to make provision in relation to claims which cannot be paid by virtue of any such condition and provision for the payment to members of the authority who are councillors of an amount by way of supplement to the basic allowance where, in any financial year, the aggregate paid out or owing under the scheme is less than an amount specified in or determined under the regulations;

(d) to provide that the amount authorised by virtue of subsection (2) above to be paid by way of allowance in any case shall not exceed such amount as may be so specified or determined;

(e) to contain such provision as may be so specified or determined with respect to the general administration of the scheme, with respect to the manner in which, time within which and forms on which claims for any allowance are to be made and with respect to the information to be provided in support of any such claim;

(f) to contain such provision as may be so specified or determined for avoiding the duplication of payments or of allowances, for determining the bodies by which payments of allowances are to be made and for the apportionment of payments between different bodies.

[(3A) Regulations under this section may make provision for or in connection with-

(a) enabling district councils, county councils, county borough councils or London borough councils to determine which members of the council are to be entitled to pensions, allowances or gratuities,

(b) treating the basic allowance or the special responsibility allowance as amounts in respect of which such pensions, allowances or gratuities are payable.

[(3B) Regulations under this section may make provision for or in connection with requiring a district council, county council, county borough council or London borough council to establish and maintain a panel which is to have such functions as may be specified in the regulations in relation to allowances, or pensions, allowances or gratuities, payable to members of the council.]

[(3C) Regulations under this section may make provision for or in connection with enabling a panel established by a body specified in the regulations to exercise such functions as may be specified in the regulations in relation to allowances, or pensions, allowances or gratuities, payable to members of such district councils, county councils or London borough councils in England as may be specified in the regulations.]

[(3D) Regulations under this section may make provision for or in connection with the establishment by the National Assembly for Wales on a permanent or temporary basis of a panel which is to have such functions as may be specified in the regulations in relation to allowances, or pensions, allowances or

gratuities, payable to members of county councils and county borough councils in Wales.]

[(3E) Regulations under subsection (3B) above may include provision-

- (a) with respect to the number of persons who may or must be appointed to the panel of a council,
- (b) with respect to the persons who may or must be appointed to the panel of a council,
- (c) for or in connection with the appointment by councils of joint panels.]

[(3F) Regulations under subsection (3C) may include provision-

- (a) with respect to the number of persons who may or must be appointed to a panel mentioned in that subsection,
- (b) with respect to the persons who may or must be appointed to such a panel.]

[(3G) Regulations under subsection (3B), (3C) or (3D) may include provision-

- (a) for or in connection with enabling a panel mentioned in that subsection to make recommendations to a council on the level of allowances payable to members of the council,
- (b) for or in connection with enabling such a panel to make recommendations to a council as to which members of the council are to be entitled to pensions, allowances or gratuities,
- (c) which permits different recommendations to be made in relation to different councils or descriptions of council.]

(4) Regulations under this section may—

- (a) prohibit the payment, otherwise than in accordance with sections 174 to 176 of the Local Government Act 1972 or sections 46 to 48 of the Local Government (Scotland) Act 1973 or in such other cases as may be specified in the regulations, of any allowance to a member of a relevant authority who is a councillor or to any appointed member of a relevant authority;

- (b) impose requirements on a relevant authority with respect to the publication, in the minutes of that authority or otherwise, of the details of amounts paid in pursuance of a scheme made under the regulations;
- [(ba) make provision with respect to the amendment, revocation or replacement of a scheme made by a relevant authority under the regulations; and]

- (c) contain such incidental provision and such supplemental, consequential and transitional provision in connection with the other provisions of the regulations as the Secretary of State considers appropriate.

(5) In this section “relevant authority” means-

- (a) a local authority of any of the descriptions specified in any of the paragraphs of section 21(l) below, other than paragraphs (d) [(g)] and (i), or in section 21(2) below; or
 - (b) any body on which a body which is a relevant authority by virtue of paragraph (a) above is represented and which is designated as a relevant authority for the purposes of this section by regulations made by the Secretary of State; or
 - (c) any appeal committee so designated which is constituted in accordance with [paragraph 2 or 3 of Schedule 33 to the Education Act 1996];
-

[(5A) In making or operating any scheme authorised or required by regulations under this section, a district council, county council, county borough council or London borough council shall have regard to any guidance for the time being issued by the Secretary of State.]

(6) In this section any reference to a councillor includes a reference to a member of the authority concerned who, in accordance with regulations under this section, is to be treated as if he were a councillor.

Local Government Act 2000, s.100

Power to make provision about allowances.

100. - (1) The Secretary of State may by regulations make provision with respect to-

- (a) allowances payable to members of a parish council,
- (b) travelling and subsistence allowances payable to members of such relevant authorities as may be prescribed,
- (c) allowances payable to members of such relevant authorities as may be prescribed for attending conferences or meetings,
- (d) the reimbursement of expenses incurred by members of such relevant authorities as may be prescribed.

(2) For the purposes of this section a member of a committee or sub-committee of a relevant authority is to be treated as a member of the authority.

(3) The provision which may be made under subsection (1)(b) includes provision with respect to allowances in respect of travel by bicycle or by any other non-motorised form of transport.

(4) The provision which may be made under this section includes provision which amends or repeals any provisions of sections 173 to 178 of the Local Government Act 1972.

(5) Before making any regulations under this section, the Secretary of State must consult such representatives of local government and such other persons (if any) as he considers appropriate.

(6) In this section-

“prescribed” means prescribed by regulations made by the Secretary of State,

“relevant authority” means-

- (a) a body specified in section 21(1) of the Local Government and Housing Act 1989,
- (b) a body on which a body falling within paragraph (a) is represented,
- (c) a parish council.

(7) In its application to Wales this section has effect as if-

- (a) for any reference to the Secretary of State there were substituted a reference to the National Assembly for Wales,
 - (b) for any reference to a parish council there were substituted a reference to a community council.
-

Appendix 2: the new regulations

LOCAL GOVERNMENT, ENGLAND

Local Authorities (Members' Allowances) (England) Regulations 2003
No 1021

<i>Made</i>	<i>7th April 2003</i>
<i>Laid before Parliament</i>	<i>7th April 2003</i>
<i>Coming into force</i>	<i>1st May 2003</i>

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The First Secretary of State in exercise of the powers conferred on him by sections 18 and 190(1) of the Local Government and Housing Act 1989 and sections 100 and 105(2), (3) and (4) of the Local Government Act 2000^[2], and of all other powers enabling him in that behalf, and having carried out such consultation as is required by section 100(5) of the Local Government Act 2000, hereby makes the following Regulations -

PART 1

GENERAL

Citation, commencement and application

1. - (1) These Regulations may be cited as the Local Authorities (Members' Allowances) (England) Regulations 2003 and shall come into force on 1st May 2003.

(2) These Regulations apply in England only.

Interpretation

2. In these Regulations -

“the Association of London Government” means the body known by that name and established on 1st April 2000 as a joint committee by the London borough councils and the Corporation of the City of London;
“basic allowance” has the same meaning as in regulation 4 of these Regulations;

“co-optees’ allowance” has the same meaning as in regulation 9 of these Regulations;

“dependants’ carers’ allowance” has the same meaning as in regulation 7 of these Regulations;

“independent remuneration panel” means a panel or joint panel established under regulation 20 of these Regulations;

“local government elector” means a person entitled to vote as an elector at a local government election in accordance with section 2 of the Representation of the People Act 1983;

“parish basic allowance” has the same meaning as in regulation 25 of these Regulations;

“parish remuneration panel” means a panel or joint panel established under regulation 27 of these Regulations;

“parish travelling and subsistence allowance” has the same meaning as in regulation 26 of these Regulations;

“political group” means a group constituted in accordance with regulation 8 of the Local Government (Committees and Political Groups) Regulations 1990;

“proper officer” shall be construed in accordance with section 270(3) of the Local Government Act 1972;

“recommendation” means a recommendation made by a panel in accordance with regulations 21 and 28;

“the scheme” means the scheme for the payment of allowances made in accordance with Parts 2 and 3 of these Regulations;

“special responsibility allowance” has the same meaning as in regulation 5 of these Regulations;

“travelling and subsistence allowance” has the same meaning as in regulation 8 of these Regulations;

“unitary county council” means a county council for an area for which there is no district council; and

“year” means -

(a) the period beginning on the date of the coming into force of these Regulations and ending on 31st March 2004; and

(b) any period of 12 months ending on 31st March in any year after 2004.

Application of these Regulations

3. - (1) Any reference in this Part and Parts 2 and 3 of these Regulations to an

authority shall, unless otherwise specified be construed as a reference to a body of one of the following descriptions -

- (a) a district council;
- (b) a county council;
- (c) a London borough council;
- (d) the Council of the Isles of Scilly;
- (e) a fire authority constituted by a combination scheme under the Fire Services Act 1947;
- (f) a joint authority established by Part IV of the Local Government Act 1985;
- (g) the London Fire and Emergency Planning Authority;
- (h) the Broads Authority;
- (i) a National Park authority; and
- (j) a conservation board of an area of outstanding natural beauty;

(2) For the purposes of section 18 of the Local Government and Housing Act 1989 -

(a) the bodies referred to at sub-paragraphs (h) and (j) of paragraph (1) are hereby designated as relevant authorities; and

(b) any member of an authority listed in paragraph (1) shall be treated as if he were a councillor.

PART 2

ALLOWANCES

Basic allowance

4. - (1) An authority shall -

(a) make a scheme in accordance with these Regulations which shall provide for the payment of an allowance in respect of each year to each member of an authority, and the amount of such an allowance shall be the same for each such member (“basic allowance”); and

(b) pay basic allowance and any other allowance permitted by these Regulations only in accordance with such a scheme.

(2) In relation to basic allowance, the scheme shall -

(a) specify the amount of entitlement by way of basic allowance in respect of any year to which it relates; and

(b) provide that where the term of office of a member begins or ends otherwise than at the beginning or end of a year, his entitlement shall be to payment of such part of the basic allowance as bears to the whole the same proportion as the number of days during which his term of office as member subsists bears to the number of days in that year.

(3) The scheme may specify that where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with Part III of the Local Government Act 2000 or regulations made under that Part, the part of basic allowance payable to him in respect of the period for which he is suspended or partially suspended may be withheld by the authority.

Special responsibility allowance

5. - (1) A scheme made under this Part may provide, in accordance with paragraph (2), for the payment for each year for which that scheme relates of an allowance (“special responsibility allowance”) to such members of the authority as have such special responsibilities in relation to the authority as are specified in the scheme and are within one or more of the following categories -

(a) acting as leader or deputy leader of a political group within the authority;

(b) acting as a member of an executive where the authority are operating executive arrangements within the meaning of Part II of the Local Government Act 2000;

(c) 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;

(d) representing the authority at meetings of, or arranged by, any other body;

(e) acting as a member of a committee or sub-committee of the authority which meets with exceptional frequency or for exceptionally long periods;

(f) acting as the spokesman of a political group on a committee or sub-committee of the authority;

(g) acting as a member of an adoption panel within the meaning of the Adoption Agencies Regulations 1983;

(h) acting as a member of any committee or sub-committee that deals with any function arising under any enactment authorising the authority to license or control the carrying on of any activity;

(i) carrying out 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 in sub-paragraphs (a) to (h) (whether or not that activity is specified in the scheme).

(2) Any scheme making such provision as is mentioned in paragraph (1) shall -

(a) specify the amount of each special responsibility allowance, which need not be the same;

(b) provide that, where -

(i) members of an authority are divided into at least two political groups; and

(ii) a majority of members of the authority belong to the same political group ("the controlling group"),

a special responsibility allowance shall be paid to at least one person who is not a member of the controlling group and has special responsibilities described in paragraph (1)(a) or (f); and

(c) provide that where a member does not have throughout the whole of a year any such special responsibilities as entitle him to a special responsibility allowance, his entitlement shall be to payment of such part of the special responsibility allowance as bears to the whole the same proportion as the number of days during which he has such special responsibilities bears to the number of days in that year.

(3) The scheme may specify that where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with Part III of the Local Government Act 2000 or regulations made under that Part, the part of special responsibility allowance payable to him in respect of the responsibility or duties from which he is suspended or partially suspended may be withheld by the authority.

Special responsibility allowance for members of the Association of London Government

6. - (1) For the purposes of regulation 5 -

(a) references to an authority shall include the Association of London Government, which is hereby designated for the purposes of section 18 of the Local Government and Housing Act 1989;

(b) references to members shall, in relation to that body, be references to its members who are also members of London borough councils; and

(c) references in regulation 5 to a scheme made under this Part shall, in relation to the Association of London Government, be construed as

references to a scheme established by the Association of London Government for the payment of special responsibility allowance only, in accordance with regulation 5 and the Association of London Government is hereby authorised to make such a scheme in accordance with these Regulations.

(2) Where the Association of London Government pays special responsibility allowance to such members -

(a) Part 3 of these Regulations shall apply to that body in respect of its payments of special responsibility allowance as it applies to an authority; and

(b) Part 4 of these Regulations shall apply to that body as it applies to an authority as regards an independent remuneration panel established by regulation 20(1)(c).

Dependants' carers' allowance

7. - (1) A scheme may provide for the payment to members of an authority of an allowance ("dependants' carers' allowance") in respect of such expenses of arranging for the care of their children or dependants as are necessarily incurred in -

(a) the attendance at a meeting of the authority or of any committee or sub-committee of the authority, or of any other body to which the authority makes appointments or nominations, or of any committee or sub-committee of such a body;

(b) the attendance at any other meeting, the holding of which is authorised by the authority, or a committee or sub-committee of the authority, or a joint committee of the authority and at least one other local authority within the meaning of section 270(1) of the Local Government Act 1972, or a sub-committee of such a joint committee, provided that -

(i) where the authority is divided into two or more political groups it is a meeting to which members of at least two such groups have been invited; or

(ii) if the authority is not so divided, it is a meeting to which at least two members of the authority have been invited;

(c) the attendance at a meeting of any association of authorities of which the authority is a member;

(d) the attendance at a meeting of the executive or a meeting of any of its committees, where the authority is operating executive arrangements;

(e) the performance of any duty in pursuance of any standing order made under section 135 of the Local Government Act 1972 requiring a member or members to be present while tender documents are opened;

(f) the performance of any duty 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;

(g) the performance of any duty in connection with arrangements made by the authority for the attendance of pupils at any school approved for the purposes of section 342 of the Education Act 1996 (approval of non-maintained special schools); and

(h) the carrying out of any other duty approved by the authority, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the authority or any of its committees or sub-committees.

(2) For the purposes of this regulation, “authority” means an authority of any description specified in sub-paragraphs (a) to (c) of regulation 3(1).

Travelling and subsistence allowance

8. - (1) A scheme may provide for the payment to members of an authority of an allowance in respect of travelling and subsistence (“travelling and subsistence allowance”), including an allowance in respect of travel by bicycle or by any other non-motorised form of transport, undertaken in connection with or relating to such duties as are specified in the scheme and are within one or more of the following categories -

(a) the attendance at a meeting of the authority or of any committee or sub-committee of the authority, or of any other body to which the authority makes appointments or nominations, or of any committee or sub-committee of such a body;

(b) the attendance at any other meeting, the holding of which is authorised by the authority, or a committee or sub-committee of the authority, or a joint committee of the authority and one or more local authority within the meaning of section 270(1) of the Local Government Act 1972, or a sub-committee of such a joint committee provided that -

(i) where the authority is divided into two or more political groups it is a meeting to which members of at least two such groups have been invited, or

(ii) if the authority is not so divided, it is a meeting to which at least two members of the authority have been invited;

(c) the attendance at a meeting of any association of authorities of which the authority is a member;

(d) the attendance at a meeting of the executive or a meeting of any of its committees, where the authority is operating executive arrangements;

(e) the performance of any duty in pursuance of any standing order made under section 135 of the Local Government Act 1972 requiring a member or members to

be present while tender documents are opened;

(f) the performance of any duty 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;

(g) the performance of any duty in connection with arrangements made by the authority for the attendance of pupils at any school approved for the purposes of section 342 (approval of non-maintained special schools) of the Education Act 1996, and

(h) the carrying out of any other duty approved by the authority, or any duty of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the authority or of any of its committees or sub-committees.

(2) A scheme may specify that where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with Part III of the Local Government Act 2000 or regulations made under that Part, any travelling and subsistence allowance payable to him in respect of the responsibilities or duties from which he is suspended or partially suspended may be withheld by the authority.

(3) For the purposes of this regulation -

(a) a member of a committee or sub-committee of an authority is to be treated as a member of an authority; and

(b) an authority includes, in addition to those bodies referred to in regulation 3(1), the following bodies -

(i) an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities); and

(ii) a joint board upon which a body referred to in regulation 3(1)(a) to (h) is represented.

Co-optees' allowance

9. - (1) The scheme may provide for the payment of an allowance for each year to a member in respect of attendance at conferences and meetings ("co-optees' allowance").

(2) In relation to co-optees' allowance, the scheme shall -

(a) specify the amount of entitlement by way of co-optees' allowance in respect of any year to which it relates; and

(b) provide that where the appointment of a member begins or ends otherwise than at the beginning or end of a year, his entitlement shall be to payment of such part of the co-optees' allowance as bears to the whole the same proportion as the number of days during which his term of office as member subsists bears to the number of days in that year.

(3) The scheme may specify that where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with Part III of the Local Government Act 2000 or regulations made under that Part, any co-optees' allowance payable to him in respect of the responsibilities or duties from which he is suspended or partially suspended may be withheld by the authority.

(4) The amount of co-optees' allowance payable to any member who presides at a meeting of an overview and scrutiny committee, where that committee's functions under section 21 of the Local Government Act 2000 relate wholly or partly to any education functions which are the responsibility of the authority's executive, shall not be less than the minimum amount of any special responsibility allowance payable under that authority's scheme to a person who presides at meetings of any other other authority's committees or sub-committees.

(5) For the purposes of paragraphs (1) to (4) of this Regulation, "member" means a person who is not a member of the authority but who is a member of a committee or sub-committee of an authority.

PART 3

SCHEMES

Requirements for schemes

10. - (1) Before the beginning of each year, an authority shall make the scheme required by regulation 4(1)(a) for the payment of basic allowance for that year.

(2) The scheme shall also make provision for the following allowances if an authority intends to make such payments in respect of the year -

- (a) special responsibility allowance;
- (b) dependants' carers' allowance;
- (c) travelling and subsistence allowance; and
- (d) co-optees' allowance.

(3) Subject to regulation 12 the scheme may be amended at any time but may only be revoked with effect from the beginning of a year.

(4) A scheme may make provision for an annual adjustment of allowances by reference to such index as may be specified by the authority and where the only change made to a scheme in any year is that effected by such annual adjustment in accordance with such index the scheme shall be deemed not to have been amended.

(5) Where an authority has regard to an index for the purpose of annual adjustment of allowances it must not rely on that index for longer than a period of four years before

seeking a further recommendation from the independent remuneration panel established in respect of that authority on the application of an index to its scheme.

(6) Where an amendment is to be made which affects an allowance payable for the year in which the amendment is made, the scheme may provide for the entitlement to such allowance as amended to apply with effect from the beginning of the year in which the amendment is made.

(7) A scheme may provide that where payment of any allowance has already been made in respect of any period during which the member concerned is

(a) suspended or partially suspended from his responsibilities or duties as a member of the authority in accordance with Part III of the Local Government Act 2000 or regulations made under that Part;

(b) ceases to be a member of the authority; or

(c) is in any other way not entitled to receive the allowance in respect of that period,

the authority may require that such part of the allowance as relates to any such period be repaid to the authority.

(8) Where the scheme is revoked in accordance with this regulation or regulation 12, an authority shall before the revocation takes effect make a further scheme for the period beginning with the date on which the revocation takes effect and ending at the end of the year in question.

(9) A scheme must make provision to ensure that where a member of an authority is also a member of another authority, that member may not receive allowances from more than one authority in respect of the same duties.

Pensions

11. - (1) A scheme made by a district council, county council or a London borough council shall set out -

(a) which members of the authority are to be entitled to pensions in accordance with a scheme made under section 7 of the Superannuation Act 1972; and

(b) whether the basic allowance or the special responsibility allowance, or both, may be treated as amounts in respect of which such pensions are payable in accordance with a scheme made under section 7 of the Superannuation Act 1972.

(2) In making such provision an authority may only include someone who has first been recommended by the independent remuneration panel established in respect of that authority for such entitlement under regulation 21.

Transitional provisions for revocation of allowance schemes

12. Where an independent remuneration panel has produced a report in accordance with regulation 21, a district, county or London borough council may, notwithstanding regulation 10(3), revoke an allowance scheme at any time once that council has begun to operate -

- (a) executive arrangements, where they are being operated in place of existing alternative arrangements;
- (b) alternative arrangements, where they are being operated in place of existing executive arrangements; or
- (c) different executive arrangements which involve an executive which takes a different form.

Elections to forgo allowances

13. The scheme shall provide that a person may, by notice in writing given to the proper officer of the authority, elect to forgo his entitlement or any part of his entitlement to allowances.

Claims and payments

14. - (1) The scheme shall specify a time limit from the date on which an entitlement to each of the following allowances arises during which a claim for such allowances must be made by the person to whom they are payable -

- (a) dependants' carers' allowance;
- (b) travelling and subsistence allowance; and
- (c) co-optees' allowance.

(2) Nothing in paragraph (1) shall prevent an authority from making a payment where the allowance is not claimed within the period specified in the scheme.

(3) The scheme may provide for payments of allowances to be made at such times as may be specified in it, and different times may be specified for different allowances.

Records of allowances

15. - (1) An authority shall keep a record of the payments made by it in accordance with a scheme.

(2) Such a record shall -

- (a) specify the name of the recipient of the payment and the amount and nature of each payment;
- (b) be available, at all reasonable times, for inspection and at no charge -

- (i) where it is kept by an authority specified in regulation 3(1)(a) to 3(1)(d), by any local government elector for the area of that

authority; and

(ii) where it is kept by any other authority, by any local government elector of any authority specified in regulation 3(1)(a) to 3(1)(d) in whose area that other authority exercises functions; and

(c) be supplied in copy to any person who requests such a copy and who pays to the authority such reasonable fee as it may determine.

(3) As soon as reasonably practicable after the end of a year to which the scheme relates, an authority shall make arrangements for the publication within the authority's area of the total sum paid by it in the year under the scheme to each recipient in respect of each of the following -

- (a) basic allowance;
- (b) special responsibility allowance;
- (c) dependants' carers' allowance;
- (d) travelling and subsistence allowance; and
- (e) co-optees' allowance.

Publicity

16. - (1) An authority shall, as soon as reasonably practicable after the making or amendment of a scheme, make arrangements for its publication by -

- (a) ensuring that copies of the scheme are available for inspection by members of the public at the principal office of the authority, at all reasonable hours; and
 - (b) publishing in one or more newspapers circulating in its area, a notice which -
 - (i) states that the authority has made or amended a scheme and specifies the period of time for which the scheme has effect;
 - (ii) describes the main features of the scheme and specifies the amounts payable in respect of each allowance mentioned in the scheme;
 - (iii) describes any responsibilities or duties specified in the scheme in accordance with regulations 5(1) and 8(1) in relation to special responsibility allowance and travelling and subsistence allowance;
 - (iv) confirms that in making or amending the scheme, the authority complied with any duty arising under regulation 19 to
-

have regard to the recommendations of an independent remuneration panel;

(v) describes the main features of that panel's recommendations and specifies the recommended amounts of each allowance mentioned in its report for that authority;

(vi) states that copies of the scheme and copies of a record kept in accordance with regulation 15(1) and (2) are available at the principal office of the authority for inspection by members of the public at such times as may be specified by the authority in the notice; and

(vii) specifies the address of the principal office of the authority at which such copies are made available.

(2) An authority shall ensure that a notice in the form required under sub-paragraph (b) is published in one or more newspapers circulating in its area as soon as possible after the expiration of twelve months after the previous publication of such a notice, irrespective of whether the scheme has been amended during that twelve month period.

(3) An authority shall supply a copy of the scheme to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine.

Transitional provisions

17. - (1) Notwithstanding regulation 33, any scheme made by an authority in accordance with the Local Authorities (Members' Allowances) regulations 1991 as amended shall continue in force up to and including 29th September 2003 or until a new scheme in accordance with these Regulations is made by the authority, if sooner.

(2) An authority shall make a scheme in accordance with these Regulations on or prior to 30th September 2003.

(3) Where an authority first makes a scheme in accordance with these Regulations it shall revoke any previous scheme for the payment of allowances and ensure that the scheme made in accordance with these Regulations takes effect on the date that the revocation of the previous scheme takes effect.

(4) Subject to paragraph (5), any scheme made by an authority in accordance with these Regulations between the coming into force of these Regulations and 30th September 2003 may make provision for any allowance payable in accordance with such a scheme to be payable as if the scheme had been in force with effect from 1st May 2003.

(5) Any provision made in accordance with paragraph (4) shall not permit a member to receive a greater amount in total under the provisions of that scheme and any previous scheme, in respect of any duty carried out between the coming into force of these Regulations and the making of a scheme in accordance with these Regulations, than he would have received had the scheme been in effect from the 1st May 2003.

PART 4

INDEPENDENT REMUNERATION PANELS

Application of this Part

18. Any reference in this Part to an authority, unless otherwise specified, shall be construed as a reference to a body of one of the following descriptions -

- (a) a district council;
- (b) a county council; and
- (c) a London borough council.

Duty to have regard to recommendations

19. - (1) Before an authority referred to in regulation 3(1)(a), (b), or (c) makes or amends a scheme, the authority shall have regard to the recommendations made in relation to it by an independent remuneration panel.

(2) Before an authority referred to in regulation 3(1)(e), (f), (g), (h), (i) or (j) makes or amends a scheme that authority shall have regard to the recommendations made by any independent remuneration panels in relation to any authority of a description referred to in regulations 3(1)(a), (b) or (c) by which any of its members are nominated.

Independent remuneration panels

20. - (1) An independent remuneration panel shall be established in respect of each authority by one of the following means -

- (a) by an authority in which case that panel shall exercise the functions specified in regulation 21 in respect of that authority;
- (b) jointly by any authorities in which case that panel shall exercise the functions specified in regulation 21 in respect of the authorities which established it; or
- (c) by the Association of London Government in which case that panel shall exercise the functions specified in regulation 21 in respect of any London borough councils,

but there shall not be more than one panel which makes recommendations in respect of an authority.

(2) An independent remuneration panel shall consist of at least three members none of whom -

- (a) is also a member of an authority in respect of which it makes recommendations or is a member of a committee or sub-committee of such an authority; or
-

(b) is disqualified from being or becoming a member of an authority.

(3) An authority may pay the expenses incurred by an independent remuneration panel established under paragraph (1)(a) or (1)(b) in carrying out its functions and may pay the members of the panel such allowances or expenses as the authority or authorities for which it makes recommendations may determine.

(4) The Association of London Government may pay the expenses incurred by an independent remuneration panel established under paragraph (1)(c) in carrying out its functions and may pay the members of the panel such allowances or expenses as it may determine.

Recommendations of panels

21. - (1) An independent remuneration panel shall produce a report in relation to the authority or authorities in respect of which it was established, making recommendations -

(a) as to the responsibilities or duties in respect of which the following should be available -

- (i) special responsibility allowance;
- (ii) travelling and subsistence allowance; and
- (iii) co-optees' allowance;

(b) as to the amount of such allowances and as to the amount of basic allowance;

(c) as to whether dependants' carers' allowance should be payable to members of an authority, and as to the amount of such an allowance;

(d) as to whether, in the event that the scheme is amended at any time so as to affect an allowance payable for the year in which the amendment is made, payment of allowances may be backdated in accordance with regulation 10(6);

(e) as to whether adjustments to the level of allowances may be determined according to an index and if so which index and how long that index should apply, subject to a maximum of four years, before its application is reviewed;

(f) as to which members of an authority are to be entitled to pensions in accordance with a scheme made under section 7 of the Superannuation Act 1972; and

(g) as to treating basic allowance or special responsibility allowance, or both, as amounts in respect of which such pensions are payable in accordance with a scheme made under section 7 of the Superannuation Act 1972.

(2) A copy of a report made under paragraph (1) shall be sent to each authority in respect of which recommendations have been made.

(3) An independent remuneration panel may make different recommendations in relation to each of the authorities for which it exercises functions.

Publicity for recommendations of panels

22. - (1) Once an authority receives a copy of a report made to it by an independent remuneration panel in accordance with regulation 21, it shall, as soon as reasonably practicable -

(a) ensure that copies of that report are available for inspection by members of the public at the principal office of the authority, at all reasonable hours; and

(b) publish in one or more newspapers circulating in its area, a notice which -

(i) states that it has received recommendations from an independent remuneration panel in respect of its scheme;

(ii) describes the main features of that panel's recommendations and specifies the recommended amounts of each allowance mentioned in the report in respect of that authority;

(iii) states that copies of the panel's report are available at the principal office of the authority for inspection by members of the public at such times as may be specified by the authority in the notice; and

(iv) specifies the address of the principal office of the authority at which such copies are made available.

(2) An authority shall supply a copy of a report made by an independent remuneration panel in accordance with regulation 21 to any person who requests a copy and who pays to the authority such reasonable fee as the authority may determine.

Transitional provisions for independent remuneration panels

23. Notwithstanding regulation 33(1)(f), any independent remuneration panel established under the Local Authorities (Members' Allowances) (England) Regulations 2001 shall continue in being and shall constitute an independent remuneration panel for the purposes of these Regulations as if it had been established under regulation 20, although where the composition of such a panel does not comply with these Regulations, the authority or authorities or other body by which it is established must ensure that the panel does so comply within four months of the date on which these Regulations come into force.

PART 5

PARISH COUNCILS

[not reproduced]

PART 6

TRANSITIONAL PROVISIONS, REVOCATION AND DISAPPLICATIONS

Revocation

33. - (1) The following Regulations shall be revoked to the extent not already revoked -

- (a) the Local Authorities (Members' Allowances) Regulations 1991;
- (b) the Local Authorities (Members' Allowances) (Amendment) Regulations 1995;
- (c) the Local Authorities (Members' Allowances) (Amendment) Regulations 1996;
- (d) the Local Authorities (Members' Allowances) (Amendment) (England) Regulations 2000;
- (e) the Local Authorities (Members' Allowances) (Amendment) (England) (No. 2) Regulations 2000; and
- (f) the Local Authorities (Members' Allowances) (England) Regulations 2001.

(2) Paragraph 4 of the Schedule to the Greater London Authority Act 1999 (Consequential Amendments of Subordinate Legislation) (Fire etc. Authority) Order 2000 shall be revoked.

Disapplication

34. - (1) Subject to paragraphs (2) and (3), the following shall be disapplied as respects authorities -

- (a) sections 173 to 175 of the Local Government Act 1972;
- (b) section 176(1)(a) and (2) of that Act; and
- (c) section 18(2)(b) of the Local Government and Housing Act 1989,

for all purposes other than -

- (i) the payment of any allowance payable to members of an admissions appeal panel constituted in accordance with regulations made by the Secretary of State under the provisions of the School Standards and Framework Act 1998; and
 - (ii) the payment of any allowance payable to members of an exclusions appeal panel constituted in accordance with regulations made by the Secretary of State under the provisions of the Education Act 2002.
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(2) As respects parish councils the provisions referred to in paragraph (1) shall be disapplied with effect from 30th September 2003.

(3) As respects any other authority the provisions referred to in paragraph (1) shall be disapplied with effect from the date upon which such authority makes a scheme in accordance with Parts 2 and 3 of these Regulations.

(4) In this regulation, the reference to “authorities” is a reference to the following bodies -

- (a) a district council;
 - (b) a county council;
 - (c) a London borough council;
 - (d) the Council of the Isles of Scilly;
 - (e) a fire authority constituted by a combination scheme under the Fire Services Act 1947;
 - (f) a joint authority established by Part IV of the Local Government Act 1985;
 - (g) the London Fire and Emergency Planning Authority;
 - (h) the Broads Authority;
 - (i) a National Park authority;
 - (j) a conservation board of an area of outstanding natural beauty; and
 - (k) a parish council.
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Executive
(Date.....)

Version (No.....)
(Date.....)