Yearbook ONLINE 2019



# CONTENTS



**Published FREE for**
**Local Council Officers and Clerks**
**in England and Wales**
***by***


*Clerks and Councils Direct*

# The Clerk's Year

**by Paul Clayden**

**THE LOCAL** government year runs from 1 April until the following 31 March. It is convenient, and sensible, at this time to preview the regular events for the year which begins on 1 April 2019 so that adequate preparation for them can be made and nothing important is overlooked.

**PERIODS**

The period of office of the Chairman of the Council starts at the annual meeting of the council. This must be held on a day in May, except in the year of the ordinary council elections (every fourth year), when it must be held on or after the fourth day after the election, or on or before the eighteenth day after it. The next date for many local council elections in England is 2 May 2019. In Wales, the next ordinary elections will be in 2021.

The Chairman remains in office until his or her successor is elected unless he or she resigns in writing to the council, dies or becomes disqualified. If none of these events occur, the Chairman's successor is elected at the next annual council meeting. There is nothing to prevent the Chairman from standing for re-election.

There is no power for the council to elect a chairman for a longer period than one year; although in some councils an understanding or convention is followed whereby a chairman normally serves for perhaps three years before stepping down. If, after an ordinary election, the Chairman is no longer a councillor, he or she nevertheless remains in the chair until a successor is elected. Once elected, the Chairman must sign a declaration of acceptance of office as chairman.

The Vice-Chairman (if any) is also elected at the annual council meeting and holds office for one year. Again, some councils have a convention whereby the Vice-Chairman is elected chairman in the following year, but this is not a matter of law and the council need not follow the convention. The Vice-Chairman does not sign a declaration of acceptance of office as vice-chairman.

The term of office of councillors runs for four years from the fourth day after the date of the ordinary election until the fourth day after the next ordinary election. A councillor elected, co-opted or appointed between ordinary elections serves out the term.

The term of office of a councillor may be ended by written resignation to the Chairman, failure to attend meetings for six consecutive months without a reason approved by the council, disqualification for a prison sentence, bankruptcy, an election offence or conviction for failing to abide by the law relating to disclosable pecuniary interests (in England) or for a serious breach of the council's code of conduct (in Wales).

The clerk of the council serves from the date of appointment until his or her service is ended by death, resignation or dismissal within the terms of employment. If the council wishes to adopt the power of general competence (England only), the clerk must hold either the Certificate in Local Council Administration or the Certificate in Higher Education in Local Policy or Local Council Administration or the first level of the foundation degree in Community Engagement and Governance awarded by the University of Gloucestershire or its successor De Montfort University (Leicester).

**ANNUAL EVENTS**

**Annual Parish Meeting:** This is obligatory in England and must be held between 1 March and 1 June. The local government electors for the parish are entitled to attend, speak and vote. If present, the chairman of the Council must preside. The meeting may discuss any matter of relevance to the parish. The annual parish meeting is sometimes held on the same day as the annual council meeting, but is entirely separate from it.

In Wales, there is no requirement to hold an annual, or any, community meeting, except in connection with the establishment, dissolution or grouping of community councils.

**Other parish and community meetings:** A parish or community meeting can be called at any time in accordance with the statutory procedures for so doing.

**Annual Parish or Community Council meeting:** The council must hold an annual meeting in May or, in an ordinary election year, between the fourth and the eighteenth day after the election. This will, too, usually be in May because the normal election day is the first Thursday in May. At that meeting, the Chairman of the Council must be elected. It is normal to elect the Vice-Chairman (if any), Committees and Sub-Committees at the same meeting and to arrange a programme of meetings for the year.

**Other meetings of the Council:** In England, at least three meetings other than the annual meeting must be held. In Wales, only the annual meeting is obligatory. In practice, of course, councils meet more frequently than the statutory minimum number of times.

**Audit:** The accounts of the council are audited annually, with the audit for the preceding year normally being held in the summer or autumn.

**Register of Electors:** This is prepared by the electoral registration officer. A person on the register may vote at council elections, may speak and vote at parish/community meetings and is qualified to be elected as a councillor (there are other qualifications as well). The clerk usually holds a copy of the register but has no duties in respect of its compilation or use. The number of electors determines the expenditure limit under section 137 of the Local Government Act 1972, which is £7.86 per elector per year in both England and Wales for 2018/19.

**PROCEDURES**

**Accounts:** the accounts year ends on 31 March and begins on 1 April. In England, the clerk must keep proper accounting records in order to comply with the Accounts and Audit Regulations 2015 and the Local Audit (Smaller Authorities) Regulation 2015 (in Wales, the Accounts and Audit (Wales) Regulations 2014), and must ensure that the accounts balance at the end of the year. The clerk is responsible for dealing with VAT returns, income tax and national insurance deductions from employees' remuneration, submitting accounts for payment to the council for approval in accordance with the council's financial regulations. (NALC publishes a model set of financial regulations.)

**Meetings:** the clerk is responsible for ensuring that the correct statutory procedures are followed for the calling and holding of council meetings, committee and sub-committee meetings and, usually, parish/community meetings (occasionally, such meetings are called by electors without reference to the council). After meetings, the clerk must prepare minutes for approval by the council, etc.

**Elections:** the clerk has no duties in relation to ordinary elections. When a casual vacancy occurs, the clerk must put up a notice advertising the vacancy and should then inform the electoral registration officer. If there is no by-election, the clerk should ensure that the co-option of a new councillor is put on the council's agenda as soon as possible.
**Precept:** the precept for the money the council requires to be raised from the council tax payers must be sent to the billing authority by the beginning of March (and is usually sent in earlier). This means that the council's budget must be settled before the amount of the precept can be determined. The budgeting process usually takes place between about September and January.
**Insurance:** the council's insurance policies will need to be renewed annually. The opportunity should be taken to review the levels of cover and the terms of the policies to ensure that the council is fully insured.
**Fees and charges:** the level of fees, rents and charges should be reviewed regularly and raised where necessary. This is best done at budget time.

**LOCAL COUNCIL AWARD SCHEME (ENGLAND ONLY)**

The Local Council Award Scheme (LCAS) has been designed to both provide the tools and encouragement to those councils at the beginning of their improvement journeys, as well as promoting and recognising councils that are at the cutting edge of the sector. It is only through the sector working together to share best practice, drive up standards and supporting those who are committed to improving their offer to their communities that individual councils and the sector as a whole will reach its full potential.

The scheme was created in 2014 and is managed by the Improvement and Development Board. Accreditation under the Scheme is carried out by a panel set up by a county association of local councils or a regional group of associations.
Councils can apply for an award at one of three levels:

- The **Foundation Award** demonstrates that a council meets the minimum requirements for operating lawfully and according to standard practice.
- The **Quality Award** demonstrates that a council achieves good practice in governance, community engagement and council improvement.
- The **Quality Gold Award** demonstrates that a council is at the forefront of best practice and achieves excellence in governance, community leadership and council development.

The scheme sets out criteria to meet at each level covering selected aspects of the council's work. Councils can seek to progress through the tiers over time thereby raising standards. Councils of any size can aspire to an award appropriate for their budget and level of activity.
The Scheme replaced the Quality Town and Parish Council Scheme (QTPCS). Any council which has been accredited under the QTPCS can apply for automatic transition to the LCAS. Full details of the LCAS are available on the NALC website: **www.nalc.gov.uk**

*January 2019*
*© CommuniCorp*

# Codes of Conduct

**by Paul Clayden**

**ENGLAND**

**Code of Conduct**

Chapter 7 of Part 1 of the Localism Act 2011 requires a "relevant authority" (which includes all types of local authority including parish and town councils) to promote and maintain high standards of conduct by members and co-opted members. Every relevant authority must adopt a code which is consistent with these principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. There is no mandatory code, but local government representative bodies like NALC have published suggested codes. The Ministry of Housing, Communities and Local Government issued guidance entitled *Openness and transparency on personal interests* which can be viewed on the MHCLG website via **GOV.UK**: **www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors**.

The main points of a typical code (Oxfordshire County Council) are as follows:

*Selflessness*

You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself.

*Objectivity*

In carrying out public business you must make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

*Accountability*

You are accountable for your decisions and actions to the public and must submit yourself to whatever scrutiny is appropriate to your office.

*Openness*

You must be as open as possible about your actions and those of your council, and must be prepared to give reasons for those actions.

*Honesty and integrity*

You must not place yourself in situations where your honesty and integrity may be questioned, must not behave improperly and must on all occasions avoid the appearance of such behaviour.

*Leadership*

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example in a way that secures or preserves public confidence.

A relevant authority may revise its existing code or adopt another one. NALC has issued a model code which is available to member councils.

A principal authority must make arrangements for dealing with allegations of breaches of its code so that they can be investigated and decisions can be made about what action to take if a member is found to have broken the code. A local council does not have to make any such arrangements. There is no statutory sanction for breaking the code and no power for a relevant authority to suspend or disqualify a member.

**Disclosable pecuniary interests**

Every member of a relevant authority must declare any relevant pecuniary interests, called in the legislation "disclosable pecuniary interests", he or she may have. The monitoring officer of the district or unitary authority in which a parish or town lies holds the register of such interests of the members of parish or town councils. The list of interests must be available for public inspection at all reasonable hours and be published on the authority's website. If a local council has a website, details of those interests must be published there as well. Details of sensitive interests (see below) do not have to be disclosed but the register may state that a member has such an interest.

Disclosable pecuniary interests are prescribed by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464) and are as follows:

| *Subject* | *Prescribed description* |
|---|---|
| Employment, office, trade, profession or vocation | Any employment, office, trade, profession or vocation carried on for profit or gain. |
| Sponsorship | Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. |
| Contracts | Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority-<br>(a) under which goods or services are to be provided or works executed; and<br>(b) which has not been fully discharged. |
| Land | Any beneficial interest in land within the area of the relevant authority. |
| Licences | Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer. |
| Corporate tenancies | Any tenancy where (to M's knowledge):<br>(a) the landlord is the relevant authority; and<br>(b) the tenant is a body in which the relevant person has a beneficial interest. |
| Securities | Any beneficial interest in the securities of a body where:<br>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and<br>(b) either:<br>i. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or<br>ii. if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class. |

An interest is disclosable if it is that of a member, his or her spouse or civil partner, or a person living with a member as a spouse or civil partner.

A member who has an unregistered disclosable pecuniary interest in any matter must normally declare at a meeting of the council or of a committee or sub-committee or a joint committee that he or she has such an interest. The unregistered interest must be registered within 28 days of the disclosure. However, if the interest is sensitive, only the fact that the member has an interest – and not its nature – has to be declared. A sensitive interest is one where the member and the monitoring offer consider that disclosure of details of the interest could lead to the member, or a person connected to the member, being subject to violence or intimidation.

When a member has a registered disclosable interest and/or has declared an unregistered interest, the member must not take any part in discussion or voting on the matter in question. A standing order may provide for the exclusion of a member from a meeting while a matter in which he or she has declared an interest is being discussed or voted upon.

A relevant authority may, on receipt of a written request, grant a dispensation from either or both of the restrictions on participation and voting in relation to a disclosed interest. Before granting a dispensation the authority must have regard to all relevant circumstances, including:

i. whether or not the business of the authority would be impeded because of the number of members who have disclosed interests. For example, if all those members with disclosed interests could neither speak nor vote the council or committee etc. might be inquorate;
ii. whether the party political balance of the authority would be affected (not normally relevant at local council level);
iii. whether or not granting the dispensation would be in the interests of people living in the area;
iv. whether or not it would otherwise be appropriate to grant a dispensation.

It is an offence, without reasonable excuse, to break any of the foregoing rules and to give false or misleading information regarding a disclosable interest. The maximum penalty on summary conviction (i.e. by a magistrates' court) is a fine not exceeding level 5 on the standard scale (£5,000). In addition, the court may disqualify the convicted person from being a member of the relevant authority or any other authority for up to five years. A prosecution can only be instituted by or on behalf of the Director of Public Prosecutions and must be begun within 12 months from the date on which the prosecutor acquired sufficient evidence to warrant proceedings being taken against the member in question, but no more than three years after the commission of the alleged offence.

**WALES**

**PART III** of the Local Government Act 2000 gives the Welsh Assembly power to issue a model code of conduct for councillors and co-opted members. The current Code is the Conduct of Members (Model Code of Conduct of Members) (Wales) Order (SI 2001/2289) as amended by the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 (SI 2016/84).

**General obligations: paragraphs 4 to 9 of the code**

4. You must:
   (a) carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
   (b) show respect and consideration for others;
   (c) not use bullying behaviour or harass anyone; and
   (d) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority.
5. You must not:
   (a) disclose confidential information, or information which should reasonably be regarded as of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
   (b) prevent another person from gaining access to information to which that person is entitled by law.
6. You must:
   (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
   (b) report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which for the purposes of this paragraph does not include offences of behaviour capable of punishment by way of a fixed penalty);
   (c) report to the Public Service Ombudsman for Wales and to your authority's monitoring officer any conduct by another member which you reasonably believe breaches this code of conduct;
   (d) not to make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority;
   (e) comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers.
7. You must not:
   (a) in your official capacity or otherwise use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;
   (b) use, or authorise others to use, the resources of your authority:
      i. imprudently;
      ii. in breach of your authority's requirements;
      iii. unlawfully;
      iv. other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which you have been elected or appointed;

v. improperly for political purposes;
vi. improperly for private purposes.

8. You must:
(a) when participating in meetings or reaching decisions regarding the business of your authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by your authority's officers, in particular by:
i. the authority's head of paid service;
ii. the authority's chief finance officer;
iii. the authority's monitoring officer;
iv. the authority's chief legal officer (who should be consulted when there is any doubt as to the authority's power to act, as to whether the action proposed lied within the policy framework agreed by the authority or where the legal consequences of action or failure to act by the authority might have important repercussions);
(b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

9. You must:
(a) observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;
(b) avoid accepting from anyone gifts, hospitality (other than official hospitality, such as a reception or a working lunch duly authorised by your authority), material benefits or services for yourself or any person which might place you, or reasonably appear to place you, under an improper obligation.

**Interests**

The interests which must be registered are set out Part 2 of the Code. They are as follows:

**Personal interests**

10.
(1) You must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest.
(2) You must regard yourself as having a personal interest in any business of your authority if
(a) it relates to, or is likely to affect:
i. any employment or business carried on by you;
ii. any person who employs or has appointed you, any firm in which you are a partner or any company for which you are a remunerated director;
iii. any person, other than your authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties as a member;
iv. any corporate body which has a place of business or land in your authority's area, and in which you have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
v. any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
vi. any land in which you have a beneficial interest and which is in the area of your authority;
vii. any land where the landlord is your authority and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;
viii. any body to which you have been elected, appointed or nominated by your authority;
ix. any:
aa) public authority or body exercising functions of a public nature;
ba) company, industrial and provident society, charity, or body directed to charitable purposes;
ca) body whose principal purposes include the influence of public opinion or policy;
da) trade union or professional association; or
ea) private club, society or association operating within your authority's area, in which you have membership or hold a position of general control or management;
x. any land in your authority's area in which you have a licence (alone or jointly with others) to occupy for 28 days or longer;
(b) a member of the public might reasonably perceive a conflict between your role in taking a decision, upon that business, on behalf of your authority as a whole and your role in representing the interests of constituents in your ward or electoral division; or
(c) a decision upon it might reasonably be regarded as affecting:
I. your well-being or financial position, or that of a person with whom you live, or any person with whom you have a close personal association;
ii. any employment or business carried on by persons as described in 10(2)(c)(i);
iii. any person who employs or has appointed such persons described in 10(2)(c)(i), any firm in which they are a partner, or any company of which they are directors;
iv. any corporate body in which persons as described in 10(2)(c)(i) have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
v. any body listed in paragraphs

10(2)(a)(ix)(aa) to (ee) in which persons described in 10(2)(c)(i) hold a position of general control or management, to a greater extent than the majority of:

(aa) in the case of an authority with electoral divisions or wards, other council tax payers, rate payers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

(bb) in all other cases, other council tax payers, ratepayers or inhabitants of the authority's area.

**Disclosure of personal interests**

11.

(1) Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority and you make:

(a) written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication; or

(b) oral representations (whether in person or some form of electronic communication) to a member or officer of your authority you should disclose the interest at the commencement of such representations, or when it becomes apparent to you that you have such an interest, and confirm the representation and interest in writing within 14 days of the representation.

(3) Subject to paragraph 14(1)(b) below, where you have a personal interest in any business of your authority and you have made a decision in exercising a function of an executive or board, you must in relation to that business ensure that any written statement of that decision records the existence and nature of your interest.

(4) You must, in respect of a personal interest not previously disclosed, before or immediately after the close of a meeting where the disclosure is made pursuant to sub-paragraph 11(1), give written notification to your authority in accordance with any requirements identified by your authority's monitoring officer from time to time but, as a minimum containing:

(a) details of the personal interest;

(b) details of the business to which the personal interest relates; and

(c) your signature.

(5) Where you have agreement from your monitoring officer that the information relating to your personal interest is sensitive information, pursuant to paragraph 16(1), your obligations under this paragraph 11 to disclose such information, whether orally or in writing, are to be replaced with an obligation to disclose the existence of a personal interest and to confirm that your monitoring officer has agreed that the nature of such personal interest is sensitive information.

(6) For the purposes of sub-paragraph (4), a personal interest will only be deemed to have been previously disclosed if written notification has been provided in accordance with this code since the last date on which you were elected, appointed or nominated as a member of your authority.

(7) For the purposes of sub-paragraph (3), where no written notice is provided in accordance with that paragraph you will be deemed as not to have declared a personal interest in accordance with this code.

**Prejudicial interests**

12.

(1) Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) Subject to sub-paragraph (3), you will not be regarded as having a prejudicial interest in any business where that business:

(a) relates to:

i. another relevant authority of which you are also a member;

ii. another public authority or body exercising functions of a public nature in which you hold a position of general control or management;

iii. a body to which you have been elected, appointed or nominated by your authority;

iv. your role as a school governor (where not appointed or nominated by your authority) unless it relates particularly to the school of which you are a governor;

v. your role as a member of a Local Health Board where you have not been appointed or nominated by your authority;

(b) relates to:

i. the housing functions of your authority where you hold a tenancy or lease with your authority, provided that you do not have arrears of rent with your authority of more than two months, and provided that those functions do not relate particularly to your tenancy or lease;

ii. the functions of your authority in respect of school meals, transport and travelling expenses, where you are a guardian, parent, grandparent or have parental responsibility (as defined in section 3 of the Children Act 1989) of a child in full time education, unless it relates particularly to the school which that child attends;

iii. the functions of your authority

in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of such pay from your authority;

iv. the functions of your authority in respect of an allowance or payment made under the provisions of Part 8 of the Local Government (Wales) Measure 2011 or an allowance or pension under section 18 of the Local Government and Housing Act 1989;

(c) your role as a community councillor in relation to a grant, loan or other form of financial assistance made by your community council to community or voluntary organisations up to a maximum of £500.

(3) The exemptions in subparagraph (2)(a) do not apply where the business relates to the determination of any approval, consent, licence, permission or registration.

[13. Does not apply to community councils.]

**Participation in relation to disclosed interests**

14.

(1) Subject to sub-paragraphs (2), (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee:

(a) withdraw from the room, chamber or place where a meeting considering the business is being held:

i. where sub-paragraph (2) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or

ii. in any other case, whenever it becomes apparent that that business is being considered at that meeting;

(b) not exercise executive or board functions in relation to that business;

(c) not seek to influence a decision about that business;

(d) not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business; and

(e) not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.

(2) Where you have a prejudicial interest in any business of your authority you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

(2A) Where you have a prejudicial interest in any business of your authority you may submit written representations to a meeting relating to that business provided that the public are allowed to attend the meeting for the purpose of making representations relating to the business, whether under a statutory right or otherwise.

(2B) When submitting written representations under sub-paragraph (2A) you must comply with any procedure that your authority may adopt for the admission of such representations.

(3) Sub-paragraph (1) does not prevent you attending and participating in a meeting if:

(a) you are required to attend a meeting of an overview or scrutiny committee, by such committee exercising its statutory powers; or

(b) you have the benefit of a dispensation provided that you:

i. state at the meeting that you are relying on the dispensation; and

ii. before or immediately after the close of the meeting give written notification to your authority containing:

(aa) details of the prejudicial interest;

(bb) details of the business to which the prejudicial interest relates;

(cc) details of, and the date on which, the dispensation was granted; and

(dd) your signature.

(4) Where you have a prejudicial interest and are making written or oral representations to your authority in reliance upon a dispensation, you must provide details of the dispensation within any such written or oral representation and, in the latter case, provide written notification to your authority within 14 days of making the representation.

**Part 4 - the register of members' interests**
**Registration of financial and other interests and memberships and management positions**

15.

(1) Subject to sub-paragraph (4), you must, within 28 days of:

(a) your authority's code of conduct being adopted or the mandatory provisions of this model code being applied to your authority; or

(b) your election or appointment to office (if that is later), register your financial interests and other interests, where they fall within a category mentioned in paragraph 10(2)(a) in your authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph (4) you must, within 28 days of becoming aware of any new personal interest or change to any personal interest falling within a category mentioned in paragraph 10(2)(a), register that new personal interest or change by providing written notification to your authority's monitoring officer or in the case of a community council to your authority's proper officer.

(3) Subject to sub-paragraph (4), you must, within 28 days of becoming aware of any

change of registered personal interest falling within a category mentioned in paragraph 10(2)(a), register that change in your authority's register of members' interests by providing written notification to your authority's monitoring officer or in the case of a community council to your authority's proper officer.

(4) Sub-paragraphs (1), (2) and (3) do not apply to sensitive information determined in accordance with paragraph 16(1).

(5) Sub-paragraphs (1) and (2) will not apply if you are a member of a relevant authority which is a community council when you act in your capacity as a member of such an authority.

(6) You must, when disclosing a personal interest in accordance with paragraph 11 for the first time, register that personal interest in your authority's register of interests by providing written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer.

**Sensitive information**

16.

(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to the interest under paragraph 15.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under sub-paragraph (1) is no longer sensitive information, notify your authority's monitoring officer, or in the case of a community council to your authority's proper officer asking that the information be included in your authority's register of members' interests.

(3) In this code, "sensitive information" ("gwybodaeth sensitif") means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

**Registration of gifts and hospitality**

17. You must, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of your authority, provide written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer of the existence and nature of that gift, hospitality, material benefit or advantage.

**CONTACT US AT:**
*Clerks & Councils Direct*
CommuniCorp
2 Micklefields
Stanton
Bury St Edmunds
IP31 2XF

Telephone: 01359 254149

Email:
clerkscouncils@btinternet.com

Website:
www.clerksandcouncilsdirect.co.uk

*January 2019*



***Make sure your copies of Clerks & Councils Direct get to the right person at the right address.***

***Send all name and/or address changes promptly to:***
***Clerks & Councils Direct***
***2 Micklefields, Stanton***
***Bury St Edmunds IP31 2XF***

**Please change our details as below:**

Current clerk: _____

Council: _____

Post Code: _____

**NEW DETAILS**

Name of clerk: _____

Address: _____

Town: _____

County: _____

Post Code: _____

Telephone: _____

Email: _____

***You may also telephone 01359 254149, or***
***BEST OF ALL EMAIL:***
***clerkscouncils@btinternet.com***

CLERKS & COUNCILS DIRECT

# Accounts and Audit Regulations

**by Paul Clayden**

There are separate provisions for England and Wales. These are similar but not identical.

**ENGLAND**

The Local Audit and Accountability Act 2014 brought in a new regime for the accounts and audit procedure for local authorities in England (including parish meetings in parishes without councils). Charter trustees are also covered by the Act. The details are contained in the Local Audit (Smaller Authorities) Regulations 2015 (SI 2015/184) and the Accounts and Audit Regulations 2015 (SI 2015/234). The regulations apply to accounts relating to the financial year 2015-16 and subsequent years.

The 2014 Act applies to all types of local authority, called in the Act "relevant authorities". Local councils and parish meetings are classed as "smaller authorities" if their gross income and expenditure for the financial year does not exceed £6.5 million.

*Category 1 and Category 2 authorities*

The Regulations effectively divide local authorities into two categories for accounting purposes. Category 1 authorities are those whose gross income or gross expenditure for the financial year is £6.5 million or more. Category 2 authorities are those whose gross income or expenditure for the financial year does not exceed £6.5 million (section 6 of the Local Audit and Accountability Act 2014.)

Category 2 authorities are called "smaller authorities" in the 2014 Act. There are special provisions for authorities whose gross annual income or expenditure does not exceed £25,000. These authorities are covered by the Local Audit (Smaller Authorities) Regulations 2015 (SI 2015/184) – see below.

As a general rule, a Category 2 authority may opt to prepare full accounts in the same way as a Category 1 authority.

The remainder of this article deals only with Category 2 authorities and those authorities below the £25,000 threshold.

*The main provisions of the Accounts and Audit Regulations 2015 relating to Category 2 authorities*

*Regulation 3 - responsibility for internal control*

This requires the authority to ensure that it has a sound system of internal control.

*Regulation 4 - accounting records and control system*

This provides for the responsible financial officer (RFO) (usually the clerk) to determine the accounting records and control systems of the authority.

*Regulation 5 - internal audit*

This requires the authority to maintain an adequate and effective system of internal audit, taking into account public sector internal auditing standards or guidance.

*Regulation 6 – review of internal control system*

There has to be an annual review of, and an annual governance statement on, the authority's system of internal control prepared in accordance with proper practices in relation to accounts, as defined in section 21 of the Local Government Act 2003. Proper practices are described in the JPAG (Joint Practitioners' Advisory Group) publication *Governance and Accountability for Smaller Authorities in England: Practitioners' Guide* (2016). This can be downloaded from the website of the Society of Local Council Clerks (**www.slcc.co.uk**); the Society also sells a printed version.

*Regulation 11 - statement of accounts for Category 2 authorities*

This requires the authority to prepare accounts as follows:

1. an income and expenditure account and a statement of balances, in accordance with, and in the form specified by, the annual return and as required by proper practices (see the *Practitioner's Guide* for details);
2. where the authority's gross income or expenditure (whichever is higher) does not exceed £200,000 for the current financial year or for either of the immediately preceding two financial years, the authority may opt to prepare a receipts and payments account instead.

*Regulation 12 – signing and approval of statements of accounts for Category 2 authorities*

The responsible financial officer (RFO) (usually the clerk) must sign and date the relevant accounts. Thereafter, the authority must consider and approve the accounts and ensure that the person presiding at the meeting at which the accounts are approved (usually the chairman of the council) signs the accounts.

Once the accounts have been approved, the RFO must open the accounts to public inspection (see below, Regulations 14 and 15) and inform the auditor of the date on which the accounts are so open.

*Regulation 13 – publication of statement of accounts and annual governance statement for Category 2 authorities*

After the period for the public inspection of accounts has ended, but not later than 30 September of the financial year immediately after the financial year to which the accounts relate, the authority must publish the statement of accounts, any certificate of the auditor and the annual governance statement. Publication must include publication on the authority's website.

Copies of the documents must be available for purchase at a reasonable cost and those published on the authority's website must be available for inspection for at least five years.

*Regulation 14 – period for the exercise of public rights*

This provides that any rights of objection, inspection and questioning of the auditor may only be exercised within a single period of 30 working days (working days exclude Saturdays, Sundays, Christmas Day, Good Friday and bank holidays).

Accounts etc. must be available for inspection on reasonable notice at reasonable times.

*Regulation 15 – commencement of period for the exercise of public rights*

This requires that the accounts etc. of the authority must be available for inspection during the first 10 working days of July in the financial year following that to which the accounts relate.

The RFO must ensure publication of the statement of accounts and of a statement which sets out details of the rights of public inspection, the manner in which members of the public should notify that they wish to

inspect accounts and the name and address of the auditor. Publication must include publication on the authority's website.

*Regulation 16 – notice of conclusion of audit*
As soon as reasonably practicable after the conclusion of the audit the authority must publish a statement saying that the audit has been concluded, giving details of the public's rights of inspection under section 25 of the 2014 Act and saying where and when those rights may be exercised.

*Regulation 20 - publication of annual audit letter*
This requires the annual audit letter received from the auditor to be considered by the authority and to be published (including publication on the authority's website) and to permit copies to be purchased.

*Local Audit (Smaller Authorities) Regulations 2015*
As a general rule, a smaller authority (i.e. a Category 2 authority) may certify itself as an exempt authority if the higher of the authority's gross income and gross expenditure for the financial year in question does not exceed £25,000, or if the authority's gross receipts and gross payments for that year do not exceed £25,000. The authority must publish its decision on its website (if it has one) or in some other manner likely bring the decision to the notice of local residents.

Where an authority has certified itself as exempt it does not have to comply with the Accounts and Audit Regulations 2014 in most respects. Instead it will have to comply with the transparency code for smaller authorities (authorised by the Smaller Authorities (Transparency Requirements) (England) Regulations (SI 2015/494). This requires the following financial information to be published annually no later than the beginning of July:

- all items of expenditure above £100;
- end of year accounts, annual governance statement, and internal audit report as contained in the annual return. The end of year accounts should be accompanied by:
  - a copy of the bank reconciliation for the relevant financial year;
  - an explanation of any significant variances (e.g. more than 10-15%, in line with proper practices) in the statement of accounts for the relevant year and previous year; and
  - an explanation of any differences between 'balances carried forward' and 'total cash and short term investments', if applicable.

Parish meetings for parishes with no council are exempt from Transparency Code.

If there are questions or objections by electors an auditor will need to be available to deal with them.

There are elaborate provisions in the Regulations enabling an exempt authority to opt in to the statutory accounting provisions and for the Secretary of State to specify the audit regime for those authorities.

*Guidance on accounts*
As indicated above, the JPAG (Joint Practitioners' Advisory Group) publication *Governance and Accountability for Smatter Authorities in England: Practitioners' Guide* (2016) gives detailed advice on the preparation and audit of accounts.

**WALES**

The governing legislation in Wales is the Public Audit (Wales) Act 2004 (as amended by the Public Audit (Wales) Act 2013) and the Accounts and Audit (Wales) Regulations 2014 (SI 2014/3362). The 2014 Regulations apply to the financial year 2014/15 and subsequent years. The paragraphs below refer to the 2014 Regulations.

*Regulations 2 interpretation*
A principal council is a "larger relevant body". A community council is a "smaller relevant body", but it becomes a larger relevant body if its gross income or expenditure (whichever is higher) exceeds £2.5 million. As far as the author is aware, no community council exceeds this threshold. The remainder of this article deals only with smaller relevant bodies.

*Regulation 5 – internal controls and financial management*
The council must ensure that there is a sound system of internal control which facilitates the exercise of the council's functions. This must include the management of risk and adequate and effective financial management.

The council must conduct an annual review of the effectiveness of its internal control system and the findings of the review must be considered by the whole council. Thereafter, the council must approve a statement of internal control in accordance with proper practices. These are set out in the joint One Voice Wales/SLCC publication *Governance and accountability for local councils: a practitioner's guide 2011 (Wales)* available from: **www.slcc.co.uk/bookstore/details/governance-and-accountability-wales-practitioners-guide/44/**

*Regulation 6 – accounting records and control systems*
The responsible financial officer determines accounting records and accounting control systems and is responsible for keeping them up to date and in accordance with proper practices.

The accounting records must show and explain the council's financial transactions and must in particular contain (a) daily entries of receipts and payments; (b) a record of assets; (c) a record of income and expenditure in relation to claims for grants and the like from Welsh ministers, other Ministers of the Crown or a body to which those ministers may pay money.

The accounting control systems must include (a) measures to ensure that financial transactions are recorded as soon as reasonably possible; (b) procedures to ensure that uncollectable amounts, including bad debts, are not written off without the approval of the responsible financial officer or other member of his staff and that the approval is shown in the accounting records;

(c) measures to ensure risk is appropriately managed.

*Regulation 7 – internal audit*
The council must maintain an adequate and effective internal audit system. It is the duty of the responsible financial officer to make available relevant documents and records (including those held in electronic form) and to supply information and explanations to the internal auditor. Guidance on how to choose an internal auditor can be found in *Governance and accountability for Local Councils in Wales: A Practitioners' Guide 2011 (Wales)* as amended in 2014.

*Regulation 14 – accounting statements*
Accounts must be prepared in accordance with proper practices. These practices are set out in *Governance and accountability for Local Councils in Wales: A Practitioners' Guide 2011 (Wales).*

*Regulation 15 – signing, approval and publication of accounting statements*
The responsible financial officer (RFO) must sign and date the accounts. They must then be approved by the council as a whole and signed by the person presiding at the meeting at which the accounts are approved. The accounting statement must be published not later than 30 September after the end of the year to which the accounts relate.

*Regulation 16 – procedure for public inspection*
The accounts must be available for public inspection for 20 working days prior to the date appointed by the auditor for the audit under regulation 21. Working days exclude Saturday, Sunday, Christmas Day, Good Friday and other bank holidays in Wales.

*Regulation 17 – notice of public rights*
The council must display a public notice or notices for at least 14 days prior to the date on which public inspection of the accounts is allowed in accordance with regulation 16.

*Regulation 18 – notice of conclusion of audit*
As soon as possible after the conclusion of the audit the council must display a public notice for at least 14 days stating that the audit has finished and giving details of the rights of inspection conferred on local government electors by section 29 of the Public Audit (Wales) Act 2004.

*Regulation 25 – written notice of objection*
A written notice of objection to the accounts must state the facts on which the local government elector relies and must give, as far as possible, particulars of any item alleged to be contrary to law or of any matter on which the auditor should issue a report.

*Regulation 27 – publication of annual audit letter*
The council must as soon as possible after receipt publish the annual audit letter and make available copies for purchase.

*Regulation 28 – extraordinary audit*
Where the Auditor General directs the holding of an extraordinary audit the council must display a public notice or notices giving details of the right of local government electors to make objection to the accounts.

To keep up-to-date with consultations, guidance and regulations don't forget to read Paul Clayden's legal section in every edition of *Clerks and Councils Direct*.
If you need more detailed legal information, then why not subscribe to *Local Councils Update*? Download a subscription form from the *Local Councils Update* section on this website.

*January 2019*

***www.clerksandcouncilsdirect.co.uk***

# Clerks' Remuneration

**by Paul Clayden**

The National Joint Council (NJC) for Local Government Services has (previously) reached agreement on the pay scales for 2019-20. Consequently the National Association of Local Councils and Society of Local Council Clerks jointly recommend that the salary scales of all full and part-time clerks be adjusted in accordance with the spinal column points (SCP). Due to the introduction of the national living wage, a new pay spine will be introduced on 1 April 2019. The new spinal column points and their current equivalents are shown below.

The main provisions of the agreement are as follows.

## SALARIES

- The salary ranges are based on evaluated benchmark posts.
- The salary bands are established in four main overlapping scales starting at SCP 5/15 as set out in the National Agreement.

| Scale | Points below substantive range | Substantive benchmark range | Points above substantive range |
|---|---|---|---|
| **LC1** | 5-6/15-17 | 7-12/18-22 | 13-17/23-25 |
| **LC2** | 18-23/26-29 | 24-28/30-34 | 29-32/35-38 |
| **LC3** | 33-36/39-42 | 37-41/43-47 | 42-45/48-51 |
| **LC4** | 46-49/52-55 | 50-54/56-60 | 55-62/61-68 |

Councils will identify the appropriate salary range for a particular post by reference to the benchmark profiles of posts, which are published with the agreement. These benchmark profiles describe a range of typical posts within the sector. If the post exactly matches the profile, the substantive salary range above should be applied. If there is not a direct match, the applicable salary range will be from the 'points below' and 'points above' columns in the above chart.

Salaries will be either an incremental scale or a 'spot salary', within the appropriate salary range.

There are also provisions for dealing with exceptional positions, which have responsibilities substantially greater than the LC4 benchmark range.

### SALARY SCALES (FULL TIME) FROM 1 APRIL 2019

| Scale | Points below substantive range (c) | | Substantive benchmark range (b) | | Points above substantive range (a) | |
|---|---|---|---|---|---|---|
| **LC1** | **(5-6)** | | **(7-12)** | | **(13-17)** | |
| | 5/15 | £18,795 | 7/18 | £19,554 | 13 | £22,021 |
| | 6/16 | £19,171 | 8/19 | £19,945 | 14/23 | £22,462 |
| | 6/17 | £19,171 | 9/20 | £20,344 | 15/24 | £22,911 |
| | | | 10 | £20,751 | 16 | £23,369 |
| | | | 11/21 | £21,166 | 17/25 | £23,836 |
| | | | 12/22 | £21,589 | | |
| **LC2** | **(18-23)** | | **(24-28)** | | **(29-32)** | |
| | 18 | £24,313 | | | | |
| | 19/26 | £24,799 | 24/30 | £27,905 | 29/35 | £32,029 |
| | 20/27 | £25,295 | 25/31 | £28,785 | 30/36 | £32,878 |
| | 21 | £25,801 | 26/32 | £29,636 | 31/37 | £33,799 |
| | 22/28 | £26,317 | 27/33 | £20,507 | 32/38 | £34,788 |
| | 23/29 | £26,999 | 28/34 | £31,371 | | |
| **LC3** | **(33-36)** | | **(37/41)** | | | |
| | 33/39 | £35,934 | 37/43 | £39,782 | 42/48 | £44,632 |
| | 34/40 | £36,876 | 38/44 | £40,760 | 43/49 | £45,591 |
| | 35/41 | £37,849 | 39/45 | £41,675 | 44/50 | £46,732 |
| | 36/42 | £38,813 | 40/46 | £42,683 | 45/51 | £47,896 |
| | | | 41/47 | £43,662 | | |
| **LC4** | **(46/49)** | | **(50-54)** | | **(55-62)** | |
| | 46/52 | £49,101 | 50/56 | £54,194 | 55/61 | £62,967 |
| | 47/53 | £50,318 | 51/57 | £55,554 | 56/62 | £64,812 |
| | 48/54 | £51,429 | 52/58 | £57,397 | 57/63 | £66,679 |
| | 49/55 | £52,869 | 53/59 | £59,244 | 58/64 | £68,510 |
| | | | 54/60 | £61,099 | 59/65 | £70,246 |
| | | | | | 60/66 | £72,019 |
| | | | | | 61/67 | £73,835 |
| | | | | | 62/68 | £75,701 |

### SALARY SCALES (PART-TIME) from 1 April 2019

Salary scales and hourly pay rates for **ALL** part-time clerks are calculated by **pro-rata** reference to the standard NJC working week for all local government staff of 37 hours. To calculate the hourly pay rate for part-time clerks paid between LC1 and LC4, divide the full-time annual salary by 52 weeks and then by 37 hours rounded to the third decimal place. **For part-time clerks in LC1 and part LC2, for example, the hourly rates, payable from 1 April 2019are:**

**Scale LC1 and part LC2**

SCP (Spinal Column Point) 5/15 £9.77p

| | |
|---|---|
| SCP 6/16 | £9.96p |
| SCP 6/17 | £9.965p |
| SCP 7/18 | £10.16p |
| SCP 8/19 | £10.37p |
| SCP 9/20 | £10.57p |
| SCP 10 | £10.79p |
| SCP 11/21 | £11.00p |
| SCP 12/22 | £11.22p |
| SCP 13 | £11.45p |
| SCP 14/23 | £11.67P |
| SCP 15/24 | £11.91p |
| SCP 16 | £12.15p |
| SCP 17/25 | £12.39p |
| SCP 18 | £12.64p |
| SCP 19/26 | £12.89p |
| SCP 20/27 | £13.15p |

**SALARY RATES (BELOW LC scale)**

((**42-45**)only applicable to staff other than the Clerk)

| | |
|---|---|
| SCP 1/6 | £9.02p |
| SCP 1/7 | £9.02p |
| SCP 2/8 | £9.21p |
| SCP 2/9 | £9.21p |
| SCP 3/10 | £9.39p |
| SCP 3/11 | £9.39p |
| SCP 4/12 | £9.58p |
| SCP 4/13 | £9.58p |
| SCP 5/14 | £9.77p |

### CAR ALLOWANCES FOR LOCAL COUNCIL CLERKS

The National Joint Council for Local Government Services has (previously) reached agreement on the rates of car allowances payable from 1 April 2009. No increase appears to have been agreed since. The figures below also show the amounts of petrol element and VAT applicable to each group (VAT is 20%).

| | 451-999cc | 1000-1199cc | 1200-1450cc |
|---|---|---|---|
| **Essential Users** | | | |
| Lump sum per annum | £846.00 | £963.00 | £1,239.00 |
| per mile first 8,500 | 36.9p | 40.9p | 50.5p |
| per mile after 8,500 | 13.7p | 14.4p | 16.4p |
| Petrol element | 9.406p | 10.366p | 11.288p |
| Amount of VAT per mile in petrol element at 20% | 1.881p | 2.073p | 2.257p |

| | 451-999cc | 1000-1199cc | 1200-1450cc |
|---|---|---|---|
| **Casual Users** | | | |
| per mile first 8,500 | 46.9p | 52.27p | 65.00p |
| per mile after 8,500 | 13.7p | 14.4p | 16.4p |
| Petrol element | 9.406p | 10.366p | 11.288p |
| Amount of VAT per mile | 1.881p | 2.073p | 2.257p |

**Note:** The rates applicable to engine sizes 1200-1450cc are also the maximum rates payable.

**Note:** HMRC'S tax-free mileage rates are:

| | First 10,000 miles | Above 10,000 miles |
|---|---|---|
| Cars and vans | 45p | 25p |
| Motorcycles | 24p | 24p |
| Bicycles | 20p | 20p |

**CONTACT US AT:**
*Clerks & Councils Direct*
CommuniCorp
2 Micklefields
Stanton
Bury St Edmunds
IP31 2XF

Telephone: 01359 254149

Email:
clerkscouncils@btinternet.com

Website:
www.clerksandcouncilsdirect.co.uk

January 2019

# Rights of Way

**by Paul Clayden**

**Introduction**

Rights of way are public highways over which members of the public have a right of passage. There are four categories of rights of way which need to be distinguished. These are **footpaths**, where the public right of passage is on foot only, and **bridleways**, where the public right of passage is for walkers, for those riding or leading a horse and, sometimes, for driving animals. There is also a statutory right to ride a bicycle on a bridleway. In addition, there are **byways open to all traffic**, where there is a right of way for vehicles and all other kinds of traffic but which are mainly used as footpaths or bridleways; and **restricted byways** (formerly known as roads used as public paths), where there is a right of way on foot, on horseback and when leading a horse and for vehicles other than mechanically propelled vehicles. In addition, **public paths** are footpaths and bridleways.

**Definitive maps**

Most rights of way in England and Wales are shown on maps prepared and kept up-to-date by "surveying authorities" (county councils, county borough councils (in Wales), unitary councils, metropolitan district councils and London borough councils). Depiction of a path or way on the definitive map is conclusive evidence that it is a public right of way. There is a fairly elaborate procedure for altering the definitive map where a change in the path network takes place; this is a procedure in which local councils can play an important part (see below under the role of local councils). Paths shown on the definitive map are depicted on the 1:50,000 and 1:25,000 series of Ordnance Survey maps and also on the OS tourist area maps.

**Creation of rights of way**

Under the common law, a right of way is created by a landowner "dedicating" the right for the benefit of the public. Dedication can be express (e.g. in a document), but is usually implied from members of the public actually using a way freely and openly. Where this happens for an uninterrupted period of 20 years, a presumption of dedication arises (section 31 of the Highways Act 1980), which a landowner would have to defeat in order to show that there was no public right of way.

Creation of a right of way by presumed dedication can occur at any time and a path so created can be added to the definitive map (so long as the evidence for dedication is cogent). However, under section 53 of the Countryside and Rights of Way (CROW) Act 2000, most rights of way that were legally in existence in 1949 but are not recorded on the definitive map and statement by 1 January 2026 will be extinguished then.

Under section 66 of the Natural Environment and Rural Communities (NERC) Act 2006 it is not possible to create a right of way for mechanically propelled vehicles by presumed dedication or other common law method; creation can only be by an enactment or other specific means (e.g. a creation agreement with a local authority) or by the construction of a road under statutory powers intended to be used by motor vehicles.

Under section 67 of the NERC Act 2006 most rights of way for motor vehicles that are not shown on the definitive map are extinguished.

There are also statutory powers for local authorities (including local councils) to create rights of way by agreement or compulsorily (but local councils have no compulsory powers).

**Closure and diversion of rights of way**

At common law, a right of way cannot be lost by disuse, a principle summed up in the phrase "once a highway, always a highway", but it can be lost by physical destruction (e.g. the collapse of a cliff path into the sea). However, as indicated above, rights of way can be lost if they are not recorded on the definitive map before 2026.

Rights of way can be closed or diverted under statutory powers. In most cases, the relevant local authority (county, unitary or district council) makes a closure or diversion order. The procedures are somewhat elaborate, to allow for public consultation, advertisement and objection, sometimes with a public inquiry conducted by an independent inspector. In the case of a footpath or bridleway, the highway authority may apply to a magistrates' court for a closure or diversion order. Here, the district council and the local council have a power to veto the application.

It is also possible for a local authority to make a public spaces protection order under Part 4 Chapter 2 of the Anti-social Behaviour, Crime and Policing Act 2014 to restrict the use of public rights of way to combat crime and antisocial behaviour.

**Rights and obligations**

**The path user:** The path user has a legal right to pass and repass over the right of way, but without exceeding the limits of lawful use (e.g. a footpath must only be used for walking). He or she must keep to the line of the path wherever possible and must keep dogs on a lead or under close control in a field or enclosure where there are livestock. All path users should obey the Countryside Code.

**The owner or occupier of land:** The owner or occupier of land must not obstruct or interfere with the lawful rights of passage of path users, must not allow vegetation to overhang a path, must maintain stiles and gates across a path in a safe condition and must not erect misleading notices which might deter path users. A public path (other than a field-edge path) may be ploughed for agricultural purposes. Where a path is lawfully ploughed, the surface must normally be restored within 24 hours to a minimum width of one metre for a footpath and two metres for a bridleway. Failure to do so is an offence. Apart from ploughing, to disturb the surface of a public path or a restricted byway is an offence unless the consent of the highway authority has been obtained. Crops (other than grass) must not be allowed to grow on the line of a public path so as to make it difficult to find or use. Bulls must not be kept in fields crossed by public paths unless they are under 11 months old, or not of a recognised dairy breed and at large with heifers.

**The highway authority:** The highway authority has a duty to maintain all publicly maintainable rights of way (the great majority), to assert and protect public rights of way and to prevent the unlawful stopping up and obstruction of rights of way (including enforcement of the obligations of landowners and occupiers in relation to ploughing and cropping). The authority has a duty to keep the definitive map up-to-date and to provide signposts where a public path or a byway open to all traffic leaves a metalled road (unless the local council agrees that they are not necessary). The authority also has powers to waymark paths, to improve them and to publicise them. The highway authority

has power to make closure and diversion orders and to apply to the magistrates' court (see above).

**The district council:** The district council (where it is not the highway authority) has a right to take over the maintenance of public paths in certain circumstances and may also take over other responsibilities by agreement with the highway authority. It has the power (but not the duty) to assert and protect public rights of way, to prosecute for unlawful obstruction and for breach of ploughing/cropping obligations, to make closure and diversion orders, to create new public paths by agreement and, with the consent of the highway authority, to erect signposts and waymarks.

**The local council:** Parish, town and community councils have no duties in relations to rights of way. They have powers to maintain public paths, to make representations to the highway authority about paths that are obstructed or stopped up, to prosecute for wilful obstruction of rights of way and for breach of ploughing/cropping obligations, to signpost and waymark paths (with the consent of the highway authority and, usually, the landowner or occupier) and to create new paths by agreement with landowners. In addition, they have the right to be consulted or notified about changes to the definitive map and about closure and diversion orders.

The foregoing is only an outline and is not intended to be an exhaustive list of the rights and obligations relating to rights of way.

**Departmental guidance**

The Department for Environment, Food and Rural Affairs (Defra) has issued a comprehensive circular entitled *Rights of Way Circular (1/09),* applicable to England only. This can be viewed on the **www.gov.uk** website. The Welsh government's equivalent is *Circular 5/93: Public Rights of Way*, which can be viewed on the **www.gov.wales** website. Advice for local authorities and other order-making bodies can also be found on the Planning Inspectorate's section of the website **www.gov.uk.**

**The "right to roam"**

Part I of the CROW Act 2000 provides for a right of public access on foot to "access land", defined as open country (i.e. land that is predominantly mountain, moor, heath or down) and registered common land. There are 13 types of "excepted land", including parks and gardens, land within 20 metres of a dwelling, golf courses, racecourses, aerodromes and railway land. Certain categories of land are excluded from the right of access because there is access under other statutory provisions, such as the Commons Act 1899 and section 193 of the Law of Property Act 1925.

The Countryside Agency (in England) and the Countryside Council for Wales (in Wales) were required to prepare maps showing all access land. Since then, the Countryside Agency has been abolished and its functions under the CROW Act 2000 transferred to Natural England. The Countryside Council for Wales has also been abolished and its functions transferred to Natural Resources Wales. The initial procedure, which has been completed, was similar to that for the preparation of definitive maps of rights of way and resulted in the identification of all access land in England and Wales. The maps showing these areas can be viewed on the Natural England section of the website **www.gov.uk** and on the website **www.naturalresourceswales.gov.uk**. Maps must be reviewed regularly; the maximum period between reviews is ten years.

The right of access is defined as an entitlement to enter and remain on any access land for the purpose of open-air recreation, but only so long as (a) no wall, fence, hedge, stile or gate is broken or damaged; and (b) the general restrictions in schedule 2 to the CROW Act 2000 and any other restrictions imposed under chapter II of the Act are observed. In broad terms, the general restrictions outlaw criminal and antisocial behaviour, the driving or riding of vehicles (other than invalid carriages), the playing of organised games (including hang-gliding and paragliding) and the use of metal detectors. A person who breaks the foregoing conditions becomes a trespasser and can be removed by the owner of the land in accordance with the ordinary laws of trespass.

Under section 16 of the CROW Act 2000 an owner (a freeholder or a leaseholder with a lease of which at least 90 years remain unexpired) may dedicate his land for the purposes of Part I of the Act. A leaseholder must obtain the consent of the freeholder or the dedication must be made jointly.

**Changes in the law not yet in force**

Sections 20–27 and schedule 7 of the Deregulation Act 2015 make a number of changes to the law. These are principally concerned (a) to speed up the process whereby unrecorded rights of way can be added to the definitive map; (b) to protect the rights of landowners to retain a private right of way to reach properties over a public right of way that is extinguished by the cut-off date; (c) to enable landowners, tenants and occupiers to apply for public path diversion or extinguishment orders; and (d) to empower highway authorities to authorise the erection of gates on a restricted byway or a byway open to all traffic.

*January 2019*



# Village Greens

by Paul Clayden

**Origin of village greens**

Village greens were originally small areas, usually forming part of the manorial waste, on which local inhabitants had (and mostly still have) a customary right to indulge in "lawful sports and pastimes". In *Oxfordshire CC v Oxford City Council* (2006), the House of Lords confirmed that "lawful sports and pastimes" includes informal recreational activity, such as walking a dog. For the purposes of registration under the Commons Registration Act 1965, two other types of land were included within the meaning of a village green: (a) recreational allotments, i.e. land set aside under an Inclosure Award for recreation by local inhabitants and (b) land on which local people had in fact indulged in lawful sports and pastimes for at least 20 years, but where a customary right could not be proved.

**Registration**

Under the 1965 Act, provision was made for the registration of village greens, rights of common over greens (rare) and the ownership of greens. The initial three-year registration period ended on 31 July 1970. Failure to register land or rights before the final date meant that the land ceased to be a village green and the rights were extinguished. By virtue of section 10 of the 1965 Act, a final registration was conclusive evidence of the matters registered. This meant that, in some cases, land which was wrongly registered achieved the status of village green. Under Part 1 of the Commons Act 2006 it is possible to rectify mistakes in limited circumstances, the main ones being: (a) where the registered green is a building or is comprised within the curtilage of a building and (b) where throughout the 20 years prior to provisional registration under the 1965 Act the land was physically incapable of being used for recreation.

So far, the relevant provisions of the 2006 Act have been applied only to pilot authorities in England. The English pilot areas are Blackburn with Darwen Borough Council, Cornwall Council, Cumbria County Council, Devon County Council, County of Herefordshire District Council, Kent County Council, Lancashire County Council and North Yorkshire County Council. The pilot stage was originally expected to last until September 2010, after which the provisions would be extended to the whole of England by the end of 2015. However, the timetable has slipped and it is not known when the extension to the whole of England can be expected. Part 1 of the 2006 Act applies in Wales.

The registers are held by county councils and unitary councils and are open to public inspection. Under the 2006 Act, administrative and procedural regulations have been made to ensure that the registers are brought and kept up to date. At present, these regulations apply only to the pilot areas.

**Ownership of village greens**

The 1965 Act provided for the registration of ownership of greens. Where ownership was not claimed, the green was vested in the local council (or the district council if there was no local council). However, this procedure applied only to greens registered under the 1965 Act before 31 July 1970. There is no procedure for registering ownership of new greens registered after 31 July 1970 in the village green registers, although registration of title under the Land Registration Act 2002 may be possible. The 2006 Act does not make any provision for the vesting of ownership of new greens, despite this being contained in the policy documents on commons and greens issued in 2002 by the Department for Environment, Food and Rural Affairs (Defra) and the Welsh Assembly.

**Management**

Local councils have power to manage, and make byelaws over, village greens of which they are the registered owner under the 1965 Act. As a general rule, the powers of management and bylaw making derive from the Open Spaces Act 1906, and in the case of greens where ownership was conferred under the 1965 Act the 1906 Act is specified as the relevant management Act. Some greens are managed in accordance with a scheme made under the Commons Act 1899 and there may be local acts which give management powers.

**New greens**

Under the 1965 Act it was possible to register a new green where there has been open, unchallenged use of the land in question for at least 20 years for recreational purposes by a significant number of inhabitants of a locality or of any neighbourhood within a locality. The House of Lords held, in *Oxfordshire CC v Oxford City Council* (2006), that the 20-year (or longer) period must continue until the date of application for registration. The 2006 Act re-enacted in substance the provisions about registering new greens, but also provided that an application could be made where the use of the land for recreational purposes has ceased for no more than five years, where the cessation occurred before the 2006 Act came into force, or one year (two years in Wales), where the cessation occurred after the 2006 Act came into force, before the date of application.

Further restrictions on the registration of new greens were made by the Growth and Infrastructure Act 2013 (covering England) and the Planning (Wales) Act 2015 (covering Wales). In England, the main restrictions are as follows:

- A landowner can deposit with the registration authority a statement accompanied by a map which brings to an end any period of recreational use "as of right" over the land to which the statement and map relate. Detailed procedural regulations have been made in England, but not yet in Wales.
- Where certain "trigger events" related to the development of land occur within the planning system, the right to apply for registration of the land as a green is excluded. Examples include the first publication of an application for planning permission for the land, which will include circumstances where planning permission is subsequently granted; the adoption or making by the local planning authority of a local plan or neighbourhood plan which identifies the land for potential development; a proposed application for development consent under the Nationally Significant Infrastructure Project (NSIP) regime is first publicised by the applicant; an application for development consent under the NSIP regime which has been accepted by the Secretary of State (in practice the Planning Inspectorate) is first

publicised by the applicant; a draft local development order or neighbourhood development order is first published for consultation; or the publication of a notice of application for deemed planning permission in respect of orders under the Transport and Works Act 1992.

In Wales, broadly the same restrictions apply, but there are fewer "trigger events". The full list of trigger events is provided in Schedule 1A to the 2006 Act. Each trigger event is matched by a "terminating event", whereby the trigger is effectively removed and the land can again qualify for registration. Examples of terminating events include the withdrawal of a planning application or the refusal of an application after all avenues of appeal have been exhausted or the time limit for appealing has passed.

Guidance on the provisions of the 2013 Act can be found in the Defra publication *Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006*, which can be viewed on the Defra section of the **www.gov.uk** website. The Welsh government has not issued any equivalent guidance.

**Protection of greens**

It is generally an offence under section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876 to do anything that damages or encroaches upon a green. This can include driving over or parking on greens. In the *Oxfordshire CC* case (see above) the House of Lords held that these statutes apply to new greens.

**Vehicular access over commons and greens**

Vehicular access across common land and village greens is often a problem, both for the owners/users of the common or green and for those who claim access. The basic legal position is that an offence is committed under section 34 of the Road Traffic Act 1988 by driving over land not forming part of a road without "lawful authority" (which usually means statutory authority or the permission of the landowner). Despite this prohibition, many people gain vehicular access to their properties across such land without any specific authority. There have been attempts by landowners to charge for access which had been thought to be free. The courts initially ruled that long continued use of an access way cannot be claimed as an easement or right of way where the use of the way is made illegal by statute. To address this problem, section 68 of the Countryside and Rights of Way Act 2000 provided that, where someone used a vehicular access way to a property over land where it was an offence to drive without lawful authority but otherwise the use would be sufficient to create a right of way, a statutory right of way was created by regulations, subject to various conditions laid down in the section.

In *Bakewell Management Ltd. v Brandwood* (2004) the House of Lords overruled earlier cases and held that a vehicular right of way could be acquired over common land by long usage in the same way as any other type of prescriptive right. This ruling effectively rendered section 68 of the 2000 Act unnecessary. As a result, the section was repealed by the 2006 Act as from 1 October 2006 in England and from 6 September 2007 in Wales. However, the legal position may still not be clear in relation to greens. *Bakewell* related only to common land, and there does not appear to have been a reported case where the rulings have been applied to greens. Breach of the 1857 and 1876 Acts (see "Protection" above) is an absolute offence, in that there is no provision for an offence to be avoided where lawful authority has been given (as there is in the case of a breach of the 1988 Act).

**Further reading and information**

The Open Spaces Society (**www.oss.org.uk**) publishes much useful information about village greens. *Getting Greens Registered* is the society's main publication relating to the registration of new greens.

*January 2018*



**CONTACT US AT:**
*Clerks & Councils Direct*
CommuniCorp
2 Micklefields
Stanton
Bury St Edmunds
IP31 2XF

Telephone: 01359 254149

Email:
clerkscouncils@btinternet.com

Website:
www.clerksandcouncilsdirect.co.uk

# Cemeteries and closed churchyards

**by Paul Clayden**

**The legal framework**

Section 214 of the Local Government Act (LGA) 1972 provides that a local council (i.e. a parish council in England and a community council in Wales) is a burial authority, as is an English parish meeting where there is no parish council. As such a local council or meeting may provide, or contribute towards the provision of, a cemetery or crematorium. Land may be purchased by agreement or compulsorily. Burial boards, joint burial boards and joint burial committees as existing on 31 March 1974 ceased to exist on that date. However, if two or more burial authorities were involved, they were obliged to set up a new joint board or a joint committee.

The Local Authorities' Cemeteries Order 1977 (amended in 1986 to permit keeping records in a computer) contains the detailed regulations which apply to the provision and management of cemeteries. The Order covers such matters as layout, repair and access; consecration and setting apart for particular religious denominations; provision of chapels; plan and record of the cemetery; grants of rights of burial and to erect memorials; registration of burials and disinterments; fees and charges; maintenance and removal of graves; and offences and penalties.

Local councils (but not parish meetings) also have power to provide a crematorium. A number of councils may combine for this purpose. Before the crematorium is used, the council must certify to the Secretary of State that the building has been properly completed and equipped. Regulations controlling cremation have been made by the Secretary of State under the Cremation Acts 1902 and 1952 (the Cremation (England and Wales) Regulations 2008 (SI 2008/2841)).

In addition to the foregoing, under section 214(6) of the LGA 1972, burial authorities may contribute towards the expenses incurred by any other person in maintaining any place of interment in which the remains of inhabitants of the parish or community are or may be interred. In the author's view, this power is wide enough to allow contributions to places of interment owned or managed both by religious and non-religious organisations (but for a contrary view with regard to religious bodies, see the final section of the article). Such places do not have to be in the area of the parish or community.

**Problems and pitfalls**

Problems and difficulties can arise if a council fails to apply the legal rules properly or fails to keep accurate records. Interment is a sensitive issue and relatives of a deceased person can be very upset when a council makes a mistake. In particular, a council needs to be sure on the following points:

a) The register of rights of burial is up-to-date and all plots subject to a right of burial are clearly identified on an accurate plan of the cemetery. It has not been unknown for a person to be buried in someone else's plot, leading not only to great distress among relatives but also involving the council in the expensive procedure for exhumation.

b) The number of permitted burials per plot is known and is not exceeded. Three burials per plot is the usual maximum. The form of grant of a right of burial should specify the permitted number of burials.

c) The council has a clear policy on memorials and enforces that policy. Some councils require that memorials are of a uniform size and shape, others restrict the types of material (e.g. a ban on black marble or gold lettering), yet others do not permit pictures or photographs on or adjacent to graves and memorials. These matters can be very delicate; it is therefore essential that executors and relatives are made specifically aware of any restrictions relating to memorials before an interment takes place.

d) The general regulations in the 1977 Order also apply to the interment of ashes. The scattering of ashes in a cemetery is at the discretion of the burial authority. Many cemeteries have a special area for the interment of ashes. The disinterment of ashes amounts to an exhumation and the statutory procedure for exhumation should be followed.

e) Memorials belong to the persons who erected them, not to the council. The safety of memorials is thus primarily the responsibility of their owners, but the council must ensure that persons resorting to its cemetery are safe. A council has power under the 1977 Order to move or remove dangerous memorials.

The Institute of Cemetery and Crematorium Management (www.iccm-uk.com) can provide help and advice on the management of cemeteries and crematoria. The current annual fee for local councils is £90.

**Closed churchyards**

***England***

Any inhabitant of a parish, whatever his religion, is entitled to be buried in the churchyard (i.e. the churchyard of a Church of England church). If a churchyard ceases to be usable (e.g. because it is full), the Secretary of State may make representations to the Privy Council for an Order in Council discontinuing burials where he is satisfied that such a step is necessary for the protection of public health. The parochial church council is responsible for the maintenance of the closed churchyard in decent order and for the necessary repairs to walls and fences.

Under section 215 of the LGA 1972, the parochial church council can at any time give three months' written notice to a parish council or chairman of a parish meeting that it wishes the churchyard to be maintained at public expense. If the parish council or meeting prefers that the responsibility for maintenance should fall upon the district council rather than itself, it may within the three months so resolve and serve a further notice to this effect in writing upon the district council and the parochial church council. The district council is then obliged to take over the maintenance of

the churchyard instead of the parish council at the end of the three months.

If a parish council or meeting passes on responsibility for a closed churchyard to a district council, the latter may (and probably will) charge the cost of maintenance back to the council tax payers of the parish as a special expense. There thus may be no financial saving by passing responsibility on. It may also be the case that, as a more local body, the parish council or meeting can carry out maintenance more economically than a district council. It would be wise, therefore, not to pass on responsibility automatically but to consider the financial position and other relevant matters before taking a final decision.

If it does not serve the further notice, the parish council or meeting will become responsible for the maintenance of the churchyard at the end of the three months, and it cannot thereafter transfer the responsibility to the district council.

As a consequence of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (in force from 1 March 1993), the responsibility for maintaining trees in a closed churchyard falls on the council or meeting.

A parish council or meeting cannot be required to maintain a churchyard which is disused but not closed, but it has power to contribute towards the maintenance of the churchyard (section 214, LGA 1972).

***Wales***

Before 1 April 1974, responsibility for the maintenance of closed churchyards could be transferred to the then parish councils and parish meetings. Any transfers which took place before that date remain effective. After that date, parishes were replaced by communities and the transfer procedure in section 215 of the LGA 1972 was not applied in Wales. Community councils cannot therefore be required to take over maintenance of a closed churchyard. They may contribute towards the cost incurred by any other person in so doing under section 214 of the LGA 1972.

The Care of Churches etc. Measure 1991 (see above) does not apply to the Church in Wales.

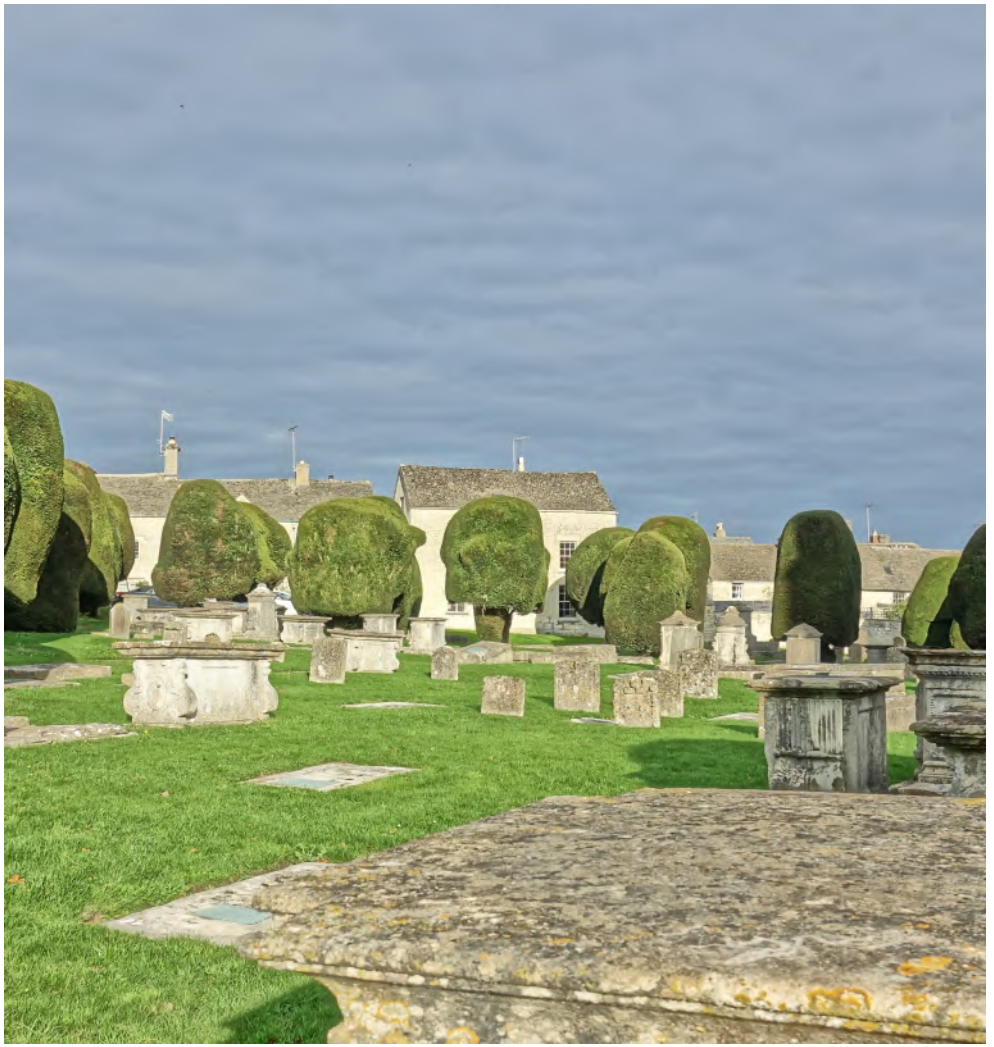
**Contributions to support churches, churchyards and other ecclesiastical property**

The National Association of Local Councils takes the view that the "free resource" (section 137 of the LGA 1972) and the power of general competence (sections 1–8 of the Localism Act 2011) cannot be used to benefit churches, chapels, churchyards or other property belonging to an ecclesiastical body (not being a closed churchyard as described above). The reason for this is that section 8 of the Local Government Act 1894 prohibits expenditure by local councils on property relating to the affairs of the church or an ecclesiastical charity.

However, NALC's view is not shared by the Government, which says that section 137 of the LGA 1972 and sections 1–8 of the Localism Act 2011 are not overridden by the 1894 Act. The fact is that councils have for many years contributed towards the cost of maintaining churches, churchyards, etc. without any apparent challenge or question at audit. The report to the Department for Digital, Culture, Media and Sport entitled *The Taylor Review: Sustainability of English Churches and Cathedrals*, published in December 2017, recommended that the law be clarified so as to enable a council to use section 137 of the LGA 1972 and the power of general competence to benefit churches, etc. According to the Government, further legislation is not necessary.

*January 2019*





# Travellers and Gypsies

by Paul Clayden

**Introduction**

Travellers and gypsies are often perceived as being responsible for trespassing and breaching planning laws. This article seeks to set out the legal position in relation to these matters, but is not a comprehensive statement of the law relating to such persons.

Gypsies are defined in the Caravan Sites and Control of Development Act 1960 (the 1960 Act) as "persons of nomadic life, whatever their race or origin, but does not include members of an organised group of travelling showmen, or of persons engaged in travelling circuses, travelling together as such". The Court of Appeal has interpreted this to mean that gypsies are persons who wander or travel for the purpose of making or seeking their livelihood and they do not include persons who move from place to place without any connection between their movement and their means of livelihood (*R v South Hams DC ex parte Gibb [1994] 3 WLR 1151*). Travellers are not defined by statute, but presumably are those who move around without any connection between their movement and their livelihood. However, the Department of Communities and Local Government (DCLG) and the Welsh Assembly Government in their advice to local authorities make no distinction between gypsies and travellers (see below).

The Human Rights Act 1998 is relevant in relation to gypsies and travellers. This is also covered below.

**Trespassing**

It is in general a civil, not a criminal, wrong to trespass on someone's property without that person's consent. Any remedy in law must normally be sought in the county court.

Under section 61 of the Criminal Justice and Public Order Act 1994 (the 1994 Act), powers are given to the police to remove trespassers from land, if the trespassers are there for the purpose of residence. The power is exercisable if the trespassers have caused damage, or have used threatening, abusive or insulting words to the occupier, or if they have six or more vehicles with them on the land. The section applies specifically to common land. Where the public has access to such land, the local authority is treated as an occupier and may therefore ask the police to remove the trespassers. The local authority is the parish council, the district council, the county council or the unitary council; they have concurrent powers in this respect.

Sections 62A to E of the 1994 Act (added by the Anti-social Behaviour Act 2003) provide that the senior police officer at a scene may direct a person to leave land and to remove any vehicles and other property if the officer reasonably believes that the following conditions are met: (a) the person and one or more others are trespassing on the land; (b) the trespassers have between them at least one vehicle on the land; (c) the trespassers are on the land with the common purpose of residing there for any period; (d) if the person has one or more caravans on the land, there is a suitable pitch on a registered caravan site for each of those caravans; (e) the occupier of the land or his agent has asked the police to remove the trespassers from the land. Failure to comply with a direction is an offence for which the maximum penalty on conviction is a fine not exceeding level 4 on the standard scale (currently £2,500). There is also a power in section 62C of the 1994 Act for the police to seize and remove vehicles where a direction has not been complied with and where a trespasser has moved to other land within the local authority's area within three months after the direction has been given.

Under section 77 of the 1994 Act a local authority (London borough council, the Common Council of the City of London, a county or district council; in Wales a county or county borough council) has power to direct persons residing unlawfully in vehicles within the authority's area on highway land, other unoccupied land or occupied land without the consent of the occupier to leave the land and to remove their vehicles and any other property. In exercising this power, the authority must make adequate enquiries as to the effect of eviction on the schooling of any child on the site and the health and welfare of persons who may be vulnerable by reason of age, infirmity, sickness or pregnancy. Failure to comply with a direction as soon as practicable is an offence. It is also an offence for a person who has been directed to leave land to re-enter the land with a vehicle within three months after the date of the direction. The maximum penalty on conviction for both offences is a fine not exceeding level 3 on the standard scale (currently £1,000). It is a defence to show that failure to comply with a direction, or returning to the land within three months, was due to mechanical breakdown, illness or other immediate emergency.

Section 78 of the 1994 Act provides that, on a complaint being made by a local authority (as defined above), a magistrates' court may make an order requiring removal from the land of any vehicle and property and any person residing in it and may authorise the authority to enter the land and remove the vehicle and property. It is an offence to obstruct the carrying out of an order, for which the maximum penalty on conviction is a fine not exceeding level 3 on the standard scale.

General guidance to local authorities on dealing with unauthorised camping is given in the DCLG, the Home Office and the Ministry of Justice joint publication *Dealing with illegal and unauthorised encampments* (published in March 2015). This can be viewed at and downloaded from **www.gov.uk** (simply type the title of the document in the search box).

DCLG has also issued a *Guide to effective use of enforcement powers. Part 1: Unauthorised encampments* (published in February 2006), which can also be viewed at **www.gov.uk** (part 2 of this publication concerning illegal caravan sites no longer appears on the DCLG pages of the website; presumably it is no longer in force).

The Welsh Government published guidance on *Managing Unauthorised Camping* in 2005 (NAFWC 04/2005, updated May 2006, available on the website **www.gov.wales**). In *Travelling to a Better Future* (March 2016), the Welsh Government stated that a revised version of the guidance was published in December 2013, but the guidance does not appear to have been placed on its website.

Under section 59 of the Anti-social Behaviour, Crime and Policing Act 2014, a local authority may make a public spaces protection order to (a) prohibit specified things being done in a defined public space, or (b) to require specific things to be done by persons carrying on specified activities in that area. A public place is defined in section 74 of the 2014 Act as any place to which the public or any section of the public has access, on payment or

otherwise, as of right or by virtue of express or implied permission.

It is possible that activities by gypsies or travellers could come within the scope of a public spaces protection order. The Secretary of State has power to issue guidance to local authorities about public spaces protection orders. In pursuance of the power, the Home Office has issued *Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers. Statutory Guidance for frontline professionals* (July 2014). This can be viewed and downloaded on the website **www.gov.uk**. The Local Government Association has also issued guidance, which can be viewed and downloaded on the LGA website, **www.local.gov.uk**.

**Planning**

As a general rule, the stationing of a caravan on land which is to be for the purposes of human habitation requires planning permission. There are exceptions: (a) where the caravan is used within the curtilage of a dwelling house (e.g. as accommodation for guests or family members, but not if let to strangers or on commercial terms); (b) temporary use of land for a caravan for not more than 14 days in a calendar year; (c) use of land for a caravan where a site licence is not required (see below).

A site licence under the Caravan Sites and Control of Development Act 1960, as well as planning permission, is required for the provision of a caravan site, subject to certain exceptions specified in Schedule 1 to the 1960 Act. There are 12 of these, the most relevant to this article being: (a) use within the curtilage of a dwelling house; (b) use by a person travelling with a caravan for one or two nights; (c) sites occupied by exempted organisations (e.g. the Caravan Club); (d) sites approved by exempted organisations; (e) sites occupied by the licensing authority (a London borough council, the Common Council of the City of London, a county or district council; in Wales, a county or county borough council).

The use of land as a caravan site without a licence is an offence for which the maximum penalty on conviction is a fine not exceeding level 4 on the standard scale (currently £2,500). DCLG has issued guidance in *Planning policy for traveller sites* (August 2015). This contains detailed guidance on the approach that local authorities should adopt in relation to the planning of sites for travellers. The document can be viewed and downloaded on **www.gov.uk**.

The Welsh Government has issued a circular (WAGC 30/2007) entitled *Planning for Gypsy and Traveller Caravan Sites*. A revised version was published for consultation in May 2017, but so far the new circular has not been adopted. Both documents can be viewed and downloaded on the Welsh Government website, **www.gov.wales**.

**Mobile Homes Act 1983**

The Mobile Homes Act 1983 (as amended) regulates the provision of mobile homes. Schedule 1 applies to gypsy and traveller sites provided by local authorities in both England and Wales. The schedule, in effect, treats such sites on the same basis as those provided by others. It gives various statutory rights to gypsy or traveller pitch occupiers, including those relating to security of tenure, protection from eviction, payment of fees, termination of pitch agreements, the obligations of owners and occupiers and rights to the quiet enjoyment of a mobile home. The full details can be found in the Mobile Homes 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011 (SI 2011/1003). The equivalent Welsh enactment is the Mobile Homes 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2013 (SI 2013/1723).

**Human Rights Act 1998**

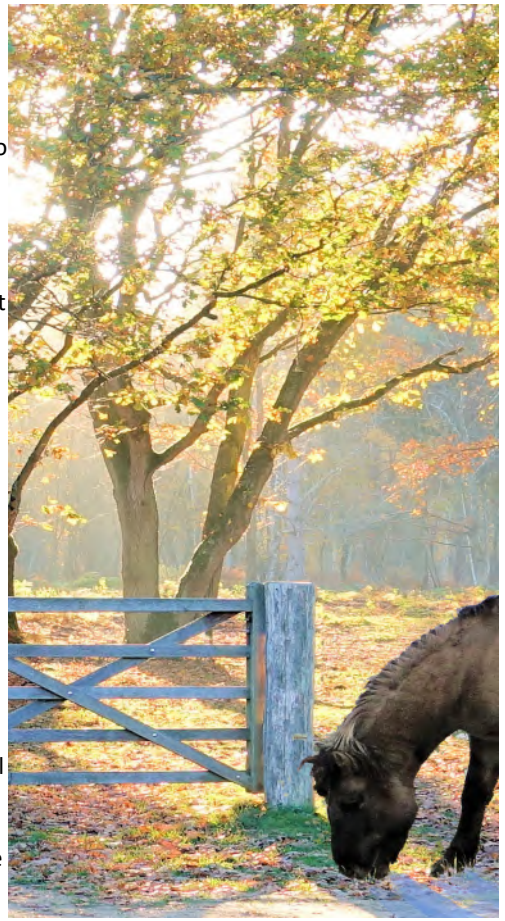
There have been a number of cases in recent years in which it has been alleged that obtaining (a) a court order for possession against gypsies and travellers who have trespassed on land or (b) an injunction to prohibit the use of land owned by a gypsy or traveller from being used to station caravans in breach of planning control is contrary to Articles 8 and/or 14 of the European Convention on Human Rights, incorporated into English law by the Human Rights Act 1998.

Article 8(1) guarantees the right of respect for family life, home and correspondence. Article 8(2) prohibits a national authority from interfering with the exercise of the right, except in accordance with the law and to the extent necessary in a democratic society in the interests of, among others, public safety or the economic well-being of the country. Article 14 prohibits discrimination against persons on the ground of sex, race, religion, colour, language, nationality, political or other opinion, birth or other status, property or association with a national minority.

Such cases, culminating in the judgement of the House of Lords in *Kay and Others v LB of Lambeth and Others* and *Leeds City Council v Price and Others [2006] UKHL 10,* have generally held that there is no breach of Articles 8 or 14 of the Convention where a local authority secures the eviction of trespassing gypsies or other caravan dwellers from its land or where an injunction is sought to prohibit the stationing of caravans on land in breach of planning control. Only in one case – *Connors v United Kingdom* [*2004] 40 EHRR 189* – did the European Court of Human Rights find that Article 8 was breached when a tenant of an official gypsy site was evicted because the site was his home.

*January 2019*





# Value Added Tax

by Paul Clayden

## Introduction

Value Added Tax (VAT) is a tax on consumer spending and is charged on business expenditure. Expenditure that is not related to business is generally outside the scope of VAT (see below). VAT has its own jargon. The most important words and phrases are:

- "taxable supplies": business transactions which attract VAT;
- "taxable person": a person making taxable supplies. Such a person must normally be registered for VAT with HM Revenue and Customs (HMRC);
- "output tax": the VAT charged and collected by a taxable person;
- "input tax": the VAT paid by a taxable person on the goods and services he receives for his business.

As a general rule, input tax can be set against output tax, so that if input tax exceeds output tax the balance can be recovered from HMRC, and if output tax exceeds input tax the balance is paid to HMRC.

## Registration

All local authorities, including parish and community councils, must register with HMRC if they make taxable supplies, whatever the value of those supplies. Parish meetings in parishes where there is no parish council cannot be registered.

## Taxable supplies

Taxable supplies by local councils can be classified by subject. In April 1996 HM Customs and Excise (now HMRC) issued VAT Notice 749A, which set out in detail the VAT status of most local authority activities. This notice appears to have been withdrawn and is not mentioned on the HMRC website. If a copy can be obtained, it would be a useful point of reference.

Taxable supplies are in three categories:

- standard-rated (where the tax is levied or charged at the standard rate of 20 per cent);
- zero-rated (where the tax is levied or charged at 0 per cent); and
- exempt (where the law specifies that no VAT is chargeable).

Where a council makes a taxable supply of goods or services (e.g. admission charges to entertainments), it must charge the appropriate rate of VAT; if it does not do so, HMRC will nevertheless treat the transaction as if VAT had been charged and the council will have to account to HMRC for the VAT foregone.

Where the VAT rate is zero, no VAT is charged, but any related input tax is normally recoverable. Where the transaction is exempt from VAT, no VAT can be charged and, importantly, no related input tax paid by the council can be reclaimed. This can lead to a council paying out more in VAT than it can recover (see below for more information about exempt supplies).

## Non-business supplies

Non-business supplies are supplies which are not in competition with the private sector. Thus the costs incurred by a council on administration (e.g. hire of rooms, office expenses, telephone and similar charges) are not in competition with the private sector and are non-business expenditure, and any related input tax incurred can be recovered.

Goods or services provided free of charge by the council are non-business supplies. Thus the gift of play equipment to a local playgroup and the letting of a sports pitch to a local football club without charging a fee are non-business supplies.

A council can claim a refund of the VAT it incurs in making a non-business supply (e.g. the cost of purchasing play equipment donated to a local playgroup) on the following conditions:

- it places the order for the goods or services;
- it receives the supply;
- it receives a tax invoice made out to the council from the supplier, and
- it pays for the goods or services from its own funds, including funds awarded to the council such as lottery grants (with a limited exception noted immediately below).

As a general rule, a council cannot claim a refund of VAT on purchases made with funds provided by another body for the benefit of that body (e.g. a village hall management committee gives the council money which the council spends for the benefit of the village hall and reclaims the VAT). However, where, as commonly happens, funds are raised locally for a specific project, those funds can be donated to the council and the council may reclaim the VAT on purchases made with those funds, provided that:

- it places the order for the goods or services;
- it receives the supply;
- it receives a tax invoice made out to the council from the supplier;
- it remains the owner of the goods or services;
- it uses them for its own non-business purpose; and
- it keeps sufficient records to enable the goods or services to be easily identified and the reason for buying them.

## Exempt supplies

As indicated above, a supply of goods or services is exempt from VAT if the law says so. There is a long list of exemptions in Schedule 9 to the Value Added Tax Act 1994. So far as councils are concerned, the most important exemptions relate to land.

As a general rule, the letting of land or buildings is exempt; the length of lease is immaterial. Examples of letting include granting a lease of a community centre to charitable trustees; a tenancy of an allotment; a letting of sports facilities. The general rule extends to the letting or hiring of rooms where there is a licence to occupy land; this would be the case where the hirer has exclusive control of the room for the period of the letting or hire.

There are specific provisions relating to the letting of sports facilities. These are normally treated as standard-rated supplies. However, the following are exempt:

- a single let of sports and physical recreation facilities for a continuous period of over 24 hours to the same person. The person to whom the facilities are let must have exclusive control of them throughout the letting period;
- let for ten sessions or more, provided that:

a) each session is for the same sport or activity;

b) each session is in the same place, but not necessarily on the same pitch;

c) the interval between each session is at least one day and not more than 14 days;

d) the series of sessions is paid for at the same time and written evidence to that effect is recorded;

e) the facilities are let to a school, a club, an association or organisation representing affiliated clubs or constituent organisations, such as a local league;

f) the person or body to whom the facilities are let has exclusive use of them during the sessions.

**Reclaiming VAT on exempt supplies**

Despite the general rule that VAT on purchases for exempt business activities cannot be reclaimed, there is an exception if the amount to be reclaimed is an insignificant proportion of the VAT incurred. An amount is treated as insignificant if:

- it is not more than £625 on average per month (£7,500 a year); or
- it is less than 5 per cent of the total VAT incurred on all the goods and services purchased in a financial year. This total includes goods and services for non-business activities.

Many councils let land and buildings for sports and community use (e.g. pitches and village halls). These councils may be above the foregoing limits and thus unable to reclaim input tax. It would be sensible to check the position regularly.

For those councils which are, or may be, unable to reclaim input tax related to lettings and hirings, it is possible to opt to waive the exemption. If this is done, however, the council will have to charge VAT on lettings, thus putting up the cost to lessees and hirers. This is a very complicated area of VAT law and councils would be well advised to seek advice (possibly from HMRC) before deciding whether or not to waive the exemption.

**Further reading**

This article is only a summary of the areas of VAT law most likely to affect local councils. The subject as a whole is a vast and complex one. Councils would be well advised to have copies of the following VAT notices issued by HMRC:
*VAT Notice 700: the VAT guide*
*VAT Notice 706: partial exemption*
*VAT Notice 742: land and property*
*VAT Notice 749: local authorities and similar bodies*.

All the above can be viewed on and downloaded from the VAT section of the HMRC website at **www.hmrc.gov.uk/vat**

*January 2019*


# Data Protection

**by Paul Clayden**

The General Data Protection Regulation (EU regulation 2016/679) (GDPR) came into force on 25 May 2018 and makes changes to the law relating to data protection. The legislation is lengthy and complicated. It imposes duties and responsibilities on local councils and on parish meetings in parishes without councils. This article sets out only an outline of the new rules; detailed information can be obtained from the Information Commissioner's Office (ICO). The National Association of Local Councils (NALC) has issued *Protection Laws: A GDPR toolkit for local councils*, which can be viewed by NALC members on the association's website. The official English text of the GDPR can be viewed on the website **eur-lex.europa.eu**.

The main thrust of the GDPR is to regulate the collection, management, transmission and processing of personal data. The GDPR does not apply to the processing of data by a living individual in the course of purely personal or household activity. References below to "articles" are to articles of the GDPR.

*Definitions*

The GDPR contains a number of definitions which are important to know:

*Personal data:* this is elaborately defined in article 4 of the GDPR but is essentially information held in recorded form, both electronically and in writing or printing.

*Data subject:* an individual who is the subject of personal data.

*Sensitive personal data:* data consisting of information about a data subject relating to racial or ethnic origins; political opinions; religious or similar beliefs; membership of a trade union; physical or mental health; sexual life; the commission or alleged commission of any offence; any proceedings relating to any offence or alleged offence.

*Data controller:* a natural or legal person or public authority which, either alone or jointly with others, determines the purposes for which and the manner in which personal data is, or will be, processed. A local council is thus a data controller (either alone or jointly with one or more others). A parish meeting is a public authority but it is not a statutory corporation and is thus not a legal person. However, section 13 of the Local Government Act (LGA) 1972 provides that in every parish without a separate parish council there exists a statutory corporation consisting of the chairman of the parish meeting and an officer appointed by the district council; they are called the parish trustees. It would seem that the parish trustees constitute the data controller.

*Data processor:* the person or authority which processes data on behalf of a data controller. In the case of a local council, the clerk will probably be the processor, acting under the direction of the council as controller. In a parish without a council, the parish trustees (if they are the data controller) will be responsible for appointing a data processor. It is likely that the chairman of the meeting will be appointed as that person.

*Processing:* obtaining, recording or holding information or data or carrying out any operation or set of operations on the information or data.

*Data protection principles*

It is the duty of a data controller to comply with the data protection principles. These, stated shortly, are that personal data:

1. Must be processed fairly and lawfully and in a transparent manner;
2. Must be collected and held only for specified, explicit and lawful purposes;
3. Must be adequate, relevant and limited to what is necessary for the purposes for which it is processed;
4. Must be accurate and kept up to date;
5. Must not be kept for any longer than is necessary for the stated purpose;
6. Must be processed in a manner that ensures appropriate security of the personal data;
7. Must have appropriate technical and organisational safeguards against unauthorised or unlawful processing;
8. Must not be transferred to any country outside the European Economic Area (the 28 member states of the European Union plus Iceland, Liechtenstein and Norway) unless that country has an adequate level of protection of the rights and freedoms of data subjects.

*The lawful bases of processing*

1. *Consent:* the data subject has consented to the processing of data about him/her.
2. *Contract*: the processing is necessary in accordance with a contract of employment between the data controller and the data subject.
3. *Legal obligation:* the processing is required in pursuance of a legal obligation but not including a contractual obligation.
4. *Vital interests:* the processing is necessary to protect someone's life.
5. *Public task*: the processing is necessary for the carrying out of a task in the public interest or official functions (e.g. the functions of the Houses of Parliament, the administration of justice and the exercise of functions of a public nature in the public interest by any person (including a local council and a parish meeting).

*Exemptions*

There are number of exemptions from the data protection principles, as follows:

1. National security
2. Defence
3. Public security
4. Prevention and detection of crime
5. Other important public interests such as public health, budgetary and taxation matters
6. Protection of judicial independence and proceedings
7. Monitoring of inspection or regulatory functions
8. Protection of the individual or the rights and freedoms of others
9. Enforcement of civil law matters.

So far as local councils and parish meetings are concerned, personal data may be exempt in certain circumstances, of which the following are examples:

1. Disclosures of information required by law (e.g. under the Freedom of Information Act 2000).
2. Maintenance of a public register, such as the register of councillors' interests in accordance with the council's Code of Conduct.
3. Where the information which is processed does not include personal data.
4. Information which is confidential, as between the council and its legal professional adviser.
5. Certain administrative procedures, for example:

- accounts and audit
- staff administration
- public relations and marketing of the council.

*Data protection officer (DPO)*

Where a public authority carries out data processing, the authority must appoint a data protection officer. The DPO's main tasks are to inform and advise the data controller or processor and their staff about their obligations under the GDPR; to monitor compliance by the authority with the GDPR and other data protection laws; and to carry out data audits. Section 7 of the Data Protection Act 2018 exempts local councils, parish meetings and charter trustees from the requirement to appoint a DPO.

*Rights of data subjects*

1. *The right to be informed:* where personal data is collected, the data subject must be provided with details of the controller, the DPO (if any), the purposes for which the data is used and the legal basis for processing.
2. *The right of access:* the data controller must provide information on request. A data subject has the right to give written notice to a data controller requiring the controller to provide a description of the data, the purposes for which it is being processed and the recipients, or classes of recipients, to whom the data may be disclosed. No fee is chargeable.
3. *The right to rectification:* where information is inaccurate or incomplete, a data subject is entitled to require the information to be altered and updated.
4. *The right of erasure:* a data subject may require the controller to erase personal data in circumstances specified in article 17. The right is restricted on various grounds, including freedom of expression and information, in compliance with a legal obligation and in court proceedings. This right is sometimes called "the right to be forgotten".
5. *The right to restrict processing:* a data subject has the right to restrict the processing of data on various grounds set out in article 18. These include inaccuracy of data; unlawful processing; and situations where the controller no longer needs the data.
6. *The right to data portability:* a data subject can require a controller to provide him or her (and third parties) with their personal data in a machine-readable portable format.
7. *The right to object:* a data subject has the right to object to processing in breach of article 6(1)(e) and (f) broadly on the grounds that the processing was not necessary in the public interest or in carrying out official duties.
8. *The right not to be subject to automatic decision-making including profiling:* this is covered under article 22.

There is no requirement for data controllers to register with the Information Commissioner's Office (as was necessary under the now repealed Data Protection Act 1998). However, the Digital Economy Act 2017 enables the Secretary of State to make regulations requiring data controllers to pay a charge to the ICO. These regulations are the Data Protection (Charges and Information) Regulations 2018 (SI 2018/480), which came into force on 25 May 2018. For a local council or parish trustees with fewer than ten members of staff the annual fee is £40, and for one with ten or more staff the fee is £60 (in both cases with a £5 discount for paying by direct debit).

*January 2019*