

## PAYE Arrangements for Clerks and Responsible Finance Officers

### Introduction

In February 2011, HMRC's guidance 'Parish and Community Council Clerks PAYE implementation' confirmed that a Clerk's and a Responsible Finance Officer's tax and NIC contributions must be paid by the council employer under PAYE. This is because a Clerk and a Responsible Finance Officer (RFO) are office holders.

Even if a clerk or a RFO is self employed, emoluments received, whether described as an honorarium, a salary, a payment towards expenses or a combination of these, is subject to PAYE.

HMRC's guidance stated that 'in the **majority** of cases the Parish Council [or in Wales, the community council] needs to register with HMRC as an employer and operate PAYE on the income the Clerk [or Responsible Finance Officer/RFO] earns. This is the same position as for any office or employment; there is no other acceptable tax treatment applicable to Parish Clerks and RFOs. Any previous agreements with HMRC or the former Inland Revenue under which the Clerk was paid gross or was treated as self employed are void, as are any 'inherited arrangements' under which a Clerk's income is not subjected to PAYE.'

The full version of HMRC's guidance is available from HMRC's website using the following link [http://www.hmrc.gov.uk/employers/parish\\_council.pdf](http://www.hmrc.gov.uk/employers/parish_council.pdf). It is also available from the members' area of our website.

### When to register as an employer with HMRC for PAYE

A council must register as an employer with HMRC and operate PAYE if **any** of the following applies:

- the Clerk or RFO (or other employee) already has another job;
- the Clerk or RFO (or other employee) is receiving a state or occupational pension;
- the council is paying the Clerk or RFO (or other employee) at or above the PAYE threshold;
- the council is paying the Clerk or RFO (or other employee) at or above the National Insurance Lower Earnings Limit (which is lower than the PAYE threshold);
- the council is providing the Clerk or RFO (or other employee) with employee benefits (such as pension contributions to LGPS).

For 2011 – 2012, the PAYE tax threshold is £144 per week, £623 per month or £7,475 per year and the National Insurance Lower Earnings Limit is £102 per week, £442 per month, or £5,304 per year.

Council employers must ask the Clerk/ RFO (and other employees) to complete Form P46 to confirm if he/she has other employment or receives a pension. If the clerk or RFO confirms in the P46 that he/she does have another job or receives a pension (or he/she does not complete the Form P46), then the council must register as an employer and operate PAYE.

If a clerk or RFO confirms in the P46 that either he /she does not have another job or does not receive a pension **and** the emoluments paid by the council to the clerk or RFO is lower than the National Insurance Lower Earnings Limit, then the council does not need to register with HMRC as an employer and operate PAYE.

It will be more often than not that a clerk or RFO will have an aggregate income that is at or above the National Insurance Lower Earnings Limit (e.g. because they have another job or receive a pension). This is why HMRC's 2011 guidance says 'in the **majority** of cases the Parish Council [or in Wales, the community council] needs to register with HMRC as an employer and operate PAYE on the income the Clerk [or Responsible Finance Officer/RFO] earns.'

If a Council requires further clarification of its position, we recommend that the Council writes to its local tax office.

## **How to register as an employer with HMRC for PAYE**

A parish council or in Wales a community council can register as an employer with HMRC to operate PAYE by telephone or internet. Detailed information about registration is available on HMRC's website using the following link <http://www.hmrc.gov.uk/payee/intro/register.htm>.

When a council has an obligation to operate PAYE on payments to the Clerk or RFO (or other employee), responsibility to register with HMRC rests with the body corporate of the council. It is NALC's view that it is appropriate that the person registering the council with HMRC is the Chairman of the council (or staffing / finance committee) or another member of the council as instructed to do so by resolution. NALC's acknowledges that a council may delegate registration with HMRC to the clerk or RFO.

**This briefing was issued Meera Tharmarajah, Solicitor and Head of Legal Services**