

TONBRIDGE & MALLING BOROUGH COUNCIL
SPECIAL EXPENSES ('LOCAL CHARGE') SCHEME

1. Introduction

- 1.1 The Provisions relating to “special expenses” are contained in the Local Government Finance Act 1992 at sections 34 and 35. These sections allow different amounts of council tax to be calculated for different parts of the district, depending on what if any “special items” relate to those parts. The legal background is set out in the Appendix.
- 1.2 In resolving to implement a Special Expenses Scheme, the Council revokes the Financial Arrangements with Parish Councils Scheme which was effective from 1 April 1992 made under s136 Local Government Act 1972 with effect from the same date (1 April 2017).

2. Objectives of the Scheme

- 2.1 The borough consists of 27 parished areas, and one unparished area. Parish councils exercise certain functions in their respective areas, which the Borough Council must exercise directly in the unparished area. These are known as concurrent functions.
- 2.2 The Council has historically awarded grants under s136 Local Government Act 1972 to parish councils in order to contribute towards the cost of concurrent functions. Due to significant financial pressures, the Council finds that it is unable to continue providing this level of financial support and must make savings.
- 2.3 The Council has resolved to adopt a Scheme of Special Expenses in order to provide a fairer system in terms of financial equity for taxpayers across the borough.

3. Function to be included in Scheme

- 3.1 Cabinet, at its meeting on 28 July 2016, recommended that the following concurrent functions are included in the Scheme:
- Closed churchyards
 - Open spaces, parks and play areas maintained by TMBC in parished areas; excluding Leybourne Lakes Country Park (strategic site)
 - Open spaces, play areas, parks and sportsgrounds in Tonbridge; excluding Castle Grounds and Haysden Country Park (strategic sites)
 - Support given to ‘Local’ Events
 - Allotments

3.2 In addition, at its meeting on 12 October 2021, Cabinet recommended that the following concurrent function is included in the Scheme:

- Public conveniences in Tonbridge in non-strategic sites (i.e. those located on Castle Street, Priory Road and those sited within Racecourse Sportsground)

3.3 Full Council endorsed the update to the Scheme at its meeting on 26 October 2021.

4. Calculation of Special Expenses

4.1 TMBC will calculate an average council tax across the whole of its area under section 31B of the Local Government Finance Act 1992. Included in that will be the amounts payable to parish councils under their precepts, plus the amounts TMBC will spend on performing functions which are performed in parts of its area by parish councils.

4.2 Under section 34 of the Local Government Finance Act 1992, TMBC must then deduct the total of any special items. For each part of its area, TMBC must then add back amounts for any relevant special items for that part of its area. The amount added back is calculated by dividing the special item (i.e. the authority's estimated cost of performing the function in that part of its area) by the tax base for the part of the area in which the authority performs the function.

4.3 Treating expenses as special expenses does not affect the overall amount that TMBC needs to raise through council tax, and does not, therefore, affect the average amount of council tax across the whole of the borough. It simply means that, compared with what would happen if the expenses were not treated by TMBC as special expenses, the council tax is:

- relatively lower for areas where the parish council performs the concurrent function, as it includes the parish's costs but not TMBC's costs of performing the function elsewhere; and
- relatively higher for areas where TMBC performs the concurrent function, as all TMBC's costs of performing the concurrent function must be met by taxpayers in the area where TMBC performs it.

5. Implementation

5.1 This (original) Scheme became effective from 1 April 2017, following resolution of Full Council on 1 November 2016. The update to the Scheme, adding the function at paragraph 3.2, as approved by Full Council on 26 October 2021 became effective on 1 April 2022.

5.2 The list of concurrent functions included within the Scheme will be reviewed from time to time and the Scheme updated as necessary.

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LEGAL BACKGROUND

Section 34 of the Local Government Finance Act 1992, as amended by the Localism Act 2011, requires that certain items, which are referred to as 'special items', and which relate to a part only of a billing authority's area, be removed from the calculation of the overall basic amount of tax and added to that for the area concerned.

Section 35(1) defines these items as:

- Any precept issued to or anticipated by the authority which is, or is believed to be, applicable to a part of its area and was taken into account by it in making the calculation (or last calculation) in relation to the year under Section 31A(2) above (i.e. the parish precepts, as included in the calculation of the budget requirement).
- Any expenses which are its (the Council's) special expenses and were taken into account by it in making that calculation.

Section 35(2)(d) defines further 'Special Expenses' as:

“any expenses incurred by a billing authority in performing in a part of its area a function performed elsewhere in its area by the sub-treasurer of the Inner Temple, the under-treasurer of the Middle Temple, a parish or community council or the chairman of a parish meeting are the authority's special expenses unless a resolution of the authority to the contrary effect is in force”

In order for expenses incurred in performing any function of a district council to be special expenses the function must be carried out by the district in only part of its area, and the same function must be carried out in another part of the district by one or more parish councils. The detailed identification of concurrent functions is therefore essential for using this special expenses provision.

One of the reasons behind the special expenses regime is to allow a more equitable division of council expenses for council taxpayer funded services so that those receiving the benefit of certain services in a particular area are those who pay for them through their precept and do not pay twice for similar services carried out in any areas where there is not a parish or town council so as to avoid “double taxation” for the relevant services.

The power to charge special expenses is discretionary and in order for it to apply there must be a resolution of the billing authority in force. As the resolution has to refer to the matters which will be special expenses for these purposes the resolution will need to identify which function related activities will be included within the calculation.

Special Expenses must be applied consistently throughout a billing authority's area. There is no discretion to make selective application to some parts of the borough only.