

Sabbaticals and Council Tax

NUS Briefing

Introduction

Council Tax is the local property tax, which is given to your local authority to help them fund their services. How much a household is required to pay depends on the value of the house and the rate at which the local authority has set the tax. It is possible to be exempted from payment of the tax, and all full-time students are exempt, even if they live with non-students. The status of sabbaticals is more complicated.

In NUS' view, your liability for tax depends on whether or not you have graduated before starting your sabbatical year, except where you live in a halls of residence. Where a sabbatical has graduated, they would not qualify for a student certificate.

Please note that the council tax does not apply to Northern Ireland.

Status and definition of students

Under the current regulations full-time students are exempt from council tax. Halls of residence, properties occupied only by full-time students and houses that are empty but owned by a student and formerly used as their main residences are excluded from the billing process. Where full-time students share with non-students they are invisible for the purposes of the tax and are not billed along with the other residents¹.

Other than in halls of residence, students must prove they have that status by means of a student certificate issued by their institution. Some institutions will issue such certificates to sabbaticals so that they can claim exemption. Others will not, and some will only do so if the sabbatical has yet to graduate. It is because of this that confusion arises surrounding the status of sabbaticals.

The regulations define a student as, *a person who is to be regarded as (a) a foreign language assistant... (b) a person undertaking a full time course of education... or (c) a person undertaking a qualifying course of education.*

This has implications for the way in which you as a sabbatical are regarded for the purpose of council tax.

Sabbaticals who have graduated

In NUS' view, if you have graduated by the time you take sabbatical office you are not entitled to a student certificate. This is also true even if you have not been awarded your degree due to failure or if your official graduation ceremony takes place after the start of your sabbatical term. In addition, you are not entitled to a student certificate even if you are intending to return to study (eg a PGCE course) after your sabbatical term. The reason for this can be explained both by the council tax legislation and by case law. Note that the legislation quoted is that set for England and Wales; nonetheless the Scottish legislation has the same effect.

¹ Note that in England and Wales this is a recent change to the law and may not apply to students who shared with non-students who lived in a property before April 2004 – contact NUS for more information.

As mentioned in the section above, your student status is dependent on you being engaged in a full-time course of education. This is defined in schedule 1 of the Council Tax regulations thus:

A person is to be regarded as undertaking a full-time course of education on a particular day if – (a) on the day he [sic] is enrolled for the purpose of undertaking such a course, with a prescribed educational establishment... and (b) the day falls within the period beginning with the day on which he began the course and ended with the day on which he ceases to undertake it, and a person is to be regarded as ceasing to undertake a course of education for the purpose of this paragraph if he has completed it, abandoned it or is no longer permitted by the educational establishment to undertake it.

Of most relevance here are the final seventeen words. Despite the fact that some institutions will give their sabbaticals a student certificate, regardless of whether or not they have graduated, this was never the intention in the CT regulations. Indeed, there has been at least one case of an ex-sabbatical who was prosecuted for non-payment of Council Tax, despite having completed his term of office two years previously and having been given a student certificate by his university.

Obviously, some institutions for whatever reason will continue issue all sabbaticals with certificates. Whilst this, should it apply to you, may well be to your advantage, there is always the chance that the local authority could challenge such a position.

One other thing to note is that if you live with one or more students, they continue to be exempt from the tax even if you are not. Moreover, as it is the property which is assessed and not individuals their "share" of the Council Tax will not be paid for them: the whole amount will still be charged and it will be up to all those in the household who are not exempt to pay. However, if you are the only non-student in the house, you can get a 25 per cent discount on the total amount.

Sabbaticals who have yet to graduate

If you are regarded as an intercalating student (ie you are in temporary suspension of your course) the situation is more complex. Local authorities have interpreted the council tax regulations in different ways and thus intercalating sabbaticals are treated differently depending where they are in the country.

NUS takes the view that all intercalating students, so long as you remain registered, should be treated as full-time students and issued with a student exemption certificate. Therefore if you were elected before your final year and intend to return to your studies after you complete your term of office you should be exempt.

An intercalating sabbatical officer should be regarded as a student for council tax purposes by virtue of the definition of "student" as provided by article 4, paragraph 3 and 4 of Schedule 1 to the Council Tax (Discount Disregards) Order 1992 (as amended). Article 4 provides that "student" means a person who is to be regarded as (among other things) a person undertaking a full-time course of education, as according to paragraph 3 and 4 of Schedule 1 to the Order.

Paragraph 4 of Schedule 1 to the Council Tax (Discount Disregards) Order 1992 (as amended in 2011) defines full-time study thus:

A full time course of education is... one:

- (a) which subsists of at least one academic year of the educational establishments concerned or, in the case of an educational establishment which does not have academic years, for at least one calendar year;
- (b) which persons undertaking it are **normally** required by the educational establishment concerned to undertake periods of study, tuition or work experience (whether at premises of the establishment or otherwise)... of at least 24 weeks in each academic or calendar year (as the case may be) during which it subsists, and... which taken together amount in each such academic or calendar year to an average of at least 21 hours a week

This is a very important paragraph as it has been cited by a number of local authorities as a way of excluding sabbaticals from being entitled to claim full-time status. They argue that the period and length of attendance required (24 weeks and 21 hours) mean that sabbaticals do not fall into the definition of student. However, that is a simplistic reading of the above: the key word in paragraph 4 is 'normally'.

Paragraph 3 of Schedule 1 to the above Order (as amended by the subsequent Order of 1996) states that a person is to be regarded as undertaking a full-time course of education on a particular day if:

- (a) on that day he is enrolled for the purpose of attending such a course with [a university] and
- (b) the day falls within the period beginning with the day on which he begins the course and ending with the day on which he ceases to undertake it, and a person is to be regarded as ceasing to undertake a course of education for the purpose of this paragraph if he has completed it, abandoned it or is no longer permitted by the educational establishment to attend it.

As an intercalating sabbatical officer you have not completed your course, and nor have you abandoned it or in any way been prevented by the college from attending, it follows that you are still undertaking a full time course of education. Indeed, the explanatory note to paragraph 3(b) of Schedule 1 (as given in the amended form above) states that "the amendment... enables students to qualify even during a period where they are not attending the course".

Finally, in 1996 the Department of the Environment stated in a Council Tax information letter that in their view, "a period of intercalation will remain within the period of a course... and therefore, provided that the person remains enrolled at the educational establishment, they will continue to fall within the definition of a full-time student."

If you are an intercalating sabbatical and have any difficulty in persuading your local authority that you should not be charged Council Tax, please feel free to contact NUS for further assistance.