

Non Domestic Rating Discretionary Rates Relief Policy

**Retail, Hospitality and Leisure Business Rates Relief
Scheme; and Supporting Small Business Rates Relief
Scheme.**

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1.0 Purpose of the Policy

- 1.1 The purpose of this policy is to determine the level of discretionary relief payable under the new discretionary rate reliefs that have been provided by Government with effect from 1 April 2023.
- 1.2 Government has provided the Council with funding to assist those ratepayers who meet the qualifying criteria for each or any of the new reliefs.
- 1.3 The Government has not changed the legislation relating to business rates reliefs available to properties. Instead, the Government will, in line with the eligibility criteria set out in this policy, reimburse local authorities where relief is granted using discretionary relief powers under section 47 of the Local Government Finance Act 1988.
- 1.4 Whilst funding is provided by Government, it is for the Council to decide its own local scheme and determine in each individual case whether to grant relief. However, the Council, in the case of the two reliefs detailed within this policy, will look to maximise the support for ratepayers whilst looking to maximise the grants available.
- 1.5 This policy outlines the following new reliefs that are all available from 1 April 2023:
 - Retail, Hospitality and Leisure Relief (1 April 2023 until 31 March 2024)
 - Supporting Small Business Rate Relief (1 April 2023 until 31 March 2026); and
- 1.6 The document also outlines the Council's policy for the granting of each relief; general guidance on granting and administering the reliefs and awards; subsidy controls applicable in each cases; and the Council's scheme of delegation.

2.0 Discretionary Relief – Legislative Background

Introduction

- 2.1 The original purpose of discretionary relief was to provide assistance where the property does not qualify for mandatory relief, or to 'top' up cases where ratepayers already receive mandatory relief.
- 2.2 Over recent years and particularly since 2011, the discretionary relief provisions have been amended to allow authorities the flexibility to provide more assistance to businesses and organisations.
- 2.3 The range of bodies, which are eligible for discretionary rate relief, is wide and not all of the criteria laid down by the legislation will be applicable in each case.

- 2.4 The Council will expect all businesses, if requested, to provide such information and evidence as required in order to determine whether relief should be awarded.
- 2.5 There is no statutory appeal process or tribunal against any decision made by the Council although, as with any decision of a public authority, decisions can be reviewed by Judicial Review. The authority will however, upon request, review decisions made. Details of the internal review process are given within this policy.
- 2.6 The decision to grant or not to grant discretionary relief is a matter purely for the Council.

3.0 Retail, Hospitality and Leisure Business Rates Relief Scheme (1 April 2023 to 31 March 2024)

General Explanation

- 3.1 At the Autumn Statement on 17 November 2022 the Chancellor announced the introduction of a new business rates relief scheme for retail, hospitality, and leisure properties worth around £2.1 billion in 2023-24. This will support the businesses that make our high streets and town centres a success and help them to evolve and adapt to changing consumer demands.
- 3.2 The 2023-24 Retail, Hospitality and Leisure Business Rates Relief scheme will provide eligible, occupied, retail, hospitality, and leisure properties with a 75% relief, up to a cash cap limit of £110,000 per business.

How will the relief be provided?

- 3.3 As this is a temporary measure for 2023-24, Government is not changing the legislation relating to the reliefs available to properties. Instead, Government will, in line with the eligibility criteria set out in this guidance, reimburse the Council if it uses its discretionary relief powers under section 47 of the Local Government Finance Act 1988 (as amended) to grant relief. It will be for the Council to adopt a local scheme and determine in each individual case when, having regard to this guidance, to grant relief under the legislation.
- 3.4 Government will fully reimburse the Council and major precepting authorities for their loss of income under the rates retention scheme as a result of awarding the relief that falls within the definitions in this policy, using a grant under section 31 of the Local Government Act 2003.
- 3.5 The government expects the Council to apply and grant relief to qualifying ratepayers from the start of the 2023-24 billing year.

Which properties will benefit from relief?

- 3.6 Hereditaments which benefit from the relief will be those which for a chargeable day in 2023-24:
- (a) meet the eligibility criteria; and
 - (b) the ratepayer for that chargeable day has not refused the relief for the eligible hereditament. The ratepayer may refuse the relief for each eligible hereditament anytime up to 30 April 2024. The ratepayer cannot subsequently withdraw their refusal for either all or part of the financial year.
- 3.7 The Council has decided that, for the purposes of section 47 of the 1988 Act, hereditaments where the ratepayer has refused the relief are outside of the scheme and outside of the scope of the decision of which hereditaments qualify for the discount and are therefore ineligible for the relief.
- 3.8 In line with the legal restrictions in section 47(8A) of the Local Government Finance Act 1988, the Council may not grant the discount to themselves or precepting authorities.

How much relief will be available?

- 3.9 Subject to the £110,000 cash cap per business, the total amount of government-funded relief available for each property for 2023-24 under this scheme is for chargeable days from 1 April 2023 to 31 March 2024, 75% of the chargeable amount.
- 3.10 The relief will be applied after mandatory reliefs and other discretionary reliefs funded by section 31 grants have been applied, but before those where the Council has used its wider discretionary relief powers introduced by the Localism Act 2011, which are not funded by section 31 grants. However, the former categories of discretionary relief available prior to the Localism Act 2011 (i.e., charitable relief etc.) will be applied first in the sequence of discretionary reliefs and, therefore, before Retail, Hospitality and Leisure relief. Authorities may use their discretionary powers to, at cost to themselves, offer further discounts outside this scheme or additional relief to hereditaments within the scheme. However, where the Council applies a locally funded relief under section 47, this will be applied after the Retail, Hospitality and Leisure relief.
- 3.11 The ordering **will** be applied in following sequence:
- Transitional Relief
 - Mandatory Reliefs (as determined in legislation)
 - S.47 Discretionary Relief in the following order:
 - (i) 2023 Supporting Small Business (SSB);

- (ii) Former categories of discretionary relief available prior to the Localism Act 2011 (i.e., charitable, CASC, rural top up, and not for profit) will be applied first in the sequence of discretionary reliefs, after SSB;
- (iii) Other discretionary (centrally funded);
- (iv) 2023-24 Retail Hospitality and Leisure relief scheme; and
- (v) Other locally funded schemes (such as section 49 hardship).

3.12 Subject to the cash cap, the eligibility for the discount and the relief itself will be assessed and calculated on a daily basis. The following formula will be used to determine the amount of relief to be granted for a chargeable day for a particular hereditament in the financial year 2023-24:

- Amount of relief to be granted = $V \times 0.75$ where:
- V is the daily charge for the hereditament for the chargeable day after the application of any mandatory relief and any certain other discretionary reliefs in line with 5.3 above.

3.13 This will be calculated ignoring any prior year adjustments in liabilities which fall to be liable on the day.

3.14 Ratepayers that occupy more than one property will be entitled to relief for each of their eligible properties up to the maximum £110,000 cash cap, per business.

The Cash Cap and Subsidy Control

3.15 Under the cash cap, no ratepayer can in any circumstances exceed the £110,000 cash cap across all of their hereditaments in England.

3.16 Where a ratepayer has a qualifying connection with another ratepayer, then those ratepayers will be considered as one ratepayer for the purposes of the cash caps. A ratepayer shall be treated as having a qualifying connection with another:

- (a) where both ratepayers are companies, and
 - (i) one is a subsidiary of the other, or
 - (ii) both are subsidiaries of the same company; or
- (b) where only one ratepayer is a company, the other ratepayer (the “second ratepayer”) has such an interest in that company as would, if the second ratepayer were a company, result in its being the holding company of the other.

3.17 The Retail Hospitality and Leisure Scheme is likely to amount to subsidy. Any relief provided by the Council under this scheme will need to comply with the UK’s domestic and international subsidy control obligations.

3.18 To the extent that the Council is seeking to provide relief that falls below the Minimal Financial Assistance (MFA) thresholds, the Subsidy Control Act allows an economic actor (e.g., a holding company and its subsidiaries) to receive up to £315,000 in a 3-year period (consisting of the 2023-24 year and the 2 previous financial years). MFA subsidies cumulate with each other and with other subsidies

that fall within the category of 'Minimal or SPEI financial assistance'. Expanded Retail Discount granted in 2021-22 does not count towards the £315,000 allowance but BEIS COVID-19 business grants and any other subsidies claimed under the Small Amounts of Financial Assistance limit of the Trade and Cooperation Agreement will be counted.

- 3.19 In those cases, where it is clear to the Council that the ratepayer is likely to breach the cash cap or the MFA limit, then the Council will automatically withhold the relief.
- 3.20 MFA subsidies above £100,000 are subject to transparency requirements. This is not cumulated per beneficiary but applies per subsidy award. This means that for every individual subsidy provided of more than £100,000, the Council will include details of the subsidy on the subsidy control database.

Splits, mergers, and changes to existing hereditaments

- 3.21 The relief will be applied on a day-to-day basis using the formula set out above. A new hereditament created as a result of a split or merger during the financial year, or where there is a change of use, will be considered afresh for the relief on that day.

Recalculations of relief

- 3.22 The amount of relief awarded will be recalculated in the event of a change of circumstances. This could include, for example, a backdated change to the rateable value or the hereditament. This change of circumstances could arise during the year in question or during a later year.
- 3.23 Under regulations made under section 47 of the Local Government Finance Act 1988 the Council must give at least 12 months' notice of a revocation or variation of a rate relief scheme the effect of which would be to increase rate bills. Such a revocation or variation can only take effect at the end of a financial year (other than to comply with international agreements). But within these regulations, the Council may still make decisions to ensure the scheme is administered in accordance with the extant rules. If a change in circumstances renders a property ineligible, the relevant bill can be amended in the year to reflect the loss of the relief.

Eligibility for the Retail, Hospitality and Leisure Relief Scheme

3.24 The Council uses the following definitions to establish eligibility for the relief:

Hereditaments that meet the eligibility for Retail, Hospitality and Leisure scheme will be occupied hereditaments which meet all of the following conditions for the chargeable day:

- they are wholly or mainly being used:
 - (i) as shops, restaurants, cafes, drinking establishments, cinemas, or live music venues,
 - (ii) for assembly and leisure; or
 - (iii) as hotels, guest & boarding premises, or self-catering accommodation

i. Hereditaments that are being used for the sale of goods to visiting members of the public:

- Shops (such as: florists, bakers, butchers, grocers, greengrocers, jewellers, stationers, off licences, chemists, newsagents, hardware stores, supermarkets, etc)
- Charity shops
- Opticians
- Post offices
- Furnishing shops/ display rooms (such as: carpet shops, double glazing, garage doors)
- Car/caravan show rooms
- Second-hand car lots
- Markets
- Petrol stations
- Garden centres
- Art galleries (where art is for sale/hire)

ii. Hereditaments that are being used for the provision of the following services to visiting members of the public:

- Hair and beauty services (such as: hairdressers, nail bars, beauty salons, tanning shops, etc)
- Shoe repairs/key cutting
- Travel agents
- Ticket offices e.g., for theatre
- Dry cleaners
- Launderettes
- PC/TV/domestic appliance repair
- Funeral directors
- Photo processing
- Tool hire
- Car hire

iii. Hereditaments that are being used for the sale of food and/or drink to visiting members of the public:

- Restaurants
- Takeaways
- Sandwich shops
- Coffee shops
- Pubs
- Bar

iv. Hereditaments which are being used as cinemas;

v. Hereditaments that are being used as live music venues:

- Live music venues are hereditaments wholly or mainly used for the performance of live music for the purpose of entertaining an audience. Hereditaments cannot be considered a live music venue for the purpose of business rates relief where a venue is wholly or mainly used as a nightclub or a theatre, for the purposes of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- Hereditaments can be a live music venue even if used for other activities, but only if those other activities (i) are merely ancillary or incidental to the performance of live music (e.g., the sale/supply of alcohol to audience members) or (ii) do not affect the fact that the primary activity for the premises is the performance of live music (e.g., because those other activities are insufficiently regular or frequent, such as a polling station or a fortnightly community event).
- There may be circumstances in which it is difficult to tell whether an activity is a performance of live music or, instead, the playing of recorded music.

vi. Hereditaments that are being used for the provision of sport, leisure, and facilities to visiting members of the public (including for the viewing of such activities).

- Sports grounds and clubs
- Museums and art galleries
- Nightclubs
- Sport and leisure facilities
- Stately homes and historic houses
- Theatres
- Tourist attractions
- Gyms
- Wellness centres, spas, massage parlours
- Casinos, gambling clubs and bingo halls

vii. Hereditaments that are being used for the assembly of visiting members of the public.

- Public halls
- Clubhouses, clubs, and institutions

viii. Hereditaments where the non-domestic part is being used for the provision of living accommodation as a business:

- Hotels, Guest, and Boarding Houses
- Holiday homes
- Caravan parks and sites

3.25 To qualify for the relief the hereditament should be wholly or mainly being used for the above qualifying purposes. In a similar way to other reliefs (such as charity relief), this is a test on use rather than occupation. Therefore, hereditaments which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the relief.

3.26 The list set out above is not intended to be exhaustive as it would be impossible to list the many and varied uses that exist within the qualifying purposes.

Hereditaments that are being used for the provision of the following services to visiting members of the public:

3.27 The list below sets out the types of uses that the government does not consider to be an eligible use for the purpose of this discount. Again, it is for the Council to determine for themselves whether particular properties are broadly similar in nature to those below and, if so, to consider them **not** eligible for the discount under their local scheme:

- Financial services (e.g., banks, building societies, cash points, bureaux de change, short-term loan providers, betting shops);
- Medical services (e.g., vets, dentists, doctors, osteopaths, chiropractors);
- Professional services (e.g., solicitors, accountants, insurance agents/ financial advisers, employment agencies, estate agents, letting agents); and
- Post office sorting offices.

4.0 Supporting Small Business Rates Relief Scheme

General Explanation

4.1 For the financial years 2023-24 to 2025-26, the Government will, in line with the eligibility criteria set out below, reimburse the Council if it uses its discretionary relief powers under section 47 of the Local Government Finance Act 1988 (as amended), to grant 2023 Supporting Small Business relief.

4.2 It will be for the Council, which administers the 2023 Supporting Small Business (2023 SSB) relief, to adopt a local scheme and determine in each individual case when, having regard to this guidance, to grant relief under section 47.

4.3 Central government will reimburse the Council and major precepting authorities for the actual cost to them under the rates retention scheme of the 2023 Supporting Small Business relief that falls within the definitions in this policy.

Who is eligible for the 2023 Supporting Small Business Relief (2023 SSB) and how much relief will be available?

- 4.4 2023 SSBR will help those ratepayers who as a result of the change in their rateable value at the revaluation are losing some or all of their Small Business, Rural Rate Relief or 2017 SSBR and, as a result, are facing large increases in their bills.
- 4.5 Charities and Community Amateur Sports Clubs, who are already entitled to mandatory 80% relief, are not eligible for 2023 SSBR.
- 4.6 To support these ratepayers, 2023 SSBR will ensure that the increase in the bills of these ratepayers is limited to a cash value of £600 per year. This cash maximum increase ensures that ratepayers do not face large bill increases in 2023/24 after transitional relief and small business rate relief (as applicable) have been applied. In order to simplify the scheme, the 2023 SSBR will not include minimum percentage bill increases (unlike the 2017 scheme).
- 4.7 Those on 2023 SSBR whose 2023 rateable values are £51,000 or more will not be liable to pay the supplement (1.3p) to fund small business rate relief while they are eligible for 2023 SSBR.
- 4.8 The 2017 SSBR scheme was provided to support small and medium ratepayers who had seen large increases in their bills at the 2017 revaluation. They have, therefore, had 6 years of support to allow them to adjust to their full 2017 bills. Therefore, for those ratepayers receiving 2017 SSB relief in 2022-23, any eligibility for 2023 SSBR will end on 31 March 2024.
- 4.9 The Council will ensure this eligibility criteria is clear in the scheme approved and that relief for these ratepayers is awarded for one year only so that the relief can then be withdrawn on 31 March 2024 without further notice.
- 4.10 A change of ratepayers will not affect eligibility for the Supporting Small Business scheme but eligibility will be lost if the property falls vacant or becomes occupied by a charity or Community Amateur Sports Club.
- 4.11 There is no second property test for eligibility for the 2023 SSBR scheme. However, those ratepayers who during 2022-23 lost entitlement to Small Business Rate Relief (because they failed the second property test) but have, under the rules for Small Business Rate Relief, been given a 12 month period of grace before their relief ended - can continue on the 2023 SSBR scheme for the remainder of their 12 month period of grace.

Sequence of reliefs

- 4.12 Hereditaments eligible for charity or Community Amateur Sports Club relief or hereditaments which are unoccupied are not eligible for 2023 SSBR. For the

avoidance of doubt, small business rate relief or rural rate relief will not be applied to further reduce the bill found under 2023 SSBR (to avoid the double counting of relief).

- 4.13 The same principle applies to properties for which a Section 44A certificate has been granted (apportionment of rateable values for partly occupied properties). The presence of a section 44A certificate will not further reduce the bill found under 2023 SSBR.
- 4.14 All other discretionary reliefs, including those funded by section 31 grants, will be considered after the application of 2023 SSBR.

Subsidy control

- 4.15 The 2023 SSBR is likely to amount to a subsidy. Therefore, any relief provided by the Council under this scheme will need to comply with the UK's domestic and international subsidy control obligations.
- 4.16 To the extent that the Council is seeking to provide relief that falls below the Minimal Financial Assistance (MFA) thresholds, the Subsidy Control Act allows an economic actor (e.g., a holding company and its subsidiaries) to receive up to £315,000 in a three-year period (consisting of the 2023/24 year and the two previous financial years). MFA subsidies cumulate with each other and with other subsidies that fall within the category of 'Minimal or SPEI financial assistance'. BEIS COVID-19 business grants and any other subsidies claimed under the Small Amounts of Financial Assistance limit of the Trade and Cooperation Agreement should be counted under the £315,000 allowance.
- 4.17 In those cases where it is clear to the Council that the ratepayer is likely to breach the MFA limit then the Council will withhold the relief. Otherwise, the Council may include the relief in bills and ask the ratepayers, on a self-assessment basis, to inform the Council if they are in breach of the MFA limit.
- 4.18 MFA subsidies above £100,000 are subject to transparency requirements. This is not cumulated per beneficiary but applies per subsidy award. This means that for every individual subsidy provided of more than £100,000, the Council will include details of the subsidy on the subsidy control database.

Recalculations of reliefs

- 4.19 As with other reliefs, the amount of SSBR awarded will be recalculated in the event of a change of circumstances. This could include, for example, a backdated change to the rateable value or to the hereditament. This change of circumstances could arise during the year in question or during a later year.

- 4.20 Under regulations made under section 47 of the Local Government Finance Act 1988 authorities must give at least 12 months' notice of a revocation or variation of a rate relief scheme the effect of which would be to increase rate bills. Such a revocation or variation can only take effect at the end of a financial year (other than to comply with international agreements). But within these regulations, the Council may still make decisions which are conditional upon eligibility criteria. If a change in circumstances renders a property ineligible, the relevant bill can be amended in the year to reflect the loss of the relief.
- 4.21 Therefore, when making an award for SSBR, the Council will ensure the conditions of the award that the relief are subject to the property's continuing eligibility. If the use of the property changes so that it is no longer eligible, the relevant chargeable amount must be recalculated to reflect that fact.
- 4.22 The Council will also ensure that the scheme provides that eligibility for those ratepayers previously in the 2017 SSBR scheme in 2022-23 are eligible for one year of relief only and that the relief will then be withdrawn from those ratepayers on 31 March 2024 without further notice.

5.0 Effect on the Council's Finances

- 5.1 As all of the reliefs within this policy are government led initiatives, grants for the full amount awarded will be available through section 31 of the Local Government Act 2003.

6.0 Administration of Discretionary Relief

- 6.1 The following section outlines the procedures followed by officers in granting, amending, or cancelling discretionary relief and reduction. This is essentially laid down by legislation¹

Applications and Evidence

- 6.2 All of the rate relief included with this policy will be awarded automatically by the Council.
- 6.3 **The Council will provide this service and provide guidance free of charge. Ratepayers are encouraged to approach the Council direct and NOT pay for such services through third parties.**

¹ The Non-Domestic Rating (Discretionary Relief) Regulations 1989

Granting of relief

- 6.4 In all cases, the Council will notify the ratepayer of decisions via their rates demand and details will include:
- The amount of relief granted and the date from which it has been granted;
 - The new chargeable amount; and
 - A requirement that the applicant should notify the Council of any change in circumstances that may affect entitlement to relief.
- 6.5 This relief is to be granted from the beginning of the financial year in which the decision is made or when liability begins whichever is the later. The relief will cease at the end date provided for within Government guidance and a decision may be revoked at any time by the Council where the ratepayer fails to meet **any** of the relevant eligibility criteria.
- 6.6 Variations in any decision will be notified to ratepayers as soon as practicable.

7.0 Scheme of Delegation

Granting, Varying, Reviewing and Revocation of Relief

- 7.1 All powers in relation to reliefs are given under the Local Government Finance Act 1988, the Local Government and Rating Act 1997, the Local Government Act 2003, and the Localism Act 2011. However section 223 of the Local Government Act 1992 allows for delegation of decisions by the Council to Cabinet, Committees, Sub-Committees or Officers.
- 7.2 The Council's scheme of delegation allows for the Head of Customer Services to award, revise or revoke any discretionary relief .

Reviews

- 7.3 This policy for will be reviewed annually or where there is a substantial change to the legislation or funding rules. At such time, a revised policy will be brought before the relevant committee of the Council.

Disputes

- 7.4 Where the Council receives a dispute from the ratepayer regarding the granting, non-granting or the amount of any discretionary relief, the case will be reviewed by the Head of Customer Services. Where a decision is revised then the ratepayer shall be informed, likewise if the original decision is upheld.

- 7.5 Where the ratepayer wishes to appeal the decision of the Head of Customer Services, the case will be considered by the Council's Section 151 Officer whose decision on behalf of the Council will be final.
- 7.6 Ultimately the formal appeal process for the ratepayer is Judicial Review although the Council will endeavour to explain any decision fully and openly with the ratepayer.

8.0 Reporting changes in circumstances

- 8.1 Where any award is granted to a ratepayer, the Council will require any changes in circumstances which may affect the relief, to be reported as soon as possible or in any event within 21 days of the change. This will be important where the change would result in the amount of the award being reduced or cancelled e.g., where the premises comes unoccupied or is used for a purpose other than that determined by the Council as eligible for relief.
- 8.2 Where a change of circumstances is reported which would cease or revise eligibility, the relief will, if appropriate, be revised or cancelled as appropriate.
- 8.3 Where any award is to be reduced, the Council will look to recover the amount from the date the change of circumstances occurred.

9.0 Fraud

- 9.1 Where a ratepayer falsely applies for any relief, or where the ratepayer provides false information, makes false representation, or deliberately withholds information in order to gain relief, prosecutions will be considered under the Fraud Act 2006.