

# **Policy for the granting of Discretionary Non-Domestic Rate Relief**

## Version Control

| Version | Version date  | Revised by  | Description                                |
|---------|---------------|-------------|--|
| 1       | July 1998     | -           | Original policy                            |
| 1.1     | February 2002 | V Lane      | Update for leisure attractions & Guildhall |
| 1.2     | May 2013      | V Fair      | Update to new style                        |
| 1.3     | June 2013     | C Lennard   | Minor updates                              |
| 2       | February 2014 | E Woodhouse | New discretionary reliefs                  |
| 2.1     | March 2014    | E Woodhouse | Update for Flood relief                    |
| 2.2     | April 2014    | E Woodhouse | Update for Reoccupation relief             |
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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 to be granted to certain defined ratepayers within the City Council's area.
- 1.2 The Local Government Finance Act 1988 and subsequent legislation requires the authority to grant mandatory relief for premises occupied by Charities and similar organisations that own or occupy them wholly or mainly for charitable purposes. Likewise certain premises situated within a rural settlement area will be eligible for mandatory relief. Powers have also been granted under the Localism Act 2011, which allow for the granting of discretionary rate relief to any premises where the authority feels the granting of such relief would be of benefit to the local community.
- 1.3 Further guidance has also been received from Central Government in respect of the granting of relief for:
- Unoccupied new structures (from 1<sup>st</sup> October 2013);
  - Retail relief (from 1<sup>st</sup> April 2014); and
  - Retail reoccupation relief (from 1<sup>st</sup> April 2014)
  - Flooding relief (from 1<sup>st</sup> December 2013).

The values and relevant dates of these reliefs may be varied by Government. Any variations will be incorporated into the policy by change control at the relevant times.

- 1.4 Whilst the City Council is obliged to grant relief to premises, which fall within the mandatory category, the City Council also has powers to grant discretionary relief to ratepayers subject to certain criteria being met. In the case of new reliefs, guidance has been issued by Central Government outlining actions expected to be taken by local authorities.
- 1.5 Full details of the legislative requirements for both mandatory and discretionary relief are given within the following sections this report.
- 1.6 This document also outlines the following areas:
- Details of the criteria for receiving Discretionary Relief for all relevant areas;
  - The Council's policy for granting of all types of Discretionary Relief;
  - Guidance on granting and administering the relief;
  - European Union requirements including provisions for State Aid; and
  - The Scheme of Delegation.
- 1.7 This policy covers all aspects of discretionary rate relief (subject to changes in legislation). Where organisations apply for relief they will be granted (or not granted) relief in line with the following policy.

## **2.0 Mandatory Relief - Legislative Background**

### **Charity Relief**

- 2.1 The powers relating to the granting of mandatory<sup>1</sup> and discretionary relief are given to the authority under the Local Government Finance Act 1988<sup>2</sup>. Charities and Trustees for Charities are only liable to pay one fifth of the Non Domestic Rates that would otherwise be payable where property is occupied and used wholly or mainly for charitable purposes. This amounts to mandatory relief of 80%. For the purposes of the Act a charity is an organisation or trust established for charitable purposes, whether or not it is registered with the Charity Commission. The provision has recently been extended under the Local Government Act 2003 (effective from 1<sup>st</sup> April 2004) to registered Community Amateur Sports Clubs (CASCs).
- 2.2 The authority has discretion to grant relief of up to a further 20% for these cases under the discretionary provisions.

### **Rural Rate Relief**

- 2.3 The City Council has no rural settlements within its area.

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<sup>1</sup> S43 & S45 Local Government Finance Act 1988

<sup>2</sup> S47 & S48 Local Government Finance Act 1988

## 3.0 Discretionary Relief – Legislative Background

### Introduction

- 3.1 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.
- 3.2 Over recent years and particularly since 2011, the discretionary relief provisions have been amended to allow authorities the flexibility to provide assistance to businesses and organisations. Central Government have also allowed for relief:
- to be targeted to certain business ratepayers;
  - to encourage building of business premises even though the developer may not be able to sell or let the premises immediately;
  - to alleviate the effects of the recession; and
  - to encourage the use of retail premises which have been unoccupied for a period of time.
- 3.3 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.
- 3.4 Unlike mandatory relief, ratepayers are obliged to make a written application to the City Council.
- 3.5 The City Council is obliged to consider carefully every application on its merits, taking into account the contribution that the organisation makes to the amenities of the area. There is no statutory appeal process against any decision made by the Council although as with any decision of a public authority, decisions can be reviewed by Judicial Review.
- 3.6 Granting of the relief falls broadly into the following categories:
- a. Discretionary Relief – Charities who already receive mandatory relief.
  - b. Discretionary Relief – Premises occupied by organisations not established or conducted for profit whose main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts;
  - c. Discretionary Relief – Premises occupied by organisations not established or conducted for profit and wholly or mainly used for purposes recreation;
  - d. Discretionary Relief – Rural Rate relief - premises that already receive mandatory relief (not applicable to the City Council);
  - e. Discretionary Relief – Rural Rate relief - premises not receiving mandatory relief but of benefit to the local community and less than £16,500 RV (not applicable to the City Council);
  - f. Discretionary Relief – Granted under the Localism Act 2011 provisions
  - g. Discretionary Relief – Unoccupied New Structures (available from 1<sup>st</sup> October 2013);
  - h. Discretionary Relief - Retail relief (available from 1<sup>st</sup> April 2014);
  - i. Discretionary Relief - Reoccupation Relief (available from 1<sup>st</sup> April 2014);
  - j. Discretionary Relief - Flooding Relief (from 1<sup>st</sup> December 2014).
- 3.7 The decision to grant or not to grant relief is a matter purely for the City Council although the general principles are a matter of concern to Central Government

and in the case of g., h., i. & j. above, Central Government has provided specific guidance and finance.

## 4.0 Charity Relief – Mandatory Relief recipients

### General Explanation

- 4.1 Section 43 of the Local Government Finance Act 1988 allows mandatory relief (80%) to be granted on premises if the ratepayer is a charity or trustees for a charity and the premises are wholly or mainly used for charitable purposes. No charge is made in respect of unoccupied premises where it appears that *when next in use* it will be used wholly or mainly for those purposes.
- 4.2 The legislation has been amended by the Local Government Act 2003 (effective from 1<sup>st</sup> April 2004) to include registered<sup>3</sup> Community Amateur Sports Clubs (CASC). These organisations can now receive the mandatory (80%) relief.

### Charity registration

- 4.3 Charities are defined within the legislation as being an institution<sup>4</sup> or other organisation established for charitable purposes only or by persons administering a trust established for charitable purposes only.
- 4.4 The question as to whether an organisation is a charity may be resolved in the majority of cases by reference to the register of charities maintained by the Charity Commissioners under s.4 of the Charities Act 1960. Entry in the register is conclusive evidence. By definition, under the Non Domestic Rating legislation, there is no actual need for an organisation to be a registered charity to receive the relief and this has been supported by litigation<sup>5</sup>, however in all cases the organisation must fall within the following categories:
- trusts for the relief of poverty;
  - trusts for the advancement of religion;
  - trusts for the advancement of education; and
  - trusts for other purposes beneficial to the community, but not falling under any of the preceding heads.
- 4.5 Certain organisations are exempted from registration generally and are not required to make formal application to the Charity Commissioners these are:
- the Church Commissioners and any institution administered by them;
  - any registered society within the meaning of the Friendly Societies Acts of 1896 to 1974 ;
  - units of the Boy Scouts Association or the Girl Guides Association; and
  - voluntary schools within the meaning of the Education Acts of 1944 to 1980
- 4.6 The authority would consider charitable organisations, registered or not, for mandatory relief.

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<sup>3</sup> Registered with HMRC as a CASC

<sup>4</sup> S67(10) Local Government Finance Act 1988

<sup>5</sup> Income Tax Special Commissioners v Pemsell (1891)

## **Use of Premises – wholly or mainly used**

- 4.7 Irrespective of whether an organisation is registered as a charity or not, the premises must be wholly or mainly used for charitable purposes. This is essential if any relief (either mandatory or discretionary) is to be granted. In most cases this can be readily seen by inspection but on occasions the authority has had to question the actual use to which the premises are to be put.
- 4.8 Guidance from the Department of Communities and Local Government (DCLG) has stated that in the case of 'mainly', at least 51% must be used for charitable purposes whether of that charity or of that and other charities
- 4.9 The following part of this section gives details on typical uses where relief may be given plus additional criteria that have to be satisfied. The list is not exhaustive but gives clear guidance on premises for which mandatory relief can be granted *and therefore* premises which could be equally considered for discretionary rate relief.

## **Offices, administration and similar premises**

- 4.10 Premises used for administration of the Charity including:
- Offices
  - Meeting Rooms
  - Conference Rooms

## **Charity shops**

- 4.11 Charity shops are required to meet additional legislative criteria if they are to receive mandatory (and therefore discretionary) relief. Section 64(10) of the Local Government Finance Act 1988 provides that a property is to be treated as being wholly or mainly used for charitable purposes at any time if, at the time, it is wholly or mainly used for the sale of goods donated to a charity and the proceeds of the sale of the goods (after any deduction of expenses) are applied for the purposes of the charity.
- 4.12 In order to ascertain whether an organisation meets these requirements, inspections may be made by staff when an application is received

## **Charity Relief – Mandatory Relief recipients, the City Council's Policy**

- 4.13 Organisations already in receipt of mandatory relief will not generally be eligible for discretionary relief but applications will be considered on their merits from charitable bodies & Community Amateur Sports Clubs, which can demonstrate that their activities are consistent with the City Council's core values and priorities, and tackling poverty strategy.
- 4.14 A decision to award discretionary relief and how much relief is given is only applicable to the financial year for which the application is made
- 4.15 A fresh application for discretionary relief will be necessary for each financial year.



## 5.0 Discretionary Relief – Non Profit Making Organisations including Recreation

### General explanation

#### Non-Profit

- 5.1 The legislation<sup>6</sup> allows the authority to grant discretionary relief where the property is not an *excepted* one and all or part of it is occupied for the purposes of one or more institutions or other organisations none of which is established or conducted for profit and each of whose main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts.
- 5.2 Relief cannot be granted to any premises occupied by the City Council, or any town or parish council (*excepted premises*).
- 5.3 A number of issues arise from the term 'not established or conducted for profit'. This requires the authority to make enquiries as to the overall purpose of the organisation although if surpluses and such amounts are directed towards the furtherance or achievement of the objects of the organisation then it does not necessarily mean that the organisation was established or conducted for profit.<sup>7</sup>

#### Recreation Clubs

- 5.4 Ideally all recreation clubs should be encouraged to apply for CASC status, which would automatically entitle them to 80% relief whilst at the same time ensuring that no cost of the relief is borne by the authority.
- 5.5 Recreation Clubs can also apply to the Charity Commissioners for registration as a Charity (thereby falling under the mandatory provisions for 80% relief) where they meet the following conditions:
- a. The promotion of community participation in healthy recreation and by the provision of facilities for the playing of particular sports; and
  - b. The advancement of the physical education of young people not undergoing formal education.
- 5.6 Where sports clubs do not meet the CASC requirement, and are not registered charities, discretionary relief can be granted (0-100%) where the property is not an *excepted* one, it is wholly or mainly used for purposes of recreation and all or part of it is occupied for the purpose of a club, society or other organisation not established or conducted for profit.
- 5.7 Sport England can provide a definition of recreation for these purposes
- 5.8 Within this area the authority also considers whether the facilities provided relieve the authority of the need to do so, or enhance and supplement those that it does provide.

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<sup>6</sup> S47 Local Government Finance Act 1988

<sup>7</sup> National Deposit Friendly Society v Skegness Urban District Council (1958)<sup>1</sup> and Guinness Trust (London Fund) v West Ham County Borough Council (1959)

## **Discretionary Relief - Non-Profit Organisations including Recreation – the City Council’s Policy**

- 5.9 Applications will be considered from non-profit making organisations, which can demonstrate the following:
- a. That the activities of the organisation are consistent with the City Council's core values and priorities, and tackling poverty strategy;
  - b. That they are non-profit making associations, groups, clubs which are accessible to all potential users, possess a representative management group and are clearly accountable to users, beneficiaries and members (e.g. evidence of constitution, GM, membership and/or participation are required);
  - c. That the membership comprises mainly residents of Portsmouth or that activities are of direct benefit to residents of Portsmouth;
  - d. Both as an employer, and provider of services, the organisation shall seek to eliminate all forms of discrimination in its activities and shall undertake its work with due regard to the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Act 1996 and the City Council's own commitment to Equal Opportunities;
  - e. The organisation shall not discriminate on grounds of race, gender, disability or political or religious persuasion (except in so far as the objectives of the organisation specifically address one section or group within the community);
  - f. That its membership is committed financially through subscriptions and other fund raising activities to provide facilities etc., for the organisation and its membership;
  - g. That without relief the organisation may experience financial hardship.
- 5.10 Organisations already in receipt of grant aid from the City Council will not generally be eligible for discretionary relief.
- 5.11 A decision to award discretionary relief and how much relief is given is only applicable to the financial year for which the application is made.
- 5.12 A fresh application for discretionary relief will be necessary for each financial year.

## 6.0 Discretionary Relief – Localism Act 2011

### General explanation

- 6.1 Section 69 of the Localism Act 2011 amended Section 47 of the Local Government Finance Act 1988. These provisions all authorities to grant discretionary relief in **any** circumstances where it feels fit having regards to the effect on the Council Tax payers of its area.
- 6.2 The provisions are designed to give authorities flexibility in granting relief where it is felt that to do so would be of benefit generally to the area and be reasonable given the financial effect to Council Tax payers.

### Discretionary Relief – Localism – the City Council’s Policy

- 6.3 Applications will be considered from any ratepayer who wishes to apply however, where a ratepayer is suffering hardship or severe difficulties in paying their rates liability then relief can be granted under the existing provisions as laid down by Section 49 of the Local Government Finance Act 1988. There will be no requirement to grant relief in such cases under the City Council’s discretionary relief policy.
- 6.4 Any ratepayer applying for discretionary rate relief under these provisions and who does not meet the criteria for existing relief (charities, non profit making organisations or rural premises) must meet **all** of the following criteria and the amount of relief granted will be dependant on the following key factors:
- a. The ratepayer **must not** be entitled to mandatory rate relief (Charity or Rural Rate Relief);
  - b. The ratepayer **must not** be an organisation that could receive relief as a non profit making organisation or as a sports club or similar;
  - c. The ratepayer **must** occupy the premises (no discretionary rate relief will be granted for unoccupied premises);
  - d. The premises and organisation **must** be of *significant* benefit to residents of the city;
  - e. The premises and organisation **must** relieve the City Council of providing similar facilities;
  - f. The ratepayer **must**;
    - a. Provide facilities to certain priority groups such as elderly, disabled, minority groups, disadvantaged groups; **or**
    - b. Provide *significant* employment or employment opportunities to residents of the City; **or**
    - c. Provide the residents of the City with such services, opportunities or facilities that cannot be obtained locally or are not provided locally by another organisation;
  - g. The ratepayer **must** demonstrate that assistance (provided by the discretionary rate relief) will be for a *short time only* **and** that any business / operation is financially viable in the medium and long term; **and**
  - h. The ratepayer **must** show that the activities of the organisation are consistent with the City Council's core values and priorities, and tackling poverty strategy.

- 6.5 Where a ratepayer can demonstrate that **all** of the above criteria are met, relief will be considered for a period of one year.
- 6.6 A formal application from the ratepayer will be required in each case and any relief will be granted in line with State Aid requirements.

## 7.0 Discretionary Relief – Unoccupied New Structures

### General explanation

- 7.1 Central Government announced in December 2012 that, it would exempt all newly built unoccupied commercial property completed between 1 October 2013 and 30 September 2016 from empty property rates for the first 18 months, up to the state aids limits.
- 7.2 As this is a temporary measure, the Government are not changing the rules on when a property becomes liable for empty property rates (which would be charged at 100%). Instead they are providing the exemption by reimbursing local authorities that use their discretionary relief powers (under section 47 of the Local Government Finance Act 1988) to grant relief in prescribed circumstances.
- 7.3 It will be for the City Council to decide to grant relief under section 47 but Central Government will fully reimburse local authorities for the local share of the discretionary relief (using a grant under s31 of the Local Government Act 2003) based on outturn of relief granted in the circumstances specified. Through this mechanism, central government will guarantee to reimburse local within the rates retention system.
- 7.4 In order to receive the relief, the premises will be all unoccupied non-domestic properties that are **wholly or mainly** comprised of qualifying **new structures**.
- ‘Structures’ means:
- a) foundations ;and/or
  - b) permanent walls; and/ or
  - c) permanent roofs.
- The definition of ‘new’ means;
- a. Completed less that 18 months previously; and
  - b. Completed after 1<sup>st</sup> October 2013 and before 30<sup>th</sup> September 2016.
- 7.5 New structures are to be considered completed when the building or part of the building of which they form part is ready for occupation for the purpose it was constructed unless a completion notice has been served in respect of such a building or part of a building – in which case it would be the date specified in that notice.
- 7.6 The relief runs with the property rather than the owner so subsequent owners may also qualify.
- 7.7 In all cases the relief will be subject to State Aid requirements as mentioned later in this policy.
- 7.8 In all cases, an inspection of the premises shall be made by an officer of the authority, prior to granting any relief

## **Discretionary Relief – Unoccupied New Structures – the City Council’s Policy.**

- 7.9 The relief is designed to provide an incentive to owners, developers etc. to build new non-domestic premises without the fear of facing unoccupied property rate charges. Central Government is also prepared to finance the relief through the Business Rates Retention scheme. In view of this the City Council will grant the relief in accordance with Central Government guidance for all qualifying new structures.
- 7.10 An application from the ratepayer will be required in each case and any relief will be granted in line with State Aid requirements.
- 7.11 This exemption is available for unoccupied new structures that were completed between 1<sup>st</sup> October 2013 and 30<sup>th</sup> September 2016 and will be granted for a period of 18 months to include existing empty property exempt periods.

### **EXAMPLE**

A simple example is a new build office that is unoccupied from the date it is completed for 18 months. In such a circumstance the ratepayer would not be required to pay rates for the first 3 months under the 2008 Regulations and then would benefit from 15 months new build empty property relief provided through section 47 of the Local Government Finance Act 1988.

## 8.0 Discretionary Relief – Retail Relief

### General explanation

- 8.1 The Government determined that it will allow for a relief to all **occupied** retail properties with a rateable value of £50,000 or less as follows:
- Up to £1,000 in 2014/15
  - Up to £1,500 in 2015/16.
- 8.2 As this is a temporary measure only, the Government is not changing the legislation around the reliefs available to properties. Instead local authorities will use their discretionary relief powers, introduced by the Localism Act (under section 47 of the Local Government Finance Act 1988, as amended) to grant relief. It will be for individual authorities to adopt a local scheme and decide in each individual case when to grant relief under section 47.
- 8.3 Central government will fully reimburse local authorities for the local share of the discretionary relief (using a grant under section 31 of the Local Government Act 2003).
- 8.4 The Government expects local government to grant relief to qualifying ratepayers.
- 8.5 Properties that will benefit from the relief will be occupied properties with a rateable value of £50,000 or less that are **wholly or mainly** being used as:
- Shops;
  - Restaurants;
  - Cafes; and
  - Drinking establishments
- 8.6 This policy will follow Government guidance that considers shops, restaurants, cafes and drinking establishments to mean:
- i. Properties that are being used for the sale of goods to visiting members of the public:
- Shops (such as: florist, bakers, butchers, grocers, greengrocers, jewellers, stationers, off licence, 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. Properties that are being used for the provision of the following services to visiting members of the public:

- Hair and beauty services (such as: hair dressers, 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
- DVD/ video rentals
- Tool hire
- Car hire

iii. Properties 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
- Bars

8.7 To qualify for the relief the property should be wholly or mainly being used as a shop, restaurant, cafe or drinking establishment. In a similar way to other reliefs (such as charity relief), this is a test on use rather than occupation. Therefore, properties which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the relief.

8.8 The list set out above is not intended to be exhaustive as it would be impossible to list the many and varied retail uses that exist. There will also be mixed uses. However, it will be used as a guide as to the types of uses that government considers for this purpose to be retail. Properties not listed above which are broadly similar in nature to those above will be considered for the relief. Conversely, properties that are not broadly similar in nature to those listed above would not be eligible for the relief.

8.9 The list below sets out the types of uses that government does not consider to be retail use for the purpose of this relief. Again, it is for local authorities 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 relief under their local scheme.

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

- Financial services (e.g. banks, building societies, cash points, bureau de change, payday lenders, betting shops, pawn brokers)
- Other services (e.g. estate agents, letting agents, employment agencies)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, tutors)
- Post office sorting office

ii. Properties that are not reasonably accessible to visiting members of the public



- 8.10 Central Government guidance gives a range of premises that may benefit from the relief and the City Council will use this when deciding entitlement. It is acknowledged that this is guidance and each application will be looked at on its own merits.
- 8.11 The total amount of relief available for each eligible property for each of the years under this scheme is up to £1,000 in 2014/15 and up to £1,500 in 2015/16. The amounts will not vary with rateable value and there is no taper. There is no relief available under this scheme for properties with a rateable value of more than £50,000. The eligibility for the relief and the relief itself will be assessed and calculated on a daily basis for each day of occupation. It will be granted after the application of any other relief, which may be applicable and also be granted for all properties meeting the criteria.
- 8.12 Any amounts granted will be subject to State Aid requirements.

### **Discretionary Relief – Retail Relief – the City Council’s Policy.**

- 8.13 The relief is designed primarily to assist businesses during the recession. Central Government is prepared to finance the relief through the Business Rates Retention scheme. In view of this the City Council will grant the relief in accordance with Central Government guidance for all qualifying premises.
- 8.14 An application from the ratepayer will be required in each case.
- 8.15 This relief will only be available during the financial years 2014/15 and 2015/16

## 9.0 Discretionary Relief – Reoccupation Relief

### General explanation

- 9.1 Central Government has introduced a 50% discount from non-domestic rates for new occupations of previously empty retail premises. The discount will last for 18 months and be available from 1st April 2014 until 31st March 2016.
- 9.2 The relief which is available from 1st April 2014 can be granted for all occupations of premises which meet the following criteria:
- The premises, when last in use were wholly or mainly used for retail purposes (see Section 8.6 above for definition of retail purposes);
  - The premises have been unoccupied for a period of 12 months or more immediately before their reoccupation;
  - The premises become reoccupied between 1 April 2014 and 31 March 2016; and
  - The premises are being used for any purpose (although it should be noted that the Government will only reimburse the City Council for any relief granted so long as it is for any type of occupation except for those wholly or mainly being used as betting shops, payday loan shops, and pawn brokers).
- 9.3 There is no rateable value limit for the hereditament in respect of either the previous or reoccupied use and the amount of the relief is limited to 50% of the rate charge after taking into account all other mandatory and discretionary reliefs that may be available to the ratepayer.
- 9.4 The relief will run with the property rather than the ratepayer. So if premises are in receipt of the relief and a new ratepayer becomes liable for the property they will benefit from the remaining term of the relief.
- 9.5 The definition of retail premises is identical to that given within the retail relief provisions at paragraph 8.6 of this policy.
- 9.6 As this is a temporary measure only, the Government is not changing the legislation around the reliefs available to properties. Instead local authorities will use their discretionary relief powers, introduced by the Localism Act (under section 47 of the Local Government Finance Act 1988, as amended) to grant relief. It will be for individual authorities to adopt a local scheme and decide in each individual case when to grant relief under section 47.
- 9.7 Central government will fully reimburse local authorities for the local share of the discretionary relief (using a grant under section 31 of the Local Government Act 2003).
- 9.8 The Government expects local government to grant relief to qualifying ratepayers and any amounts granted will be subject to State Aid requirements.

## **Discretionary Relief – Reoccupation Relief – the City Council’s Policy**

- 9.9 The relief is designed primarily to assist businesses during the recession and particularly in this case, to encourage the re-occupation of vacant retail premises. Central Government is prepared to finance the relief through the Business Rates Retention scheme. In view of this the City Council will grant the relief in accordance with Central Government guidance for all qualifying premises.
- 9.10 An application from the ratepayer will be required in each case. This relief is available for a maximum of 18 months as long as it is claimed prior to 31st March 2016.

## 10.0 Discretionary Relief – Flooding Relief

### General explanation

- 10.1 Central Government has introduced a new business rates relief for properties that have been flooded. It does not replace existing legislation or any other relief.
- 10.2 The Government will fund 100% rate relief for three months, for those properties which meet the following criteria:
- For any day between 1 December 2013 and 31 March 2014:
- i. the property has been flooded in whole or in part as a result of adverse weather conditions; and
  - ii. on that day, as a result of the flooding at the property, the business activity undertaken at the property was adversely affected; and
  - iii. the rateable value of the property on that day was less than £10 million.
- 10.3 The impact of the flooding will be considered in the full context of all business activities undertaken at the hereditament. Very small or insignificant impacts will not attract this relief.
- 10.4 As this is a temporary measure only, the Government is not changing the legislation around the reliefs available to properties. Instead local authorities will use their discretionary relief powers, introduced by the Localism Act (under section 47 of the Local Government Finance Act 1988, as amended) to grant relief. It will be for individual authorities to adopt a local scheme and decide in each individual case when to grant relief under section 47.
- 10.5 Central government will fully reimburse local authorities for the local share of the discretionary relief (using a grant under section 31 of the Local Government Act 2003).
- 10.6 The Government expects local government to grant relief to qualifying ratepayers.

### Definition of Flood

- 10.7 The funding is for the impacts of flooding from the adverse weather conditions between 1 December 2013 and 31 March 2014, and not, for instance, from the failure of a water main, internal water systems or the failure of a sewerage system (unless the failure was itself caused by the adverse weather conditions).
- 10.8 A flood is defined in Section 1 of the Flood & Water Management Act 2010:
- 1(1) “Flood” includes any case where land not normally covered by water becomes covered by water.
  - (2) It does not matter for the purpose of subsection (1) whether a flood is caused by—

- (a) heavy rainfall,
- (b) a river overflowing or its banks being breached,
- (c) a dam overflowing or being breached,
- (d) tidal waters,
- (e) groundwater, or
- (e) anything else (including any combination of factors).

(3) But “flood” does not include—

- (a) a flood from any part of a sewerage system, unless wholly or partly caused by an increase in the volume of rainwater (including snow and other precipitation) entering or otherwise affecting the system, or
- (b) a flood caused by a burst water main (within the meaning given by section 219 of the Water Industry Act 1991).

## **Discretionary Relief – Flooding Relief – the City Council’s Policy**

- 10.9 An application from the ratepayer will be required in each case.
- 10.10 The scheme applies to all types and uses of non-domestic hereditaments (other than those occupied by the Billing Authority).
- 10.11 Funding will be provided to authorities for the 3 months of relief granted starting on the day the hereditament first met the criteria set out in paragraph 8. The 3 months relief will apply irrespective of how long the flooding or adverse business impacts last.
- 10.12 Where a hereditament has been flooded more than once and business activities are adversely impacted, only one period of 3 months relief will be funded and should be applied from the first date on which the criteria in paragraph 8 were met.
- 10.13 This flooding relief will be applied after any other relief has been applied, e.g. retail relief.
- 10.14 This relief will be calculated ignoring any prior year adjustments in liabilities which fall to be liable on the day.
- 10.15 Ratepayers that occupy more than one property may be granted relief within the scheme for each of their eligible properties.
- 10.16 Funding for rate relief will continue to be given following a change of ratepayer. The relief will run with the property rather than the ratepayer. .
- 10.17 Where a new hereditament is created as a result of a split or merger from a hereditament which for the day immediately prior to the split or merger met the criteria above, funding will be provided to allow relief to be given for the remaining balance of the three months.
- 10.18 The scheme does not cover relief for any hereditament which was empty at the time it was flooded as there was no business activity on the premises at the time.

- 10.19 Where a hereditament becomes empty after the flood then it will receive the normal 3 or 6 months (as applicable) empty property rate free period or will continue to receive the balance of the flooding relief.
- 10.20 Where a property is eligible for Enterprise Zone relief, that relief should be granted and this will be funded under the rates retention scheme by a deduction from the central share. If a property in an Enterprise Zone is not eligible for Enterprise Zone relief, or that relief has ended, Flooding Relief may be granted in the normal way, and this would be reimbursed by grant under section 31 of the Local Government Act 2003. Local authorities should not claim funding for Flooding Relief on properties which would otherwise qualify for Enterprise Zone government funded relief.
- 10.21 Seriously damaged property may be taken off the ratings list. Where a property is removed from the rating list the ratepayer is not liable for business rates. If, as a result of the floods, the property is removed for more than 3 months that property will not require relief. Where it is less than 3 months rate relief should be provided so in total the occupier gets 3 months equivalent where they are not liable for rates.

## 11.0 Discretionary Relief – EU State Aid requirements

- 11.1 European Union competition rules generally prohibit Government subsidies to businesses. Relief from taxes, including non-domestic rates, can constitute state aid. The Council must bear this in mind when granting discretionary rate relief.
- 11.2 Rate relief for charities and non-profit making bodies is not generally considered to be state aid, because the recipients are not in market competition with other businesses. However, where other bodies receive relief and are engaged in commercial activities or if they are displacing an economic operator or if they have a commercial partner, rate relief could constitute state aid.
- 11.3 Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations (1407/2013)<sup>8</sup>. The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a three year period (consisting of the current financial year and the two previous financial years).
- 11.4 Where the relief to any one business is greater than the De Minimis level then permission will need to be obtained from the European Commission. In such cases the matter will be referred to the DCLG for advice and then referred back to the City Council for consideration.
- 11.5 In all cases, when making an application, ratepayers will be required to provide the City Council with sufficient information to determine whether these provisions are applicable in their case.

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<sup>8</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:352:0001:0008:EN:PDF>

## 12.0 Administration of Discretionary Relief

12.1 The following section outlines the procedures followed by officers in granting, amending or cancelling discretionary relief. This is essentially laid down by legislation<sup>9</sup>

### Applications and Evidence

12.2 Discretionary rate relief must be applied for in writing by the ratepayer. Application forms are produced within the City Council and issued to all ratepayers requesting the relief.

12.3 Organisations are required to provide a completed application form plus any such evidence, documents, accounts, financial statements etc. necessary to allow the authority to make a decision. Where insufficient information is provided, despite reminders, then no relief will be granted.

### Granting of relief

12.4 In all cases, the City Council will notify the ratepayer of decisions made.

12.5 Where an application is successful, then the following is notified to them in writing:

- The amount of relief granted and the date from which it has been granted;
- If relief has been granted for a specified period, the date on which it will end;
- The new chargeable amount;
- The details of any planned review dates and the notice that will be given in advance of a change to the level of relief granted; and
- A requirement that the applicant should notify the authority of any change in circumstances that may affect entitlement to relief.

12.6 Where relief is not granted then the following information is provided, again in writing:

- An explanation of the decision within the context of the authority's statutory duty; and
- An explanation of the appeal rights (see below).

12.7 Relief is to be granted from the beginning of the financial year in which the decision is made. Since 1997 decisions can be made up to 6 months after the end of the financial year for which the application was made. Where the relief is only available for a limited period as defined by Central Government then it will only be granted for that period.

12.8 A decision to award discretionary relief and how much relief is given is only applicable to the financial year for which the application is made.

12.9 A fresh application for discretionary relief will be necessary for each financial year.

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<sup>9</sup> The Non-Domestic Rating (Discretionary Relief) Regulations 1989



## **Variation of a decision**

12.10 Variations in any decision will be notified to ratepayers as soon as practicable and will take effect as follows:

- Where the amount is to be increased due to a change in rate charge – from the date of the increase in rate charge;
- Where the amount is to increase for any other reason (other than a general termination of relief under Central Government guidelines)– takes effect at the expiry of a financial year, and so that at least one year’s notice is given;
- Where the amount is to be reduced due to a reduction in the rate charge – from the date of the decrease in rate charge;
- Where the amount is to be reduced for any other reason (other than a general termination of relief under Central Government guidelines) – takes effect at the expiry of a financial year, and so that at least one year’s notice is given

12.11 A decision may be revoked and the change will take effect at the expiry of a financial year (other than a general termination of relief under Central Government guidelines).

## **Appeal rights**

12.12 Whilst there is no formal right of appeal except by judicial review, we are advised by Central Government to constitute a review panel of members where a decision is appealed and where the original decision has been made by officers under delegated powers.

## **13.0 Proposed Scheme of Delegation**

### **Granting, Varying, Reviewing and Revocation of Relief**

- 13.1 Under powers given to the authority by section 223 of the Local Government Act 1992, all permissions for the granting, varying, reviewing and revocation of discretionary relief 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 be delegated to the Head of Revenues and Benefits.
- 13.2 The method of administration shall be that laid down within this policy document. The level of the discretionary relief shall be calculated in accordance with guidance given within this policy and determined by the Head of Revenues and Benefits
- 13.3 The policy for granting relief will be reviewed 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 City Council.
- 13.4 The amount of funding to be provided by the City Council in respect of discretionary relief granted shall be determined by the S151 Officer/Head of Financial Services and approved by Council in the normal budgeting process.

### **Appeals**

- 13.5 Where the authority receives an appeal from the ratepayer regarding the granting, non-granting or amount of any discretionary relief, in line with DCLG guidelines, the case will initially be reviewed by the Head of Revenues and Benefits in conjunction with the s151 Officer/Head of Financial Services. Where a decision is revised then the ratepayer shall be informed likewise if the original decision is upheld.
- 13.6 Where a further appeal is made the matter shall be referred to a panel of members (consisting of not less than three Council members) for a decision to be made.