

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

## Version Control

<i>Version</i>	<i>Version date</i>	<i>Revised by</i>	<i>Description</i>
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1.1	February 2002	V Lane	Update for leisure attractions & Guildhall
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3.3	February	S Allen/ S Ranaghan	Amendment to Retail Rate Relief and Newspaper Relief for 2020-21 and inclusion of Pubs Relief for 2020-21.  Approved by Director of Finance & Resources.

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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 Portsmouth City Council has a duty to consider requests for discretionary rate relief or remission of Non-Domestic Rates in relation of the circumstances of the organisation or individual ratepayer.
- 1.3 The primary provision underpinning a billing authority's discretionary power to grant relief is contained in the Local Government Finance Act (LGFA) 1988, which allows billing authorities to have discretion to grant relief to certain ratepayers for all or part of the amount of Non-Domestic Rates payable.
- 1.4 The Non-Domestic Rating (Discretionary Relief) Regulations 1989 further allow a billing authority to restrict discretionary rate relief to a fixed period and to deal with the notice that must be given if such relief is varied or revoked
- 1.5 The Localism Act 2011 amended S47 of the LGFA 1988 removing the restriction to grant discretionary rate relief to charities or other prescribed types of organisation.
- 1.6 Relief granted in some cases may constitute state aid and therefore may require notification to the European Commission. Where relief constitutes state aid, legal clearance is required from the European Commission prior to its award. A de minimus aid ceiling of €200,000 over a 3-year period exists; however this relates to cumulative aid provided by all public bodies to the relevant organisation/ratepayer.
- 1.7 There is not a statutory requirement for ratepayers to submit a written application for relief, and the absence of a formal application does not prevent Portsmouth City Council granting relief where it considers the circumstances appropriate. In order to determine if relief is appropriate however for individual ratepayers, Portsmouth City Council will typically only consider applications made using the application form that is available on the Council's website, together with the relevant supporting documentation/evidence.
- 1.8 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, however this is not intended to be a "blanket policy" and each application will be considered on its own merit.
- 1.9 The government over recent years have increasingly used discretionary relief to support businesses. Portsmouth City Council will promote and maximise take up of current and any new initiatives introduced by government where funding is provided by a section 31 grant under the Local Government Act 2003.
- 1.10 Ratepayers are required, in all applications for mandatory, and/or discretionary rate reliefs, to enable Portsmouth City Council access to their premises to establish the use of the property before the council determines their eligibility for relief. Where the ratepayer refuses access, no relief will be provided.

1.11 The award of discretionary rate relief has an impact on the council tax payers of Portsmouth, and as a result it is essential that Portsmouth City Council ensure that only those ratepayers that are eligible, receive the appropriate relief.

1.12 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.

## **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 Ratepayers are obliged to make a written application to the City Council, and provide supporting documentation and evidence as required.
- 3.5 The City Council is obliged to consider carefully every application on its own 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 objectives 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 of 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 (temporary measure - no longer available);
  - h. Discretionary Relief - Retail relief 2015/16 & 2016/17 (temporary measure - no longer available);
  - i. Discretionary Relief - Reoccupation Relief (temporary measure - no longer available);
  - j. Discretionary Relief - Flooding Relief (temporary measure - no longer available).

- k. Discretionary Relief - Relief for Local Newspapers
- l. Discretionary Relief - Supporting Small Business Rates Relief
- m. Discretionary Relief - Support following the 2017 revaluation
- n. Discretionary Relief - Retail Relief 2019/20 & 2020/21
- o. Discretionary Relief - Relief for Pubs

## 4.0 Mandatory Relief for charitable organisations

### 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.
- 4.5 An organisation being registered as a charity does not however necessarily entitle them to automatically receive mandatory rate relief, as the overriding principle relates to what the property is being used for. This is particularly important to any fee charging organisations, and clear evidence will be required to establish that:
- the property occupied is used wholly or mainly for charitable purposes and;
  - where the organisation is not a registered charity, its purpose is carried out for the public benefit as detailed in section 4 of the Charities Act 2011.
- 4.6 The authority would consider charitable organisations, registered or not, for mandatory relief.
- 4.7 Certain organisations are exempted from registration 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

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

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

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

- 4.8 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 of the premises.
- 4.9 Guidance from the central government 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
- 4.10 Given the significant infrastructure, availability of public transport, and the Council's commitment to reduce air pollution, it is determined that, with the exception of disabled badge holders, the use of private motor vehicles for volunteers and parking for the employees of an organisation are not instrumental to the functions of the organisation, and as such where parking spaces are assessed separately to the main premises, and are not reserved specifically for disabled users, the parking spaces will not be determined as being used wholly or mainly for charitable purposes, and as such mandatory rate relief will not be granted in respect of their use.
- 4.11 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.

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

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

## **Charity shops**

- 4.13 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.
- 4.14 In order to ascertain whether an organisation meets these requirements, inspections may be made by staff when an application is received

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

- 4.15 Organisations already in receipt of mandatory relief will not generally be eligible for discretionary relief but applications will be considered on their own merits from charitable bodies & Community Amateur Sports Clubs, which can demonstrate<sup>10</sup>

that their activities are consistent with the City Council's core values and priorities, and tackling poverty strategy.

- 4.16 Generally discretionary rate relief will not be given to charity shops as these are in direct competition with conventional shops and relief above the 80% mandatory rate relief may lead to the loss of trade for commercially run shops.
- 4.17 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.
- 4.18 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>5</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>6</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>5</sup> S47 Local Government Finance Act 1988

<sup>6</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, AGM, 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 allow 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 dependent on the following key factors:
- a. The ratepayer **must not** be entitled to mandatory 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;
  - 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 Relief for partly occupied properties**

### **General explanation**

- 7.1 Section 44a of the Local Government Finance Act 1988 provides local authorities with the discretion to grant relief where it appears to the Council that part of the property is unoccupied and will remain so for a short period of time only.
- 7.2 The definition of what is a 'short period of time' is not prescribed, as such a billing authority will be required to make this determination based on the individual circumstances of each request.
- 7.3 Section 44a relief is not intended to apply where a property is temporarily not used; instead is aimed at situations where the ratepayer has practical difficulties in occupying or vacating parts of the property in a single operation.

### **Relief for partly occupied properties – the City Council’s Policy**

- 7.4 Any award of relief will commence on the day the property became partly unoccupied and will end on the first day of:
- where all or part of the unoccupied area becomes occupied;
  - where the premises becomes fully unoccupied;
  - where the ratepayer changes.
- 7.5 The empty part of the property will receive exemption from business rates for a maximum period of 3 months, unless the award relates to an industrial property, whereby this maximum is extended to 6 months. Following this exemption period, the full occupied charge for the whole property will apply.
- 7.6 All applications for this relief should enclose a floor plan of the rating assessment in question, which clearly defines the occupied and unoccupied area, including full details of the corresponding square footage.
- 7.7 All applications for this relief should detail the specific details of the difficulties faced by the organisation in occupying or vacating the property in a single operation, and supporting evidence, such as project plans should also be supplied to support the application.
- 7.8 Applications will not be accepted in respect of retrospective periods after which full occupation has taken place.
- 7.9 Relief will not be awarded where it has not been possible to verify the situation by undertaking a visit to the property during the vacant period.
- 7.10 Relief will not be awarded where a property is partly unoccupied due to refurbishment.
- 7.11 The following part of this section gives details on typical situations where relief may be given. The list is not exhaustive but gives guidance on situations where Section 44a relief may be considered:

- where the partial occupation of a warehouse, factory or other commercial property is used to facilitate the permanent relocation of the company;
- where fire, flood or other natural disaster prevents full occupation of the property.

7.12 The following part of this section gives details on typical situations where relief would not typically be given. The list is not exhaustive but gives guidance on situations where Section 44a relief is less likely to be considered:

- where the part occupation is likely to continue year on year
- where there appears to be no genuine effort to let, occupy or sell the empty part
- where part occupation is seasonal
- where the property owner sublets part of the premises on a commercial basis.

7.13 Portsmouth City Council's discretion with regards section 44a relief ends once a request for a certificate is issued to the Valuations Office Agency (VOA). Once the VOA have issued a certificate confirming a change to the rateable value, the billing authority has no further discretion in the matter.

## 8.0 Hardship Relief

### General explanation

- 8.1 Section 49 of the LGFA 1988 provides the billing authority with discretionary powers to reduce or remit the amount a ratepayer is required to pay in respect of either an occupied or empty property where the authority is satisfied that the ratepayer would sustain hardship, and it is reasonable, having regards to the interests of the local council tax payer.
- 8.2 Such hardship relief is not a national policy - it is local and tailored to local priorities and circumstances.
- 8.3 There is no statutory definition of hardship and the council must therefore make decisions on an individual basis, on whether to exercise its powers under section 49, and to judge the extent of those powers. Local Authorities may choose to bear in mind the following guidance from government:
- Although authorities may adopt rules for the consideration of hardship cases, they should not adopt a blanket policy either to give or not to give hardship relief: each case should be considered on its own merits and the application process kept as simple and streamlined as possible to enable decisions to be made quickly;
  - Reduction or remission of rates on grounds of hardship should be the exception rather than the rule;
  - All relevant factors affecting the ability of a business/ratepayer to meet their liability for rates should be taken into account;
  - The 'interests' of council tax payers in an area may go wider than direct financial interests. For example, where the employment prospects in the area would be worsened by a company going out of business, or the amenities of an area might be reduced by, for instance, the only provider of a service in the area;
  - Where the granting of relief would have an adverse effect on the financial interests of council tax payers, the case for a reduction or remission of rates payable may still on balance outweigh the cost to tax payers if the other interests of the council tax payers are greater;
  - Hardship rate relief may in some cases constitute state aid, and may need to be notified to the European Commission;
  - The hardship caused to a ratepayer may be self-evident, for example where a business has been affected by severe loss of trade, due to external factors such as natural disasters. However, authorities may wish to consider how the business can demonstrate such loss of trade or business. For example, do accounts, order books, till receipts or VAT returns show a marked decline in trade compared to corresponding periods in previous years?
  - Authorities should be clear in awarding relief that it will be granted only for the period for which there is clear evidence of hardship for the ratepayer concerned; and

- To guard against fraudulent claims, authorities should satisfy themselves that the claim is from a ratepayer suffering genuine hardship.
- 8.4 Whilst the Non-Domestic Rating (Discretionary Relief) Regulations 1989 do not apply to decisions in respect of hardship relief under section 49, billing authorities should nonetheless consider establishing clear rules for notifying ratepayers as to their decisions under section 49 as soon as is practicable.

## **Hardship Relief – the City Council’s Policy**

- 8.5 The Council will not grant relief where that relief could not be demonstrated to make a significant difference to the financial future of the receiving company. In other words, the Council needs to be satisfied that with any financial assistance provided, the business would be a going concern over the medium term.
- 8.6 Applications for hardship relief need not be in writing, however to assist the Council in its determination, the organisation will be required to demonstrate that it meets the following criteria:
- The organisation has suffered genuine hardship;
  - That hardship is of a one off nature;
  - There is a genuine prospect of the organisation going out of business without such hardship relief; and
  - There is a genuine prospect of the organisation remaining as a going-concern after the award of hardship relief.
- 8.7 Full details of why the business is experiencing hardship are required together with plans as to how the business can improve its position.
- 8.8 Relief is unlikely to be given unless there are clear indications that the granting of relief will ensure the long term future of the business.
- 8.9 Any relief awarded will be for a maximum of one year.

## 9.0 Relief for Local Newspapers

### General explanation

9.1 The government introduced a temporary relief of £1,500 business rates relief for office space occupied by local newspapers, up to a maximum of one discount per local newspaper title and property, up to state aid limits from 1<sup>st</sup> April 2017.

9.2 The Chancellor of the Exchequer announced an extension to the £1,500 business rates discount for local newspapers' office space to 2019/20 at the 2018 Autumn Budget on 29<sup>th</sup> October 2018.

On 27<sup>th</sup> January 2020, The Financial Secretary to the Treasury made a written ministerial statement announcing that Government will extend the duration of the local newspapers office space discount for a further 5 years to 31<sup>st</sup> March 2025.

9.3 The relief does not apply to:

- Local council magazines
- Online publications
- Local magazines

9.4 To qualify for the relief, the property must be occupied by a local newspaper and be wholly or mainly used as office premises for journalists and reporters.

9.5 Relief for local newspapers is delivered through local authority discretionary powers under section 47 (3) of the Local Government Finance Act 1988.

### Relief for Local Newspapers – the City Council's Policy

9.6 There is no requirement for ratepayers to complete an application form. In order to receive this relief, the council will identify potential recipients and award any eligible reliefs automatically.

9.7 If a ratepayer believes they qualify for this relief, and it has not been applied to their business rates account, they should contact Portsmouth City Council's business rates team at [businessratesteam@portsmouthcc.gov.uk](mailto:businessratesteam@portsmouthcc.gov.uk)

## 10.0 Supporting Small Business Rates Relief

### General explanation

- 10.1 Ahead of the 2017/18 revaluation and changes to the Small Business Rate Relief scheme, eligible ratepayers with a rateable value of less than or equal to £6,000 were entitled to 100% small business rate relief. Those with a rateable value of between £6,000 and £12,000 benefited from tapered relief from 100% to 0%.
- 10.2 Following the measures in the 2016 Budget, Government increased these thresholds from 1 April 2017 to £12,000 for the 100% relief and £15,000 for the tapered relief. This ensured that most ratepayers who were entitled to small business rate relief will pay less or nothing following the revaluation.
- 10.3 Some ratepayers however were expected to face large increases in their rateable value and lose some or all of their small business rate relief.
- 10.4 Whilst the transitional relief scheme will assist with the phasing in of large changes to gross liability, it does not provide support in respect of changes to reliefs, and consequently those ratepayers who are losing some or all of their small business rate relief could have faced large increases in their bills from 1<sup>st</sup> April 2017.
- 10.5 Supporting Small Business Rate relief is delivered through local authority discretionary powers under section 47 (3) of the Local Government Finance Act 1988.
- 10.6 To support these ratepayers, the Supporting Small Businesses relief will ensure that the increase per year in the bills of these ratepayers is limited to the greater of:
- A percentage increase p.a. of 5%, 7.5%, 10%, 15% and 15% 2017/18 to 2021/22 all plus inflation. Unlike the transitional relief scheme, for the first year of the scheme the percentage increase is taken against the bill for 31 March 2017 after small business rate relief or rural rate relief, or
  - A cash value of £600 per year (£50 per month). This cash minimum increase ensures that those ratepayers paying nothing or very small amounts in 2016/17 after small business rate relief are brought into paying something.
- 10.7 In the first year of the scheme, this means all ratepayers losing some or all of their small business rate relief or rural rate relief will see the increase in their bill capped at £600. The cash minimum increase is £600 per year thereafter. This means that ratepayers who are currently paying nothing under small business rate relief and are losing all of their entitlement to relief (i.e. moving from 6,000 rateable value or less to more than 15,000) would under this scheme be paying £3,000 in year 5.
- 10.8 Those on the Supporting Small Businesses relief scheme whose 2017 rateable values are 51,000 or more will not be liable to pay the supplement to fund small business rate relief while they are eligible for the Supporting Small

Businesses relief scheme.

- 10.9 Ratepayers remain in the Supporting Small Businesses relief scheme for either 5 years or until they reach the bill they would have paid without the scheme. A change of ratepayers will not affect eligibility for the Supporting Small Businesses relief scheme but eligibility will be lost if the property falls vacant or becomes occupied by a charity or Community Amateur Sports Club
- 10.10 There is no second property test for eligibility for the Supporting Small Businesses relief scheme. However, those ratepayers who during 2016/17 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 scheme for the remainder of their 12 month period of grace.

### **Supporting Small Business Rate Relief– the City Council’s Policy**

- 10.11 There is no requirement for ratepayers to complete an application form. In order to receive this relief, the council will identify potential recipients and award any eligible reliefs automatically.
- 10.12 If a ratepayer believes they qualify for this relief, and it has not been applied to their business rates account, they should contact Portsmouth City Council's business rates team at [businessratesteam@portsmouthcc.gov.uk](mailto:businessratesteam@portsmouthcc.gov.uk)

## 11.0 Discretionary Relief for Revaluation Support

### General explanation

- 11.1 At the Budget on 8 March 2017, the Chancellor announced that the Government would make available a discretionary fund of £300 million over four years from 2017/18 to support those businesses that face the steepest increases in their business rates bills as a result of the revaluation. The Chancellor stated that local government is best placed to determine how this fund should be targeted and administered to support those businesses and locations within their area that are in the greatest need.
- 11.2 The Government's intention is that every billing authority in England will be provided with a share of the £300 million to support their local businesses. This will be administered through the Council's discretionary relief powers under section 47 of the Local Government Finance Act 1988.
- 11.3 The Government believes that local authorities are best placed to judge the particular circumstances of local ratepayers and direct the funding where it is most needed to support local economies. The Government has allocated the available funding to each billing authority area based on assumptions about how authorities will target their relief scheme.

### Discretionary Relief for Revaluation Support - the city council's policy

- 11.4 In line with the Government's recommendations following consultation. The council will provide support only to those ratepayers who are facing an increase in their bills following revaluation. The council's principles will consider that more support will be provided to:
- ratepayers that face the most significant increases in bills; and
  - ratepayers occupying lower value properties.
- 11.5 The policy will initially apply for the year 1 April 2017 to 31 March 2018. The policy has been reviewed for the course of the remaining years for this relief, and the application process has remained unchanged during the period that this scheme has been operated.
- 11.6 Ratepayers eligible for retail rate relief in 20-21 will not typically be granted this discretionary relief unless it can be demonstrated that the value of the service to residents and local communities can be shown to exceed the amount of the discretionary revaluation support relief requested.
- 11.7 The maximum award under this scheme shall be:

2017/18	30%
2018/19	20%
2019/20	9%
2020/21	5%

- 11.8 For the period 2020/21 a minimum award of £50.00 has been introduced. Where a 5% award is below £50.00, no relief will be granted
- 11.9 Under the scheme relief will only be provided where a qualifying ratepayer's bill has increased due to the 2017 revaluation.
- 11.10 Where a qualifying ratepayer's 2017/18 and/or 2016/17 rates bill is reduced for any of the following reasons, the amount of their relief may be reduced or removed:
- a reduction in rateable value in the 2010 and, or 2017 rating lists
  - the provision of a certificated value for the 2010 rating list or historical change
  - the application of any additional rate relief or exemption
  - vacation and re-occupation of the property
  - any other reason
- 11.11 Ratepayers who may benefit from the scheme will be in occupation of a property with a rateable value of up to 200,000, unless the award of relief would not comply with EU law on State Aid. This rateable value limit reduces to 20,000 for the financial year 2020/21.
- 11.12 National organisations and country wide charities already receiving 80% mandatory relief, and ratepayers granted retail rate relief in 2020/21, will not typically be granted this relief unless it can be demonstrated that the value of the service to residents and local communities can be shown to exceed the amount of the discretionary revaluation support relief requested.
- 11.13 The key criteria to attract this relief is therefore determined for the current billing year (2020/21) as:
- The rateable value is below 20,000.
  - The property is occupied and has been in occupation by the ratepayer since before 1<sup>st</sup> April 2017.
  - There is an increase of 12.5% or more to the ratepayer's business rates liability before the application of reliefs.
  - There is an increase in the amount payable in 2017/18 compared to 2016/17.
- 11.14 Applications are invited by completing the application form available from the City Council's website, however where Portsmouth City Council is able to determine eligibility without an application form, the council may automatically make an award, and request the ratepayer to advise the city council if the relief is refused due to the state aid limits.
- 11.15 Evidence, documents, and accounts may be required to allow Portsmouth City Council to determine eligibility for this relief.
- 11.16 Any award of this relief will be for a fixed period and will cease at the end of the financial year. A new application will be required for each financial year; however Portsmouth City Council may extend the award period for a further 12 month period without a new application in some circumstances.
- 11.17 In all cases, Portsmouth City Council will notify the ratepayer of decisions made.

## **How the relief is calculated**

- 11.18 Local discretionary 'revaluation support' rate relief is calculated after any exemptions, reliefs or transitional relief/surcharge has been applied, and before the application of the business rates supplement.
- 11.19 The maximum percentage of local discretionary 'revaluation support' relief available on the net rates bill after the reliefs and exemptions described above and before the business rates supplement is 30% for 2017/18, 20% for 2018/19, and 5% for 2019/20.

## 12.0 Discretionary Relief - Retail Rate Relief

### General explanation

- 12.1 The Government announced in the Budget on 29 October 2018 that it will provide a business rates Retail Discount scheme for occupied retail properties with a rateable value of less than 51,000 in each of the years 2019-20 and 2020-21. The value of discount should be one third of the bill, and must be applied after mandatory reliefs and other discretionary reliefs funded by section 31 grants have been applied. Where an authority applies a locally funded relief, for instance a hardship fund, under section 47 this must be applied after the Retail Discount.
- 12.2 As this is a measure for 2019-20 and 2020-21 only, the Government is not changing the legislation around the reliefs available to properties. Instead the Government will, in line with the eligibility criteria set out in this policy, reimburse local authorities that 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 local billing authorities to adopt a local scheme and determine in each individual case when, having regard to this government guidance, to grant relief under section 47. 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). The Government expects local government to apply and grant relief to qualifying ratepayers from the start of the 2019/20 billing cycle.
- 12.3 In a written statement on 27<sup>th</sup> January 2020 the Government announced that eligible ratepayers would receive a 50% discount on their business rates bill from April 2020. In addition to increasing the level of the retail discount, the scheme for 2020/21 shall also be extended to include cinemas and music venues, where the rateable value is less than £51,000.

### Retail Rate Relief - the city council's policy

#### Which properties will benefit from relief?

- 12.4 Properties that will benefit from the relief will be occupied hereditaments with a rateable value of less than £51,000, that are wholly or mainly being used as shops, restaurants, cafes and drinking establishments.
- 12.4 We consider shops, restaurants, cafes and drinking establishments to mean:

#### **i. Hereditaments that are being used for the sale of goods 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
- Tool hire
- Car hire
- Music Venues
- Cinemas

**ii. 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
- Bars

12.5 To qualify for the relief the hereditament 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, hereditaments which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the relief.

12.6 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, this list is intended to be a guide as to the types of uses that Government considers for this purpose to be retail. Portsmouth City Council will determine whether particular properties not listed are broadly similar in nature to those above and, if so, will consider them eligible for the relief. Conversely, properties that are not broadly similar in nature to those listed above would not be eligible for the relief.

12.7 The list below sets out the types of uses that the Government does not consider to be retail use for the purpose of this relief. Again, Portsmouth City Council will determine whether particular properties are broadly similar in nature to those below and, if so, consider them not eligible for the relief under their local scheme.

**iii. Hereditaments 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, bureaux 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 offices

## **vi. Hereditaments that are not reasonably accessible to visiting members of the public**

Generally speaking, the government also does not consider other assembly or leisure uses beyond those listed at 12.4 above, to be retail uses for the purpose of the discount. For example theatres and museums are outside the scope of the scheme, as are nightclubs which are not similar in nature to the hereditaments described at 12.4 (iii) above. Hereditaments used for sport or physical recreation (e.g. gyms) are also outside the scope of the discount. Where there is doubt, Portsmouth City Council will exercise their discretion with reference to the above.

12.8 The inclusion of cinemas and music venues was a change to the retail discount scheme for 2020. We consider this to mean:

Hereditaments that are being used as cinemas.

Hereditaments that 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. Although we would expect this would be clear in most circumstances, guidance on this may be found in Chapter 16 of the statutory guidance issued in April 2018 under section 182 of the Licensing Act.

12.9 There is no requirement for ratepayers to complete an application form. In order to receive this relief, the council will identify potential recipients and award any eligible reliefs automatically.

12.10 If a ratepayer believes they qualify for this relief, and it has not been applied to their business rates account, they should contact Portsmouth City Council's business rates team at [businessratesteam@portsmouthcc.gov.uk](mailto:businessratesteam@portsmouthcc.gov.uk)

12.11 Evidence may be required to allow Portsmouth City Council to determine eligibility for this relief.

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

## 13.0 Discretionary Relief – Pub Relief

### General Explanation

- 13.1 On 27th January 2020, the Financial Secretary to the Treasury made a written ministerial statement announcing additional business rates measures that would apply from 1st April 2020. This included an additional discount for pubs.
- 13.2 Relief for pubs is delivered through local authority discretionary powers under section 47 (3) of the Local Government Finance Act 1988.

#### Pubs Relief - the city council's policy

- 13.3 The pubs discount will provide a £1,000 discount to eligible pubs with a rateable value of less than £100,000 in 2020/21. This is in addition to the retail discount and will apply after the retail discount.
- 13.4 To qualify for pub relief the property must be occupied and have a rateable value of less than £100,000.
- 13.5 The majority of pubs are independently owned or managed and will not be part of chains. Where pubs are part of a chain, relief will be available for each eligible property in the chain, subject to meeting State Aid requirements.
- 13.6 There is no definitive description of a traditional pub or public house in law which could be readily used by local authorities to determine eligibility. The objective has been to adopt an approach that makes the design and eligibility of the scheme easy to implement by local authorities in a clear and consistent way, is widely accepted by the industry and which is consistent with the Government's policy intention as set out in this section.

The Government's policy intention is that eligible pubs should:

- be open to the general public
- allow free entry other than when occasional entertainment is provided
- allow drinking without requiring food to be consumed
- permit drinks to be purchased at a bar.

For these purposes, it should exclude:

- restaurants
- cafes
- nightclubs
- hotels
- snack bars
- guesthouses
- boarding houses
- sporting venues
- music venues
- festival sites
- theatres
- museums

- exhibition halls
- cinemas
- concert halls
- casinos

The exclusions in the list above is not intended to be exhaustive and it will be for Portsmouth City Council to determine those cases where eligibility is unclear.

Where eligibility is unclear Portsmouth City Council will consider broader factors in their considerations – i.e., in meeting the stated intent of policy that it demonstrates the characteristics that would lead it to be classified as a pub, for example being owned and operated by a brewery. Additionally, Portsmouth City Council may also consider other methods of classification, such as the planning system and the use classes order to help decide whether a property is a pub or not. However, permission for a particular use class will not necessarily mean that the property meets the definition of a pub.

- 13.7 There is no requirement for ratepayers to complete an application form. In order to receive this relief, the council will identify potential recipients and award any eligible reliefs automatically.
- 13.8 If a ratepayer believes they qualify for this relief, and it has not been applied to their business rates account, they should contact Portsmouth City Council's business rates team at [businessratesteam@portsmouthcc.gov.uk](mailto:businessratesteam@portsmouthcc.gov.uk)

## 14.0 Discretionary Relief – EU State Aid requirements

- 14.1 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.
- 14.2 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.
- 14.3 Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations (1407/2013)<sup>7</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).
- 13.4 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 MHCLG for advice and then referred back to the City Council for consideration.
- 13.5 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>7</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:352:0001:0008:EN:PDF>

## 15.0 Administration of Discretionary Relief

- 15.1 The following section outlines the procedures followed by officers in granting, amending or cancelling discretionary reliefs. This is essentially laid down by legislation<sup>8</sup>

### Applications and Evidence

- 15.2 Discretionary rate relief must be applied for in writing by the ratepayer, unless stated otherwise. Application forms are produced within the City Council and issued to all ratepayers requesting the relief, and are also available on the city council's website.
- 15.3 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

- 15.4 In all cases, the City Council will notify the ratepayer of decisions made.
- 15.5 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.
- 15.6 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).
- 15.7 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.
- 15.8 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.
- 15.9 A fresh application for discretionary relief will be necessary for each financial year.

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<sup>8</sup> The Non-Domestic Rating (Discretionary Relief) Regulations 1989

## Variation of a decision

- 15.10 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
- 15.11 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

- 15.12 In cases where the award for discretionary relief is refused the applicant has 21 days from the date of the letter notifying them that their application was not successful to request a review of the decision and consider any other supporting evidence not previously supplied.
- 15.13 Where an appeal is submitted the person making the appeal must set out the full grounds on which the appeal is based and specify the reasons why the relief should be granted based on the criteria operated by the council and also provide any further supporting evidence.
- 15.14 A review panel is convened as required to consider any appeals. The review panel will decide on the outcome and advise the appellant whether or not their appeal was successful following the panel meeting to determine any requests for a review of the decision.
- 15.15 The review panel will consist of the Director of Community & Communications, the Revenues & Benefits Manager and a representative from the Revenues & Benefits Services.
- 15.16 The decision of the review panel will be final and the only recourse available will be way of a Judicial Review. This will only apply if the applicant believes that the council has exceeded its statutory powers, there has been a procedural impropriety or where an action is irrational. Individual organisations are advised to seek independent legal advice should they wish to proceed in that manner.

## **16.0 Scheme of Delegation**

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

- 16.1 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 Director of Community & Communications.
- 16.2 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 Director of Community & Communications.
- 16.3 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.
- 16.4 The amount of funding to be provided by the City Council in respect of discretionary relief granted shall be determined by the S151 Officer/Director of Finance and approved by Council in the normal budgeting process.