

EAST AYRSHIRE COUNCIL

CABINET – 18 FEBRUARY 2009

NON DOMESTIC RATES - MANDATORY AND DISCRETIONARY RELIEFS POLICY

Report by Executive Head of Finance and Asset Management

1. PURPOSE OF THE REPORT

- 1.1 To advise Cabinet of the current policy in respect of mandatory and discretionary relief available and to seek approval for an addition to the policy whereby organisations can be considered for discretionary relief notwithstanding that the award of occasional licences may be made in respect of any premises from which they carry out their activities.

2. BACKGROUND

- 2.1 The previous Policy in respect of these reliefs was approved by the Policy & Resources Committee in June 1998. Internal Audit completed a review of Non Domestic Rates during 2008 and recommended that it would be good practice to review the existing policies in respect of discretionary relief. The opportunity has also been taken to amend the proposed policy to reflect changes in the management structure and political decision making structure of the Council over this period, together with increases in financial limits where applicable.
- 2.2 The following types of relief are available to Non Domestic Ratepayers:
- (a) Mandatory Relief;
 - (b) Church/Hall Exemption;
 - (c) Disabled Persons Reduction;
 - (d) Empty Property Relief (Fully & Partially Unoccupied);
 - (e) Discretionary Relief.

Members should note that flexibility as to the amount of relief granted by the Council applies only to category (e) above with all others set by legislation.

3. RELIEFS AVAILABLE

3.1 Mandatory Relief

- 3.1.1 Mandatory Relief is afforded to an organisation in terms of Section 4(2) of the Local Government (Financial Provisions Etc.) (Scotland) Act 1962, as amended, on provision of a Charity Recognition Letter from the Inland

Revenue. This Letter confirms recognition of the organisation as a charity for the purposes of Section 505 of the Income & Corporation Taxes Act 1988, and that the organisation is entered in the Scottish Charity Register in terms of the Charities and Trustee (Investment) Act 2005. This letter also shows the organisation's Scottish Charity Number and Tax Reference.

- 3.1.2 Mandatory Relief may also be applied if the subject is within a category specified by Scottish Ministers and is not used for profit making but is used as residential accommodation for persons living separately and sharing the facilities of the property.
- 3.1.3 The amount of Mandatory Relief which would be afforded in both cases is equivalent to 80% of the Non-Domestic Rate.

3.2 Church/Hall Exemption

- 3.2.1 Complete mandatory exemption is afforded to any church, chapel, meeting place or hall that is wholly or mainly used by a religious body for purposes connected to that body, where no profit is derived, in terms of Section 22 of the Valuation and Rating (Scotland) Act 1956. The purposes which confer exemption include any use of the premises whose direct object is to bring religious influence to bear on the community, being church purposes rather than religious purposes in the narrow sense.

NO CHANGE TO CURRENT POLICY

3.3 Disabled Persons Reduction

- 3.3.1 An organisation, or individuals, may be considered for Disabled Persons Reduction in terms of the Rating (Disabled Persons) Act 1978 and Section 5 of the Rating and Valuation (Amendment) (Scotland) Act 1984. To qualify, premises must be wholly or mainly used for one or more of the following purposes:
- (i) The provision of residential accommodation for the care or after-care of disabled persons or persons suffering from illness. (Provision of medical, surgical or dental treatment disqualifies the applicant, therefore hospitals cannot be afforded this Relief);
 - (ii) The provision of facilities for training, or keeping suitably occupied, disabled persons or persons suffering from illness;
 - (iii) The provision of welfare services for disabled persons;
 - (iv) The provision for disabled persons of facilities for employment or work in terms of Section 15 of the Disabled Persons (Employment) Act 1944;
 - (v) The provision of sheltered employment by a local authority in terms of Section 3(1) of the Disabled Persons (Employment) Act 1958.
- 3.3.2 If the property is a Nursing Home, a certificate in terms of the Nursing Homes Registration (Scotland) Act 1938 (as amended), and awarded by NHS Ayrshire and Arran, or in terms of the Social Work (Scotland) Act 1968 and issued by East Ayrshire Council's Chief Social Work Officer, must be supplied. In addition, details of staff, resident occupiers, and a plan or

diagram of the property must be supplied with the application. If the property is not wholly used for one or more of the above listed purposes, but such activities take place in at least 50% of the property, a rateable value for that area can be obtained from the Ayrshire Valuation Joint Board and a partial Disabled Persons Reduction may be granted.

NO CHANGE TO CURRENT POLICY

3.4 Empty Property Relief

3.4.1 Empty Property Relief may be applied to an account in terms of The Non Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994 that came into force with effect from 1 January 1995. The rate liability for empty subjects can be relieved for a maximum period of only three months and thereafter an Empty Property Rate equivalent to 50% of that which would apply were the premises occupied requires to be levied. The Empty Property Rate does not apply to the following categories of property, which will continue to receive full relief until the end of the empty period:

- (i) Industrial properties;
- (ii) Properties with a Rateable Value of less than £1500;
- (iii) Properties unoccupied due to death or insolvency;
- (iv) Properties which are prohibited by law from occupation;
- (v) Properties which are under a compulsory purchase order;
- (vi) Properties which have a Preservation Order;
- (vii) Listed Buildings and Ancient Monuments.

3.4.2 For retrospective remission claims prior to 1 January 1995 application must be made in terms of Section 243 of the Local Government (Scotland) Act 1947. In such case, documentary evidence confirming that the property was empty for the period in question, such as an invoice from a removal firm or a letter from a neighbouring business not connected to the applicant, must be provided.

NO CHANGE TO CURRENT POLICY

3.5 Properties Formerly in Receipt of Industrial De-Rating

3.5.1 Industrial de-rating was a Mandatory Relief afforded to manufacturing businesses. The Regional Assessors were responsible for determining which businesses qualified and relief was afforded in terms of a set percentage against the Rateable Value. It was gradually phased out and was last in place during the 1993/94 financial year where 25% relief was afforded.

3.5.2 Properties that are partly occupied and were previously in receipt of industrial de-rating may apply for short-term relief for the unoccupied part of the premises under Section 243A of the above Act. A plan or diagram must be provided so that the Ayrshire Valuation Joint Board can supply a Rateable Value for the empty part of the property and the area must be unoccupied for more than one month but less than three. The Rateable Value supplied by the Valuation Board should be equal to or greater than 5% of the total

Rateable Value or £1500, whichever is the lesser. Applications should be made as soon as the part of the property becomes empty and only one application may be accepted in each financial year.

NO CHANGE TO CURRENT POLICY

3.6 Discretionary Relief

3.6.1 Discretionary Relief is granted in terms of Section 4(5) of the Local Government (Financial Provisions Etc.) (Scotland) Act 1962 and is applicable to organisations that meet the following criteria:

- (i) Charitable;
- (ii) Of social benefit but not profit making;
- (iii) Recreational or Sporting Member Clubs which are not established for profit.

3.6.2 There are several forms of Discretionary Relief:

a) Licensed Sports Club Relief

It was previously agreed that Sports Clubs with a licensed clubroom be required to apply annually for Relief by providing turnover figures from their latest set of accounts available as at 31 December each year. From these an adjusted turnover figure is calculated based upon 100% of the gross income from bar and gaming machines, whilst the gross income from food and tobacco is calculated at 50% and 100% respectively. This adjusted turnover figure is used to calculate a “non-sporting” rateable value. Where this figure is less than the actual rateable value of the property, the difference is defined as the “sporting” rateable value and Relief is afforded on that figure.

b) Unlicensed Sports Club Relief

Sports Clubs without a licensed facility are entitled to 100% Discretionary Relief if they are a non-profit making associated member clubs. The constitution, rules and latest audited accounts must be provided and the constitution must contain a clause which confirms that, in the event of the club being wound-up, any profits following settlement of all debts must be forwarded to another club with similar objectives and aims. The membership must not be restrictive and Relief may be refused if this is the case.

A turnover calculation exactly the same as that applied to licensed Sports Clubs, with the exception of alcohol sales is carried out to determine the level of relief for unlicensed Sports Clubs. Similarly unlicensed Sports Clubs are required to reapply annually for discretionary relief.

NO CHANGE TO CURRENT POLICY

c) Charity Shops

This is available to organisations in receipt of 80% Mandatory Relief. Such organisations require to provide a letter confirming that the amount of donated goods sold in the property is equivalent to 60% or more of the total goods for sale before the additional 20% Relief can be granted.

In the case of a Licensed Charitable Organisation, such as the Royal British Legion, the formula used for Licensed Sports Clubs is applied to the Licensed Charitable Organisation's trading figures and if there is a residual or "sporting" rateable value element, the organisation is entitled to 80% Mandatory Relief, irrespective of the residual element.

NO CHANGE TO CURRENT POLICY

d) Occasional Licenses

The Licensing (Scotland) Act 2005 makes provision for the award of occasional licenses to the following:

- (i) The holder of a premises license
- (ii) The holder of a personal license
- (iii) A representative of any voluntary organisation.

As a result it is recommended that organisations entered in the Scottish Charity Register in terms of the Charities and Trustee (Investment) Act 2005 be considered for Discretionary relief, notwithstanding that the award of occasional licences may be made in terms of (i) and (ii) above, in respect of any premises from which the organisation carries on its activities.

It is recommended that Groups or Clubs covered by (iii) above are considered for Discretionary Relief, provided that the license applications are limited to:

- (a) Not more than 4 occasional licenses each having effect for a period of 4 days or more; and
- (b) Not more than 12 occasional licenses each having effect for a period of less than 4 days

In any period of 12 months the total number of days on which the licenses have effect should not exceed 56 days.

NEW ADDITION TO POLICY

3.7 Centrally Funded Further Educational Establishments

3.7.1 Organisations concerned with the provision of further education whilst being wholly or mainly funded by Central or Local Government are refused Discretionary Relief.

3.7.2 It is proposed that refusal of Discretionary Relief for this category is continued.

NO CHANGE TO CURRENT POLICY

3.8 100% Discretionary Relief

3.8.1 This Relief is available to non-profit making organisations that provide social benefit and when making application, audited accounts require to be provided. It is aimed at organisations that are not recognised as charitable by the Inland Revenue but do not derive profit from their activities.

NO CHANGE TO CURRENT POLICY

3.9 Discretionary Relief – Hardship

3.9.1 Section 156 of the Local Government (Scotland) Act 1994 allows the Council to remit payment (in whole or in part) of the Non-Domestic Rate by awarding discretionary relief if it is satisfied that the business would sustain hardship if it did not do so, and that it is reasonable for the Council to do so, having regard to the interests of its Council Tax payers. Any relief awarded is met 75% from the Non Domestic Rate Pool (centrally) and 25% from Council resources.

3.9.2 It was previously agreed by the Policy and Resources Committee that the Council would not consider granting Hardship Relief to any applicant without first discussing the viability of alternative repayment arrangements being put in place together with a "Business Health Check" being carried out by officers within the Economic Development Division to ascertain the current and future trading position of the companies as the Council has a duty to consider any alternative support package prior to consideration of the Hardship Relief. It is considered that this approach remains appropriate and it is recommended that Cabinet endorse it.

3.9.3 In order to ensure the implementation of the policy it is proposed that the detailed procedures attached as Appendix 2 are adopted.

4. MANDATORY AND DISCRETIONARY RELIEF FOR RURAL AREAS

4.1 Legislative Background

4.1.1 The Local Government and Rating Act 1997 and The Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Order 1997, both effective from 1 April 1998, make provision for Mandatory and Discretionary Relief from Non-Domestic Rates to be afforded to ratepayers whose property lies within a

defined "Rural Area" and where the Rateable Value of the property falls within certain limits. Appendix B shows the defined Rural Areas.

4.1.2 Section 3 of the Local Government and Rating Act 1997 provides for Mandatory Relief of 50% to be granted to either a General Store or Post Office, provided the Rateable Value does not exceed £5,000 and it is the only General Store or Post Office within the settlement. With effect from 1 April 2000 the Rateable Value level was increased to £6,000, and from 1 April 2005 increased to £7,000.

4.1.3 Section 4 of the Local Government and Rating Act 1997 provides for Discretionary Relief of up to 100% to be granted to other properties, provided the Rateable Value does not exceed £10,000 and the property is of benefit to the local community. Discretionary Relief of up to 50% can also be granted to properties that qualify for Mandatory Relief. With effect from 1 April 2000 the Rateable Value level was increased to £12,000. With effect from 1 April 2005 the Rateable Value level this was increased to £14,000.

4.1.4 The Local Government (Financial Provisions etc) (Scotland) Act 1962 precluded local authorities from granting Discretionary Relief to Council occupied properties. It is, however, significant that the 1997 Act does not appear to specifically exclude Council occupied properties.

4.2 Revised Policy

4.2.1 The following qualifying criteria are proposed for the application of Mandatory and Discretionary Relief -

- (i) Mandatory Relief of 50% can be granted to a property that is the only Post Office or the only General Store within a qualifying settlement, provided the Rateable Value does not exceed £7,000. A qualifying Post Office and a qualifying General Store in the same settlement would both be granted 50% Mandatory Relief.
- (ii) Discretionary Relief of up to 50% can be granted to a property that does not qualify for Mandatory Relief provided -
 - (a) the Rateable Value does not exceed £14,000 with effect from 1 April 2005.
 - (b) it is the only such property within the settlement;
 - (c) the property is not used exclusively for gambling or the sale of alcohol;
 - (d) the property is open and available for full access to all members of the community, except in the case of legal prohibition;
 - (e) no restrictive practice or policy, contrary to the public benefit, is employed;
 - (f) it is used for purposes which are of benefit to the local community;
 - (g) no other form of Discretionary Relief has been awarded.

- (iii) The Council will request further information where it is not clear that no restrictive policy is in place. The applicant would then have to demonstrate that the benefit provided was available to all members of the community.
- (iv) The Act does not define "benefit". For the purposes of this policy, "used for purposes which are of benefit to the local community" should be recognised as the sole provision of a service or facility, which is essential to the proper enjoyment of rural life including the sale of food and household provisions, transportation requirements, financial/banking services, social welfare needs and healthcare. It should be emphasised that this list is not exhaustive and each case will be considered on its individual merits.
- (v) In calculating the amount of Discretionary Relief, the previous year's annual turnover of the applicant or, in the case of a new venture, the projected annual turnover should be taken into account. For new ventures, the Council would review any Discretionary Relief afforded during the first year when trading figures for that year became available. The actual figures will then be used to calculate entitlement for the first two years. Applicants, in their first trading year, who have purchased an established business, should provide the previous owner's turnover figure. Where an applicant is unable to provide actual or projected figures, a retrospective grant of Discretionary Relief, if applicable, will be made on receipt of the first year's trading figures. Again the first year's figures will determine the first two years relief. The amount of Discretionary Relief will be determined by a "Non-Domestic Rates Payable to Turnover" ratio as shown on the tables below -

Non-Domestic Rates Payable: Turnover	% Relief to be granted
1:01 – 1:10	50%
1:11 – 1:20	49% - 40%
1:21 – 1:30	39% - 30%
1:31 – 1:40	29% - 20%
1:41 – 1:50	19% - 10%
1:51 – 1:59	9% - 1%
1:60 AND OVER	NIL

The above ratios will be monitored and if necessary revised awards applied retrospectively.

Examples	1	2	3
Rates Payable	£5,000	£5,000	£5,000
Turnover	£50,000	£160,000	£300,000
Ratio	1:10	1:32	1:60
% Relief Due	50%	28%	Nil
Amount Granted	£2,500	£1,400	Nil

- (vi) All applications for relief are subject to an annual review to ensure that the qualifying criteria still apply.

4.3 Implications For Council Owned Properties

4.3.1 Counsel's Opinion has previously been sought on whether or not it would be competent for the Council to grant Discretionary Relief in respect of Council property. In Counsel's Opinion it was indicated that the Council would be able to grant itself discretionary relief for Council owned properties, however, the Opinion did highlight that a degree of caution would be required when determining the extent to which Council properties provided a "benefit to the local community".

4.4 Properties Currently in Receipt of Rural Relief

4.3.2 There are currently 18 Council properties are in receipt of rural relief. Given the position set out in paragraph 4.3.1 the asset portfolio will continue to be considered against the proposed qualifying criteria outlined in paragraph 3. A further 7 non Council properties, all of which are Post Offices, in receipt of rural relief.

5. APPEALS

5.1 Where the Executive Head of Finance and Asset Management's determination results in the refusal of Mandatory or Discretionary Relief, the Executive Head of Finance and Asset Management will advise the applicant, in writing within 14 days, of that determination.

5.2 Except where the determination to refuse Mandatory or Discretionary Relief was made on the basis of prescribed conditions, the Executive Head of Finance and Asset Management will also advise the applicant of the right of appeal to the Ad-hoc Discretionary Rental/Non Domestic Rates Relief Appeals Panel and that any such appeal must be made in writing within 21 days of the date of the Executive Head of Finance and Asset Management's determination.

5.3 In respect of Rural Relief the Ad-hoc Discretionary Rental/Non Domestic Rates Relief Appeals Panel has the right to award Discretionary relief, provided that it is satisfied that the appellant provides a beneficial service or facility to the rural community in which they are based and also that it would be reasonable to award such relief having regard to the interests of persons liable to pay Council Tax

5.4 In relation to Hardship Relief after consideration of the appeal against the Executive Head of Finance and Asset Management's refusal to grant relief, and, having taken account of reports submitted by the Executive Head of Finance and Asset Management and the Head of Planning and Economic Development, the Appeals Panel would have the power to remit payment (in whole or in part) of the Non-Domestic Rates arrears, provided that they were satisfied that not only would the appellant sustain hardship if the Council did not remit payment (in whole or in part), but also that it would be reasonable to

remit payment (in whole or in part), having regard to the interests of persons liable to pay Council Tax.

- 5.5 The decision of the Ad-hoc Discretionary Rental/Non Domestic Rates Relief Appeals Panel to refuse or allow an application for Mandatory or Discretionary Relief will be final and binding on both the appellant and the Council.

6. FINANCIAL IMPLICATIONS

- 6.1 The regulations provide that 75% of the costs of discretionary relief are met from the non domestic rate pool with the remaining balance being funded locally except in the case of sports clubs where the relief is 100% funded from the pool.

7. LEGAL IMPLICATIONS

- 7.1 Authority to award discretionary relief for recreational or sporting member clubs is stated within Section 4(5) of the Local Government (Financial Provisions Etc) (Scotland) Act 1962. Discretionary relief awarded on the grounds of hardship is made in terms of Section 156 of the Local Government (Scotland) Act 1994. The Local Government and Rating Act 1997 and The Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Order 1997, both effective from 1 April 1998, make provision for Mandatory and Discretionary Relief from Non-Domestic Rates to be afforded to ratepayers whose property lies within a defined "Rural Area" and where the Rateable Value of the property falls within certain limits.

8 RECOMMENDATIONS

- 8.1 That Cabinet
- 1) agrees that the revised mandatory and discretionary non domestic rates relief policy as set out in paragraph 3 and 4 of the report
 - 2) agrees that the addition to the policy proposed at paragraph 3.6(d) in respect of occasional licences;
 - 3) otherwise notes the report.

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Executive Head of Finance and Asset Management
5/1/09 RB

BACKGROUND PAPERS – NIL

Any person wishing further information on this report should contact Robin Baker, Financial Controller on Tel No. (01563) 576331

Implementation Officer: Robin Baker, Financial Controller

**NON DOMESTIC RATES – DISCRETIONARY RELIEF – HARDSHIP
OPERATIONAL PROCEDURE NOTE**

APPLICATION FOR DISCRETIONARY RELIEF – HARDSHIP

1. All applications for Hardship Relief should be made in writing to the Executive Head of Finance and Asset Management who will advise the applicant of the Council's policy in relation to the use of alternative payment arrangements and the completion of a Business Health Check.
2. As an alternative to the award of Hardship Relief, the Executive Head of Finance and Asset Management may, where it is considered appropriate, first offer to put in place a repayment arrangement in respect of any Non-Domestic Rates arrears. This would allow the business to spread the repayment over a longer period of time. Any repayment arrangement agreed would be structured in such a way as to take into account future rating liability which would fall to be paid concurrently with the arrears repayments.
3. If the applicant felt that the repayment arrangement offered was insufficient or that they are unable to meet the financial requirements, the Executive Head of Finance and Asset Management will liaise with the Head of Planning & Economic Development who will arrange for a "Business Health Check" to be carried out to ascertain the expected current and future trading position of the Company. It is proposed that where a business identifies significant cash flow or other financial difficulties within their application that these are passed to the Head of Planning & Economic Development to allow a "Business Health Check" to commence in advance of any payment arrangement being proposed.
4. On completion of the "Business Health Check" the Executive Head of Finance and Asset Management and the Head of Planning & Economic Development would be in a position to take into account the business's total indebtedness, not only to the Council but also to other creditors. The Head of Planning & Economic Development would also be in a position to offer assistance and advice to the business with regard to its trading situation.
5. In the event that it is established that the business lacks working capital, support through business grants could be considered, in appropriate circumstances, by the Head of Planning & Economic Development.
6. Following assessment by the Head of Planning & Economic Development if it is felt that the applicant would benefit from the award of Hardship Relief, the Executive Head of Finance & Asset Management will determine the application, taken into account the findings and recommendations of the Head of Planning & Economic Development, and will advise the applicant, in writing, of the decision within 14 days.

7. Hardship Relief will only be considered for the period the application relates to and will not be applied without limit of time. A new application will be required if the applicant feels that relief should be awarded in subsequent years.

APPEALS PROCESS

1. Where the Executive Head of Finance and Asset Management's determination of the application results in the refusal of Hardship Relief, the Executive Head of Finance and Asset Management will also advise the applicant, in writing within 14 days and confirm the right of appeal to the Ad-hoc Discretionary Rental/Non Domestic Rates Relief Appeals Panel and that any such appeal must be made in writing within 21 days of the date of the Executive Head of Finance and Asset Management's determination.
2. After consideration of the appeal against the Executive Head of Finance and Asset Management's refusal to grant relief, and, having taken account of reports submitted by the Executive Head of Finance and Asset Management and the Head of Planning Economic Development Services, the Appeals Panel Cabinet would have the power to remit payment (in whole or in part) of the Non-Domestic Rates arrears, provided that they were satisfied that not only would the appellant sustain hardship if the Council did not remit payment (in whole or in part), but also that it would be reasonable to remit payment (in whole or in part), having regard to the interests of persons liable to pay Council Tax.
3. The decision of the Ad-hoc Discretionary Rental/Non Domestic Rates Relief Appeals Panel to refuse or allow an application for Hardship Relief will be final and binding on both the appellant and the Council.

APPENDIX B

DEFINED RURAL AREAS

Settlements that have been designated as "Rural Areas", and where the population does not exceed 3,000, are-

Catrine	Lugton
Coalhall	Montgreenan
Coylton	Moscow
Cronberry	Muirkirk
Crosshouse	Ochiltree
Dalrymple	Patna
Dunlop	Rankinston
Drongan	Sinclairston
Fenwick	Skares
Gatehead	Sorn
Hollybush	Stair
Kilmaurs	Trabboch
Kirkmichael	Waterside (Fenwick)
Knockentiber	Waterside (Patna)
Lugar	New Cumnock (from 01/04/08)

Places within East Ayrshire that are excluded, by Order, from the list of "Rural Areas" are -

Auchinleck	Bellsbank
Cumnock	Darvel
Galston	Kilmarnock
Logan	Mauchline
Newmilns	Stewarton
Dalmellington & Burnton	Hurlford & Crookedholm