

MEDWAY COUNCIL DISCRETIONARY BUSINESS RATE RELIEF POLICY (AMENDMENT)

1. Backdating Restrictions

- 1.1 With effect from 1 April 2023, Section 4 of the Non-Domestic Rating Act 2023 removed the restriction whereby billing authorities could only award discretionary rate relief (under Section 47 Local Government Finance Act 1988) into the previous financial year if the decision was taken within six months of the current financial year. Local Authorities are now free to set the period of backdating as they see fit.
- 1.2 In order to simplify the backdating restriction, and also allow for delays in the Valuation Office Agency making new entries in the rating list, decisions to backdate awards of discretionary relief are now restricted to a maximum of 12 months from the date an application is received (not from the date of decision), with the exception of those reliefs reimbursed to the council through a Section 31 grant which will be unrestricted.

2. Retail Hospitality and Leisure Relief 2024/25

- 2.1 At the Autumn Statement 2023 the Chancellor announced the extension of the business rates relief scheme for retail, hospitality, and leisure businesses.
- 2.2 The scheme is identical to that introduced for 2023/24.
- 2.3 As this is a temporary measure, Government is not changing legislation to define when a property entitled to relief. Instead they will, in line with the eligibility criteria set out in guidance, reimburse local authorities that use their discretionary relief powers under section 47 of the Local Government Finance Act 1988 (as amended) to grant relief.
- 2.4 Government will fully reimburse the council for their loss of income under the rates retention scheme as a result of awarding the relief that falls within the definitions in this guidance, using a grant under section 31 of the Local Government Act 2003.
- 2.5 Government issued a guidance note intended to support local authorities in administering the relief.

3. Properties to benefit from relief

- 3.1 To qualify for retail relief, properties must be occupied and be used wholly or mainly as shops, restaurants, cafes, drinking establishments, cinemas, live music venues, hotels, guest & boarding premises, self-catering accommodation or be used for assembly and leisure.
- 3.2 Shops, restaurants, cafes, drinking establishments, cinemas and live music venues are defined as:
 - i. hereditaments that are being used for the sale of goods to visiting members of the public:

- shops (such as: florists, bakers, butchers, grocers, greengrocers, jewellers, stationers, off licences, chemists, newsagents, hardware stores, supermarkets, etc)
 - charity shops
 - opticians
 - post offices
 - furnishing shops/display rooms (such as: carpet shops, double glazing, garage doors)
 - car/caravan showrooms
 - second-hand car lots
 - markets
 - petrol stations
 - garden centres
 - art galleries (where art is for sale/hire)
- ii. hereditaments that are being used for the provision of the following services to visiting members of the public:
- hair and beauty services (such as: hairdressers, nail bars, beauty salons, tanning shops, etc.)
 - shoe repairs/key cutting
 - travel agents
 - ticket offices e.g. for theatre
 - dry cleaners
 - laundrettes
 - PC/TV/domestic appliance repair
 - funeral directors
 - photo processing
 - tool hire
 - car hire
- iii. hereditaments that are being used for the sale of food and/or drink to visiting members of the public:
- restaurants
 - takeaways
 - sandwich shops
 - coffee shops
 - pubs
 - bars
- iv. hereditaments which are being used as cinemas

- v. hereditaments that are being used as live music venues:
 - live music venues are hereditaments wholly or mainly used for the performance of live music for the purpose of entertaining an audience. Hereditaments cannot be considered a live music venue for the purpose of business rates relief where a venue is wholly or mainly used as a nightclub or a theatre, for the purposes of the Town and Country Planning (Use Classes) Order 1987 (as amended).
 - hereditaments can be live music venues 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 the government expects 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 2003.

3.3 Assembly and leisure are considered to mean:

- i. hereditaments that are being used for the provision of sport, leisure and facilities to visiting members of the public (including for the viewing of such activities).
 - Sports grounds and clubs
 - Museums and art galleries
 - Nightclubs
 - Sport and leisure facilities
 - Stately homes and historic houses
 - Theatres
 - Tourist attractions
 - Gyms
 - Wellness centres, spas, massage parlours
 - Casinos, gambling clubs and bingo halls
- ii. Hereditaments that are being used for the assembly of visiting members of the public.
 - Public halls
 - Clubhouses, clubs and institutions

3.4 Hotels, guest & boarding premises and self-catering accommodation are considered to mean:

- i. Hereditaments where the non-domestic part is being used for the provision of living accommodation as a business:
 - hotels, Guest and Boarding Houses
 - Holiday homes
 - Caravan parks and sites

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

3.6 The list set out above is not intended to be exhaustive as it would be impossible to list the many and varied uses that exist within the qualifying purposes. However, it is intended to be a guide as to the types of uses that the Government considers for this purpose to be eligible for relief. The council will determine whether particular properties not listed are broadly similar in nature to those above and, if so, to consider them eligible for the relief. Conversely, properties that are not broadly similar in nature to those listed above will not be eligible for the relief.

3.7 The following types of use (and those of a similar nature) are not considered to be retail and as such would not qualify for relief:

- i. 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, short-term loan providers, betting shops)
 - medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
 - professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, employment agencies, estate agents, letting agents)
 - post office sorting offices
- ii. Hereditaments that are not reasonably accessible to visiting members of the public

3.8 The following business usages are considered to be incompatible with the authority's wider objectives for the area and are therefore excluded from this relief:

- massage parlour
- sex shops licensed under Local Government (Miscellaneous Provisions) Act 1982

3.9 Where there is doubt over whether the property qualifies, discretion will be used with reference to the above and knowledge of Medway's local tax base.

4. Amount of relief to be awarded

4.1 Subject to the £110,000 cash cap per business, the total amount of government-funded relief available for each property for 2024/25 under this scheme is, for chargeable days from 1 April 2024 to 31 March 2025, 75% of the chargeable amount.

4.2 The relief will be applied after mandatory reliefs and other discretionary reliefs funded by section 31 grants have been applied, but before those where the council has used its wider discretionary relief powers introduced by the Localism Act 2011, which are not funded by section 31 grants. However, as required in the NNDR guidance notes, the former categories of discretionary relief available prior to the Localism Act 2011 (i.e. charitable/CASC/rural etc. top up and not for profit) will be applied first in the sequence of discretionary reliefs and, therefore, before Retail, Hospitality and Leisure relief. The ordering will be applied in following sequence:

- i. improvement relief
- ii. transitional relief
- iii. mandatory reliefs (as determined in legislation)
- iv. section 47 Discretionary Relief in the following order:
 - 2023 Supporting Small Business (SSB)
 - Former categories of discretionary relief available prior to the Localism Act 2011 (i.e. charitable, CASC and rural top up, not for profit) should be applied first in the sequence of discretionary reliefs, after SSB
 - Other discretionary (centrally funded) including, Freeport relief
 - 2024/25 Retail Hospitality and Leisure relief scheme
 - Other locally funded schemes (such as hardship)

4.3 Subject to the cash cap, the eligibility for the discount and the relief itself will be assessed and calculated on a daily basis. The following formula will be used to determine the amount of relief to be granted for a chargeable day for a particular hereditament in the financial year 2024/25:

Amount of relief to be granted = $V \times 0.75$ where:

V is the daily charge for the hereditament for the chargeable day after the application of any mandatory relief and any certain other discretionary reliefs in line with the guidance in paragraph 3.2 above.

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

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

4.6 A ratepayer has a right of appeal to the authority against any decision. Appeals against a refusal to grant relief will be dealt with as follows:

- initial review by the Head of Council Tax and Business Rates
- second stage review by the Chief Finance Officer

4.7 A ratepayer may refuse the relief for each eligible hereditament anytime up to 30 April 2025. When doing so, for the purposes of section 47 of the 1988 Act, hereditaments where the ratepayer has refused the relief are outside of the scheme and outside of the scope of the decision of which hereditaments qualify for the

discount and are therefore ineligible for the relief. The ratepayer cannot subsequently withdraw their refusal for either all or part of the financial year.

- 4.8 In line with the legal restrictions in section 47(8A) of the Local Government Finance Act 1988, the council may not grant the discount to itself, certain precepting authorities (e.g. a parish or county council) or a functional body, within the meaning of the Greater London Authority Act 1999.

5. The cash cap and subsidy control

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

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

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

- 5.3 Furthermore, the Retail Hospitality and Leisure Scheme is likely to amount to subsidy. Any relief provided by the council under this scheme will need to comply with the UK’s domestic and international subsidy control obligations (For further details see <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities/technical-guidance-on-the-uks-international-subsidy-control-commitments>).

- 5.4 To the extent that the council is seeking to provide relief that falls below the Minimal Financial Assistance (MFA) thresholds, the Subsidy Control Act allows an economic actor (e.g. a holding company and its subsidiaries) to receive up to £315,000 in a 3-year period (consisting of the 2024/25 year and the 2 previous financial years). MFA subsidies cumulate with each other and with other subsidies that fall within the category of ‘Minimal or SPEI financial assistance’. BEIS COVID-19 business grants and any other subsidies claimed under the Small Amounts of Financial Assistance limit of the Trade and Cooperation Agreement should be counted towards the £315,000 allowance.

- 5.5 In those cases where it is clear to the council that the ratepayer is likely to breach the cash cap or the MFA limit then it will automatically withhold the relief. Where the council includes the relief in bills, ratepayers will be required, on a self-assessment basis, to inform the authority if they are in breach of the cash caps or MFA limit.

6. Splits, mergers, and changes to existing hereditaments

- 6.1 The relief should be applied on a day to day basis using the formula set out in 3.3 above. A new property created as a result of a split or merger during the financial year, or where there is a change of use, should be considered afresh for the relief on that day.

7. Recalculations of relief

- 7.1 The amount of relief awarded will be recalculated in the event of a change of circumstances. This could include, for example, a backdated change to the rateable value or the hereditament. This change of circumstances could arise during the year in question or during a later year.

8. Calculation examples for 2024/25

8.1 The Retail, Hospitality and Leisure scheme is always calculated after mandatory relief and other discretionary reliefs funded by section 31 grant. Ignoring cash caps.

Example 1: An occupied shop with a rateable value of £40,000

Gross rates (before any reliefs) = £40,000 x 0.499: = £19,960

RHL Relief Discount (75%), £19,960 x 0.75 = -£14,970

Rates due (after RHL Relief Discount): = £4,990

Example 2: An occupied shop with a rateable value of £100,000

Gross rates (before any reliefs) = £100,000 x 0.546: = £54,600

RHL Relief Discount (75%), £54,600 x 0.75 = -£40,950

Rates due (after RHL Relief Discount): = £13,650

Example 3: An occupied charity shop with a rateable value of £40,000

Gross rates (before any reliefs) = £40,000 x 0.499 = £19,960

Net rates after charity relief (80% discount): = £3,992

RHL Relief Discount (75%), £3,992 x 0.75 = -£2,994

Rates due (after charity relief and RHL Relief Discount): = £998

Example 4: An occupied shop with a rateable value of £13,500 eligible for Small Business Rate Relief (SBRR)

Gross rates (before any reliefs) = £13,500 x 0.499 = £6,737

Net rates after SBRR (50%): = £3,368

RHL Relief Discount (75%), £3,368 x 0.75 = -£2,526

Rates due (after SBRR and RHL Relief Discount): = £842

Example 5: An occupied shop with a rateable value of £10,000 eligible for Small Business Rate Relief (SBRR)

Gross rates (before any reliefs) = £10,000 x 0.499 = £4,990

Net rates after SBRR (100%): = £nil

Rates bill is nil and, therefore, no RHL Relief applies

Example 6: A shop with a rateable value of £40,000 (example 1) but only occupied until 30 September 2024

Gross rates while occupied (before any reliefs) = £40,000 x 0.499 x 183/365 = £10,007

RHL Relief Discount (75% from 01/04/24 to 30/09/24), £10,007 x 0.75 = -£7,505

Net rates while occupied = £2,502

Gross rates while unoccupied (before any reliefs) = £40,000 x 0.499 x 182/365 = £9,953

Unoccupied property relief (100% from 01/10/24 to 31/12/24), £9,953 x 92/182: = -£5,031

Net rates while unoccupied = £4,922

Rates due for the year (after empty property relief and RHL Relief Discount): = £7,424
