

Business Rates Charity Relief Policy

2017/2020

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Runnymede 
BOROUGH COUNCIL

Charity Relief Policy 2017

Contents

Content	Page
Introduction	1
Mandatory Charity Relief	1
Discretionary Charity Relief	2/3
Administering the scheme Mandatory relief	3/4
Administering the scheme Discretionary relief	4/7
State aid	7
Managing the process	7/9
Cost of scheme	9

Charity Relief Policy 2017

Introduction

The Local Government Finance Act 1988 and subsequent legislation requires local authorities to grant mandatory relief for premises occupied by charities and similar organisations that own or occupy them wholly or mainly for charitable purposes.

Whilst the Council is obliged to grant relief to premises that fall within the mandatory category, the Council also has powers under the Local Government Finance Act 1988 to grant discretionary relief to ratepayers subject to certain criteria being met.

The powers relating to the granting of mandatory and discretionary relief are given to local authorities under sections 43, 45, 47 and 48 of the Local Government Finance Act 1988, respectively

Powers have also been granted under the Localism Act 2011, which allow for the granting of discretionary relief to any premises where the authority feels the granting of such relief would be of benefit to the local community.

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 Taxpayers.

Mandatory Charity Relief

Charities and Trustees for Charities are only liable to 20% of the Business 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.

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. From 1st April 2008 Section 45A of the Local Government Finance Act 1988, as amended, allows for no charge to be made in respect of unoccupied premises where it appears that *when next in use* it will be wholly or mainly used for those purposes.

The legislation was amended by the Local Government Act 2003 to include Community Amateur Sports Clubs (CASC) registered with HMRC as a CASC.

Charities are defined by s.67 (10) of the Local Government Finance Act 1988 as being an institution or other organisation established for charitable purposes only or by persons administering a trust established for charitable purposes only.

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 Commission under s.4 of the Charities Act 1960. Entry in the register is conclusive evidence. By definition, under the non-domestic rating legislation, there is no actual need for an organisation to be a registered charity to receive the relief.

Charity Relief Policy 2017

However, in all cases, the organisation must fall within the following categories:

- trusts for the relief of poverty;
- trusts for the advancement of religion;
- trusts for the advancement of education; and
- trusts for other purposes beneficial to the community, but not falling under any of the preceding categories.

Certain organisations are exempted from registration generally and are not required to make formal application to the Charity Commissioners. These are:

- the Church Commissioners and any institution administered by them;
- any registered society within the meaning of the Friendly Societies Acts of 1896 and 1974;
- units of the Boy Scouts Association and Girl Guides Association; and
- voluntary schools within the meaning of the Education Acts of 1944 and 1980.

The Council will consider charitable organisations, registered or not, for mandatory relief.

Discretionary Charity Relief

Local authorities have discretion to grant relief of up to a further 20% for these cases under the discretionary provisions.

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.

Under s.69 of the Localism Act 2011, with effect from 1st April 2012 the discretionary relief provisions have been amended and added to by central government to allow authorities to provide assistance to businesses and organisations including:

- to be targeted to certain business ratepayers;
- to encourage the 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;
- to encourage the use of retail premises which have been unoccupied for a period of time.

The range of bodies that are eligible for discretionary relief is wide and not all of the criteria laid down by the legislation will be applicable in each case.

Unlike mandatory relief, ratepayers will be obliged to make a written application to the Council for which forms are provided.

The Council has a duty to carefully consider every application on its merits, taking into account the contribution that the organisation makes to the amenities of the area. There is no statutory appeal process against any decision made by the Council. However, as with any decision of a public authority, decisions can be challenged by Judicial Review.

Charity Relief Policy 2017

Granting of discretionary relief falls broadly into the following categories:

- Charities that already receive mandatory relief.
- Premises occupied by organisations not established or conducted for profit whose main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts.
- Premises occupied by organisations not established or conducted for profit and wholly or mainly used for purposes of recreation.
- Granted under s.69 of the Localism Act 2011.

Administering the scheme

Mandatory relief

Use of premises – wholly or mainly

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 occasion, the Revenues service may have to question the actual use of the premises.

Guidance from the Department of Communities and Local Government (DCLG) has stated that in the case of “mainly”, at least 51% must be used for charitable purposes whether of that charity or of that and other charities.

For the purposes of any of the reliefs in this policy, the Council defines wholly or mainly as the entire premises being used for 51% or more of the time or 51% or more of the premises being used all of the time or some combination of both that amounts to 51% or more in total.

In May 2013, three councils successfully defended appeals by the Public Safety Charitable Trust in a hearing heard by Justice Sales in the High Court of Justice in London regarding “wholly or mainly”. Justice Sales said “*it is reasonable to infer that parliament intended that substantial mandatory exemption from rules for a charity in occupation of a building should depend upon the charity actually making extensive use of the premises for charitable purposes (i.e. use of the building which is substantially and in real terms for the public benefit, so as to justify exemption from ordinary tax in the form of non-domestic rates) rather than leaving them mainly unused*”. This is an important judgement that helps councils defend decisions that premises are not being wholly or mainly used for charitable purposes.

The above judgement prompted the Charity Commission to issue a warning to charities.

Offices, administration and similar premises

Premises used for administration of the Charity include:

- Offices
- Meeting Rooms
- Conference Rooms

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Charity shops

Charity shops are required to meet additional legislative criteria if they are to receive mandatory 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.

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

Discretionary relief

Section 47 of the Local Government Finance Act 1988 allows the authority to grant discretionary relief where the property is not an excepted one (see below) 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.

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.

Relief cannot be granted to excepted properties, i.e. one where all or part of it is occupied by any of the following:

- a billing authority, such as Runnymede Borough Council, or
- a precepting authority (County & Parish councils or a Police and Crime Commissioner), other than charter trustees, or
- a functional body within the meaning of the Greater London Authority Act 1999

Charities must meet the following criteria to qualify for 20% discretionary relief:

- The hereditament must be used wholly or mainly for the purpose of the charity.
- There must be evidence in the Constitution or Articles of Association that the organisation is non-profit making.
- Membership or access is open to all sections of the community. Membership fees should be set so as to be accessible to people on low incomes.
- The facilities are made available to other sections of the community, e.g. schools.
- The organisation provides training/education or coaching to its members and/or the local community.
- There is suitable evidence of safeguarding and equality measures in place for its members or those using the facilities, e.g. for safeguarding children or vulnerable adults and an inclusion policy.
- Consideration will be given to the income and expenditure accounts for as many financial years as deemed necessary and must be provided on request or the application will be refused.

Charity Relief Policy 2017

- Consideration will be given to all sources of income.
- If the organisation operates a bar, it will need to prove that its profits are used solely for the benefit of the organisation and its members.
- The organisation must be a local organisation. National charities, or charities that are affiliated to national charities, will not be considered for discretionary relief. Evidence will be required of any affiliations.
- Consideration will be given to the impact of the organisation on other local businesses.
- Consideration will be given to the use of the property and if it appears to be proportionate to the size of the property.

Evidence should be provided to support each criterion in the application. If the organisation is unable to meet any of the criteria it should clearly explain why.

The above criteria will be used to establish the level of discretionary relief awarded.

The following will also be taken into account:

- The existence of a licensed bar will not prevent the award of relief. However, the nature of the organisation and its aims will be taken into account.
- The organisation must directly benefit Runnymede residents.

Charity shops/offices/premises

Applications from charities for shop premises or offices and from national or regional or administrative offices of national charities will not normally be considered for discretionary relief unless there is a direct benefit to Runnymede residents.

Leisure and sporting (recreation) clubs

Section 64 of the Local Government Act 2003 permits non-profit making leisure and sporting (recreation) clubs to apply to HMRC for Community Amateur Sporting Club (CASC) status, which would automatically entitle them to 80% relief. They will not normally be considered for any discretionary rate relief.

Alternatively, they can 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:

- the promotion of community participation in healthy recreation and by the provision of facilities for the playing of particular sports; and
- the advancement of the physical education of young people not undergoing formal education.

Where leisure and sporting clubs do not meet the CASC requirement, and are not registered charities, discretionary relief will be considered, on its merits, for up to 50 % provided:

- a) the property is not an excepted one;
- b) the premises are wholly or mainly used for the purposes of recreation and all or part of it is occupied for the purpose of the club;
- c) its activities enhance or supplement the Council's own services; and
- d) it mainly serves the local area.

Charity Relief Policy 2017

Other organisations

Organisations already in receipt of mandatory relief (80%) will not normally be considered for any discretionary relief with the following exceptions:

- Official Scout and Guide organisations shall be granted discretionary rate relief provided they can demonstrate that their premises are used solely or mainly by them, or them and any other non-profit making service, for the benefit of the Community. This would be subject to certification at each renewal of the relief or upon request by the Council's authorised officer, whichever shall be the sooner.
- Community Associations.
- Village Halls.
- Day Centres for the elderly and other groups (together with their administrative offices where remote from the operational centre).

These organisations shall be granted discretionary relief from the remaining 20% rate liability.

Organisations already in receipt of grant aid from the Council will not generally be eligible for discretionary relief.

Localism Act 2011

Section 69 of the Localism Act 2011 allows a local authority to grant discretionary relief in any circumstances where it feels fit having regard to the effect on the Council Tax payers of its area.

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.

Any ratepayer applying for discretionary rate relief under these provisions and who does not meet the criteria for existing relief (charities, not for 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:

- The ratepayer must not be entitled to mandatory rate relief (Charity or Rural Rate Relief);
- The ratepayer must not be an organisation that could receive relief as a non-profit making organisation or as a sports club or similar;
- The ratepayer must occupy the premises (no discretionary rate relief will be granted for unoccupied premises);
- The premises and organisation must be of *significant* benefit to residents of the borough;
- The premises and organisation must relieve the Council of providing similar facilities.

The ratepayer must also;

- Provide facilities to certain priority groups such as elderly, disabled, minority groups, disadvantaged groups; or
- Provide *significant* employment or employment opportunities to residents of the borough; or

Charity Relief Policy 2017

- Provide the residents of the borough with such services, opportunities or facilities that cannot be obtained locally or are not provided locally by another organisation;
- 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
- The ratepayer must show that the activities of the organisation are consistent with the Council's priorities.

Where a ratepayer can demonstrate that all of the above criteria are met, the period of relief granted will be solely at the discretion of the Council and will generally only be for up to one year.

A formal application from the ratepayer will be required in each case and any relief will be granted in line with State Aid requirements.

State Aid

All relief under this local scheme is subject to State Aid consideration.

State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However the support for ratepayers will be State Aid compliant where it is provided in accordance with the De Minimis Regulations (1407/2013)².

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).

To administer De Minimis it is necessary for the council to establish that the award of aid will not result in the undertaking having received more than €200,000 of De Minimis aid.

Managing the process

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

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

Where an application is successful, the following will be notified to them in writing:

- the amount of relief granted and the date from which it has been granted;
- the date on which any relief granted 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.

Where relief is not granted then the following information will be 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).

Charity Relief Policy 2017

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.

Discretionary relief shall be granted for the period until the end of the current rating list or until there is a material change in the organisation's circumstances or the use of the premises, whichever is the soonest.

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

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

Whilst there is no formal right of appeal except by judicial review, in the interests of natural justice applicants may seek a review of the decision from the Council.

A simple application will be required to ensure relief is administered in a transparent way taking into account State Aid and there must be some evidence that the increase in business rate liability will cause financial hardship.

Powers given to the authority for the granting, varying, reviewing and revocation of discretionary relief under the Local Government Finance Act 1988, the Local Government and Rating Act 1997, the Local Government Act 2003 and the Localism Act 2011 shall be delegated to the Revenues Manager or Business Rates Manager within Revenues Services.

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 Revenues Manager or Business Rates Manager.

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 Council.

The amount of funding to be provided by the Council in respect of discretionary relief granted shall be determined by the Corporate Head of Resources and approved by Council in the normal budgeting process.

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The Revenues Manager may, at his/her discretion, make a determination to revoke the relief in accordance with s.47 (6) of the Local Government Finance Act 1988 if, during a period for which an organisation is in receipt of relief:

- there is a material change in an organisation's circumstance; or
- there is a material change in the use of the premises; or
- the organisation fails to provide relevant information regarding its current status.

Where the authority receives a request from the ratepayer for a review of the decision regarding the granting or refusal of discretionary relief or an amount of any discretionary relief or to revoke relief, the case will be reviewed by the Head of Customer Services, Revenues & Benefits. Where the original decision is not revised, the ratepayer may then appeal to the Corporate Director of Resources whose decision will be final.

In exceptional circumstances, the Corporate Director of Resources may refer the case to the Corporate Management Committee if it is believed that the case merits further consideration. The ratepayer shall be informed of the final outcome.

Cost of Mandatory and Discretionary Reliefs

With effect from 1st April 2013 funding for both mandatory and discretionary rate relief changed. The Business Rates pool operated by the Government largely paid for 80% of the cost prior to that date. Since then, 50% of the cost of relief under these provisions is now borne entirely by local Council Taxpayers and Business Rates payers.

- 50% is paid by central government,
- 40% is paid by Runnymede Borough Council, and
- 10% is paid by Surrey County Council

Except for mandatory relief, relief is not a matter of right. The Council is entitled through its policy to determine different levels of discretionary relief according to the nature and circumstances of individual organisations.

The Council will consider each case in accordance with the eligibility criteria set out in these guidelines. These guidelines are not restrictive and nothing in them shall be taken as restricting the Council's ability to depart from its general policy as to the granting of relief if it sees fit to do so and/or as circumstances dictate.

It should be noted that the Council's ability to grant rate relief may be limited by other factors, notably the budget available.

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