

POLICY AND RESOURCES CABINET BOARD

REPORT OF THE HEAD OF FINANCIAL SERVICES –

DAVE REES

28TH MAY 2015

SECTION A – MATTER FOR DECISION

WARDS AFFECTED: ALL

BUSINESS RATES –SECTION 44A DISCRETIONARY RELIEF

1. Purpose of The Report

- 1.1. Section 44A of the Local Government Finance Act 1988 provides Local Authorities with the discretion to allow rate relief where a property is partly occupied for a temporary period.
- 1.2. In order that any decisions to grant relief are fair and consistent, a policy has been drafted setting out the circumstances and details that will be taken into consideration when making a decision.
- 1.3. This report provides Members with this policy on Section 44A relief for authorisation. (Appendix 1)

2. Background

- 2.1 In rating law a partly used property is viewed as occupied, though section 44A of the Local Government Finance Act 1988 enables the Council to grant rate relief on a property that is partly unoccupied, so long as this situation exists for a short time only. This is in addition to various statutory reductions, discounts and disregards etc. that are already within existing legislation.
- 2.2 The amount of relief is not discretionary as the sum awarded is calculated on the apportioned rateable value supplied by the Valuation Office.

3. **Equality Impact Assessment**

A screening assessment has been undertaken to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010. After completing the assessment it has been determined that this policy does not require an Equality Impact Assessment. The purpose of this policy is to provide temporary assistance to taxpayers to help reduce their business rates liability in respect of properties that are partly occupied for a temporary period. As such there is a low reputational risk to the Authority as the awards will be to the advantage of the taxpayers who meet the qualifying circumstances. It will be of low visibility to the general public as it only applies to those paying business rates. The qualifying circumstances do not discriminate against any of the protected characteristics.

4. **Recommendation**

It is recommended that Members adopt the “Business Rates Discretionary Relief Policy Section 44A” attached at Appendix 1.

5. **Reason for Proposed Decision**

To establish a policy to formalise applications received from business ratepayers for partial relief for NNDR.

6. **List of Background Papers**

Local Government Finance Act 1988

7. **Appendix**

Appendix 1 – Business Rates Discretionary Relief Policy Section 44A.

8. **Officer Contact**

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COMPLIANCE STATEMENT

SECTION 44A DISRECTIONARY RELIEF

(a) **Implementation of Decision**

The decision is proposed for immediate implementation.

(b) **Sustainability Appraisal**

Community Plan Impacts:

Economic Prosperity	Positive
Education and Lifelong Learning	No impact
Better Health and Well Being	No impact
Environment and Transport	No impact
Crime and Disorder	No impact

Other Impacts:

Welsh Language	No impact
Sustainable Development	No impact
Equalities	No impact
Social Inclusion	No impact

(c) **Consultation**

There has been no requirement under the Constitution for external consultation.

Neath Port Talbot County Borough Council

Business Rates Discretionary Relief Policy Section 44A

May 2015

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1. Introduction

The Council has discretionary powers to award relief from payment of Non-Domestic Rates in a range of circumstances. This Policy shall apply in giving consideration to applications for discretionary rate relief made in respect of properties that are partly occupied for a temporary period.

The discretionary relief policy will be administered by Neath Port Talbot CBC and will be made available to any tax payer specified in Section 4 of this policy. The purpose of this discretionary relief policy is to provide temporary assistance to tax payers to help reduce their business rates liability. The operation of the policy is at the discretion of the Council.

2. Legislative Powers

Section 44A of the Local Government Finance Act 1988 provides Local Authorities with the discretion to allow rate relief where a property is partly occupied for a temporary period.

The definition of a ‘temporary period’ is not prescribed with the law and therefore Neath Port Talbot CBC has the discretion to decide the period relief should be awarded.

Partially occupied rate relief (also referred to as Section 44A Relief) is not intended to be used where part of a property is temporarily not used. The intention is aimed at situations where there are practical difficulties in occupying or vacating part of the property.

3. Statement of Objectives

The purpose of this policy is to specify how the Council will operate this discretionary power and to set out the factors that will be considered when making a decision on whether to award Section 44A relief (or not).

Principally, the objective of this discretionary relief is to offer short term financial assistance to tax payers where part of the premises they occupy is temporarily unoccupied. Each application for discretionary relief will be treated strictly on its own merits and all tax payers will be treated fairly and equally.

4. Claiming Discretionary Relief

All applications must be made on the Authority's designated form by the occupier, owner or persons acting on their behalf, e.g. agents, solicitors or accountants.

The applicant must submit a plan which clearly identifies the areas of occupation and those areas that are temporarily unoccupied.

Applications will only be considered in respect of unoccupied parts of a property that can be clearly defined and are reasonably segregated from the occupied part of the property.

The effective start date of Section 44A relief will normally be the date of initial request, there will be no retrospective granting of relief where a request is made after the premises becomes fully operational or fully vacated.

5. Decision Making

The ratepayer must allow a Council Officer access to the property by appointment during normal working hours in order to verify the part occupation of the property. The inspector may also visit the premises from time to time, without prior notice to check that the certified unoccupied area is not in use.

Applications where favourable consideration would be likely would include (although not limited to) the following –

- Full occupation being phased over a period of time
- Full vacation occurring in stages over a period of time
- Where fire, flood or other natural disaster prevents full use of the premises
- Where remedial building work is being undertaken
- Where there are short term practical difficulties in occupying the whole property

In all of the above cases, the period of part occupation must be for a temporary period only.

Rate relief will not be awarded where the partial occupation is due to the normal day to day operation of the business; i.e. a warehouse which has recently had the despatch of a large order and has limited stock or where part occupation is seasonal.

Relief will not be awarded where it appears to the Council that the only reason that part of the property is empty is for the purposes of applying for rate relief.

Relief may not be awarded where part occupation is likely to continue year on year or where the empty area (or part of the area) has been subject to previous applications. Relief may also not be awarded if repeated awards of Section 44A have been granted historically.

Periodic refurbishments of a property are part of the normal economic life of a properties occupation and are unlikely to be considered for part occupied relief.

6. Period of Award

Section 44A relief will mirror the normal exemption allowance for the type of assessment, a maximum of 3 months for non-industrial and 6 months for industrial.

Awards of rate relief shall end at the earliest occurrence of one of the following:

- a) The date of full occupation
- b) The date of full vacation
- c) The date of completion of remedial works
- d) The end of the financial year (a further application will need to be made if the period of part occupation continues after the 1st April)
- e) The maximum period permitted for the relief
- f) The Council is unable to verify ongoing entitlement to the relief

7. Authority to Award Relief

The Principal Council Tax Officer or Senior Rating Officer will assess all Section 44A applications and the decision will then be referred to the Director of Finance & Corporate Services or Head of Financial Services for final authorisation.

8. Notification of Decision

The Council will notify an applicant in writing within 14 days of receiving sufficient information to make a decision or within a reasonable period afterwards.

Where an application for discretionary relief is successful the applicant (and any other affected party) will receive notification of:

- The amount of the award

- The circumstances of the award, any steps that the applicant should take and any conditionality attached to the award
- The start and end date of the award
- Their duty to report any change of circumstances that may affect the award
- The recoverability of any award
- The procedure to follow should the applicant disagree with the decision.

9. Review of Decision

Under the Local Government Finance Act, there is no right of appeal against the Council's use of discretionary powers. However, the Council will accept an applicant's written request for a further review of its decision, if it is made within one month of the date of notification of the decision.

The request for review will be considered by a person other than the person who made the original decision. He/she will consider whether the applicant has provided any additional information against the required criteria that will justify a change to the original decision.

If the review concludes not to revise the original decision, this decision is final and may only be challenged by way of judicial review or by a complaint to the Local Government Ombudsman, (where there is an allegation of maladministration).

10. Data Access and Data Sharing

The Council is allowed to collect data to support, evidence and to determine discretionary payments. The scheme will operate to support principles for fair, reasonable and confidential data access and sharing at all times.