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## Local Government Finance Circular No. 6/2020

By e-mail

To: Directors of Finance of Scottish Local Authorities  
Chief Executive, Convention of Scottish Local Authorities (COSLA)

Our ref: A27331834  
6 April 2020

Dear Directors,

### **NON-DOMESTIC RATES RELIEF: INFORMATION FOR SCOTTISH LOCAL AUTHORITIES**

1. Please see enclosed at Annex A information relating to current arrangements for non-domestic rates relief.
2. This is offered in light of recent changes to reliefs in respect of 2020-21.
3. The information was compiled with the involvement of officers from COSLA and the Institute of Revenues, Rating and Valuation (IRRV). The Scottish Government is grateful for this expert input.
4. I hope the document is useful, and would be happy to discuss any comments or queries. My contact details are above.

Yours faithfully,

**ANOUK BERTHIER**  
Local Government & Analytical Services Division

# **ANNEX A - NON-DOMESTIC RATES RELIEF: INFORMATION FOR SCOTTISH LOCAL AUTHORITIES**

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## INTRODUCTION

5. Non-domestic rates (NDR), often referred to as business rates, are levied on non-domestic properties, subject to statutory exemptions and reliefs. The NDR framework for Scotland is devolved to the Scottish Parliament and Scottish Government, and although broadly similar, is different in detail from arrangements in the rest of the UK.
6. Valuation of non-domestic properties is undertaken independently by the Scottish Assessors, subject to statutory appeal processes, with all valuations freely accessible on the Scottish Assessors' Association's website.<sup>1</sup> Scottish Ministers annually set a national poundage, which is applied to a property's rateable value (RV). Rating, including billing, collection, enforcement and determination of rates relief, is undertaken by local authorities. A ratepayer may appeal to the council on the grounds that they are being improperly charged.<sup>2</sup>
7. Certain types of properties are statutorily exempt from NDR, either through exclusion from the valuation roll (e.g. agricultural land and buildings) or exemption from rating (e.g. churches, lighthouses, fishings), the effect of these being that the property is not liable for rates.
8. A number of reliefs are available for certain types of property nationally under Scottish law. These are subject where applicable to European Commission rules on State Aid.
9. Some reliefs are mandatory (i.e. they must be applied) and some are discretionary (i.e. local authorities have discretion as to their application).
10. Under Part 11 of the Community Empowerment (Scotland) Act 2015, local authorities may also reduce or remit non-domestic rates. In doing so, they must have regard to the authority's expenditure and income and the interests of persons liable to pay council tax set by the authority. The revenue impact of local reliefs must be borne by the local authority.

### **This document**

11. Information in this document is provided by the Scottish Government, in conjunction with the Convention of Scottish Local Authorities (COSLA), to Scottish local authorities.
12. This document has no statutory basis, is offered without prejudice to relevant legislation and legal decisions, and does not constitute legal advice.
13. The document was developed by a working group of officers from the Scottish Government, COSLA and a number of local authorities representing the Institute of Revenues Rating and Valuation (IRRV). A draft was shared for comment with all local authorities ahead of finalising this version.
14. The document aims to inform a mutual understanding amongst local authority practitioners. It includes general information relating across the different reliefs, and specific information relating to each relief.

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<sup>1</sup> [www.saa.gov.uk](http://www.saa.gov.uk)

<sup>2</sup> Section 238 of the Local Government (Scotland) Act 1947, section 238(1): "In respect of each rate levied by them every rating authority shall fix a date on or before which any person may lodge with the officer of the authority designated for the purpose an appeal against the rates claimed from him on the ground that he is being improperly charged, and another date on which the appeals shall be heard by the rating authority or a committee thereof."

15. Given their responsibilities for managing public funds, it is up to local authorities to ensure that procedures for administering relief, including reviewing and re-application processes, are suitably robust, including for audit purposes.

16. This document refers to amended legislation rather than amending legislation. For example, The Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017 have to date been subject to a number of amendments – and reference is made to the 2017 Regulations.

## **STATE AID**

17. State aid is a European Commission consideration of public assistance given to undertakings on a discretionary basis and having the potential to distort competition and affect trade between Member States of the European Union. An undertaking is defined as any entity, regardless of its legal status, which is engaged in economic (commercial/competitive) activity relating to a market in comparable goods or services.

18. Relief from the payment of rates reduces an undertaking's current expenditure, and so can be regarded as State aid. Any measure intended partially or wholly to exempt firms in a particular sector from the charges arising from the normal application of the general system, where there is no justification for such exemption on the basis of the nature or general scheme of this system, can constitute State aid.<sup>3</sup> Therefore, where a tax measure, such as rates relief, distorts competition by favouring selected undertakings, for example by region or by sector, then it should comply with the State aid regulations.

19. Before the State aid tests can be applied it is necessary to determine the following two aspects:

- Is the beneficiary an undertaking?
- Is an undertaking engaged in economic activity?

20. This is defined as offering goods and/or services on a given market and which could, at least in principle, be carried out by a private operator for remuneration in order to make profits.

21. Most recipients of rates relief are businesses and will be regarded as undertakings. However those recipients that deliver non-economic activity, i.e. not operating in a commercial market for goods and services, mainly serving a local area and whose objectives are, for example, religious, educational, social welfare, science-related, culturally-based (e.g. literature or arts), are not regarded as undertakings. The legal status of an organisation is not relevant for State aid purposes; only the activity that the public support relates to should be considered.

22. General measures applied to all enterprises do not constitute State aid (examples include general taxation measures or employment legislation).

23. There are four key tests which need to be considered in order to establish whether a measure constitutes State aid. If an organisation is deemed an undertaking, then these tests must be applied to determine whether State aid applies. The tests are cumulative and all four must be met for State aid to be present:

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<sup>3</sup> Case 173/73 Italy v Commission [1974] ECR 709: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61973CJ0173>

- there has been an intervention by the State or through State resources which can take a variety of forms (e.g. grants, interest and tax reliefs);
- the intervention gives the recipient an advantage on a selective basis, for example to specific companies or industry sectors, or to companies located in specific regions;
- competition has been or may be distorted; and
- the intervention is likely to affect trade between Member States.

24. If aid is present, the cash grant equivalent of the aid needs to be calculated as the difference between the standard non-domestic rate liability and the reduced rate offered. The aid may then be able to be awarded compatibly using the *de minimis* regulation.

25. State aid rules limit the amount of support that may be provided to a given undertaking to €200,000 (cash grant equivalent) over a three-year period. The European Commission considers that public funding to a single recipient of up to this amount has a negligible impact on trade and competition, and does not require notification.

26. Special rules apply to agriculture, where the *de minimis* limit is €20,000 per undertaking;<sup>4</sup> and fisheries which is limited to €30,000.

27. The State aid ceiling takes into account all public assistance (national and sub-national) given as *de minimis* funding over the three-year period by a Member State, which can take various forms (relief from rates, grants, loans, subsidised contracts, etc.). Aid given under an approved scheme does not have to be cumulated with *de minimis* aid, provided any such *de minimis* aid is not awarded towards the same eligible costs as those supported via that approved scheme.

28. The sterling equivalent is calculated using the European Commission's exchange rate<sup>5</sup> applicable on the written date of offer of the *de minimis* funding.

29. When considering *de minimis* aid, councils should:

- ensure that the new award itself does not breach the relevant ceiling of the beneficiary over a three-year period;
- ask the prospective beneficiary about any *de minimis* aid received during the fiscal year for which aid is being considered and the previous two fiscal years, and then determine how much, if any, *de minimis* aid can be awarded without breaching the relevant ceiling; and
- inform the recipient explicitly that it is *de minimis* aid they are receiving, for their reference.

30. The European Court of Justice has ruled that all entities which are controlled (on a legal or on a *de facto* basis) by the same entity should be considered as a single undertaking. Individual subsidiaries or branches of such an undertaking cannot therefore be treated as separate entities and awarded separate allocations of *de minimis* aid.

31. The State aid position of each relief is covered in the respective sections of this document. In practice, given that NDR liability accrues on a daily basis, relief can end mid-

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<sup>4</sup> Note: the total amount of *de minimis* aid granted per Member State is €20,000 over any period of 3 fiscal years. However, Member States can further increase the maximum aid amount to €25 000 per single undertaking, within a national cap of 1.5% of the annual output, if they do not spend more than 50% of their total national aid envelope on one particular agricultural sector -

[https://ec.europa.eu/agriculture/stateaid/legislation\\_en](https://ec.europa.eu/agriculture/stateaid/legislation_en)

<sup>5</sup> Exchange rate (InforEuro): <http://ec.europa.eu/budget/graphs/inforeuro.html>

year once the *de minimis* amount is reached and then be withheld until such time within a rolling three-year period that relief can again be awarded in line with the *de minimis* regulation.

32. On 19 March 2020, the European Commission announced a temporary framework to enable Member States to further support the economy in the COVID-19 outbreak<sup>6</sup>. This temporary framework allows aid to be granted to undertakings facing difficulty as a result of the COVID-19 outbreak, and extends the limit of support to €800,000. Aid to the fishery and aquaculture sector should not exceed €120,000 per undertaking, and should not exceed €100,000 per undertaking in the primary production of agricultural goods. To be considered in the temporary framework, aid should be granted no later than 31 December 2020.

33. The UK Government has deemed the Small Business Grant Fund and Retail, Hospitality and Leisure Grant Fund<sup>7</sup> to be State aid capped by this temporary framework. The Scottish Government therefore deems the *Scottish Grant Funding Schemes* to also fall under this regime.<sup>8</sup>

34. However, following discussion with the European Commission, the UK Government does not consider its targeted Coronavirus rates *reliefs* to be a State aid.<sup>9</sup> The same will apply in Scotland for the 100% retail, hospitality and leisure Coronavirus relief under regulation 4(1) of the Regulations: this will *not* be considered State aid (note the Coronavirus universal 1.6% relief is not being likely to be considered State aid as it applies to all properties).

## GENERAL INFORMATION

35. Determination of each relief by the council is generally based on an application from the rateable occupier (for some reliefs an application is statutorily required). Recurrent annual applications are not necessarily required, but in some cases statutorily are; for example, councils may choose to align a reapplication cycle with the revaluation cycle.

36. To determine the amount of relief to be awarded, local authorities should take steps as they see fit to ensure they have complete, accurate and up-to-date information on all properties occupied by the applicant in Scotland, i.e. across all local authority areas. Application is made to each local authority in whose area the property for which relief is sought is located, and separate application made for each relief. Applicants should provide details of all non-domestic properties in Scotland which they own, lease or are entitled to occupy, regardless of whether they are occupied or vacant.

37. The applicant must be listed as the property's rateable occupier in the council's assessment roll, or authorised to apply on behalf of the rateable occupier.

38. An application for a relief to which State aid rules apply must declare all other public assistance received as *de minimis* (see State aid section above). The local authority should consider undertaking due diligence. Any application not providing correct information may

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<sup>6</sup> [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/sa\\_covid19\\_temporary-framework.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf)

<sup>7</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/877286/small-business-grant-fund-and-retail-guidance-v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877286/small-business-grant-fund-and-retail-guidance-v3.pdf)

<sup>8</sup> <https://www.gov.scot/publications/local-government-finance-circular-5-2020-covid-19-grant-funding-schemes/>

<sup>9</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/877892/BRIL\\_6 - 2020 - Coronavirus Response Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877892/BRIL_6_-_2020_-_Coronavirus_Response_Guidance.pdf)

be considered fraudulent, in which case appropriate action may be taken against the applicant.

39. For some reliefs, such as Empty Property Relief or Charity Relief, the council may require the applicant to supply additional documentary evidence in support of their application. Examples of documentary evidence required in support of applications for certain reliefs are at Annex B. A council may decide that a single letter, e.g. from a surveyor, agent, regulator or law-enforcement organisation, on its own is not sufficient evidence.

40. A completed application form signed and dated by the rateable occupier is necessary for the local authority to begin its consideration. Local authorities may accept applications by email, and this is to be encouraged.

41. Rates bills to ratepayers should include a list of the reliefs the property is in receipt of.

42. Relief applications relating to utilities valued under the designated Assessors' regime<sup>10</sup> should be passed to the relevant billing authority as follows:

- electricity – South Lanarkshire Council
- water – Fife Council
- gas – West Dunbartonshire Council
- docks and harbours – Falkirk Council
- railways – Highland Council
- canals – Highland Council
- fixed-line telecommunications – Renfrewshire Council

43. Some reliefs are mandatory, i.e. if the applicant is deemed eligible then the relief must be awarded.

44. Some reliefs are discretionary, i.e. if the applicant is deemed eligible then the relief may be awarded.

45. Funding arrangements for reliefs between local authorities and the Scottish government are set out in The Non-Domestic Rating Contributions (Scotland) Regulations 1996. The cost of discretionary reliefs is generally 75% funded by the Scottish Government and 25% by the awarding council, except for 100% discretionary sports clubs,<sup>11</sup> which is fully funded by the Scottish Government. The discretionary reliefs are:

- Charity Relief 'top-up' from 80% to 100% for OSCR-registered charities;
- Charity Relief of up to 100% for certain other not-for-profit organisations;
- Sports Club Relief 'top-up' from 80 to 100% for HMRC-registered Community Amateur Sports Clubs (CASCs);
- elements of Rural Relief;
- Hardship Relief; and
- Stud Farms Relief.

46. Local reliefs<sup>12</sup> are fully funded by the Council.

47. Any reduction in rates due to an apportionment carried out by the assessor under section 24A(1) of the Local Government (Scotland) Act 1966 (for short-term unoccupied properties at the request of the council) is fully funded by the Scottish Government.

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<sup>10</sup> The Non-Domestic Rating (Valuation of Utilities) (Scotland) Order 2005.

<sup>11</sup> Awarded under section 4(5)(c) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

<sup>12</sup> Awarded under section 140 of the Community Empowerment (Scotland) Act 2015.

## **CORONAVIRUS RELIEFS**

48. These measures are intended to support businesses affected by the Coronavirus (COVID-19) outbreak.

49. The key legislation is The Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020 which applies for 2020-21 only.

### Universal 1.6% Relief

50. All properties in Scotland are eligible for a 1.6% relief on their gross rates bill. This applies to the gross rates payable, i.e. taking into account the poundage plus any supplements the property may be liable for.

51. This relief does not require an application and should be applied to all properties.

52. This relief is a general measure and therefore is unlikely to be considered State aid.

### Retail, Hospitality and Leisure Relief

53. 100% relief is available for non-domestic properties in the retail, hospitality and leisure sectors.

54. Eligibility is based on the property being wholly or mainly used for purposes set out in Schedule 1 of the regulations. For the avoidance of doubt, lands and heritages which have restricted temporarily due to the government's advice on COVID-19 should be treated as occupied for the purposes of this relief.

55. In order to qualify for the relief, properties must have been occupied on 17 March 2020.

56. Hospitality (classes 1 to 10 of Schedule 1) is considered to include bed and breakfast accommodation, camping sites, caravans, caravan sites, chalets, holiday huts, bothies, guest houses, hotels, hostels, public houses (which includes licensed pubs and nightclubs where the sale of alcohol is principally intended for consumption on the premises, and there is no requirement that people consume food on the premises in order to purchase alcohol), restaurants, self-catering holiday accommodation and timeshare accommodation.

57. Retail (classes 11, 12, 14, 15 and 16) include:

- markets the use of which is defined as: "market place on which goods are exhibited for sale to members of the public";
- retail shops the use of which is defined as: "Use as a shop, being a building or part of a building that is used for the retail sale of goods to members of the public who visit the building to buy goods for consumption or use elsewhere, whether or not by the buyer, for purposes unconnected with a trade or business";
- service providers the use of which is defined as: "Use to provide hair and beauty services, shoe repairs, key cutting, photo processing, laundry services, car or tool hire, car washing or repair of domestic electronic/electrical goods";
- Registered letting agencies;
- Funeral parlours; and
- Travel agencies (used by a travel agency or by a tour operator) .



58. As regards stores and other properties some of which may be considered to fall into Class 12, it is for councils to interpret whether they would interpret the definition to encompass those properties on a case by case basis.

59. Leisure (Class 13) includes properties used as an arts gallery or centre, sports club, sports centre, sports ground, clubhouse, gymnasium, museum, cinema, theatre, music venue, ticket office, recreation ground, bingo hall, tourist attraction or tourist facility.

60. It is for local authorities to interpret the meaning of the uses in Schedule 1 where these are not specifically legally defined (e.g. letting agents). For instance, castles or standalone visitor centres may be considered to be eligible under Class 13 under “tourist attraction or tourist facility.”

61. The UK Government confirmed on 2 April 2020<sup>13</sup> that the UK Government’s assessment is that, given the impact of COVID-19 in the sectors receiving the English Expanded Retail Discount 2020/21, the latter is not a State aid. The UK Government has considered this matter in discussions with the European Commission and is content with this analysis following those discussions.

62. The Scottish Government is content that the relief in Scotland is therefore not a State aid either. Local Authorities in Scotland should therefore also provide the relief to all eligible properties.

63. This relief does not require an application and should be applied to all eligible properties.

#### Airports and baggage handlers Relief

64. Schedule 2 specifies the following airports are eligible for 100% relief: Aberdeen International, Barra, Benbecula, Campbeltown, Cumbernauld, Dundee, Edinburgh, Glasgow, Glasgow Prestwick, Inverness, Islay, Kirkwall, Oban, Stornoway, Sumburgh, Tiree and Wick John O’Groats. Regulations 4(b) and 4(c) of the regulations further specify that 100% relief is available for properties situated at an airport listed in Schedule 2 and wholly or mainly used to provide one or more handling services for scheduled passenger flights; and occupied by the company named Loganair Limited, incorporated with company registration number SC170072.

65. This relief does not require an application and should be applied to all eligible properties.

#### **BUSINESS GROWTH ACCELERATOR (BGA) RELIEF**

66. The key legislation is The Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Regulations 2018 which apply for 2018-19 and The Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Regulations 2019 (“the 2019 regulations”).

67. Properties that contain new buildings are eligible for 100% mandatory new-build relief until twelve months after they are first occupied. Improved properties that contain buildings

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/877892/BRIL\\_6 - 2020 - Coronavirus Response Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877892/BRIL_6_-_2020_-_Coronavirus_Response_Guidance.pdf)

are eligible to see no rates increases for 12 months until after the RV has been amended as a result of the improvement.

68. This relief is available from 1 April 2018.<sup>14</sup> The 2019 regulations set out four regulations under which relief can be granted:

- New-build (1): Regulation 4 provides for 100% relief to the entire RV of the property for twelve months until after first occupation. This applies to new entries on the Roll made under section 2(1)(b) of the Local Government (Scotland) 1975 Act containing one or more buildings or parts of a building, none of which were shown in any entry in the roll for the day prior to the day that entry takes effect.
- New-build (2): Regulation 6 provides for 100% relief to the entire RV of the property, for twelve months until after first occupation. This applies to entries that contained no buildings (e.g. ground entries in the Roll). This applies to entries on the Roll made under section 2(1)(d) of the Local Government (Scotland) 1975 Act containing one or more buildings or parts of a building, none of which were shown in any entry in the roll for the day prior to the day that entry takes effect.
- New-build (1 or 2) + improvements: Regulation 8 sets out how properties in receipt of one of the above two types of new-build relief are treated when they are further improved.
- Regulation 10 provides for delayed increase in rates bills for 12 months on existing entries in the Roll which comprise a building where there has been a property improvement. 100% relief is available only on the *increase* in RV, which is equal to the final RV minus the RV prior to the commencement of the works. Examples would typically include an extension to the rear of a shop; the erection of a new building in an entry that already has buildings; the installation of a sprinkler system, airconditioning, or underfloor heating.

69. Property improvements comprise the installation of plant and machinery that falls within class 4 in the schedule of the Valuation for Rating (Plant and Machinery) (Scotland) Regulations 2000.

70. If the property was an existing dwelling or other building that was previously exempt from the valuation roll immediately prior to being entered on the roll, then it is not eligible for BGA relief.

71. Where an unoccupied property in receipt of new-build relief is divided, each new entry continues to be eligible for relief until twelve months after it is first occupied. Where an occupied entry in the Roll in receipt of new-build relief is split, relief continues to be available on each unit until the end of this twelve-month occupation period but no more.

72. Where an increase in RV is due to a split, merger or reorganisation, a property is not eligible for relief, even if the process involves for instance the creation of a new building.

73. Equally, where there is an increase in RV due in whole or in part to a change in the way the lands and heritages are being used,<sup>15</sup> then the property would not qualify for BGA relief (even where there has been a concurrent improvement). The Business Growth Accelerator is intended to help improve Scotland's property stock, and property conversions, while likely to be considered an "improvement" by the investor, are not necessarily physical *improvements* to the property. A property that was converted from one type of use to another

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<sup>14</sup> Eligibility is currently due to expire 31 March 2021.

<sup>15</sup> This is not explicitly tied to changes in planning use and local authorities' interpretations may differ.

(e.g. office to hotel) would thus not typically be considered to qualify for relief, except on improvements (e.g. extension) made after the conversion.

74. The local authority determines whether a property is eligible for relief, and may wish to consult the Assessor's office to discuss eligibility. The Non-Domestic Rates (Scotland) Act 2020 provides that Assessors will identify new builds and improved properties with a marker in the Valuation Roll in order to facilitate identification in future.

75. This relief is mandatory and 100% funded by the Scottish Government.

76. BGA applies general for properties of a certain type (buildings) and in certain circumstances (new and improved) and is therefore unlikely to be considered State aid.

## **CHARITY RELIEF**

77. The key legislation is Section 4 of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

78. Properties that are either (i) occupied by a charity in the Scottish Charity Register, held by the Scottish Charity Regulator (OSCR),<sup>16</sup> or by trustees thereof, *and* that are used wholly or mainly for charitable purposes; or (ii) held on trust for use as an almshouse, are entitled to 80% mandatory charity relief.<sup>17</sup>

79. This mandatory element of the relief is 100% funded by the Scottish Government.

80. The local authority also has discretion to 'top up' this relief to 100%.<sup>18</sup> This element of the relief is 75% funded by the Scottish Government. This means that a property receiving 80% mandatory relief and a 20% discretionary top up would see this relief 95% funded by SG (80\*100 + 20\*75).

81. The local authority determines whether occupation is wholly or mainly for charitable purposes. A trading arm of a charity, which is itself a separate entity that is not a charity, may not be eligible for mandatory relief. For charity shops to be eligible, their use must be wholly or mainly for the sale of goods donated to the charity and the proceeds of sale (after expenses) must be applied for the purposes of the charity. To inform this consideration, the relative proportion of new and donated goods sold on the premises may be requested from the occupier.

82. Properties occupied by certain other not-for-profit organisations are eligible to receive up to 100% relief at the discretion of the local authority.<sup>19</sup> To qualify, the purpose of occupation must mainly be charitable or otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts.

83. The Non-Domestic Rates (Scotland) Act 2020 removes eligibility for charity relief from mainstream independent schools<sup>20</sup>, leaving it in place for special schools<sup>21</sup> and schools for musical excellence within that category. It does not affect these schools' charitable status.

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<sup>16</sup> [www.oscr.org.uk/charities/search-scottish-charity-register](http://www.oscr.org.uk/charities/search-scottish-charity-register)

<sup>17</sup> Section 4(2) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

<sup>18</sup> Section 4(5)(a) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

<sup>19</sup> Section 4(5)(b) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

<sup>20</sup> Section 10(2) of the Non Domestic Rates (Scotland) Act 2020.

<sup>21</sup> Defined in section 29(1) of the Education (Additional Support for Learning) (Scotland) Act 2004.

This provision has not been commenced and therefore all charitable independent schools remain at the time of publication eligible for charitable rates relief.

84. Local authorities may have their own policies for awarding discretionary relief. Some current examples of eligibility criteria are:

- premises does not hold a liquor or gaming licence;
- premises is not used to carry out commercial operations;
- the organisation benefits the community.

85. A separate application will normally be required for each rateable property. Joint occupation or use of the premises with another party that does not meet the criteria may affect eligibility. Full details must be provided or the application could be deemed fraudulent and action taken against the applicant. For organisations not registered with OSCR, the local authority may ask for details of their constitution. Where there is any doubt, local authorities may visit the premises.

86. The 80% mandatory relief appears to be available across the UK and could be regarded as a general measure and therefore unlikely to be State aid. Any discretionary relief applying to activity not economic in nature is also unlikely to be aid. For charity shops and other commercial activity, a State aid assessment will need to be made and the four tests applied. If State aid is found to be present, then relief may be able to be awarded as *de minimis*.

## **DAY NURSERY RELIEF**

87. The key legislation is The Non-Domestic Rates (Day Nursery Relief) (Scotland) Regulations 2018.<sup>22</sup>

88. 100% relief is available where the premises are used wholly or mainly as a day nursery.

89. An application must be made for this relief.

90. As this relief confers a selective advantage, it is considered to be subject to State aid. The relief can be awarded only as *de minimis*.

## **DISABLED RATES RELIEF**

91. The key legislation is the Rating (Disabled Persons) Act 1978. Up to 100% relief may be available where:

- residential accommodation is provided for the care or aftercare of people who are disabled,
- facilities are provided for the training of people who are disabled; or
- welfare services or workshops for disabled persons are provided.

92. The applicant will generally be asked to confirm the percentage of floor space used for the qualifying purposes. Floor plans relating to the qualifying area, or area for which relief is to be applied, may also be requested.

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<sup>22</sup> Eligibility is currently due to expire 31 March 2021.

93. To determine the eligibility for care homes, the council may request confirmation of registration with Social Care and Social Work Improvement Scotland (otherwise known as the Care Inspectorate).

94. If the property is deemed eligible and the qualifying area has been confirmed at 100%, then the council will generally award 100% rates relief.

95. If the property is deemed eligible and the qualifying area has been confirmed at less than 100%, the council will generally request the Assessor to apportion qualifying parts of the property. The percentage of qualifying area will be used to calculate the percentage of relief to be awarded, provided the qualifying area is greater than 50%.<sup>23</sup>

96. The 100% mandatory element appears to be available across the UK and could be regarded as a general measure and therefore unlikely to be State aid.

## **DISTRICT HEATING RELIEF**

97. The key legislation is The Non-Domestic Rates (District Heating Relief) (Scotland) Regulations 2017.

98. Properties used wholly or mainly for the purposes of a district heating network may receive 50% relief.

99. Ministers intend to lay regulations in 2020-21 that would time-limit this relief to 2032.

100. As this relief confers a selective advantage, it is considered to be subject to State aid. The relief can be awarded only as *de minimis*.

## **EMPTY PROPERTY RELIEF**

101. The key legislation is sections 24 to 25 of the Local Government (Scotland) Act 1966, the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994, and the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 2018.

102. Unoccupied property meeting any of the criteria below is not liable for rates:

- property not comprising one or more buildings or a part of a building;
- listed buildings;
- subject of a building preservation order;
- rateable value (RV) under £1,700;
- owner in administration (or subject to an administration order);
- owner is a company or limited liability partnership subject to a winding-up order made under the Insolvency Act 1986 or being wound up voluntarily under that Act;
- occupation prohibited by law;
- action taken by or on behalf of the Crown or any public authority with a view to prohibiting occupation or to acquisition (e.g. compulsory purchase order);
- person entitled to possession only so entitled as a liquidator, as the trustee under a trust deed for creditors or an award of sequestration, or as the executor of a deceased person's estate.

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<sup>23</sup> Under Section 24A of the Local Government (Scotland) Act 1966.

103. For properties prohibited by law from occupation, a rates exemption would be granted where legal action had been taken to prevent its use. However, if legal action had been taken to prevent one particular person or trade from using the property, then it would be unlikely to be exempt unless that person was the owner.

104. Annex B provides examples of supporting documentary evidence that the council may require in order to determine that a property is unoccupied.

105. Unoccupied industrial property is eligible for 100% relief for the first six months since becoming unoccupied and thereafter 10% indefinitely. Other (non-industrial) unoccupied property is eligible for 50% relief for the first three months since becoming unoccupied and thereafter 10% indefinitely. A change of ratepayer does not affect the qualifying time period.

106. This relief is mandatory and 100% funded by the Scottish Government.

107. From 1 April 2020 and for the purpose of determining eligibility, a property is treated as if it had been unoccupied during any period of occupation that ended within six months of when it started. This will only affect properties that reach the relevant reset period after 1 April 2020.

108. Any unoccupied property that is rateable is, for the purposes of determining charity relief eligibility, treated as if it is being used for the purpose for which it was used when last occupied.<sup>24</sup> It may not however be eligible for charity relief unless the proprietor (or the party entitled to occupation) also satisfies the relevant criteria (see charity relief section).

109. Part-occupation:<sup>25</sup> if it appears to the council that part of a property is unoccupied but will remain so for a short time only, it may ask the Assessor to apportion the RV between the occupied and unoccupied parts. In that case, the Assessor must apportion accordingly and the following applies. The RV for the whole property is taken for rating purposes to be the apportioned value of the occupied portion plus a percentage of the apportioned value of the unoccupied portion. That percentage is 0% for industrial property empty for up to six months; 90% for industrial property empty for over six months; 50% for non-industrial property empty for up to three months; 90% for non-industrial property empty for over three months. The Valuation Roll itself is not altered, the apportioned figures being supplied to the council by the Assessor on request.

110. Part-occupation is generally considered when a ratepayer can clearly evidence that part of the property is empty. The start date for relief is the later of the date part occupation commenced or the start of the financial year in which the council's request was made to the Assessor. The end date is the earliest of: the end of the part occupation; the end of the financial year in which the council's request was made to the Assessor; a further apportionment being made; or the property become fully unoccupied. The council may extend the duration into the following financial year.

111. Plant and machinery can be kept on property without that being classed as occupation.<sup>26</sup>

112. Empty property relief could be regarded as a general measure and therefore unlikely to be State aid.

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<sup>24</sup> Section 24(4) of the Local Government (Scotland) Act 1966.

<sup>25</sup> Section 24A of the Local Government (Scotland) Act 1966, and the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994.

<sup>26</sup> Section 24B of the Local Government (Scotland) Act 1966.

113. The Scottish Government has set out a requirement to restrict the use of certain premises and businesses during the COVID-19 emergency period.<sup>27</sup> It is for councils to determine whether a property is occupied or unoccupied based on the existing legislation, and considering whether the threshold as set out in case law for a property to be unoccupied is met under any temporary restriction on certain types of use.<sup>28</sup>

## ENTERPRISE AREAS RELIEF

114. The key legislation is The Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2016<sup>29</sup>.

115. Properties concerned with specific sectors in four defined Enterprise Areas, each of which comprises a number of defined geographic locations (see Table 1), may be eligible. Boundaries for each location are set out in a published series of maps.<sup>30</sup>

116. Reliefs and thresholds are set out in Table 2. Dundee Port, Nigg and part of Irvine are within the wider Enterprise Area strategic locations, but are not eligible for rates relief.<sup>31</sup>

**Table 1: Enterprise Areas subject to rates relief (including local authority area)**

<b>Life Sciences</b>	<b>Low Carbon / Renewables North</b>
<ul style="list-style-type: none"> <li>• Irvine – part of site (North Ayrshire)</li> <li>• Forres (Moray)</li> <li>• Inverness Campus (Highland)</li> <li>• BioQuarter (Edinburgh)</li> <li>• BioCampus (Midlothian)</li> <li>• BioCity (North Lanarkshire)</li> </ul>	<ul style="list-style-type: none"> <li>• Hatston (Orkney)</li> <li>• Arnish (Western Isles)</li> <li>• Scrabster (Highland)</li> <li>• Lyness (Orkney)</li> </ul>
<b>General Manufacturing &amp; Growth Sectors</b>	<b>Low Carbon / Renewables East</b>
<ul style="list-style-type: none"> <li>• Creative Clyde (Glasgow City)</li> <li>• Prestwick International – Aerospace (South Ayrshire)</li> <li>• West Lothian – Food and drink manufacturing (West Lothian)</li> </ul>	<ul style="list-style-type: none"> <li>• Leith (Edinburgh)</li> </ul>

<sup>27</sup> The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. require the restriction of use of businesses selling food or drink for consumption on the premises, and business listed in Part 2 of schedule 1 which include e.g. cinemas, theatres, nightclubs and barbers, to protect against the risks to public health arising from coronavirus. The restriction lasts until a direction is given by the Scottish Ministers or the expiry of the Regulations which is 6 months from the date they came into force - 26 March 2020. The Scottish Ministers are required to keep the need for these restrictions under review. In many cases the premises the use of which is restricted during COVID-19 may continue using their premises for storage purposes and may therefore not be classed as either empty or unoccupied. Proprietors, tenants and occupiers are not prohibited from occupying these premises or allowing them to be occupied - they are being prohibited from opening the premises and using them in particular ways.

<sup>28</sup> For instance, In the case of Makro Properties Ltd v Nuneaton and Bedworth BC [2012] EWHC 2250 (Admin), the High Court held that storage of paperwork by an occupier in just 0.2% of the floor space in a 140,000 square foot warehouse was sufficient to amount to "rateable occupation" so as to entitle the owner to empty rates relief upon vacation by the occupier.

<sup>29</sup> Eligibility is currently due to expire on 31 March 2022.

<sup>30</sup> <https://www.gov.scot/publications/enterprise-areas-maps/>

<sup>31</sup> These may instead claim enhanced capital allowances enabling businesses to claim up to 100% of the cost of certain qualifying investments in plants and machinery against the businesses' taxable profits.

**Table 2: Enterprise Areas reliefs and thresholds**

<b>Value</b>	<b>Rates relief</b>
<b>£120,000 or less</b>	100%
<b>Over £120,000 and up to £240,000</b>	50%
<b>Over £240,000 and up to £480,000</b>	25%
<b>Over £480,000 and up to £1,200,000</b>	10%
<b>Over £1,200,000 and up to £2,400,000</b>	5%
<b>Over £2,400,000</b>	2.5%

117. Only businesses undertaking certain activity in each area, as defined at Annex D, are eligible. Only new-build properties (entered in the valuation roll after 1 April 2012) or properties which were vacant for at least a three-month period are eligible.

118. This relief is mandatory and 100% funded by the Scottish Government.

119. As the activity is commercial in nature and the recipients receive an advantage on a selective basis due to the geographic restrictions that apply, State aid is deemed to be present. The relief can be awarded only as *de minimis*.

## **FRESH START RELIEF**

120. The key legislation is sections 24 to 25 of the Local Government (Scotland) Act 1966, the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994, and The Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 2018.

121. Mandatory relief of 100% is available for a period of up to 12 months, for certain occupied premises. The following two criteria must be met:

- the property has been in receipt of empty property relief for a continuous period of at least six months immediately prior to the applicant's occupation;
- the property has a RV of up to £65,000; and
- an application for the relief must be made to the council, and the relief may not be backdated, i.e. an application must be made in-year and relief provided from 1 April of that financial year.

122. Fresh Start relief cannot be awarded alongside other rates relief to the same property. However, if one of several properties with the same occupier is eligible for Fresh Start, then the others may be eligible for different rates relief.

123. This relief is mandatory and 100% funded by the Scottish Government.

124. As the activity is commercial in nature and the recipients receive an advantage on a selective basis due to the sectoral restrictions that apply, State aid is deemed to be present and accordingly the relief can only be awarded as *de minimis*.



## HARDSHIP RELIEF

125. The key legislation is section 25A of the Local Government (Scotland) Act 1966.
126. A local authority may award up to 100% relief if the applicant would otherwise sustain hardship, and if doing so was reasonable in light of the interests of council taxpayers.
127. This relief is discretionary and generally 75% funded by the Scottish Government.
128. If the applicant's activity is commercial in nature, then relief would confer an advantage on a selective basis, and State aid would be deemed to be present, in which case the relief could only be awarded as *de minimis*. Please refer to the *de minimis* regulation for a definition of and the support available for firms in difficulty.<sup>32</sup>

## MOBILE MASTS RELIEF

129. The key legislation is The Non-Domestic Rates (Telecommunication Installations) (Scotland) Regulations 2019.<sup>33</sup>
130. Relief is awarded to mobile masts or towers in (i) three 'Mobile Masts Pilot Areas' (two in Arran and one in Cairngorm) entered in the valuation roll on or after 1 April 2016; or (ii) located in a number of specific different grid references.<sup>34</sup>
131. Relief can be awarded between 1 April 2016 and 31 March 2029. An application to the council is required.
132. This relief is mandatory and 100% funded by the Scottish Government.
133. As the activity is commercial in nature and the recipients receive an advantage on a selective basis due to the sectoral restrictions that apply, State aid is deemed to be present and accordingly the relief can only be awarded as *de minimis*.

## NEW FIBRE RELIEF

134. The key legislation is The Non-Domestic Rates (Telecommunications New Fibre Infrastructure Relief) (Scotland) Regulations 2019.
135. Telecommunications new fibre infrastructure<sup>35</sup> is eligible for 100% relief between 1 April 2019 and 31 March 2029. An application to the council is required.
136. This relief is mandatory and 100% funded by the Scottish Government.
137. New fibre relief could be regarded as a general measure and therefore unlikely to be State aid.

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<sup>32</sup> [http://ec.europa.eu/competition/state\\_aid/legislation/de\\_minimis\\_regulation\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf)

<sup>33</sup> The Non-Domestic Rates (Telecommunications and Canals) (Scotland) Amendment Order 2016 provides that masts to which the relief applies receive separate entries in the valuation roll.

<sup>34</sup> <https://www.gov.scot/publications/4g-infill-programme-non-domestic-rates-relief-mobile-masts/>

<sup>35</sup> The Non-Domestic Rating (Telecommunications New Fibre Infrastructure) (Scotland) Order 2019 provides that new fibre infrastructure installed after 1 April 2019 receives separate entries in the valuation roll.

## RELIGIOUS EXEMPTION FROM RATES

138. The key legislation is section 22 of the Valuation and Rating (Scotland) Act 1956.

139. Buildings occupied by a religious body for the purpose of religious worship or related administration, and halls used in connection with such buildings and their occupiers' purpose, are exempt from rates.

140. The council decides whether premises are used as a place of worship or related administration. Church halls may be ineligible if they are used mainly for non-religious purposes.

141. Although not a statutory requirement, some councils request applications for monitoring purposes.

142. Councils may also offer relief to properties occupied by an institution or organisation which was not established or conducted for profit and whose main object is religious.<sup>36</sup>

143. As the activity is non-economic in nature, organisations would generally not be regarded as undertakings and State aid would not apply.

## RENEWABLE ENERGY RELIEF

144. The key legislation is the Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Regulations 2010.

145. Eligibility for the renewables relief relating to community benefit requires arrangements which give at least 15% of the annual profit to a community organisation, in return for investment (or, failing that, so much of the annual profit as is attributable to 0.5 megawatt of the total installed capacity)<sup>37</sup>. Table 3 shows the sliding scale of applicable relief against total RV of all the qualifying properties in Scotland that the applicant occupies or (if vacant) is entitled to occupy.

**Table 3: Renewable energy relief thresholds<sup>38</sup>**

<b>Cumulative RV in Scotland</b>	<b>Relief (%)</b>
<b>up to £145,000</b>	100
<b>over £145,000 and up to £430,000</b>	50
<b>over £430,000 and up to £860,000</b>	25
<b>over £860,000 and up to £4 million</b>	10
<b>over £4 million</b>	2.5

<sup>36</sup> Section 4(5)(b) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

<sup>37</sup> This was amended to 0.5 megawatt by The Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2017. It was 1 megawatt prior to 1 April 2017.

<sup>38</sup> The Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2016.

146. Relief is available for subjects solely concerned with the production of heat or power (or both) from the following sources:

- biomass
- biofuels
- fuel cells
- photovoltaics
- water (including waves and tides, but excluding production from the pumped storage of water) (“hydro schemes”)
- wind
- solar power
- geothermal sources

147. In addition, hydro schemes with a RV of no more than £5 million are also eligible for 60% relief.<sup>39</sup>

148. This relief is mandatory and 100% funded by the Scottish Government.

149. As the activity is commercial in nature and the recipients receive an advantage on a selective basis due to the sectoral restrictions that apply, State aid is deemed to be present and accordingly the relief can only be awarded as *de minimis*. Any such relief, together with any other public support such as Feed-in Tariffs (FITs), would need to fall within the *de minimis* allowance.

## **REVERSE VENDING MACHINE RELIEF**

150. The key legislation is The Non-Domestic Rates (Reverse Vending Machine Relief) (Scotland) Regulations 2020.

151. Mandatory relief of 100% is available to sites of a Reverse Vending Machine (RVM).

152. The rateable values of sites of Reverse Vending Machines will not be included in the cumulative rateable value assessment for the Small Business Bonus Scheme.

153. It is unlikely that this measure would be considered State aid as it is a general measure.

## **RURAL RELIEF**

154. The key legislation is the Non Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Order 2005 and Schedule 2 to the Local Government and Rating Act 1997 as well as the Non Domestic Rates (Rural Areas) (Scotland) Regulations 2017.<sup>40</sup>

155. Mandatory relief of 100% is available to certain properties indicated in Table 4 which are the only such property located in a settlement in the local authority’s rural settlement list. The council’s determination of this is generally informed by local knowledge and the applicant’s declaration. The council compiles and maintains the rural settlement list, which is

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<sup>39</sup> The Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2018.

<sup>40</sup> This increased rural rate relief 100% for qualifying businesses (previously this was split 50% mandatory and 50% discretionary).

generally updated annually by the council in December to be in place for the start of the next financial year.

**Table 4: Rural relief thresholds**

Qualifying subject <sup>41</sup>	RV threshold
Small food shop, general store or post office	£8,500
Petrol filling station, small hotel or public house <sup>42</sup>	£12,750

156. In addition, local authorities have discretionary powers to grant up to 100% relief to properties which provide a service which is of benefit to the community where they consider it would be in the interest of council tax payers to do so.

157. As the activity is commercial in nature and the recipients receive an advantage on a selective basis due to the geographic restrictions that apply, State aid is deemed to be present and accordingly the relief can generally only be awarded as *de minimis*.

158. A case could perhaps be made that the four tests have not been fulfilled if the service is of a purely local nature and will not affect intra-community trade.

## **SMALL BUSINESS BONUS SCHEME**

159. The key legislation is the Non-Domestic Rates (Levying) (Scotland) Regulations 2020.<sup>43</sup>

160. Occupiers of property located in Scotland (or those entitled to occupy it) with combined RV of £35,000 or less may be eligible for relief. Multiple properties linked to one business (e.g. a chain of shops) may be eligible for relief if their combined RV does not exceed £35,000.

161. Table 5 outlines reliefs and thresholds.

**Table 5: Relief thresholds for SBBS**

Cumulative RV range	Percentage of rate relief
£15,000 or less	100%
£15,001 to £18,000	25%
£18,001 to £35,000	25% on each individual property with a rateable value of £18,000 or less

162. Multiple properties occupied respectively by different businesses (e.g. with separate accounts, premises, employees, suppliers, leases, marketing and websites), which nonetheless seem to be linked, may be considered by the local authority as if they were occupied by separate occupiers, subject to State aid rules.

<sup>41</sup> Subject to legislative definitions.

<sup>42</sup> Ratepayer is not also the ratepayer for another property of the same type in Scotland.

<sup>43</sup> Eligibility is currently due to expire 31 March 2021.

163. The rateable value associated with the site of a reverse vending machine should not be included in a calculation determining the cumulative rateable value of a business's premises.

164. Where there may be links between businesses occupying different properties, the onus is on the applicant to provide sufficient evidence that the businesses are run independently of each other.

165. Payday lenders ceased to be eligible for SBBS from 2014-15. To determine eligibility, local authorities may, for example, adapt their application form to request a lender's applicable interest rate, visit the property to establish whether payday lending is taking place, or use local knowledge.

166. From 1 April 2020, unoccupied properties will not be eligible for SBBS. This will apply regardless of whether the property is in receipt of empty property relief at the time of application for SBBS.

167. If backdated relief is applied for, local authorities will need to establish whether the applicant has been liable for the property's rates for the period in question (they may request supporting evidence from the applicant), and also the applicable relief legislatively provided for relating to different time periods. There is no statutory time limit for which the award of SBBS can be backdated, other than the commencement of the respective legislative provisions.

168. This relief is mandatory and 100% funded by the Scottish Government.

169. It is unlikely that this relief would be considered State aid as it is a general measure (except for payday lending).

## **SPORTS CLUB RELIEF**

170. The key legislation is section 4(2)(aa) (mandatory relief) and 4(5)(c) (discretionary relief) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

171. Properties occupied by a Community Amateur Sports Club (CASC) registered with HM Revenue and Customs,<sup>44</sup> for the purposes of that club, or for the purposes of that club and of other clubs which are, or are entitled to be, registered as a CASC, are entitled to 80% mandatory rates relief under section 4(2)(aa) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962. Note that OSCR-registered charities may also claim 80% mandatory relief under section 4(2)(a) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962. Where these are sports clubs, it would be considered that they are applying for Sports Club Relief.

172. The mandatory element of this relief is 100% funded by the Scottish Government.

173. The local authority also has discretion to 'top up' this relief to 100%.<sup>45</sup> This element of the relief is 75% funded by the Scottish Government. This means that a property receiving 80% mandatory relief and a 20% discretionary top up would see this relief 95% funded by SG (80\*100 + 20\*75).

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<sup>44</sup> <https://www.gov.uk/government/publications/community-amateur-sports-clubs-casc-registered-with-hmrc--2>

<sup>45</sup> Section 4(5)(a) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

174. Properties occupied by certain other sports clubs that are not CASCs or registered charities are eligible to receive up to 100% relief at the discretion of the local authority.<sup>46</sup> Any such relief, whilst it is discretionary, is 100% funded by the Scottish Government.

175. As the activity is non-economic in nature, organisations would generally not be regarded as undertakings and State aid would not apply.

## **STUD FARMS RELIEF**

176. The key legislation is the Valuation (Stud Farms) (Scotland) Order 2005 and Paragraph 4(2B) of Schedule 2 to the Local Government and Rating Act 1997, as inserted by section 28(4)(c) of the Local Government in Scotland Act 2003.

177. Councils may award relief to qualifying stud farms with a rateable value up to £7,000. Note this relief is separate from the de-rating provision under section 7B of the Valuation and Rating (Scotland) Act 1956.

178. This relief is discretionary and is 75% funded by the Scottish Government.

179. As the recipients receive an advantage on a selective basis, State aid is deemed to be present. The relief can be awarded only as *de minimis*.

## **TRANSITIONAL RELIEF**

180. The key legislation is The Non-Domestic Rates (Transitional Relief) (Scotland) Amendment Regulations 2020.<sup>47</sup>

181. Properties that either (i) have a RV no greater than £1.5 million, and are wholly or mainly used for the specified purpose(s)<sup>48</sup> of bed and breakfast accommodation, camping site, caravan, caravan site, chalet and holiday hut guest house, hotel, hostel, pub, restaurant, self-catering holiday accommodation or timeshare accommodation; or (ii) offices in Aberdeen City and Aberdeenshire, are entitled to a cap in their gross rates bill increase between 31 March 2020 and the day in question of 12.5% (14.4% in cash terms), subject to adjustment in respect of any changes in rateable value taking effect after 1 April 2017.

The factor for limiting increases is 1.144, derived from the 12.5% limit and the 1.7% 2020-21 poundage uplift i.e.  $1.125 \times 1.017 = 1.144$ .

182. Table 6 shows the values of the cap from 1 April 2017.

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<sup>46</sup> Section 4(5)(c) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

<sup>47</sup> Eligibility is currently due to expire 31 March 2021 but the Scottish Government has committed to maintaining an annual 12.5% real terms cap in gross rates bills for the same properties to 31 March 2022.

<sup>48</sup> And must have been so used on 31 March 2017 (or, if unoccupied on that date, so used when last occupied).

**Table 6: Annual and cumulative impact of transitional relief on annual gross bill increase limits**

	2017-18	2018-19	2019-20	2020-21
Real terms annual cap	12.50%	12.50%	12.50%	12.50%
Inflation measure	2.00%	3.00%	2.10%	1.70%
Cash terms annual cap	14.75%	15.80%	14.80%	14.40%
Cumulated cash terms increase in rates liability from 2016-17	14.75%	32.90%	52.70%	74.70%
Annual multiplier	1.1475	1.158	1.148	1.144
Cumulative multiplier	1.1475	1.329	1.527	1.747

183. The gross bill for these purposes is the RV multiplied by the non-domestic rate plus, where applicable, the large business supplement. For mergers taking effect on 1 April 2017, the comparison is with the 'relevant old entries' on 31 March 2017.

184. A property that is a split, reorganisation or merger with effect from 2 April 2017 or later is not eligible for relief.

185. A property can continue to be eligible for this relief upon a change of ratepayer, provided the required application has been made.

186. Other mandatory reliefs (i.e. under other legislation) are applicable to the transitional limit where the latter has effect.

187. This relief is mandatory and 100% funded by the Scottish Government.

188. As the activity is commercial in nature and the recipients receive an advantage on a selective basis due to the geographic restrictions that apply, State aid is deemed to be present. The relief can be awarded only as *de minimis*.

## LOCAL RELIEFS AND REDUCTIONS

189. The key provision is section 3A of the Local Government (Financial Provisions etc.) (Scotland) Act 1962 inserted by section 140 of the Community Empowerment (Scotland) Act 2015.

190. As well as the statutory reliefs covered in this document, local authorities can now apply further rates reliefs and reductions.

191. This power to set rates, in accordance with a scheme made by the local authority, came into force on 31 October 2015, and can be applied back to 1 April 2015.

192. A scheme could be based on category of property, area, activity, or by reference to such other matters as a scheme specifies; e.g. a scheme could provide for a general reduction across all rateable properties, or for a single property. Local authorities will wish any schemes to have clear, practicable and robust criteria for practitioners and ratepayers.

193. Any such reduction is fully funded by the local authority, and in exercising the power it must have regard to its income & expenditure and the interests of persons who are liable to pay council tax. A local authority may determine when a reduction is to cease, but it will always cease when there is a change in occupation of the property (although it could then be applied anew if that accords with the scheme).

194. The level of NDR income reported in councils' returns to the Scottish Government would not be affected by any such schemes (i.e. the council would fully fund the cost of rates remission or reduction under any scheme). However, councils' NDR income returns to the Scottish Government could potentially be used as a means of collecting information on the level of relief awarded under this power.

195. As with statutory reliefs, councils must consider and comply with the State aid rule. Any materially or regionally selective rates relief could be capped under this. Any other public support provided under the *de minimis* regulation must be counted within this allowance. Linked enterprises are considered together as one undertaking in respect of the *de minimis* regulation.

196. There is no statutory requirement for councils to require an application process for any relief (e.g. councils could reduce or remit rates in the initial rates bill). However, using application forms to request information about other public support would assist councils in determining the State aid position.

197. A council scheme could potentially be State aid compatible (i.e. relief not capped at *de minimis*), if relief was available across the local authority area and was not materially selective. The Scottish Government's State Aid Unit could offer councils guidance on any proposals, however Councils should obtain their own legal advice.

## **FURTHER INFORMATION**

198. Further information on State aid is available on the Scottish Government website.<sup>49</sup> The Government's State Aid Unit can be emailed at [stateaid@gov.scot](mailto:stateaid@gov.scot).

199. If further information on rates relief is required, please email the Scottish Government at [ndr@gov.scot](mailto:ndr@gov.scot).

200. Please note that the Scottish Government cannot offer legal advice or intervene in relation to individual cases.

## **Scottish Government**

**April 2020**

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<sup>49</sup> <https://www.gov.scot/publications/state-aid-guidance/>



## **ANNEX B – EXAMPLE OF SUPPORTING DOCUMENTARY EVIDENCE**

Relating to whether a property is unoccupied, examples of supporting documentary evidence include:

- Lease/Licence to occupy agreement
- Insurance documents – employee liability insurance, public liability insurance and contents insurance
- Trading accounts (audited)
- Employee pay records/national insurance records including evidence tax payments and national insurance returns to HMRC
- VAT registration certification and VAT returns
- Bank account statements
- HMRC tax assessment
- Evidence of rent changing hands between tenant/landlord – debit in bank statements and payments recorded in company accounts
- Invoices and utility bills – please provide evidence of payments made by occupying company utility bills
- dated receipts or invoices for work carried out in the refurbishment of the property, showing the date of the work and the subject address
- dated receipts for materials purchased for the refurbishment of the property, showing that the materials were delivered to the subject address
- copy of a 'To Let' advert, showing the date of publication and the subject address of the property
- copy of the invoice for the 'To Let' advert showing the date of the publication and the address of the property
- signed statement or dated marketing brochure from a letting or property agent (if the agent completes the application form, no documentary evidence is necessary)
- signed and dated statements from two or more neighbouring businesses or residents, including details of the unoccupied period, the address in question and the names, addresses and contact telephone number of both neighbours (councils may accept one such statement submitted by the applicant's solicitor, provided that their premises are in the vicinity of the applicant's); the signatories should be identifiable on either the valuation roll or valuation list relating to the address and time period in question
- photographs showing both the inside and outside of the property, and demonstrating the date taken

Relating to properties prohibited by law from occupation, examples of supporting documentary evidence include:

- written confirmation that the property is unfit for occupation from either the council's building control section or its environmental health section
- written confirmation from Police Scotland or the Scottish Fire and Rescue Service in the event the property does not meet regulation standards or in the case of fire damage

## **ANNEX C - ACTIVITIES ELIGIBLE FOR ENTERPRISE AREAS RELIEF**

In the life sciences enterprise area:

- Bioinformatics and health informatics
- Deployment of information and communications technology to persons engaged in hospital, medical, dental, residential care and other human health activities
- Drug development
- Experimental and translational medicine and clinical research
- Industrial biotechnology
- Manufacture of basic pharmaceutical products
- Manufacture of electronic components and boards
- Manufacture of instruments and appliances for measuring, testing and navigation
- Manufacture of irradiation, electromedical and electrotherapeutic equipment
- Manufacture of medical and dental instruments and supplies
- Manufacture of optical instruments and photographic equipment
- Manufacture of pesticides and other agrochemical products
- Manufacture of pharmaceutical preparations
- Medical technologies
- Pharmaceutical services, including contract research
- Research and development into, and the manufacture of, medical devices and pharmaceuticals
- Research and experimental development on natural sciences and engineering
- Stem cells and regenerative medicine
- Veterinary medicine
- Wholesale of pharmaceutical goods

In the low carbon/renewables enterprise areas: the design, fabrication, manufacture and assembly of components required for the generation of renewable energy by the technologies described in Schedule 2 of the Renewables Obligation (Scotland) Order 2009, including foundations and substructures (fixed or floating), towers, blades and nacelles, and research and development connected to those activities.

In the general manufacturing and growth sectors enterprise area:

- Creative Clyde
  - Activities involved in the programming, production, post-production, digital distribution or broadcasting of motion picture, video, television, radio, computer games, internet channels or websites
  - Architectural design
  - Digital animation
  - Digital design
  - Digital publishing of books, magazines, journals, periodicals, computer games or music
  - Production of digital advertising or digital marketing materials
  - Software development
  - Sound recording or reproduction of sound recording
- Prestwick International
  - Manufacture of aircraft or spacecraft or related machinery
  - Repair or maintenance of aircraft or spacecraft or related machinery
  - Manufacture of aircraft parts or components
  - Repair or maintenance of aircraft parts or components

- Distribution of aircraft parts or components
- Design or development of aircraft, aero-engines or aircraft components
- Certification of aircraft, aero-engines or aircraft components
- Manufacture of aircraft, aero-engines or aircraft components
- Manufacture of electronic systems used on aircraft, spacecraft or related machinery
- Repair or maintenance of electronic systems used on aircraft, spacecraft or related machinery
- Design or development of electronic systems used on aircraft, spacecraft or related machinery
- Design or development of aerospace-related software
- Provision of aerospace-related logistics services
- Research and development into aerospace-related materials or aerostructures
- Design or development of aerospace-related design systems or manufacturing systems
- Manufacture of aerospace-related design systems or manufacturing systems
- Other aerospace or aviation-related equipment development, manufacture or maintenance activities
- West Lothian
  - Food Manufacture
    - i. Manufacture of breakfast cereals or cereals-based food
    - ii. Manufacture of edible oils, margarine or fats
    - iii. Manufacture of fruit juice or vegetable juice
    - iv. Manufacture of milk products
    - v. Manufacture of pasta, noodles, couscous or similar farinaceous products
    - vi. Manufacture of pastry, biscuits or cake products
    - vii. Manufacture of prepared feeds for farm animals or prepared pet food
    - viii. Manufacture of prepared meals or dietetic food, including specially prepared low calorie food or food prepared for specific dietary requirements
    - ix. Manufacture of sugar, cocoa or chocolate, or of confectionery based on any of these products
    - x. Processing and preserving of fruit or vegetables
    - xi. Processing and preserving of meat, poultry, fish, crustaceans or molluscs
    - xii. Production of meat, poultry or fish products
    - xiii. Production of coffee or coffee substitutes
    - xiv. Production of liquid milk, cream, butter or cheese
    - xv. Grain milling
    - xvi. Tea processing
  - Beverage Manufacture
    - i. Distilling, rectifying or blending of spirits
    - ii. Manufacture of malt, wine, beer, cider or other non-distilled fermented beverages
    - iii. Manufacture of soft drinks
    - iv. Production of bottled water