



# **Tonbridge & Malling Borough Council Retail, Hospitality and Leisure Business Rates Relief Scheme (2023/24)**

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## **1.0 Purpose of the Policy**

- 1.1 The purpose of this policy is to determine the level of discretionary relief to be awarded in respect of the Retail, Hospitality and Leisure Business Rates Relief Scheme for the financial year commencing 1<sup>st</sup> April 2023.
- 1.2 This is a government led initiative and the Council is keen to support businesses as far as possible.

## **2.0 General Explanation**

- 2.1. At the Autumn Statement on 17 November 2022 the Chancellor announced the introduction of a new business rates relief scheme for retail, hospitality, and leisure properties worth around £2.1 billion in 2023/24. This will support the businesses that make our high streets and town centres a success and help them to evolve and adapt to changing consumer demands.
- 2.2 The 2023/24 Retail, Hospitality and Leisure Business Rates Relief scheme will provide eligible, occupied, retail, hospitality, and leisure properties with a 75% relief, up to a cash cap limit of £110,000 per business.

## **3.0 How will the relief be provided?**

- 3.1 As this is a temporary measure for 2023/24, Government is not changing the legislation relating to the reliefs available to properties. Instead, Government will, in line with the eligibility criteria set out in this guidance, reimburse the Council if it uses its discretionary relief powers under section 47 of the Local Government Finance Act 1988 (as amended) to grant relief. It will be for the Council to adopt a local scheme and determine in each individual case when, having regard to this guidance, to grant relief under section 47.
- 3.2 Government will fully reimburse the Council and major precepting authorities for their loss of income under the rates retention scheme as a result of awarding the relief that falls within the definitions in this guidance, using a grant under section 31 of the Local Government Act 2003.
- 3.3 The government expects the Council to apply and grant relief to qualifying ratepayers from the start of the 2023/24 billing year.

## **4.0 Which properties will benefit from relief?**

- 4.1 Hereditaments which benefit from the relief will be those which for a chargeable day in 2023/24:
  - (a) meet the eligibility criteria; and

(b) the ratepayer for that chargeable day has not refused the relief for the eligible hereditament. The ratepayer may refuse the relief for each eligible hereditament anytime up to 30 April 2024. The ratepayer cannot subsequently withdraw their refusal for either all or part of the financial year.

4.2 The Council has decided that, for the purposes of section 47 of the 1988 Act, hereditaments where the ratepayer has refused the relief are outside of the scheme and outside of the scope of the decision of which hereditaments qualify for the discount and are therefore ineligible for the relief.

4.3 In line with the legal restrictions in section 47(8A) of the Local Government Finance Act 1988, the Council may not grant the discount to themselves or precepting authorities

## **5.0 How much relief will be available?**

5.1 Subject to the £110,000 cash cap per business, the total amount of government-funded relief available for each property for 2023/24 under this scheme is for chargeable days from 1 April 2023 to 31 March 2024, 75% of the chargeable amount.

5.2 The relief will be applied after mandatory reliefs and other discretionary reliefs funded by section 31 grants have been applied, but before those where the Council has used its wider discretionary relief powers introduced by the Localism Act 2011, which are not funded by section 31 grants. However, the former categories of discretionary relief available prior to the Localism Act 2011 (i.e., charitable relief etc.) will be applied first in the sequence of discretionary reliefs and, therefore, before Retail, Hospitality and Leisure relief. Authorities may use their discretionary powers to, at cost to themselves, offer further discounts outside this scheme or additional relief to hereditaments within the scheme. However, where the Council applies a locally funded relief under section 47, this will be applied after the Retail, Hospitality and Leisure relief.

5.3 The ordering **will** be applied in following sequence:

- Transitional Relief
- Mandatory Reliefs (as determined in legislation)
- S.47 Discretionary Relief in the following order:
  - (i) 2023 Supporting Small Business (SSB);
  - (ii) Former categories of discretionary relief available prior to the Localism Act 2011 (i.e., charitable, CASC, rural top up, and not for profit) will be applied first in the sequence of discretionary reliefs, after SSB;
  - (iii) Other discretionary (centrally funded);
  - (iv) 2023/24 Retail Hospitality and Leisure relief scheme; and
  - (v) Other locally funded schemes (such as section 49 hardship).

5.4 Subject to the cash cap, the eligibility for the discount and the relief itself will be assessed and calculated on a daily basis. The following formula will be used to

determine the amount of relief to be granted for a chargeable day for a particular hereditament in the financial year 2023/24:

- Amount of relief to be granted =  $V \times 0.75$  where:
- $V$  is the daily charge for the hereditament for the chargeable day after the application of any mandatory relief and any certain other discretionary reliefs in line with 5.3 above.

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

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

## **6.0 The Cash Cap and Subsidy Control**

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

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

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

6.3 The Retail Hospitality and Leisure Scheme is likely to amount to subsidy. Any relief provided by the Council under this scheme will need to comply with the UK’s domestic and international subsidy control obligations.

6.4 To the extent that the Council is seeking to provide relief that falls below the Minimal Financial Assistance (MFA) thresholds, the Subsidy Control Act allows an economic actor (e.g., a holding company and its subsidiaries) to receive up to £315,000 in a 3-year period (consisting of the 2023/24 year and the 2 previous financial years). MFA subsidies cumulate with each other and with other subsidies that fall within the category of ‘Minimal or SPEI financial assistance’. Expanded Retail Discount granted in 2021/22 does not count towards the £315,000 allowance but BEIS COVID-19 business grants and any other subsidies claimed under the Small Amounts of Financial Assistance limit of the Trade and Cooperation Agreement will be counted.

6.5 In those cases, where it is clear to the Council that the ratepayer is likely to breach the cash cap or the MFA limit, then the Council will automatically withhold the relief.

- 6.6 MFA subsidies above £100,000 are subject to transparency requirements. This is not cumulated per beneficiary but applies per subsidy award. This means that for every individual subsidy provided of more than £100,000, the Council will include details of the subsidy on the subsidy control database.

## **7.0 Splits, mergers, and changes to existing hereditaments**

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

## **8.0 Recalculations of relief**

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

- 8.2 Under regulations made under section 47 of the Local Government Finance Act 1988 the Council must give at least 12 months' notice of a revocation or variation of a rate relief scheme the effect of which would be to increase rate bills. Such a revocation or variation can only take effect at the end of a financial year (other than to comply with international agreements). But within these regulations, the Council may still make decisions to ensure the scheme is administered in accordance with the extant rules. If a change in circumstances renders a property ineligible, the relevant bill can be amended in the year to reflect the loss of the relief.

## **9.0 Eligibility for the Retail, Hospitality and Leisure Relief Scheme**

- 9.1 The Council uses the following definitions to establish eligibility for the relief:

**Hereditaments that meet the eligibility for Retail, Hospitality and Leisure scheme will be occupied hereditaments which meet all of the following conditions for the chargeable day:**

- they are wholly or mainly being used:
  - (i) as shops, restaurants, cafes, drinking establishments, cinemas, or live music venues,
  - (ii) for assembly and leisure; or
  - (iii) as hotels, guest & boarding premises, or self-catering accommodation

**i. Hereditaments that are being used for the sale of goods to visiting members of the public:**

- Shops (such as: florists, bakers, butchers, grocers, greengrocers, jewellers, stationers, off licences, chemists, newsagents, hardware stores, supermarkets, etc)
- Charity shops
- Opticians
- Post offices
- Furnishing shops/ display rooms (such as: carpet shops, double glazing, garage doors)
- Car/caravan show rooms
- Second-hand car lots
- Markets
- Petrol stations
- Garden centres
- Art galleries (where art is for sale/hire)

**ii. Hereditaments that are being used for the provision of the following services to visiting members of the public:**

- Hair and beauty services (such as: hairdressers, nail bars, beauty salons, tanning shops, etc)
- Shoe repairs/key cutting
- Travel agents
- Ticket offices e.g., for theatre
- Dry cleaners
- Launderettes
- PC/TV/domestic appliance repair
- Funeral directors
- Photo processing
- Tool hire
- Car hire

**iii. Hereditaments that are being used for the sale of food and/or drink to visiting members of the public:**

- Restaurants
- Takeaways
- Sandwich shops
- Coffee shops
- Pubs
- Bar

**iv. Hereditaments which are being used as cinemas**

**v. Hereditaments that are being used as live music venues:**

- Live music venues are hereditaments wholly or mainly used for the performance of live music for the purpose of entertaining an audience. Hereditaments cannot be considered a live music venue for the purpose of business rates relief where a venue is wholly or mainly used as a nightclub or a theatre, for the purposes of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- Hereditaments can be a live music venue even if used for other activities, but only if those other activities (i) are merely ancillary or incidental to the performance of live music (e.g., the sale/supply of alcohol to audience members) or (ii) do not affect the fact that the primary activity for the premises is the performance of live music (e.g., because those other activities are insufficiently regular or frequent, such as a polling station or a fortnightly community event).
- There may be circumstances in which it is difficult to tell whether an activity is a performance of live music or, instead, the playing of recorded music.

**vi. Hereditaments that are being used for the provision of sport, leisure, and facilities to visiting members of the public (including for the viewing of such activities).**

- Sports grounds and clubs
- Museums and art galleries
- Nightclubs
- Sport and leisure facilities
- Stately homes and historic houses
- Theatres
- Tourist attractions
- Gyms
- Wellness centres, spas, massage parlours
- Casinos, gambling clubs and bingo halls

**vii. Hereditaments that are being used for the assembly of visiting members of the public.**

- Public halls
- Clubhouses, clubs, and institutions

**viii. Hereditaments where the non-domestic part is being used for the provision of living accommodation as a business:**

- Hotels, Guest, and Boarding Houses
- Holiday homes
- Caravan parks and sites

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



9.3 The list set out above is not intended to be exhaustive as it would be impossible to list the many and varied uses that exist within the qualifying purposes.

**Hereditaments that are being used for the provision of the following services to visiting members of the public:**

9.4 The list below sets out the types of uses that the government does not consider to be an eligible use for the purpose of this discount. Again, it is for the Council to determine for themselves whether particular properties are broadly similar in nature to those below and, if so, to consider them **not** eligible for the discount under their local scheme:

- Financial services (e.g., banks, building societies, cash points, bureaux de change, short-term loan providers, betting shops);
- Medical services (e.g., vets, dentists, doctors, osteopaths, chiropractors);
- Professional services (e.g., solicitors, accountants, insurance agents/ financial advisers, employment agencies, estate agents, letting agents); and
- Post office sorting offices.

## **10.0 Effect on the Council's Finances**

10.1 As this is a government led initiative, grants for the full amount awarded will be available through section 31 of the Local Government Act 2003.

## **11.0 Administration of Discretionary Relief**

11.1 The following section outlines the procedures followed by officers in granting, amending, or cancelling discretionary relief and reduction. This is essentially laid down by legislation<sup>1</sup>

### **Applications and Evidence**

11.2 Retail, Hospitality and Leisure Business Rates relief will be awarded automatically by the Council.

11.3 **The Council will provide this service and provide guidance free of charge. Ratepayers are encouraged to approach the Council direct and NOT pay for such services through third parties.**

### **Granting of relief**

11.4 In all cases, the Council will notify the ratepayer of decisions via their rates demand and details will include:

- The amount of relief granted and the date from which it has been granted;

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<sup>1</sup> The Non-Domestic Rating (Discretionary Relief) Regulations 1989

- The new chargeable amount; and
- A requirement that the applicant should notify the Council of any change in circumstances that may affect entitlement to relief.

11.5 This relief is to be granted from the beginning of the financial year in which the decision is made or when liability begins whichever is the later.

11.6 Variations in any decision will be notified to ratepayers as soon as practicable

## **12.0 Scheme of Delegation**

### **Granting, Varying, Reviewing and Revocation of Relief**

12.1 All powers in relation to reliefs are given under the Local Government Finance Act 1988, the Local Government and Rating Act 1997, the Local Government Act 2003, and the Localism Act 2011. However section 223 of the Local Government Act 1992 allows for delegation of decisions by the Council to Cabinet, Committees, Sub-Committees or Officers.

12.2 For the purposes of this policy, the Revenues Manager will be able to award, revise or revoke any award of Retail, Hospitality and Leisure Business Rates relief.

12.3 Applications that are refused will, on request, be reconsidered if additional supporting information is provided or the refusal is subsequently considered to be based on a misinterpretation of the application.

## **13.0 Reviews**

13.1 Where the Council receives an appeal from the ratepayer regarding the granting, non-granting or the amount of any Retail, Hospitality and Leisure Business Rates relief, the case will be reviewed by the Revenues Manager. Where a decision is revised, then the ratepayer shall be informed, likewise if the original decision is upheld.

13.2 Where the ratepayer wishes to appeal the decision, the case will be considered by the Council's Section 151 Officer whose decision on behalf of the Council will be final.

13.3 Ultimately the formal appeal process for the ratepayer is Judicial Review although the Council will endeavour to explain any decision fully and openly with the ratepayer.

## **14.0 Reporting changes in circumstances**

- 14.1 Where any award is granted to a ratepayer, the Council will require any changes in circumstances which may affect the relief, to be reported as soon as possible or in any event within 21 days of the change. This will be important where the change would result in the amount of the award being reduced or cancelled.
- 14.2 Where a change of circumstances is reported, the relief will, if appropriate, be revised or cancelled as appropriate. Where any award is to be reduced, the Council will look to recover the amount from the date the change of circumstances occurred.

## **15.0 Fraud**

- 15.1 Where a ratepayer falsely applies for any relief, or where the ratepayer provides false information, makes false representation, or deliberately withholds information in order to gain relief, prosecutions will be considered under the Fraud Act 2006.