



# **Tonbridge & Malling Borough Council Policy for the granting of the Discretionary Business Rates Relief**

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## Version Control

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## **1.0 Purpose of the Policy**

- 1.1 The purpose of this policy is to determine the level of Discretionary Business Rates Relief to be granted to certain defined ratepayers within the Council's area.
- 1.2 The Local Government Finance Act 1988 and subsequent legislation requires the Council to grant discretionary relief for premises occupied by Charities and similar organisations that own or occupy them wholly or mainly for charitable purposes. Likewise, certain premises situated within a rural settlement area will be eligible for relief. Powers have also been granted under the Localism Act 2011, which allow for the granting of discretionary rate relief to any premises where the Council feels the granting of such relief would be of benefit to the local community.
- 1.3 In addition to the above, Central Government is keen that in certain cases, assistance should be provided to businesses who have had increases in their rate liability due to the revaluation of premises in April 2017. In these cases, and where the Council meets Central Government guidelines, grants are available under section 31 of the Local Government Act 2003.
- 1.4 Whilst the Council is obliged to grant relief to premises, which fall within the mandatory category, the Council also has powers to grant discretionary relief and reductions to ratepayers, subject to certain criteria being met.
- 1.5 This document outlines the following areas:
  - Details of the criteria for receiving an award under the Discretionary Business Rates Relief Scheme;
  - The Council's general policy for granting of all types of Discretionary Reliefs;
  - Guidance on granting and administering the reliefs;
  - European Union requirements including provisions for State Aid; and
  - The Council's Scheme of Delegation.
- 1.6 This document covers all aspects of the new Discretionary Business Rates Relief scheme which is available from 1<sup>st</sup> April 2017. Where businesses apply for relief they will be granted (or not granted) relief in line with the following policy.

## 2.0 Discretionary Relief – Legislative Background

### Introduction

- 2.1 The original purpose of discretionary relief was to provide assistance where the property does not qualify for mandatory relief, or to 'top' up cases where ratepayers already receive mandatory relief.
- 2.2 Over recent years, and particularly since 2011, the discretionary relief provisions have been amended to allow authorities the flexibility to provide more assistance to businesses and organisations.
- 2.3 The range of bodies, which are eligible for discretionary rate relief, is wide and has been developed by both the Council and Central Government to address certain issues with business rates.
- 2.4 Unlike mandatory relief, ratepayers are obliged to make a written application to the Council. The Council will expect all businesses to make applications in such a format as is required (which may vary from time to time) and for the business to provide such information, evidence, certificates etc. as required in order to determine whether relief should be awarded.
- 2.5 The Council is obliged to consider carefully every application on its merits, taking into account the contribution that the organisation makes to the amenities within the authority's area. There is no statutory appeal process or Tribunal against any decision made by the Council, although as with any decision of a public authority, decisions can be reviewed by Judicial Review. The authority will however, upon request, review decisions made. Details of the internal review process are given within this policy.
- 2.6 The granting of discretionary relief falls broadly into the following categories:
  - a. Discretionary Relief – Charities who already receive mandatory relief;
  - b. Discretionary Relief – Premises occupied by organisations not established or conducted for profit whose main objects are charitable or are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts **or** premises occupied by organisations not established or conducted for profit and wholly or mainly used for purposes recreation;
  - c. Discretionary Relief – Granted under the Localism Act 2011 provisions;
  - d. Local Newspaper Relief (from 1<sup>st</sup> April 2017 for a period of two years);
  - e. Local Public House Relief (from April 2017 for a one year period);
  - f. Supporting Small Businesses Relief (from 1<sup>st</sup> April 2017 for a period of five years or until business pay their full rate charge or their transitional rate charge (calculated in accordance with the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016); and
  - g. Discretionary Business Rates Relief Scheme (from 1<sup>st</sup> April 2017 for a period of up to four years).
- 2.7 This policy document purely covers the granting of awards under the Discretionary Business Rates Relief Scheme which covers a period from 1<sup>st</sup> April 2017 for up to four years. The decision to grant or not to grant discretionary relief is a matter purely for the Council. The Council's policy for granting other reliefs can be found on the Council's website [www.tmbc.gov.uk](http://www.tmbc.gov.uk).

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## **The Council's general approach to granting Discretionary Relief**

- 2.8 In deciding which organisations should receive discretionary rate relief, the Council has considered the following factors and priorities:
- a. That any award should support business, organisations and groups that help to retain services in the Council's area and not compete directly with existing businesses in an unfair manner;
  - b. It should help and encourage business, organisations, groups and communities to become self-reliant;
  - c. Awarding discretionary relief should not distort competition or significantly change the provision of services within the Council's area;
  - d. Local organisations will be given priority over national organisations. Where requested, the organisation will need to supply the Council with clear evidence of **all** financial affairs including, and most importantly, the amounts of monies raised, used and invested locally. This will be essential where the organisation is national in nature;
  - e. To enable appropriate organisations to start, develop or continue their activities, which deliver outcomes to the community and that also relate to the priorities of the Council, which, without granting discretionary relief they would be unable to do;
  - f. To assist the Council in delivering services which could not be provided otherwise;
  - g. To enable the Council to determine the level of rate change in comparison with the organisation's financial situation; and
  - h. To ensure that the financial impact of awarding discretionary business rate relief is justified in terms of the local outcomes achieved by the organisation receiving it.
- 2.9 Where any reduction or remission is granted to a ratepayer under S49 Local Government Finance Act 1988 where hardship is proven to the Council, then there will be no requirement to grant Discretionary Rate Relief for that amount.
- 2.10 In certain cases, the order in which relief is granted is specified. Mandatory relief shall be granted in all cases where the criteria is met irrespective of whether discretionary relief can be granted or not.

## **The Council's approach to granting Government led Discretionary Relief schemes**

- 2.11 Over the past few years, a number of schemes have been led by Central Government but without specific legislative changes. These are administered under S47 of the Local Government Finance Act 1988 and guidance is often provided. The Council is keen to support such initiatives especially where they are designed to help local businesses and will look to maximise both the reliefs given as well as maximising any grants receivable. However, the Council reserves the right to vary its approach where thought appropriate.
- 2.12 In the case of the Discretionary Business Rate Relief scheme, Central Government is keen that individual Councils develop their own scheme to meet local needs. Government has allocated funds to

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the Council using a particular methodology, but it has been keen to point out that this should have **no** bearing on the actual scheme adopted by the Council.

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

- 3.1 The granting of discretionary relief will, in the main, potentially involve a cost to the Council. Since the change to the funding for Non-Domestic Rating in April 2013, the effect of the relief is complex.
- 3.2 Any amounts granted prior to 1<sup>st</sup> April 2013 and continuing since that date will be included in the Council's baseline within the Business Rates Retention Scheme. Any amounts granted for similar cases after 1<sup>st</sup> April 2013, the costs of the relief will be borne in accordance with the Business Rates Retention Scheme share namely 50% borne by Central Government, 40% by the Council and 10% by Kent County Council This also applies where mandatory relief is granted.
- 3.3 In March 2017, Central Government announced that it would make available a discretionary fund of £300 million over four years from 2017-18 to support those businesses that face the steepest increases in their business rates bills as a result of the revaluation. Government determined that Councils would be best placed to determine how this fund should be targeted and administered to support those businesses and locations within their area that are in the greatest need.
- 3.4 Where Central Government leads an initiative such as the Discretionary Business Rates Relief Scheme, grants are often made available. This is not automatic and Central Government will look to the Council to adopt any recommended criteria when granting in these areas to ensure that any grant is paid
- 3.5 Every authority within England is to be provided with a share of the fund to support their local businesses. This is to be administered through billing authorities' discretionary relief powers under section 47 of the Local Government Act 1988. The full effects of the financial allocation are shown below.
- 3.6 The allocation of monies to authorities and the methodology of the funding award is completely separate to the scheme itself and Government believes that local authorities are best placed to judge the particular circumstances of local ratepayers and direct the funding where it is most needed to support local economies.
- 3.7 The funding is not provided equally over the four-year period but in the following approximate proportions:
- Year 1 (2017/18) 58%
- Year 2 (2018/19) 28%
- Year 3 (2019/20) 12%
- Year 4 (2020/21) 2%
- 3.8 Councils will be compensated for any relief granted under section 31 of the Local Government Act 2003. The Government has decided underspend cannot be 'vired' from one year to the next.

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3.9 A key criteria of reimbursement will be that all Billing Authorities will consult with major precepting authorities when formulating their schemes.

3.10 The financial effects to the Council of the Discretionary Business Rates Relief Scheme are shown in the following table

<b>Amount of discretionary fund awarded (£000s) - Tonbridge &amp; Malling Borough Council</b>			
2017-18	2018-19	2019-20	2020-21
338	164	68	10

3.11 The above is to be awarded up to the maximum level set by Central Government. It is possible for the Council to grant more relief than that allocated by grant. However, once the maximum grant level has been reached, any additional amount granted is borne:  
40% by the Council, 10% by Kent County Council and 50% by Central Government.

## 4.0 Discretionary Relief – EU State Aid requirements

- 4.1 European Union competition rules generally prohibit Government subsidies to businesses. Relief from taxes, including non-domestic rates, can constitute state aid. The Council must bear this in mind when granting discretionary rate relief.
- 4.2 Rate relief for charities and non-profit making bodies is not generally considered to be state aid, because the recipients are not in market competition with other businesses. However, where other bodies receive relief and are engaged in commercial activities or if they are displacing an economic operator or if they have a commercial partner, rate relief could constitute state aid.
- 4.3 Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations (1407/2013)<sup>1</sup>. The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a three-year period (consisting of the current financial year and the two previous financial years).
- 4.4 Where the relief to any one business is greater than the De Minimis level, then permission will need to be obtained from the European Commission. In such cases the matter will be referred to the Department for Communities and Local Government (DCLG) for advice and then referred back to the Council for consideration. It will be for the ratepayer to provide confirmation as to whether the State Aid provisions apply to them.
- 4.5 In all cases, where discretionary relief is to be granted or where liability is to be reduced, when making an application, ratepayers will be required to provide the Council with sufficient information to determine whether these provisions are applicable in their case.

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:352:0001:0008:EN:PDF>

## 5.0 Administration of Discretionary Relief – General approach

- 5.1 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>2</sup>

### Applications and Evidence

- 5.2 All reliefs must be applied for. Application forms are produced by the Council both in hard copy and electronic format. The relevant application form is included within Appendix A of this policy. The Council will specify how applications are to be received and this may vary from time to time.
- 5.3 Organisations are required to provide a completed application form plus any such evidence, documents, accounts, financial statements etc. necessary to allow the Council to make a decision. Where insufficient information is provided, then no relief will be granted. In some cases, it may be necessary for officers to visit premises and we would expect organisations claiming relief to facilitate this where necessary.
- 5.4 Applications should initially be made to the Revenues Section and will be determined in accordance with this policy.
- 5.5 **The Council will provide this service and guidance free of charge. Ratepayers are encouraged to approach the Council direct and NOT pay for such services through third parties.**

### Granting of relief

- 5.6 In all cases, the Council will notify the ratepayer of decisions made.
- 5.7 Where an application is successful, then the following will be notified to them in writing:
- The amount of relief granted and the date from which it has been granted;
  - If relief has been granted for a specified period, the date on which it will end;
  - The new chargeable amount;
  - The details of any planned review dates and the notice that will be given in advance of a change to the level of relief granted; and
  - A requirement that the applicant should notify the Council of any change in circumstances that may affect entitlement to relief.
- 5.8 Where relief is not granted then the following information is provided, again in writing:
- An explanation of the decision within the context of the Council's statutory duty; and
  - An explanation of the appeal rights (see below).

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<sup>2</sup>The Non-Domestic Rating (Discretionary Relief) Regulations 1989

- 5.9 Discretionary relief is to be granted from the beginning of the financial year in which the decision is made. Since 1997 decisions can be made up to 6 months after the end of the financial year for which the application was made. In such cases, the Council *may* backdate its decision.
- 5.10 A decision to award discretionary relief and how much relief is given is normally only applicable to the financial year for which the application is made. However, the Council reserves the right to grant relief for any other period as appropriate. In relation to the Discretionary Business Rate Relief scheme, awards will, in the main be granted from 1<sup>st</sup> April 2017.
- 5.11 A fresh application for discretionary relief will be necessary for each financial year **or** at such time-period as the Council determines.
- 5.12 Relief cannot be awarded to any hereditament occupied by a Billing or Precepting Authority (excepted hereditament).

### **Variation of a decision**

- 5.13 Variations in any decision will be notified to ratepayers as soon as practicable and will take effect as follows:
- Where the amount is to be increased due to a change in rate charge or a change in the Council's decision which increases the award – this will apply from the date determined by the Council as appropriate;
  - Where the amount is to increase for any other reason it will take effect at the expiry of a financial year, and so that at least one year's notice is given;
  - Where the amount is to be reduced due to a reduction in the rate charge or liability including any reduction in rateable value, awarding of another relief or exemption this will apply from the date of the decrease in rate charge; and
  - Where the amount is to be reduced for any other reason, it will take effect at the expiry of a financial year, and so that at least one year's notice is given.
- 5.14 A decision may be revoked at any time, however, a one year period of notice will be given and the change will take effect at the expiry of a financial year.

## **6.0 Scheme of Delegation**

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

- 6.1 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.
- 6.2 The Council's scheme of delegation allows for the Revenues Manager to award, revise or revoke any discretionary relief applications. However, any application which is considered to be of a significant nature will be subject to consultation with the S151 Officer of the Council, and / or the relevant Executive member prior to final determination.
- 6.3 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.

### **Reviews**

- 6.4 The policy for granting relief will be reviewed annually or sooner where there is a substantial change to the legislation or funding rules. At such time, a revised policy will be brought before the relevant committee of the Council.
- 6.5 The Revenues Manager will submit a report on a six-monthly basis to the section 151 Officer summarising the position on applications received, granted and not granted.

### **Appeals**

- 6.6 Where the Council receives an appeal from the ratepayer regarding the granting, non-granting or the amount of any discretionary 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.
- 6.7 Where the ratepayer continues to be aggrieved by the decision, the case will be referred to the section 151 Officer for review. Where appropriate, cases of this nature may also be referred to the Executive member as appropriate.
- 6.8 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.

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## **7.0 Consultation**

- 7.1 The Council has consulted with the major preceptors in relation to this scheme and has taken their comments into account when determining the eligibility criteria. This is an essential part of the Discretionary Business Rates Relief Scheme and is in line with the grant determination issued by the Department of Communities and Local Government (DCLG) No.31/3071.
- 7.2 The grant determination states that a condition of the fund is that consultation is undertaken with 'relevant authorities'. Relevant authorities for the purposes of this scheme means:
- a. Any major precepting authority; and
  - b. Any combined authority.
- 7.3 In the case of Tonbridge & Malling Borough Council only the major precepting authorities have been consulted namely:
- a. Kent County Council;
  - b. The Police and Crime Commissioner for Kent; and
  - c. The Kent Fire and Rescue Service.

## 8.0 Decisions by the Council under this scheme

- 8.1 Decisions by the Council are made directly in line with the Scheme of Delegation as outlined within section 6 of this policy. Any decision to award relief under this scheme will follow the core principles of the Council's discretionary relief policy as defined by section 2.8.
- 8.2 It should be noted that, whilst the funding from Central Government for Discretionary Business Rate Relief Scheme is limited, the decision of the Council whether to award any relief under this scheme **cannot not take account** of the level of any funding.

### Discretionary Business Rate Relief Scheme- the Council's policy for granting discretionary relief.

#### Applications for relief under this scheme

- 8.3 The Council is keen to identify ratepayers who may qualify for the relief and as such will look to encourage certain ratepayers to apply. The Council will look to simplify the application process wherever possible, but it will expect any ratepayers to provide such information as is required by the Council to support their application.
- 8.4 The Council has decided that relief under the scheme will be awarded using the following criteria:
- a. The scheme is designed to assist ratepayers who have suffered significant increases in rate liability due to the revaluation and the subsequent increase to their Rateable Value;
  - b. Relief will not be granted where a hereditament has a rateable value of £200,000 or more at 1<sup>st</sup> April 2017;
  - c. Relief will not be awarded where mandatory relief is granted;
  - d. In assessing any potential entitlement to an award under this scheme, the Council will compare the following:
    - i. The rate liability of the ratepayer at 31<sup>st</sup> March 2017 after any reliefs and reductions; and
    - ii. The rate liability of the ratepayer at 1<sup>st</sup> April 2017 taking into account any transitional relief or discretionary relief within this policy;
  - e. Relief will only be given to premises which are liable for occupied rates. No relief within this scheme will be granted for unoccupied premises;
  - f. Relief will only be granted to ratepayers who were in occupation at 31<sup>st</sup> March 2017 and in occupation on 1<sup>st</sup> April 2017 and for each day subsequently.
  - g. Ratepayers taking up occupation after the 1<sup>st</sup> April 2017 will **not** be eligible for relief on the basis that new ratepayers would not have suffered from increases due to a revaluation;
  - h. Relief will be targeted to local businesses and not those business that are national or multi-national in nature. Local businesses are, for the purposes of this scheme, those which have premises wholly in the Councils area;
  - i. Relief may be awarded for more than one premises as long as **all** other criteria are met;
  - j. Relief will **not** be awarded where:
    - i. where the ratepayer has applied for a reduction under S44a of the Local Government Finance Act 1988; or

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- ii. Where the hereditament is used for the purposes of Public Services; or
- iii. the hereditament has an increase in Rateable Value after the 1<sup>st</sup> April 2017 which increases the rate charge above the 1<sup>st</sup> April 2017 value.

## **Applications for relief under this scheme**

- 8.5 The Council is keen to identify ratepayers who may qualify for the relief and as such will look to encourage certain ratepayers to apply. The Council will look to simplify the application process wherever possible, but it will expect any ratepayers to provide such information as is required by the Council to support their application

## **Amount of Relief**

- 8.6 The amount of relief is tapered and will be calculated as follows:

**2017/18**

Relief will be awarded where the calculation in 8.4d above would result in an increase of more than 2%  
**or** £250 whichever is the higher;

**2018/19**

Award = 2017/18 award x 48% (for clarity this will be 48% of the relief awarded in 2018/19)

**2019/20**

Award = 2018/19 award x 41% (for clarity this will be 41% of the relief awarded in 2018/19)

**2020/21**

Award = 2019/20 award x 15% (for clarity this will be 15% of the relief awarded in 2019/20)

## **Variation and amendment of relief under the scheme**

- 8.7 As with all reliefs, the amount of relief awarded under the Discretionary Businesses Rates relief scheme will be recalculated in the event of a change of circumstances. In effect relief is calculated on a daily basis in line with the ratepayer's liability on that day. This will include, for example, a backdated change to the rateable value of the hereditament. This change of circumstances could arise during the year in question or during a later year.
- 8.8 The Non-Domestic Rating (Discretionary Relief) Regulations 1989 (S.I. 1989/1059) requires the Council to provide ratepayers with at least one year's notice in writing before any decision to revoke or vary a decision so as to increase the amount the ratepayer has to pay takes effect. Such a revocation or variation of a decision can only take effect at the end of a financial year. But within these regulations, the Council may still make decisions which are conditional upon eligibility criteria or rules for calculating relief which allow the amount of relief to be amended within the year to reflect changing circumstances.

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## **9.0 Reporting changes in circumstances**

- 9.1 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 and in any event not more than 21 days from the happening of the event. This will be important where the change would result in the amount of the award being reduced or cancelled e.g. where the premises comes unoccupied or is used for a purpose other than that determined by the Council as eligible for relief.
- 9.2 Where a change of circumstances is reported, the relief will, if appropriate be revised or cancelled. Where any award is to be reduced, the Council will look to recover the amount from the date the change of circumstances occurred.

## **10.0 Fraud**

- 10.1 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.

## **Appendix A**

### **Application Form for the Discretionary Business Rate Relief Scheme.**

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