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Local Government Finance Circular No. 6/2021

By e-mail

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

Date: 30 March 2021

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 reliefs. Annex B provides examples of supporting documentary evidence, while Annex C lists the activities eligible for Enterprise Areas Relief.
2. This is offered in light of recent changes to reliefs in respect of 2021-22.
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
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ANNEX A - NON-DOMESTIC RATES RELIEF: INFORMATION FOR SCOTTISH LOCAL AUTHORITIES

INTRODUCTION

1. 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.
2. 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.¹ 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 NDR reliefs, is undertaken by local authorities. A ratepayer may appeal to the council on the grounds that they are being improperly charged.²
3. 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.
4. A number of reliefs are available for certain types of property nationally under Scottish law. These are subject to the UK's international commitments on subsidy control arising from, amongst others, the EU-UK Trade and Cooperation Agreement (TCA), World Trade Organisation Membership and commitments arising from international treaties and agreements to which the UK is a party.
5. Some reliefs are mandatory (i.e. they must be applied) and some are discretionary (i.e. local authorities have discretion as to their application).
6. 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

7. Information in this document is provided by the Scottish Government, in conjunction with the Convention of Scottish Local Authorities (COSLA), to Scottish local authorities.
8. This document has no statutory basis, is offered without prejudice to relevant legislation and legal decisions, and does not constitute legal advice.
9. 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

¹ www.saa.gov.uk

² 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."

Revenues Rating and Valuation (IRRV). A draft was shared for comment with all local authorities ahead of finalising this version.

10. 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.

11. 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.

12. 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.

SUBSIDY CONTROL

Background

13. The EU-UK Trade and Cooperation Agreement (TCA) is applicable from 1 January 2021. Under the TCA, the UK has established its own system of subsidy control. However, the UK's regime is not entirely exclusive to the EU's, and both are subject to common considerations.

14. All public authorities must have regard for commitments in the TCA, Withdrawal Agreement, Northern Ireland Protocol, WTO rules (including the Agreement on Subsidies and Countervailing Measures), and Trade Agreements between the UK and non-EU countries. Non-domestic rates reliefs, like other subsidy or support measures, may be subject to the conditions set out in these international agreements.

15. Relevant links are provided below:

- [EU-UK Trade and Cooperation Agreement 24.12.2020.pdf \(publishing.service.gov.uk\)](#)
- [Summary guide to awarding subsidies - GOV.UK \(www.gov.uk\)](#)
- [Technical guidance on the UK's international subsidy control commitments - GOV.UK \(www.gov.uk\)](#)

Defining a Subsidy

16. It is helpful to refer to the definition of a subsidy set out in Article 3.1 of the Subsidy Control chapter of the TCA³. A subsidy:

- arises from the resources of a public authority at any level – central, devolved, local government or a public body. This could be a financial or an in-kind contribution – for example, grants, loans at below market rate, or a loan guarantee at below market rate or allowing a company to use publicly owned office space rent free.

³ Chapter 3 (subsidy control) of Title XI of Heading One in Part Two of the Trade and Cooperation Agreement.

- confers an economic advantage on one or more economic actors. An economic actor is any entity that (regardless of its legal status) offers goods or services on a market. A government department or a charity could be an economic actor if they are acting commercially.
 - is specific insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services.
 - has, or could have, an effect on international trade or investment. This can be trade with any WTO member or, more specifically, between the UK and a country with whom it has a Free Trade Agreement. For example, if the subsidy is supporting production of a good which is exported between the UK and the EU this could affect trade. Please note that you are not being asked whether the subsidy could harm trade but merely whether there could be some sort of effect. Subsidies to very local companies or a small tourist attraction are unlikely to be caught as this is unlikely to affect international trade.
17. If the measure is considered a subsidy, its treatment may vary depending on whether it is a good or a service. Please consult the technical guidance for more information.
18. Article 3.5 of the Subsidy Control chapter of the TCA makes provision about certain of categories of subsidy that are prohibited. Similarly, the WTO ASCM contains 2 categories of prohibited subsidies, under which subsidies must not be given:
- subsidies dependent on export performance – for example giving a subsidy to a widget manufacturer linked to exporting a certain tonnage of widgets to another country
 - subsidies contingent on the use of domestic content – for example stating that the beneficiary must use 50% UK manufactured widgets in their product

TCA de minimis

19. The TCA sets out principles which all subsidies must meet, unless the total amount granted to a single economic actor is below 325,000 Special Drawing Rights (approx. £335,000 at 22 March 2021) over three years⁴.
20. The TCA de minimis of 325,000 Special Drawing Rights replaces the EU de minimis regulation under the Treaty of the Functioning of the European Union, which limited the amount of support provided to a beneficiary to €200,000 (cash grant equivalent) over a three-year period (please see de-minimis calculation below).
21. The only exceptions to the scope of the TCA are subsidies for agriculture and fisheries, subsidies related to trade in fish and fish products and subsidies related to the audio visual sector.
22. The TCA sets out common principles that must be met for subsidies that exceed the 325,000 special drawing rights. The designing and granting of subsidies must consider these principles on a case-by-case basis – including those under the Community Empowerment (Scotland) Act 2015. Failure to do so could leave a public authority open to judicial review in the UK.
23. The principles are (Article 3.4 of the Subsidy Control chapter of the TCA):

⁴ The TCA at Article 3.2:4 refers to the SDR limits as “over any period of three fiscal years”.

1. Subsidies pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns (“the objective”)
2. Subsidies should be proportionate and limited to what is necessary to achieve the objective;
3. Subsidies should be designed to bring about a change of economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided
4. Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy;
5. Subsidies should be an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means;
6. Subsidies’ positive contributions to achieving the objective should outweigh any negative effects, in particular the negative effects on trade or investment between the UK and the EU.

TCA de minimis Calculation

24. Special Drawing Rights (SDR) are on a floating currency basis, and the exchange rate changes regularly. The following links may be of assistance:
- [SDRs per Currency unit and Currency units per SDR -- last five days \(imf.org\)](#)
 - <https://fx-rate.net/SDR/GBP/>
25. Any previous de minimis aid allocated under EU State aid should be cumulated with any subsidies given as TCA SDR de minimis. Therefore, it is necessary to account for any previous de minimis payments made over the three year fiscal year period (current and previous two fiscal years of the recipient – i.e. the recipient’s own financial year for accounting purposes).
26. It may not be necessary for local authorities to convert every offer of grant provided under EU de minimis rules into SDR using the SDR conversion rate that applied at the time those grants were given. To calculate prior EU de minimis funding, local authorities may choose to use the SDR conversion rate available at 1 January 2021, unless it is possible to establish the rate at the time of payment in which case that rate should be used. This will show that previous funding now converted into SDR’s had been taken into account.
27. The Scottish Government will produce a consolidated list of COVID support, and the extent that each scheme is capped or not for the purposes of determining whether a potential grantee has cumulatively exceeded the TCA de minimis limit.

Relief Restriction Regulations

28. The Non-Domestic Rates (Restriction of Relief and Consequential Amendments) (Scotland) Regulations 2020 (“the 2020 Regulations”), which came into force on 1 January 2021, maintained the restrictions provided by the EU state aid de minimis framework as it applied on the day the 2020 Regulations were made. This was undertaken in the absence of clarity in late 2020 with regard to the future national subsidy regime in the UK, and following the ending of the EU Exit transition period on 31 December 2020.
29. The Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 follow on from and amend the Non-Domestic Rates (Restriction of Relief and Consequential

Amendments) (Scotland) Regulations 2020. These may be accessed at:
<https://www.legislation.gov.uk/ssi/2021/145/contents/made>.

30. These Regulations introduce a de minimis framework to the awarding of specified non-domestic rates reliefs in order to ensure that reliefs are aligned with the lower threshold set for TCA de minimis – 325,000 SDR. The setting of the threshold at this level would not prevent grant of other subsidies where permitted by the TCA, but rates relief would be capped at the lower threshold.
31. Under the regulations, from 1 April 2021 the 325,000 SDRs cap will apply on the aggregate financial amount that can be awarded in the form of specified non-domestic rates reliefs. In calculating the cap regard must be had to previous relief of the specified types, to relief or assistance that prior to EU Exit would have been considered de minimis State aid and to relief or assistance that is a de minimis “subsidy” under Article 3.2.4 or 3.3.3 of Chapter 3 (subsidy control) of Title XI of Heading One in Part Two of the TCA. Further information can be found in the Policy Note:
https://www.legislation.gov.uk/ssi/2021/145/pdfs/ssipn_20210145_en.pdf
32. For the avoidance of doubt, when a relief is referred to as ‘TCA de minimis’ in the rest of this document, this means that the maximum that can be awarded to a person is capped by The Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021.

National Subsidy Framework

35. The Department for Business Enterprise Industrial and Strategy launched a consultation on the design a new domestic subsidy control regime on 3 February 2021. The Consultation is open online for comment until 31 March 2021.
36. Public Authorities in the UK will have to have regard for the domestic subsidy control framework that is legislated following the conclusion of the consultation.

GENERAL INFORMATION

38. 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.
39. 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.
40. 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.
41. An application for a relief to which subsidy control rules apply must declare all other public assistance received as TCA de minimis (see Subsidy control section above). The local authority should consider undertaking due diligence. Any application not providing

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

42. 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.

43. 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.

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

45. Relief applications relating to utilities valued under the designated Assessors' regime⁵ 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

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

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

48. 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 relief, which is fully funded by the Scottish Government. The discretionary reliefs are:

- Charity Relief 'top-up' of up to 20% for OSCR-registered charities;⁶
- Charity Relief of up to 100% for certain other not-for-profit organisations;⁷
- Sports Club Relief 'top-up' of up to 80% for HMRC-registered Community Amateur Sports Clubs (CASCs);⁸
- Sports Club Relief of up to 100% for certain other not-for-profit organisations;⁹
- elements of Rural Relief;
- Hardship Relief; and
- Stud Farms Relief.

49. Local reliefs¹⁰ are fully funded by the Council.

⁵ The Non-Domestic Rating (Valuation of Utilities) (Scotland) Order 2005.

⁶ Awarded under section 4(5)(a) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

⁷ Awarded under section 4(5)(b) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

⁸ Awarded under section 4(5)(a) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

⁹ Awarded under section 4(5)(c) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

¹⁰ Awarded under section 140 of the Community Empowerment (Scotland) Act 2015.

50. 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.

CORONAVIRUS RELIEFS

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

52. The key legislation is The Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2021 which applies for 2021-22 only.

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.

55. 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.

56. Contrary to 2020-21, properties do not need to have been occupied on 17 March 2020 in order to potentially qualify for the relief in 2021-22.

57. 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.

58. 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).

59. As regards properties listed as 'kiosks', 'stores', etc. on the valuation roll, these may still be considered to fall into Class 12 and it is for councils to ascertain this based on the definition under Class 12. Where a shop operates both wholesale and retail trading, it is for the council to determine whether it is wholly or mainly used as a retail shop. Equally, where a

shop sells goods as well as offers services (e.g. a car showroom where cars can be purchased, with an associated garage) it is for the council to determine whether it is wholly or mainly used as a retail shop.

60. 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, tourist facility, soft play centre, amusement arcade or amusement centre.

61. Properties used for news publishing (Class 17), i.e. “the production of newspapers and related news platforms” are also included in Schedule 1 of the regulations.

62. It is for local authorities to interpret the meaning of the uses in Schedule 1 where these are not specifically legally defined (e.g. travel agency). For instance, castles or standalone visitor centres may be considered eligible under Class 13 under “tourist attraction or tourist facility” if they are wholly or mainly used as such.

63. In 2020-21 the UK Government did not deem the English Expanded Retail Discount 2020-21 to be state aid.¹¹ and the Scottish Government followed suit, deeming Retail, Hospitality and Leisure Relief not to be state aid that year.

64. The Scottish Government is content that the relief in Scotland for 2021-22 is therefore also not subsidy under the EU-UK Trade and Cooperation Agreement (TCA).

65. This relief requires an application (contrary to 2020-21 when it was automatically applied).

Airports and baggage handlers Relief

66. 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.

67. This relief requires an application (contrary to 2020-21 when it was automatically applied).

BUSINESS GROWTH ACCELERATOR RELIEF

68. 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”). This was most recently amended by The Non-Domestic Rates (Levying and Miscellaneous Amendments) (Scotland) Regulations 2021 for 2021-22.

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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)

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

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. From 2021-22 onwards, BGA for property improvements will be available even 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.¹² A property that was converted from one type of use to another (e.g. office to hotel) may thus qualify for relief, subject to the other eligibility criteria.

76. 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

¹² This is not explicitly tied to changes in planning use and local authorities' interpretations may differ.

2020 provides that Assessors will identify new builds and improved properties with a marker in the Valuation Roll in order to facilitate identification from 1 April 2021. However, the following points are to note at the point of publication:

- Where the increase in rateable value on an existing property has been due to 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, the property will not be marked on the roll by assessors but may still qualify for relief; and
- Where the increase in rateable value on an existing property is in part due to a change in the way the lands and heritages are being used, the property will not be marked by assessors but may still qualify for relief.

77. Local authorities are encouraged to liaise with the assessor if a property in the above circumstances applies for BGA Relief, in order to confirm eligibility for the relief.

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

79. This relief requires an application form. An application must be made in a given financial year in order for the council to be able to award/start awarding the relief in that year (except 2018-19 for which an application can be made retrospectively).

80. BGA applies generally for properties of a certain type (buildings) and in certain circumstances (new and improved) and is therefore unlikely to be considered a subsidy.

CHARITY RELIEF

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

82. Properties that are either (i) occupied by a charity in the Scottish Charity Register, held by the Scottish Charity Regulator (OSCR),¹³ 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.¹⁴

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

84. The local authority also has discretion to 'top up' this relief to 100%.¹⁵ 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 the Scottish Government (80*100 + 20*75).

85. 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.

¹³ www.oscr.org.uk/charities/search-scottish-charity-register

¹⁴ Section 4(2) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

¹⁵ Section 4(5)(a) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

86. Properties occupied by certain other not-for-profit organisations are eligible to receive up to 100% relief at the discretion of the local authority.¹⁶ 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.

87. The Non-Domestic Rates (Scotland) Act 2020 removes eligibility for Charity Relief from mainstream independent schools¹⁷, leaving it in place for special schools¹⁸ and schools for musical excellence within that category. It does not affect these schools' charitable status. This provision will be commenced on 1 April 2022.¹⁹

88. 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.

89. 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.

90. The 80% mandatory relief appears to be available across the UK and could be regarded as a general measure and therefore unlikely to be considered a subsidy. Any discretionary relief applying to activity not economic in nature is also unlikely to be aid. For charity shops and other commercial activity, local authorities will have to consider whether this must be awarded as TCA de minimis.

DAY NURSERY RELIEF

91. The key legislation is The Non-Domestic Rates (Day Nursery Relief) (Scotland) Regulations 2018.²⁰

92. 100% relief is available where the premises are used wholly or mainly as a day nursery. This relief is available for properties in all sectors - private, public and charitable.

93. An application must be made for this relief.

94. This relief is capped under The Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 and can only be awarded as TCA de minimis as the activity is commercial in nature and the recipients receive an advantage on a selective basis.

¹⁶ Section 4(5)(b) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

¹⁷ Section 10(2) of the Non Domestic Rates (Scotland) Act 2020.

¹⁸ Defined in section 29(1) of the Education (Additional Support for Learning) (Scotland) Act 2004.

¹⁹ The Non-Domestic Rates (Scotland) Act 2020 (Commencement No. 2, Transitional and Saving Provisions) Amendment Regulations 2021.

²⁰ Eligibility is currently due to expire on 30 June 2023 under The Non-Domestic Rates (Levying and Miscellaneous Amendments) (Scotland) Regulations 2021.

DISABLED RATES RELIEF

95. 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.

96. 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.

97. 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).

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

99. 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%.²¹

100. The 100% mandatory element appears to be available across the UK and could be regarded as a general measure and therefore unlikely to be considered TCA de minimis.

DISTRICT HEATING RELIEF

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

102. Properties used wholly or mainly for the purposes of a district heating network may receive 50% relief. This relief is available until 31 March 2032.²²

103. Further, properties used wholly or mainly for the purposes of a district heating network which is powered wholly or mainly by renewable generation may receive 90% relief. This relief is available until 31 March 2024.

104. This relief is capped under The Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 and can only be awarded as TCA de minimis as the activity is commercial in nature and the recipients receive an advantage on a selective basis due to the sectoral limitations that apply.

²¹ Section 24A of the Local Government (Scotland) Act 1966.

²² The Non-Domestic Rates (District Heating Relief and Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2021.

EMPTY PROPERTY RELIEF

105. 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.

106. 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.

107. 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.

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

109. 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.

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

111. 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.

112. 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.²³ 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).

113. Part-occupation:²⁴ 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

²³ Section 24(4) of the Local Government (Scotland) Act 1966.

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

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.

114. 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.

115. Plant and machinery can be kept on property without that being classed as occupation.²⁵

116. Shooting rights may be considered unoccupied if no commercial shooting/stalking takes place. If there are no buildings on the land this relief is 100%.

117. Empty Property Relief can be regarded as a general measure and is therefore unlikely to require to be awarded as TCA de minimis.

118. The Scottish Government has set out a requirement to restrict the use of certain premises and businesses during the COVID-19 emergency period.²⁶ 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.²⁷

ENTERPRISE AREAS RELIEF

119. The key legislation is The Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2016.²⁸

120. 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.²⁹

²⁵ Section 24B of the Local Government (Scotland) Act 1966.

²⁶ 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.

²⁷ 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.

²⁸ Eligibility is currently due to expire on 31 March 2022.

²⁹ <https://www.gov.scot/publications/enterprise-areas-maps/>

121. 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.³⁰

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

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

Table 2: Enterprise Areas Reliefs and thresholds

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

122. 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.

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

124. This relief is capped under The Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 and can only be awarded as TCA de minimis as the activity is commercial in nature and the recipients receive an advantage on a selective basis due to the geographic restrictions that apply.

³⁰ 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.

FRESH START RELIEF

125. 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.

126. 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 £95,000 (up from £65,000 until 31 March 2021); 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.

127. Where there is a change of occupier during the qualifying period for this relief, the new occupier may still receive the remaining balance of this relief.

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

129. Local authorities will have to consider whether this must be awarded as TCA de minimis under the TCA. As no sectoral restrictions apply and this relief is available for a particular circumstances (newly reoccupied long-term empty property), it is unlikely to confer a selective advantage however.

HARDSHIP RELIEF

130. The key legislation is section 25A of the Local Government (Scotland) Act 1966.

131. 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.

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

133. If the applicant's activity is commercial in nature, then the relief may be TCA de minimis.

MOBILE MASTS RELIEF

134. The key legislation is The Non-Domestic Rates (Telecommunication Installations) (Scotland) Regulations 2016.³¹

135. 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.³²

³¹ 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.

³² <https://www.gov.scot/publications/4g-infill-programme-non-domestic-rates-relief-mobile-masts/>

136. Relief can be awarded between 1 April 2016 and 31 March 2029. An application to the council is required.

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

138. This relief is capped under The Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 and can only be awarded as TCA de minimis as the activity is commercial in nature and the recipients receive an advantage on a selective basis including through the geographic restrictions that apply.

NEW FIBRE RELIEF

139. The key legislation is The Non-Domestic Rates (Telecommunications New Fibre Infrastructure Relief) (Scotland) Regulations 2019.

140. Telecommunications new fibre infrastructure³³ is eligible for 100% relief between 1 April 2019 and 31 March 2029. An application to the council is required.

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

142. New Fibre Relief is currently not awarded as TCA de minimis in England and the Scottish Government is following the same position.

RELIGIOUS EXEMPTION FROM RATES

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

144. 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.

145. 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.

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

147. 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.³⁴

148. As the activity is non-economic in nature, organisations would generally not be regarded as undertakings and the relief would not be awarded as TCA de minimis.

RENEWABLE ENERGY RELIEF

³³ 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.

³⁴ Section 4(5)(b) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

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

150. Eligibility for the Renewable Energy 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)³⁵. 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 thresholds³⁶

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

151. 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

152. In addition, hydro schemes with a RV of no more than £5 million are also eligible for 60% relief.³⁷ This relief is available until 31 March 2032.³⁸

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

154. This relief is capped under The Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 and can only be awarded as TCA de minimis due to the sectoral restrictions which apply.

REVERSE VENDING MACHINE RELIEF

³⁵ 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.

³⁶ The Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2016.

³⁷ The Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2018.

³⁸ The Non-Domestic Rates (District Heating Relief and Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2021.

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

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

157. 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.

158. It is unlikely that this measure would require to be awarded as TCA de minimis as it was introduced in advance of the legal requirement for certain premises to hold RVMs under the Scottish Government's Deposit Return Scheme.

RURAL RELIEF

159. 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 2017.³⁹

160. 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 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 ⁴⁰	RV threshold
Small food shop, general store or post office	£8,500
Petrol filling station, small hotel or public house ⁴¹	£12,750

161. 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.

162. This relief is capped under The Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 and can only be awarded as TCA de minimis as the activity is commercial in nature and the recipients receive an advantage on a selective basis including through the geographic restrictions that apply.

SMALL BUSINESS BONUS SCHEME

³⁹ This increased Rural Rate Relief 100% for qualifying businesses (previously this was split 50% mandatory and 50% discretionary).

⁴⁰ Subject to legislative definitions.

⁴¹ Ratepayer is not also the ratepayer for another property of the same type in Scotland.

163. The key legislation is The Non-Domestic Rates (Levying and Miscellaneous Amendments) (Scotland) Regulations 2021.⁴²

164. 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.

165. 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

166. 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 subsidy control rules.

167. 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 ratepayer's premises.

168. 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.

169. 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.

170. 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.

171. 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.

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

⁴² Eligibility is currently due to expire 31 March 2022.

173. It is unlikely that this relief would be TCA de minimis as it is a general measure (except for payday lending).

SPORTS CLUB RELIEF

174. 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.

175. Properties occupied by a Community Amateur Sports Club (CASC) registered with HM Revenue and Customs,⁴³ 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.

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

177. The local authority also has discretion to 'top up' this relief to 100%.⁴⁴ 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).

178. 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.⁴⁵ Any such relief, whilst it is discretionary, is 100% funded by the Scottish Government. From 1 April 2021, councils must have regard to the statutory guidance set out in Local Government Finance Circular No. 3/2021 when awarding this relief.

179. As the activity is non-economic in nature, this is unlikely to be considered TCA de minimis.

STUD FARMS RELIEF

180. 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.

181. 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.

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

183. This relief is capped under The Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 and can only be awarded as TCA de minimis as the activity is commercial in nature and the recipients receive an advantage on a selective basis.

⁴³ <https://www.gov.uk/government/publications/community-amateur-sports-clubs-casc-registered-with-hmrc--2>

⁴⁴ Section 4(5)(a) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

⁴⁵ Section 4(5)(c) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

TRANSITIONAL RELIEF

184. The key legislation is The Non-Domestic Rates (Levying and Miscellaneous Amendments) (Scotland) Regulations 2021.

185. Properties that either (i) have a RV no greater than £1.5 million, and are wholly or mainly used for the specified purpose(s)⁴⁶ 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 2021 and the day in question of 12.5% (also 12.5% 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 1.125.

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

Table 6: Annual and cumulative impact of Transitional Relief on annual gross bill increase limits

	2017-18	2018-19	2019-20	2020-21	2021-22
Real terms annual cap	12.50%	12.50%	12.50%	12.50%	12.50%
Inflation measure	2.00%	3.00%	2.10 %	1.70%	0.00%
Cash terms annual cap	14.75%	15.80%	14.80%	14.40%	12.50%
Cumulated cash terms increase in rates liability from 2016-17	14.75%	32.90%	52.70%	74.70%	96.50%
Annual multiplier	1.1475	1.158	1.148	1.144	1.1250
Cumulative multiplier	1.1475	1.329	1.527	1.747	1.965

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

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

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

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

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

192. This relief is capped under The Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 and can only be awarded as TCA de minimis as the activity is commercial

⁴⁶ And must have been so used on 31 March 2017 (or, if unoccupied on that date, so used when last occupied).

in nature and the recipients receive an advantage on a selective basis due to the geographic restrictions that apply.

LOCAL RELIEFS AND REDUCTIONS

193. 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.

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

195. 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.

196. 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.

197. 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).

198. 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.

199. As with statutory reliefs, councils must consider and comply with the EU-UK TCA.

200. 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 subsidy position.

201. A council scheme could potentially not be TCA de minimis if relief was available across the whole local authority area, was not materially selective and did not have any international trade implications. The Scottish Government may offer councils guidance on any proposals, the latter should seek their own legal advice.

FURTHER INFORMATION

202. The Government's Subsidy Unit can be emailed at subsidycontrol@gov.scot.

203. If further information on NDR reliefs is required, please email the Scottish Government at ndr@gov.scot.

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

Scottish Government

March 2021

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