



City of Westminster

Cabinet Member Report

Decision Maker:	Cabinet Member for Finance and Council Reform
Date:	08 April 2024
Classification:	General Release
Title:	Revision of the Council's NNDR Discretionary Relief Guidelines for 2024/25
Wards Affected:	All
Key Decision:	No
Policy Context:	Fairer Council
Financial Summary:	The cost of sections 1-3 in the Guidelines is governed by the Council's end of year position within the Business Rate Retention Scheme. However, the cost to the Council will not exceed 30% of the total amount awarded in the financial year 2024/25. The relief described in Section 4 of the Guidelines is fully funded by central government.
Report of:	Martin Hinckley Director of Revenues and Benefits

1 Summary

- 1.1 This report seeks approval of a revised version of the Council's National Non-Domestic Rates (NNDR) Discretionary Relief Guidelines for 2024/25.
- 1.2 Changes have been made to the Guidelines shown at Appendix A to reflect the proposed administrative changes, including an increase to the amount of award allowed under delegated authority. The guidelines shown at Appendix A also include the government's requirement for local authorities to use Section 47 Local Government Finance Act 1988 for the administration of the:
 - 2024/25 Retail, Hospitality and Leisure Relief Scheme
 - Supporting Small Business relief

2 Recommendations

- 2.1 To adopt a scheme of discretionary rate relief.
- 2.2 To adopt the revised National Non-Domestic Rates Discretionary Relief Guidelines as shown at Appendix A as a description of that scheme.

3 Reason for Decision

- 3.1 The proposed guidelines at Appendix A will, by providing criteria to be considered when making decisions, assist with robust and consistent decision-making.

4 Background

- 4.1 Section 47 of the Local Government Finance Act 1988 grants discretion to local authorities to adopt schemes of discretionary rate relief in relation to National Non- Domestic Rates (NNDR), also known as business rates. This is in addition to the mandatory rate reliefs that have to be given by law.
- 4.2 Section 1-3 of the Guidelines at Appendix A have been updated to ensure that all decisions are consistent, robust and that the guidance aligns with Fairer Westminster. When considering applications for the Local Discounts/NNDR Hardship Relief for 2024/25, we will continue to ask whether the applicant pays its employees the London Living Wage.
- 4.3 Section 4 of Appendix A addresses the central government prescribed awards. The government has in recent years introduced several new NNDR discounts/allowances which it has required local authorities to administer through the existing NNDR Discretionary Relief legislation (Section 47 of the Local Government Finance Act 1988) rather than amending business rates legislation to make them mandatory. There is no real discretion for local authorities, as the government expects local authorities to award relief and has committed to fully fund all such awards.
- 4.4 For 2024/25, central government have asked that local authorities implement and administer the following schemes under Section 47 of the Local Government Finance Act 1998:
 - 2024/25 Retail, Hospitality and Leisure Relief Scheme
 - Supporting Small Business relief
- 4.5 Grant of business rates relief is a form of financial assistance that is likely to qualify as a subsidy under the Subsidy Control Act 2022 (see further legal implications). The Subsidy Control Act 2022 came into force in January 2023. Maximum subsidy limits apply to all types of relief described within the Guidelines. The revised Guidelines address the changes in maximum subsidy

limits under the exemption now referred to as Minimal Financial Assistance (MFA), introduced by the 2022 Act.

- 4.6 It is proposed that existing officers' delegated powers to grant NNDR Hardship (section 3 of the Guidelines) be uplifted to £15,000 or 25% whichever is the lower (currently £5,000 or 25% whichever is the lower). The other criteria in 3.5 of the Guidelines remain unchanged. The aim of the uplift is to allow more businesses to be helped without recourse to the Rating Advisory Panel considering the application and recommending to the Cabinet Member. The Chair of the Rating Advisory Panel has been consulted and supports this proposal.

5 Financial Implications

- 5.1 The cost of sections 1-3 in Appendix A is governed by the Council's end of year position within the Business Rate Retention Scheme. However, the cost to the Council will not exceed 30% of the total amount awarded in the financial year 2024/25.
- 5.2 The central government prescribed schemes detailed in section 4 of Appendix A will be fully reimbursed by central government via a grants under section 31 of the Local Government Act 2003.

6 Legal Implications

- 6.1 The liability for NNDR (Business Rates) is set out in the Local Government Finance Act 1988. Section 47 of the Local Government Finance Act 1988 allows a local authority to grant Discretionary Relief, this section was amended by the Localism Act 2011 to allow local authorities to grant Discretionary Relief to any ratepayer. In recent years central government has used Section 47 for new schemes to avoid the requirement for new legislation. The Retail Hospitality and Leisure Relief Scheme is to be administered as such a discretionary scheme under the same legislation.
- 6.2 Section 49 of the Local Government Finance Act 1998 enables a local authority to grant Hardship relief up to 100% of the NNDR liability.
- 6.3 There is a statutory duty in some circumstances to grant discretionary relief only where it is reasonable to do so, and so having clear criteria as set out in the appended Guidelines for the exercise of discretion goes towards demonstrating fulfilment of that duty. Having the Guidelines with clear criteria also prevents any implication of bias, the existence of which would allow individual decisions on the grant of relief to be judicially reviewed.
- 6.4 All discretionary rate relief including hardship relief is subject to the UK Subsidy Control Act 2022 ("the Act") on the basis that such reliefs are likely to be subsidies. The Act places certain duties on the Council, notably (1)

assessing all subsidies (which fulfil the definition of “subsidy” in the Act) against what are called the “subsidy control principles” set out in the Act, and (2) not paying any subsidy unless it is of the view that it is consistent with those principles. There is also detailed statutory guidance about applying the Subsidy Control Act 2022, to which the Council is required to have regard.

- 6.5 What the Act and statutory guidance expects is that every subsidy will be subject to individual assessment against the subsidy control principles, however this would mean assessing around 5,627 potential grants of relief. There are two approaches to ensure compliance with the Act without such assessments being carried out. The first is an exemption known as Minimal Financial Assistance (“MFA”) which requires that all financial assistance for which MFA is claimed, including the NNDR relief for 2024/25, when taken together with other assistance received by the ratepayer under the MFA exemption in the same financial year (**from any public authority** e.g. central government grants, other rating authorities giving relief), plus the two previous financial years, is not above £315,000. This is referred to in the guidance issued for the 2024/25 Retail, Hospitality and Leisure Relief Scheme as available to authorities as a route to compliance, and accepts self-declaration as a proportionate way of eliciting further information. The Act itself requires any authority proposing to use the MFA exemption to serve a notification on each potential recipient, and the guidance includes a sample letter for sending to ratepayers for them to confirm what subsidies they have received and for which MFA was claimed, to assess whether the threshold of £315,000 was reached. The Act requires that non-response by a potential recipient of MFA to the authority’s notification means that the authority must not provide financial assistance utilising the MFA exemption.
- 6.6 Where the MFA exemption is available, then the individual relief still has to be registered on the government database as a subsidy if over £100,000.
- 6.7 Secondly, as an alternative to MFA, the Council could choose to assume that all the individual grants of relief amount to the payment of a subsidy, and to register its 2024/25 relief scheme as a subsidy scheme. Subsidy schemes are provided for in the Act as a group mechanism for covering this type of situation, where many subsidies of the same type are given. It has the advantage that individual assessment against the MFA threshold is not required. A search of the government’s central database of subsidies show that other authorities did this for 2023/24 discretionary rate relief. The Act places the Council under a duty to assess the subsidy scheme against the subsidy control principles in the Act, but then must not make the scheme unless it is of the view that the subsidies under it will be consistent with the subsidy principles. However, on initial assessment, the various reliefs described in the Guidelines will not be consistent with the principles. Moreover, even if they were consistent, there may be insufficient time to implement a subsidy scheme, because the Council would have to register the scheme on the government database of subsidy schemes, and then wait a month for the required challenge period to expire.

- 6.8 Therefore, the use of the MFA exemption is the recommended route for compliance with the Act, despite the additional notification requirements to every potentially eligible ratepayers.
- 6.9 In line with the restrictions in section 47 of the Local Government Finance Act 1988, billing authorities cannot grant discretionary relief to themselves, nor to most precepting authorities, or a functional body within the meaning of the Greater London Authority Act 1999.

7 Outstanding Issues

- 7.1 There are no outstanding issues.

8 Ward Member Consultation

- 8.1 There is no requirement for separate Ward Member consultation as the report relates to all wards.
- 8.2 The Rating Advisory Panel have been consulted on the revised guidance document.

Name and Title	Date approved
David Cookson, Finance	27.02.24
Deborah Down, Legal	07.03.24
Maria Burton, Governance	19.03.24

For completion by the **Cabinet Member for Finance and Council Reform**

Declaration of Interest

I have no interest to declare in respect of this report

Signed: _____ Date: _____

NAME: **Councillor David Boothroyd** _____

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled

Revision of the Council’s NNDR Discretionary Relief Guidelines for 2024/25

Signed

Cabinet Member for Finance and Council Reform

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal & Democratic Services, Director of Finance and, if there are resources implications, the Strategic Director of Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.