



Leicester
City Council

National Non-Domestic (Business) Rates Section 44a Local Government Finance Act 1988 (Part Occupation) Policy

1. Purpose

- 1.1 This policy outlines the Council's approach to rate relief applications where a property is part occupied for a short period. The Council has discretion to accept or refuse such applications.

The purpose is to:

- Treat all applications in a fair and consistent manner;
- Set a framework under which ratepayers can apply for relief; and
- Provide clarity on the criteria for consideration of relief and over the decision making process.

2. Background

- 2.1 A general principle of rating is that occupation of part is occupation of the whole. However, Section 44A Local Government Finance Act 1988 (Appendix 1) gives Councils discretion to grant unoccupied property relief where it appears part of a property is unoccupied and will remain so for a 'short' period only. The length of the 'short' period is not defined in legislation and is determined locally by each Council.

- 2.2 The Council has discretion to accept or refuse an application and rates remain payable in full until a determination has been made. This discretion is applied at the point where a request is made to the independent Valuation Office Agency to certify the rateable values between the occupied and unoccupied parts. The values are used as the basis for the calculation of the rates relief/liability for the relevant period. This period begins on the day which the property became partly unoccupied and ends when one or more of the following occurs:

- Occupation of any or all of the unoccupied parts of the property;
- Ending of the financial year in which the apportionment was requested;
- A request is made for a further apportionment; or
- The vacation of the whole of the property.

A request for a further apportionment may be made after the end of the financial year and/or if the vacant areas change.

3. Applications process

- 3.1 Applications must be made in writing by the ratepayer or the person authorised to act on behalf of the ratepayer (Appendix 2, application form). An application must be made at the start of or during the part occupation period. Retrospective applications will not be considered.

3.2 Applications will only be considered in respect of unoccupied part(s) of a property that can be clearly defined and is/are reasonably segregated from the occupied part(s).

3.3 Each application must include the following information:

1. The period for which relief is requested;
2. A plan of the property (rating assessment) which clearly shows the occupied and unoccupied areas and the size of those areas;
3. A statement clarifying the likely timescales to fully occupy or vacate the property and the reason why part of it is unoccupied;
4. Full contact details of the applicant; and
5. A signed declaration setting out any amount of State Aid received within the preceding three years.

Further information will be requested as deemed necessary.

3.4 A visit to the property will be arranged after the completed form and the other necessary information has been received. Access to the property must be made available to the council to confirm the nature and extent of the vacant areas. The council officer may also take photographs as part of the required evidence. A visit may also be arranged during the period for which relief has been awarded to confirm that the vacant areas remain not in use.

3.5 If the application is accepted, the Valuation Office Agency (VOA) will be requested to make a formal assessment to advise what proportion of the rateable value applies to the occupied and unoccupied areas of the property. This is for the calculation of the relief for the unoccupied part, which will be done following the receipt of the information from the VOA. If the application is successful a revised bill will be issued detailing the remaining payments or credit on the account – a refund will be issued if appropriate.

3.6 A new application will be required if there has been a change in the vacant area. The full rates are payable whilst an application is being determined.

4. Approach and considerations for relief

4.1 As part of the assessment process, the following will be taken into account:

1. The circumstances leading to the part occupation;
2. The intention of the ratepayer to occupy the vacant areas or to fully vacate the occupied areas;
3. The available evidence that the unoccupied part will be empty only for a short term; and
4. The financial implications of granting any relief, as part of the cost of is borne by the council tax payers of the area. Other factors, such as job losses/creation, may also be taken into account.

4.2 Consideration will generally be given where there are practical difficulties in occupying or vacating a property in one operation to facilitate relocation of the business. Further where there may have been a natural event such as flood, storm or fire that meant only part of the property can be occupied. Relief will not be granted where it appears that the reason for part occupation is mainly for the purposes of applying for rate relief.

4.3 Relief is not likely to be awarded where:

1. Part occupation is likely to exceed a short period, which for the purposes of this policy is considered to be one year. Given the nature of empty property rating regulations, relief can only be awarded for three months, extended to six months for industrial properties, unless one of the unoccupied property exemptions applies to

the vacant area. A new application may be considered if the vacant area changes because of genuine business reasons;

2. The vacant and occupied areas are not clearly defined;
3. The owner of the property sublets parts of premises on a commercial basis;
4. From the information available, there appears to be no attempt to let, sell or occupy the unoccupied part of the property or if it is simply surplus to requirements. Further, it may be that the property is temporarily not used or where the use is reduced, for example, a factory reduces its output capacity;
5. Due to the nature of the business, part occupation is deemed to be seasonal.
6. The ratepayer is relocating out of this Authority's area.

5. Decision and review process

5.1 Ratepayers will be notified of the decision in writing following approval by the Director of Finance, upon recommendation by the Revenues & Benefits Manager. If the application is not made at the start of the part occupation period, relief will normally only be awarded from the date it is received. The relief will be for a maximum of three months, extended to six months for industrial properties, unless one of the unoccupied property exemptions applies to the vacant area. The maximum period for relief in any case will be one year.

5.2 Ratepayers must inform the Council within 21 days of any change in circumstances that may affect the entitlement to relief.

5.3 The relief will cease upon:

- A change in the area that is partly occupied, with a possible new application;
- The expiry of the three/six month period of relief or the ending of the 'short' period (one year);
- The end of the financial year;
- A new period of relief from a new application;
- The property becomes fully occupied or fully unoccupied;
- A change in the rateable value;
- The ratepayer ceasing to be liable to pay rates in respect of the property; or
- The Council is unable to verify, following reasonable notice, that the vacant area still remains unoccupied.

5.4 Each application will be assessed on its own merits. The ratepayer can write to the Council with reasons and supporting information, within one calendar month, to request a review of the original decision to refuse relief. This will be assessed independently by a different manager and a final decision, following a review by the Director of Finance, will be sent in writing within 28 days. If the original decision still stands, a further right of appeal can only be by way of judicial review under Section 138 of the Local Government Finance Act 1988.

6. State aid

6.1 European Union regulations mean that the award of this relief may constitute State Aid in certain circumstances. State Aid can occur whenever government resources are used to provide assistance to organisations that gives them an advantage over others. However, support can be offered under this policy using the De Minimis Regulations (1407/2013). These regulations allow an undertaking to receive 200,000 euros of De Minimis aid in a three year period (consisting of the current financial year and two previous years).

6.2 Each written application must be accompanied with a statement by the ratepayer or person(s) acting on his/her/company's behalf confirming the amount of State Aid, including but not limited to discretionary rate relief, received in the current and two previous financial years. Applications cannot proceed further until this confirmation has been received.

November 2018

Appendix 1

Local Government Finance Act 1988 44A Partly occupied hereditaments.

(1) Where a hereditament is shown in a billing authority's local non-domestic rating list and it appears to the authority that part of the hereditament is unoccupied but will remain so for a short time only the authority may require the valuation officer for the authority to apportion the rateable value of the hereditament between the occupied and unoccupied parts of the hereditament and to certify the apportionment to the authority.

(2) The reference in subsection (1) above to the rateable value of the hereditament is a reference to the rateable value shown under section 42(4) above as regards the hereditament for the day on which the authority makes its requirement.

(3) For the purposes of this section an apportionment under subsection (1) above shall be treated as applicable for any day which—

- (a) falls within the operative period in relation to the apportionment, and
- (b) is a day for which the rateable value shown under section 42(4) above as regards the hereditament to which the apportionment relates is the same as that so shown for the day on which the authority requires the apportionment.

(4) References in this section to the operative period in relation to an apportionment are references to the period beginning—

- (a) where requiring the apportionment does not have the effect of bringing to an end the operative period in relation to a previous apportionment under subsection (1) above, with the day on which the hereditament to which the apportionment relates became partly unoccupied, and
- (b) where requiring the apportionment does have the effect of bringing to an end the operative period in relation to a previous apportionment under subsection (1) above, with the day immediately following the end of that period,

and ending with the first day on which one or more of the events listed below occurs.

(5) The events are—

- (a) the occupation of any of the unoccupied part of the hereditament to which the apportionment relates;
- (b) the ending of the rate period in which the authority requires the apportionment;
- (c) the requiring of a further apportionment under subsection (1) above in relation to the hereditament to which the apportionment relates;
- (d) the hereditament to which the apportionment relates becoming completely unoccupied.

(6) Subsection (7) below applies where—

- (a) a billing authority requires an apportionment under subsection (1) above, and
- (b) the hereditament to which the apportionment relates does not fall within a class prescribed under section 45(1)(d) below.

(7) In relation to any day for which the apportionment is applicable, section 43 above shall have effect as regards the hereditament as if the following subsections were substituted for section 44(2)—

“(2)A is such part of the rateable value shown for the day under section 42(4) above as regards the hereditament as is assigned by the relevant apportionment to the occupied part of the hereditament.

(2A)In subsection (2) above “the relevant apportionment” means the apportionment under section 44A(1) below which relates to the hereditament and is treated for the purposes of section 44A below as applicable for the day.”

(8) Subsection (9) below applies where—

- (a) a billing authority requires an apportionment under subsection (1) above, and
- (b) the hereditament to which the apportionment relates falls within a class prescribed under section 45(1)(d) below.

(9) In relation to any day for which the apportionment is applicable, section 43 above shall have effect as regards the hereditament as if the following subsections were substituted for section 44(2)—

“(2)A is the sum of—

- (a) such part of the rateable value shown for the day under section 42(4) above as regards the hereditament as is assigned by the relevant apportionment to the occupied part of the hereditament, and
- (b) one half of such part of that rateable value as is assigned by the relevant apportionment to the unoccupied part of the hereditament.

(2A)In subsection (2) above “the relevant apportionment” means the apportionment under section 44A(1) below which relates to the hereditament and is treated for the purposes of section 44A below as applicable for the day.”

(10) References in subsections (1) to (5) above to the hereditament, in relation to a hereditament which is partly domestic property or partly exempt from local non-domestic rating, shall, except where the reference is to the rateable value of the hereditament, be construed as references to such part of the hereditament as is neither domestic property nor exempt from local non-domestic rating.

Appendix 2

Local Government Finance Act 1988 Section 44a (part occupation) Relief - Application Form

Please complete the form below and return it to:

Business Rates Team,
Revenues & Customer Support
York House
91 Granby Street
Leicester, LE1 6FB

Name	
Contact address	
Phone number	
Email	
Business Rates Reference	
Address of the property for which the application is made	
Date when the relevant area became vacant	
Explain in detail why the area is not occupied	
When do you expect the area to become occupied?	
Please enclose a detailed plan of the premises clearly showing the unoccupied area. Your application will not be assessed until a plan has been provided.	

Declaration

I confirm that the information provided above is correct.

Signature

Position in Business

Date

Email / Telephone

You must notify us immediately if there is a change in your circumstances which may affect your entitlement to this relief. **Now - please complete the State Aid information on the back.**

State Aid

Please detail any State Aid / De Minimis State Aid you have received during the last three years. *Please indicate the date the aid was received, the amount of aid and the scheme title. If you have not received any state aid (de minimis or otherwise) please enter "None".*

Date aid received	Amount of aid received (Euros)	Scheme title that offered the aid

I understand that I have a duty to declare any State Aid that my business has received in the last three years. I understand that if I knowingly or deliberately make a false statement regarding State Aid or the State Aid measure is declared unlawful that action may be taken against the business, including but not limited to action to recover the aid from the business with interest running from the date the aid was given.

Declaration

I confirm that the information provided above is correct.

Signature

Position in Business

Date

Email / Telephone