

Business Rates Relief Schemes

Summary

To agree the adoption of a Retail Discount Scheme and to introduce a Pub Discount Scheme to support qualifying businesses in the Borough.

Portfolio – Finance

Wards Affected
All

Recommendation

The Council is advised to RESOLVE that

- (i) the Local Discretionary Business Rates Retail Discount scheme, as set out in Annex A, be approved from 1 April 2020;
- (ii) the Local Discretionary Business Rates Pub Discount scheme, as set out in Annex B, be approved from 1 April 2020; and
- (iii) the Executive Head of Finance in consultation with the Portfolio Holder for Finance be authorised to make changes to the schemes to ensure that the costs remain fully funded by Government and do not fall on the Council

1. Background and Key Issues

- 1.1 On 27 January 2020 the Government announced that it would provide a Business Rates Retail Discount, to apply in the year 2020/21.
- 1.2 This Retail Discount will apply to occupied retail properties with a rateable value of less than £51,000.
- 1.3 The value of the Retail Discount will be 50% of the 2020/21 rates bill.
- 1.4 In the same 27 January 2020 Written Ministerial Statement the Financial Secretary to the Treasury announced £1,000 business rate discount for public houses with a rateable value of less than £100,000 in 2020/21.
- 1.5 Previously in 2017/18 and 2018/19 a local discretionary pub relief scheme existed offering £1,000 in 2017/18 and then £1,500 in 2018/19 discounts to qualifying public houses.
- 1.6 Rather than introducing the new discounts nationally in 2020/21 the Government decided that each Council should set its own local relief schemes under the powers of section 47 of the Local Government Finance Act 1988 (as amended).
- 1.7 Central Government will fully reimburse Surrey Heath and Surrey County Council for the local share of the discretionary relief awarded using a grant under section 31 grant of the Local Government Act 2003.

- 1.8 Whilst Surrey Heath is free to set any criteria for reliefs they wish the Government has made it clear it will only reimburse Councils for the cost of these reliefs if the schemes meet set criteria. These criteria are reflected in the schemes proposed in annexes A to B. If a scheme does not meet these criteria then the cost of the scheme will fall on the Council.
- 1.9 In order to minimise administration and to ensure that businesses can benefit as quickly as possible the scheme has been designed to ensure that no application form is required – eligibility will be determined from information already held by the Council.
- 1.10 The Retail Discount will be useful to support retailers in our town and village centres facing significant challenges due to changing customer behaviour.
- 1.11 The Pub Discount will go some way to recognising, in a small way, the important role that pubs play in our urban and rural communities.

2. Resource Implications

- 2.1 The Business Rates Relief Discount scheme and the Business Rates Pub Discount scheme are fully funded through the NNDR3 by Central Government provided the relief is awarded in line with the criteria.
- 2.2 The Government has set some broad eligibility criteria for both schemes which must be followed to ensure funding.
- 2.3 The Retail Discount scheme is aimed at helping retail premises in town (and village) centres.
- 2.4 Both the suggested schemes to be adopted by Surrey Heath follow the broad guidelines set by Central Government and meet the criteria to support town centre business and pubs.
- 2.5 The Government has not at this time announced any New Burdens funding to offset the costs of introducing these schemes but has made clear that there is no additional funding should rebilling be required if the reliefs are not awarded on the 2020/21 annual bills issued early March 2020.

3. Options

- 3.1 The Executive can accept, reject or amend the proposal. However if the proposal is amended this may have financial implications. In addition if a scheme is not introduced the Council will be required to provide an explanation to Government.

4. Proposals

- 4.1 It is the Council RESOLVES that:
 - (i) The Local Discretionary Business Rates Retail Discount scheme as set out in Annex A is approved for the period 01 April 2020 to 31 March 2021;
 - (ii) The Local Discretionary Business Rates Pubs Discount scheme as set out in Annex B is approved for the period 01 April 2020 to 31 March 2021; and

- (iii) That the Executive Head of Finance in consultation with the Portfolio Holder for Finance be authorised to make changes to the schemes to ensure that the costs remain fully funded by Government and do not fall on the Council;

5. Supporting Information

- 5.1 The detailed schemes are set out in Annex A and B but a broad overview is set out below.
- 5.2 Retail properties that will benefit from the 50% relief will be occupied hereditaments with a rateable value of less than £51,000, that are wholly or mainly being used as shops, restaurants, cafes, drinking establishments, cinemas and live music venues in our town and village centres.
- 5.3 Eligible pubs to receive the £1,000 relief should be open to the general public, allow free entry other than when occasional entertainment is provided, allow drinking without requiring food to be consumed and permits drinks to be purchased at a bar and finally have a rateable value of less than £100,000.
- 5.4 Both reliefs are subject to State Aid limits which are set out in each detailed scheme in Annex A and B.

6. Corporate Objectives And Key Priorities

- 6.1 To support and promote our local economy.

7. Risk Management

- 7.1 There is a risk that the scheme may cost more than the funding available however that has been mitigated as much as possible in the design of the scheme.
- 7.2 Failure to implement a scheme could be seen as not being supportive of local businesses.

8. Consultation

- 8.1 As no financial impact on Surrey County Council's share of the business rate income of this scheme no consultation undertaken.

9. PR And Marketing

- 9.1 The relief schemes are likely to be of considerable interest to local businesses.

10. Officer Comments

- 10.1 The introduction of these new reliefs before annual billing on 2020/21 will remove the necessity to issue of new bills to those businesses that benefit.

Annexes	A – 2020/21 Retail Discount B – 2020/21 Pub Discount
Background Papers	DCLG at www.gov.uk : Business Rates information Letter (01/2020)
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Surrey Heath Borough Council Business Rates Retail Discount Scheme 2020/21

About the Scheme

This scheme is intended to help retailers in our town and village centres urban centres cope with the challenges presented to them by changing consumer behaviour.

This document sets out the criteria to be used to determine properties eligible for the Business Rates Retail Discount Scheme. The scheme does not require new legislation and replaces from 1 April 2020 the current Retail Discount Scheme that offers a 33% reduction to eligible properties. Surrey Heath Borough Council's 2020/21 Business Rates Retail Discount Scheme mirrors the Guidance issued by Central Government.

The Council may review and amend the scheme and the amount of relief within each year to reflect any changing circumstances or advice from Central Government.

Introduction

The Government recognises the important role that retail businesses play in urban and rural centres. In a written Ministerial Statement on 27 January 2020 the Financial Secretary to the Treasury announced that it would extend the value of the Retail Discount from one third of the bill to 50% in 2020/21.

This relief will apply to occupied retail properties with a rateable value of less than £51,000 in the year 2020/21.

The Government expects local billing authorities to grant relief to all qualifying ratepayers.

No new legislation is required to deliver the scheme. Instead, Central Government will reimburse Surrey Heath Borough Council if we use our discretionary relief powers, under section 47 of the Local Government Finance Act 1988 to grant relief. Central Government will reimburse Surrey Heath using grants under section 31 of the Local Government Act 2003, provided our scheme is in accordance with Central Government guidance.

This document explains how the scheme will operate and the eligibility criteria that applies in Surrey Heath.

Eligibility criteria

Properties that will benefit from the relief will be occupied hereditaments with a rateable value of less than £51,000 that are wholly or mainly being used as shops, restaurants, cafes, drinking establishments, cinemas and live music venues.

Surrey Heath consider shops, restaurants, cafes, drinking establishments, cinemas and live music venues to mean:

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

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

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

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

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

- Restaurants
- Takeaways
- Sandwich shops
- Coffee shops
- Pubs
- Bars

Hereditaments which are being used as cinemas

Hereditaments that are being used as live music venues

Live music venues are hereditaments wholly or mainly used for the performance of live music for the purpose of entertaining an audience. Hereditaments cannot be considered a live music venue for the purpose of business rates relief where a venue is wholly or mainly used as a nightclub or a theatre, for the purposes of the Town and Country Planning (Use Classes) Order 1987 (as amended).

Hereditaments can be a live music venue even if used for other activities, but only if those other activities (i) are merely ancillary or incidental to the performance of live music (e.g. the sale/supply of alcohol to audience members) or (ii) do not affect the fact that the primary activity for the premises is the performance of live music (e.g. because those other activities are insufficiently regular or frequent, such as a polling station or a fortnightly community event).

There may be circumstances in which it is difficult to tell whether an activity is a performance of live music or, instead, the playing of recorded music.

Although we would expect this would be clear in most circumstances, guidance on this may be found in Chapter 16 of the statutory guidance issued in April 2018 under section 182 of the Licensing Act 2003.

To qualify for the relief the hereditament should be wholly or mainly being used as shops, restaurants, cafes, drinking establishments, cinemas and live music venues. In a similar way to other reliefs (such as charity relief), this is a test on use rather than occupation. Therefore, hereditaments which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the relief.

The lists of qualifying hereditaments set out above is not intended to be exhaustive as it would be impossible to list the many and varied retail uses that exist. There will also be mixed uses. However, it is intended to be a guide for authorities as to the types of uses that the Government considers for this purpose to be retail. Authorities should determine for themselves whether particular properties not listed are broadly similar in nature to those above and, if so, to consider them eligible for the relief. Conversely, properties that are not broadly similar in nature to those listed above should not be eligible for the relief.

The list below sets out the types of uses that Surrey Heath does not consider to be retail use for the purpose of this relief. Again, it is for local authorities to determine for themselves whether particular properties are broadly similar in nature to those below and, if so, to consider them not eligible for the relief under their local scheme.

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

- Financial services (e.g. banks, building societies, cash points, bureaux de change, payday lenders, betting shops, pawn brokers)
- Other services (e.g. estate agents, letting agents, employment agencies)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/financial advisers, tutors)
- Post office sorting offices

Hereditaments that are not reasonably accessible to visiting members of the public

Generally speaking, Surrey Heath also does not consider other assembly or leisure uses beyond those listed above to be retail uses for the purpose of the discount. For example, theatres and museums are outside the scope of the scheme, as are nightclubs and industrial hereditaments. Hereditaments used for sport or physical recreation (e.g. gyms) are also outside the scope of the discount. Where there is doubt, Surrey Heath Borough Council will exercise their discretion with reference to the above and the knowledge of their local tax base always bearing in mind the need to meet the spirit of the Government's intention to support retailers in town centres.

How much relief will be available?

The total amount of government-funded relief available for each property for 2020/21 under this scheme is 50% of the bill, after mandatory reliefs and, with the exception of the 2020/21 pubs discount, other discretionary reliefs funded by section 31 grants have been applied, excluding those where local authorities have used their discretionary relief powers introduced by the Localism Act which are not funded by section 31 grants. The 2020/21 pubs discount should be applied after the retail discount. There is no relief available under this scheme for properties with a rateable value of £51,000 or more.

The eligibility for the relief and the relief itself will be assessed and calculated on a daily basis. The following formula should be used to determine the amount of relief to be granted for a chargeable day for particular hereditament in the financial year 2020/21:

Amount of relief to be granted =

$$\frac{V}{2} \text{ where}$$

V is the daily charge for the hereditament for the chargeable day after the application of any mandatory relief and any other discretionary reliefs, excluding the pubs discount and those where local authorities have used their discretionary relief powers introduced by the Localism Act which are not funded by section 31 grants.

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

Ratepayers that occupy more than one property will be entitled to relief for each of their eligible properties, subject to State Aid De Minimis limits.

Where relief has been found to have been awarded incorrectly or in error the relief will be removed and amended bills issued. If a change in circumstances that would affect the relief is not informed to the Council within 28 days the Council reserves the right to cancel all relief granted and refuse any further application.

Explanatory notes to the Retail Discount Scheme (these do not form part of the scheme)

Compensation Arrangements

Central Government will fully reimburse Surrey Heath Borough Council and Surrey County council for their local share of this discretionary relief. Surrey Heath has been asked provide an estimate of the likely total cost for providing the relief in a one-off estimate for 2020/21. Central Government will then provide payments for the local share of the cost of the estimated relief for 2020/21. The final cost will be calculated and reconciled following the submission of the NNDR3 for 2020/21

State Aid

State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However, the Supporting Small Businesses relief scheme will be State Aid compliant where it is provided in accordance with the De Minimis Regulations (1407/2013).

The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a rolling three-year period (consisting of the current financial year and the two previous financial years).

Surrey Heath has familiarised itself with the terms of this State Aid exemption, in particular the types of undertaking that are excluded from receiving De Minimis aid (Article 1), the relevant definition of undertaking (Article 2(2))⁴ and the requirement to convert the aid into Euros.

Whilst the UK left the EU on 31 January 2020, the Withdrawal Agreement negotiated by the Government and the EU provides that during an implementation period State aid rules will continue to apply as now and will be subject to control by the EU Commission as at present. Local authorities should therefore continue to apply State aid rules, including De Minimis, to the relief during the implementation period.

Although it is unlikely that any business given this relief will exceed State Aid limits we will request ratepayers inform us if any award breaches State Aid limits.

Other Discretionary Reliefs reimbursed by s.31 grants

If a property is eligible for relief under other schemes for which s.31 grant is payable – for example, “new empty property” relief or the Supporting Small Business Scheme– Surrey Heath will first award relief under those schemes and claim s.31 grant funding in the normal way. Only having awarded relief under those schemes, and any mandatory relief such as Small Business Rate Relief will Surrey Heath then award additional relief in accordance with the Retail Relief Scheme.

MHCLG does not prescribe whether the separate local discretionary relief scheme is calculated before or after any other local scheme. However, MHCLG understands that authorities and software companies will follow the practice of applying this discretionary relief before the Pubs Relief.

Delegated Authority to Award Relief

Delegated to Executive Head of Finance, Revenues and Benefits Manager or any officer delegated by the Executive Head of Finance to award relief

Application Process

The scheme entitlement is established based on information already held within Surrey Heath Borough Council's Business Rates system. Therefore, awards will be applied automatically where entitlement is found. Ratepayers may request we review their account where no automatic award has been made.

Appeals Process

There is no statutory right of appeal against a decision regarding discretionary rate relief unless the decision is so unreasonable that no reasonable person could have reached it ('Wednesbury Rules').

However, the Council recognises that ratepayers should be entitled to have a discretionary decision reviewed if dissatisfied with the outcome. Only the ratepayer or authorised agent may appeal against the decision not to award relief or the level of relief awarded. Appeals must be made within four weeks of the notification of decision.

Appeals must be in writing specifying reasons why a decision should be amended and supported by relevant new or additional evidence.

An appeal will be deemed to be discontinued if further evidence requested from the ratepayer has not been received within two weeks of the request.

Appeals against decisions made under delegated authority by the Executive Head of Finance will be considered by the Head of Legal.



Surrey Heath Borough Council Pub Discount Scheme 2020/21

About the Scheme

This scheme is intended to support pubs and is to be known as the 'Pubs Relief Scheme'.

This document sets out the criteria used to determine properties eligible for the 'Pubs Relief Scheme'. The scheme does not require new legislation and does not replace any other relief. Surrey Heath Borough Council's scheme essentially mirrors the Guidance issued by Central Government, but additionally refers to 'The Licensing Act 2003 (Consequential Amendment) (Non-Domestic Rating) (Public House in England) Order 2007' for the definition of a pub in deciding eligible properties.

The Council may review and amend the scheme and the amount of relief within each year to reflect any changing circumstances or advice from Central Government.

Introduction

The Government recognised the important role that pubs play in urban and rural communities across the country. In a written Ministerial Statement on 27 January 2020 the Financial Secretary to the Treasury announced a £1,000 business rate discount for public houses with a rateable value of up to £100,000 for one year from 1 April 2020.

The Government expects local billing authorities to grant relief to all qualifying ratepayers.

No new legislation is required to deliver the scheme. Instead, Central Government will reimburse Surrey Heath Borough Council if we use our discretionary relief powers, under section 47 of the Local Government Finance Act 1988 to grant relief. Central Government will reimburse Surrey Heath using grants under section 31 of the Local Government Act 2003, provided our scheme is in accordance with Central Government guidance.

This document explains how the scheme will operate and the eligibility criteria that applies in Surrey Heath.

Eligibility criteria

This section describes in principle the Pubs Relief Scheme. Surrey Heath Borough Council will use this section to determine eligibility for the relief. The scheme will be available to eligible occupied properties with a rateable value of less than £100,000. The majority of pubs are independently owned or managed and will not be part of chains. Where pubs are part of a chain, relief will be available for each eligible property in the chain, subject to meeting State Aid requirements.

There is no definitive description of a traditional pub or public house in law which could be readily used to determine eligibility. Surrey Heath will follow the Government's objective and adopt an approach that makes the design and eligibility of the scheme easy to implement in a clear and consistent way, is widely accepted by the industry and which is consistent with the Government's policy intention.

The Government's policy intention is that eligible pubs should:

- be open to the general public
- allow free entry other than when occasional entertainment is provided
- allow drinking without requiring food to be consumed
- permit drinks to be purchased at a bar.

In addition to determine eligibility Surrey Heath will refer to the definition of a pub as set out in the 'The Licensing Act 2003 (Consequential Amendment) (Non-Domestic Rating) (Public House in England) Order 2007' which states:

Public house means a property that meets the following conditions:

- a premises licence authorising the sale by retail of alcohol for consumption on the premises has effect;
- the premises are used principally for such sales to members of the public for consumption on the premises; and;
- the sales are not made subject to the condition that buyers reside at or consume food on the premises;

For clarity, Surrey Heath's (and the Government's) definition of a pub would exclude:

- restaurants
- cafes
- nightclubs
- hotels
- snack bars
- guesthouses
- boarding houses
- sporting venues
- music venues
- festival sites
- theatres
- museums
- exhibition halls
- cinemas
- concert halls
- casinos

This exclusions list is not intended to be exhaustive.

Where eligibility under the criteria is unclear Surrey Heath may also consider broader factors in our considerations – i.e., in meeting the stated intent of the scheme in that does it demonstrates the characteristics that would lead it to be classified as a pub, for example being owned and operated by a brewery. Additionally, we may also consider other methods of classification, such as the planning system and the use classes order to help decide whether a property is a pub or not. However, permission for a particular use class will not necessarily mean that the property meets the definition of a pub.

How much relief will be available?

The total amount of relief available for 2020/21 only under this scheme is up to £1,000 for each eligible occupied property. There is no relief available under this scheme for properties with a rateable value of £100,000 or more. Eligibility for the relief and the relief itself will be assessed and calculated on a daily basis.

Where relief has been found to have been awarded incorrectly or in error the relief will be removed and amended bills issued. If a change in circumstances that would affect the relief is not informed to the Council within 28 days the Council reserves the right to cancel all relief granted and refuse any further application.

Splits, mergers, and changes to existing hereditaments

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

Explanatory notes to the Pub Discount Scheme (these do not form part of the scheme)

Compensation Arrangements

Central Government will fully reimburse Surrey Heath Borough Council and Surrey County council for their local share of this discretionary relief. Surrey Heath has been asked provide an estimate of the likely total cost for providing the relief in a one-off estimate for 2020/21. Central Government will then provide payments for the local share of the cost of the estimated relief for 2020/21. The final cost will be calculated and reconciled following the submission of the NNDR3 for 2020/21

State Aid

State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However, the Supporting Small Businesses relief scheme will be State Aid compliant where it is provided in accordance with the De Minimis Regulations (1407/2013).

The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a rolling three-year period (consisting of the current financial year and the two previous financial years).

Surrey Heath has familiarised itself with the terms of this State Aid exemption, in particular the types of undertaking that are excluded from receiving De Minimis aid (Article 1), the relevant definition of undertaking (Article 2(2))⁴ and the requirement to convert the aid into Euros.

Whilst the UK left the EU on 31 January 2020, the Withdrawal Agreement negotiated by the Government and the EU provides that during an implementation period State aid rules will continue to apply as now and will be subject to control by the EU Commission as at present. Local authorities should therefore continue to apply State aid rules, including De Minimis, to the relief during the implementation period.

Although it is unlikely that any business given this relief will exceed State Aid limits we will request ratepayers inform us if any award breaches State Aid limits.

Other Discretionary Reliefs reimbursed by s.31 grants

If a property is eligible for relief under other schemes for which s.31 grant is payable – for example, “new empty property” relief, Retail Discount or the Supporting Small Business Scheme– Surrey Heath will first award relief under those schemes and claim s.31 grant funding in the normal way. Only having awarded relief under those schemes, and any mandatory relief such as Small Business Rate Relief will Surrey Heath then award additional relief in accordance with the Pubs Relief Scheme.

MHCLG does not prescribe whether the separate local discretionary relief scheme is calculated before or after the Support for Pubs relief scheme. However, MHCLG understands that authorities and software companies will follow the practice of taking the Discretionary Relief before the Pubs Relief.

Delegated Authority to Award Relief

Delegated to Executive Head of Finance, Revenues and Benefits Manager or any officer delegated by the Executive Head of Finance to award relief

Application Process

The scheme entitlement is established based on information already held within Surrey Heath Borough Council's Business Rates system. Therefore, awards will be applied automatically where entitlement is found. Ratepayers may request we review their account where no automatic award has been made.

Appeals Process

There is no statutory right of appeal against a decision regarding discretionary rate relief unless the decision is so unreasonable that no reasonable person could have reached it ('Wednesbury Rules').

However, the Council recognises that ratepayers should be entitled to have a discretionary decision reviewed if dissatisfied with the outcome. Only the ratepayer or authorised agent may appeal against the decision not to award relief or the level of relief awarded. Appeals must be made within four weeks of the notification of decision.

Appeals must be in writing specifying reasons why a decision should be amended and supported by relevant new or additional evidence.

An appeal will be deemed to be discontinued if further evidence requested from the ratepayer has not been received within two weeks of the request.

Appeals against decisions made under delegated authority by the Executive Head of Finance will be considered by the Head of Legal.