

THE RATES (NORTHERN IRELAND) ORDER 1977

POLICY GUIDANCE NOTE ON HARDSHIP RELIEF FOR THE NON-DOMESTIC SECTOR

December 2005



HARDSHIP RELIEF - POLICY GUIDANCE NOTE

BACKGROUND

1. The purpose of this Guidance Note is to set out in general terms the Government's Policy Guidance on Hardship Relief for the non-domestic sector. Hardship Relief will come into operation on 31 December 2005.
2. The note also covers other matters such as:
 - The amount and duration of Hardship Relief;
 - Responsibility of the Rate Collection Agency (RCA), an Executive Agency within the Department of Finance and Personnel ('the Department'), for operating the scheme;
 - The administrative decision making process; and
 - Involvement of district councils in the process.
3. Rating Policy Division of the Department has responsibility for all rating policy matters and has prepared, and will remain, responsible for any amendment to the policy on Hardship Relief. Accordingly this Guidance Note will be subject to further change as required.

INTRODUCTION

4. Article 33B of the Rates (Northern Ireland) Order 1977 [S.I. 1977 No. 2157 (N.I. 28)] ('the 1977 Order') provides for Regulations to allow the Department the discretion to remit or reduce rates in exceptional circumstances where hardship would otherwise result. This can either be for the whole of the financial year or a part of it, depending on the particular circumstances of the case. The Department has decided however, to ensure equity of treatment between ratepayers, that the amount of Hardship Relief awarded in every case should be 100% of the rates due for the relevant period (i.e. either the full year or part thereof as appropriate).
5. The Non-Domestic Rating (Hardship Relief) Regulations 2005 [S.R. 2005 No. 552] set out the legislative requirements for Hardship Relief.
6. Hardship Relief is awarded on a discretionary basis and RCA, on behalf of the Department, will be responsible for operating this discretion. It will therefore be for the relevant decision-maker in RCA to decide whether or not to exercise that discretion and remit or reduce rates, not on a blanket approach but on an individual basis. It is important that RCA exercises this discretion in a fair and proper manner and therefore the following policy guidelines have been drafted to assist when deciding individual cases.
7. Operational aspects of Hardship Relief, including management; administration; control; and monitoring procedures, have been delegated by the Department to RCA.
8. In order to make an award of Hardship Relief, a decision-maker should first assess whether exceptional circumstances exist and second if, as a direct result of these circumstances, a business or organisation would suffer hardship

if rates were not remitted or reduced. It is therefore not sufficient, in order to qualify for relief, for a business to be in hardship because of a downturn caused by normal market conditions (see paragraphs 11 to 14 below).

HARDSHIP

9. Hardship relief is intended to assist a business recover from temporary crisis, financial or otherwise. It is for the decision-maker to decide, based on the available evidence, whether or not a business would suffer hardship if relief is not provided. In making this assessment evidence of potential closure may be a useful indicator.
10. A crisis may be defined by the loss of trade resulting directly from the exceptional circumstances or the impact on business service provision resulting from the exceptional circumstances.

EXCEPTIONAL CIRCUMSTANCES

11. 'Exceptional circumstances' will usually be:
 - External to the ratepayer;
 - Beyond normal business risk;
 - Unavoidable; and
 - Unforeseen.
12. As a general principle, external risk that would be covered either by commercial insurance or by the availability of compensation from public funding would not be considered 'exceptional circumstances' on the basis that an alternative means of assistance is already available. However, it may be that such assistance may not be readily available particularly where the circumstances are sudden, e.g. in the case of severe flooding, and therefore Hardship Relief may therefore still be appropriate. Each case should be considered on its own merits.
13. While decision-makers will need to take account of all of the evidence presented before reaching a decision, as a general principle the following circumstances will not be considered as exceptional for the purposes of Hardship Relief:
 - A general market downturn;
 - Strikes internal to a business;
 - Non-domestic property becoming vacant and liable to the unoccupied rate;
 - External market conditions.
14. External market conditions can include:
 - Energy costs;
 - Insurance costs;
 - Increased interest rates;
 - Transportation costs;
 - Strength of Sterling in the European market;
 - Increased competition elsewhere.

ELIGIBILITY

Eligible hereditaments

15. Non-domestic hereditaments that are occupied by, or in the case of vacant hereditaments owned by, businesses or organisations, including the voluntary sector, will be eligible for Hardship Relief provided they satisfy the necessary conditions.

Ineligible hereditaments

16. Annex 1 defines the non-domestic hereditaments that are excluded from Hardship Relief by the Hardship Regulations.
17. In addition to the hereditaments set out in the table in Annex 1, Hardship Relief will not be available for hereditaments owned or occupied by:
 - Government Departments;
 - District Councils;
 - Statutory Bodies;
 - Businesses or organisations wholly or mainly funded by Government Departments, District Councils and Statutory Bodies.
18. All domestic hereditaments, including the domestic element of hereditaments that include both domestic and non-domestic elements, will not be eligible for Hardship Relief.

State Aid

19. Hardship Relief constitutes State Aid and may therefore need to be notified to the European Commission. State Aid is a specific term that relates to forms of assistance from a public body; publicly funded body; or a body under public sector control. This assistance could have the potential to distort competition and affect trade between member states of the European Union.
20. State Aid rules apply to all aid received by all businesses and organisations involved in economic activity ('undertakings'). The businesses and organisations do not have to be profit making if the activity carried out is one that has commercial competitors. In some instances public sector bodies and voluntary sector organisations, such as charities, could be classified as undertakings. The European Commission, however, considers that aid to a single recipient of up to €100,000 (or in the case of agricultural aid €3,000) (calculated using the exchange rate applicable on the date of offer) over a rolling three-year period has a negligible impact on trade and competition and is therefore exempt from notification under the 'de minimis' aid block exemption. This aid can be given for most purposes and is not project related.
21. Applications for Hardship Relief will be tested against the provisions for State Aid and no relief will be granted beyond the 'de minimis' limit.

EVIDENCE

22. Applications for Hardship Relief will need to be supported by evidence. Where the Department considers that further evidence is necessary before reaching a decision it will ask for this to be provided by the relevant ratepayer. Failure or declining to supply sufficient information will result in the application for relief being refused.
23. Given that Hardship Relief is intended to provide assistance to enable a business to recover from temporary crisis some form of recovery plan will generally be required before rates can be remitted or reduced.
24. Evidence that will be required to support an application will vary from case to case, depending on the particular circumstances giving rise to the application. This **may** include a combination of the following:
 - A written statement of circumstances, signed by senior officers of the business or organisation, including details of those which have led to hardship and any social, economic, technological and environmental issues;
 - A written 'outline recovery' plan, prepared by senior officers of the business or organisation or their financial representatives, providing evidence of business reshaping to show the prospect of achieving recovery (including timescales, projections, etc.);
 - Evidence such as audited profit and loss accounts, copies of bank statements, the most recent Tax and Inland Revenue returns, details of the complete assets of the applicant;
 - Evidence of financial assistance (e.g. State Aid) from a public body, publicly funded body or a body under public sector control during the current and previous two financial years and, if appropriate, details of applications made but not yet processed (see paragraphs 19 to 21 above);
 - Evidence of any compensation, paid or payable, either through commercial insurance or otherwise during the current and previous two financial years (see paragraph 12 above);

FREEDOM OF INFORMATION

25. The Freedom of Information Act 2000 (c. 36) gives the public a right of access to any information held by a public authority, in this case the Department. The Department cannot automatically consider as confidential information supplied to it but it does have the responsibility to decide whether any information provided by businesses and organisations, including information about identity, should be made public or treated as confidential.
26. This means that information provided is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided.
- The Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature.
- Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

DURATION OF RELIEF

27. Hardship Relief is intended to be temporary and it is expected that it should apply only for the length of time that it takes a business or organisation to recover from the exceptional circumstances.
28. Where an award of Hardship Relief is made for a period ending prior to 31 March in any year, RCA will consider whether exceptional circumstances exist after this period has ended. In any event, a new application will be required for each relevant financial year.

AMOUNT OF RELIEF

29. The maximum amount of Hardship Relief to be remitted or reduced in relation to an individual application will be the rates assessed for any single financial year, i.e. the NAV of the hereditament multiplied by the non-domestic rate in the pound (the non-domestic regional and district rates combined) for the district council area in which the hereditament is situated (the rates due).
30. Hardship Relief will not be available under any circumstance before the date on which the Regulations come into operation.

In the 2005/2006 financial year:

- where hardship has been present for a period of time (rather than as a result of a sudden event) then rates will be remitted or reduced in successful applications from the date on which the Regulations come into operation;
- where the event is 'sudden', all applications that are successful will have an effective date of when the 'sudden' event occurred (between the date on which the Regulations come into operation and 31 March 2006).

In the 2006/2007 financial year and in future years:

- where hardship has been present for a period of time (rather than as a result of a sudden event) then rates will be remitted or reduced in successful applications from 1 April of the year of application;
- where the event is 'sudden', all applications that are successful will have an effective date of when the 'sudden' event occurred (on and after 1 April of the year in question).

31. Existing non-domestic exemptions or reliefs will be taken into consideration before the amount of Hardship Relief is determined, i.e. the rateable value (RV) of the hereditament multiplied by the non-domestic rate in the pound (the non-domestic regional and district rates combined) for the district council area in which the hereditament is situated.
32. Evidence of State Aid will be taken into consideration before the amount of Hardship Relief is determined, i.e. either NAV or RV of the hereditament multiplied by the non-domestic rate in the pound (the non-domestic regional and district rates combined) for the district council area in which the hereditament is situated less the amount of State Aid received over the appropriate rolling three-year period.
33. Where the rates assessed have been paid in full or in part before a successful application for Hardship Relief is made, the appropriate amount will be repaid.
34. Where there is a change in occupation of a specified hereditament any existing award of Hardship Relief will not be remitted or reduced in respect of that occupier after the first day on which the change in occupation occurred. The onus will then fall to the 'new' occupier to make a separate application, if appropriate, for Hardship Relief.
35. Where, after a change in occupation, a hereditament remains unoccupied for a period greater than three months the person entitled to possession (usually the owner) becomes liable to the unoccupied rate, i.e. 50% of the full rates as assessed. The onus will then fall to that person to make a separate application, if appropriate, for Hardship Relief.

FUNDING OF RELIEF

36. The District Rate for any district will bear 25% of the Hardship Relief awarded in any year in that district. The Rates Regulations (Northern Ireland) 2000 [S.R. 2000 No. 333], which provide for the manner in which the product of the non-domestic rate is to be determined, have been amended by the Rates (Amendment) Regulations (Northern Ireland) 2005 [S.R. 2005 No. 553] to allow Hardship Relief to be taken into account when ascertaining the loss on collection in relation to the district rate.

THE ADMINISTRATIVE PROCESS

37. Article 6(1) of the European Convention on Human Rights (ECHR) states that:

‘in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’.
38. Under Article 33B of the 1977 Order the Department will take the final decision on Hardship Relief and this of itself does not satisfy the ‘independence’ test in Article 6 of the ECHR. In addition, Article 33B does not specifically provide for an independent appeal against the Department’s decision, however, there is a right of appeal to the High Court by way of Judicial Review.

39. The European Court of Human Rights has held that provided such subsequent independent control exists whereby a Court can, where necessary, overturn an internal departmental decision on its merits then this procedure complies with Article 6 above. To facilitate this the Department has decided to institute an internal review mechanism (to be operated by RCA) if a challenge has been made to an original decision. This procedure will include a number of safeguards in order to comply with Article 6.
40. This mechanism will comprise the following:
- A fully detailed decision, including findings of fact and conclusions (see paragraph 41 below), on the original application. This will be taken at an appropriate administrative level and notified to the applicant in writing advising them of the decision and of their right to ask for it to be reconsidered within a reasonable period of time. An applicant must provide specific reasons for reconsideration.
 - Where an applicant decides to seek a review, a different and more senior officer to the one who made the original decision will take the review decision. This process will include consideration of the original decision and, if appropriate, any additional evidence that has been provided by the applicant. All decisions would be fully detailed in writing to the applicant, including findings of fact and conclusions (paragraph 41 below). This will allow a Court to determine whether the decision was properly arrived at should an applicant wish to appeal the decision by way of Judicial Review (see paragraphs 37 and 38 above).
41. Decisions should include in the narrative:
- Details of the findings of fact;
 - The conclusions drawn from those facts;
 - The criteria applied in making the decision; and
 - The full reasoning behind the decision.

INVOLVEMENT OF DISTRICT COUNCILS

42. Where an application for Hardship Relief has a wider impact on the locality, i.e. beyond the consequences to the business or organisation itself, District Councils may be asked by RCA to provide a view on the application. District Councils will not, however, have any decision-making role in relation to applications for Hardship Relief.
43. Where RCA decides to seek a view from a District Council (see paragraph 42 above), it will ask for a view on:
- The exceptional circumstances as presented by the applicant;
 - The local impact on the business or organisation (including its importance to the District Council area); and
 - The impact on the interests of ratepayers in the District Council area.

IMPACT ASSESSMENTS

44. The requirements of Section 75 of the Northern Ireland Act 1998 (c. 47), which places a statutory obligation on public authorities to promote equality of

opportunity and good relations, were a key consideration in devising the administration of Hardship Relief.

45. Given that Hardship Relief is to be considered on a case-by-case basis and awarded only in exceptional circumstances, there were obvious difficulties for conducting Equality, New TSN and Rural Proofing impact assessments. Exceptional events also, by their very nature, cannot readily be predicted and therefore eligible target groups could not be identified for the purpose of prior analysis.
46. These assessments will be conducted 12 months after the relief has been introduced and data becomes available relating to applications and the decisions that have been taken. A questionnaire will accompany the RCA application form for Hardship Relief to facilitate the collection of the necessary data relating to an applicant's workforce.
47. Similar considerations applied to full Regulatory Impact Assessments and a limited impact assessment was undertaken on the potential cost to business of applying for Hardship Relief, producing accounts, business recovery plans etc. before the Regulations were made.
48. Rating Policy Division will review the Hardship Relief policy and this Guidance Note when these assessments have been completed.

GENERAL

49. Copies of this policy Guidance Note are available in hard copy on request from the Department at:

**Rating Policy Division
Department of Finance and Personnel
Room D12
Rathgael House
Balloo Road
Bangor
BT19 7NA**

Or by telephoning 028 9185 8094 or 028 9127 7606.

50. It is also available on the Review of Rating Policy website at www.nics.gov.uk/ratingpolicy/. A copy will be made available, on request, in alternative formats.

HEREDITAMENTS TO BE EXCLUDED FROM HARDSHIP RELIEF

| Entry No. | Hereditaments |
|------------------|--|
| 1 | Hereditaments used solely for, or in connection with, the parking of motor vehicles. |
| 2 | Hereditaments used solely for exhibiting advertisements. |
| 3 | Hereditaments used solely for, or in connection with, telecommunications masts and towers. |
| 4 | Hereditaments used solely for, or in connection with, automatic teller machines. |