

# Report

Report to:	<b>Finance and Corporate Resources Committee</b>
Date of Meeting:	<b>6 December 2023</b>
Report by:	<b>Executive Director (Finance and Corporate Resources)</b>

Subject:	<b>Non-Domestic Rates - Empty Property Relief Policy</b>
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## 1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ outline proposed changes to the Council's Non-Domestic Rates Empty Property Relief (EPR) policy and seek approval to implement the revised policy from 1 April 2024

## 2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that South Lanarkshire Council implements the revised Non-Domestic Rates policy as detailed at Appendix 3 from 1 April 2024; and
- (2) that the EPR Policy to be adopted by South Lanarkshire Council from 1 April 2024, as outlined at section 5, be endorsed and referred to the Executive Committee for approval.

## 3. Background

- 3.1. Non-Domestic Rates are a tax on non-domestic properties to help fund essential council services. Empty Property Relief provides certain rates relief on unoccupied non-domestic properties and prior to April 2023 the scheme was operated at a national level. It was mandatory and fully funded by the Scottish Government (SG) through the Local Government Financial Settlement.
- 3.2. EPR was devolved from SG to local authorities from 1 April 2023, following the repeal of Section 24, of the Local Government (Scotland) Act 1966. This included the transfer of £105 million annually across all councils, fixed until the next revaluation in 2026. The Council's annual allocation from 2023/2024 is £2.183 million. Each council now has autonomy to design their own scheme to best meet their needs.
- 3.3. The Council's policy on EPR was approved by the Executive Committee on 1 March 2023 for implementation from 1 April 2023. This policy mirrored the previous legislation due to the short time frame given to consider potential changes and uncertainty of the impacts of the 2023 NDR revaluation. A commitment was given to review the policy and report back to the Finance and Corporate Resources Committee during 2023/2024 with any proposed alterations.

#### 4. Current position

4.1. The current policy for awarding EPR is:-

- ◆ occupied industrial property - eligible for 100% relief for the first 6 months since becoming unoccupied, and 10% thereafter
- ◆ Other (non-industrial) unoccupied property - eligible for 50% relief for the first 3 months since becoming unoccupied and 10% thereafter
- ◆ Unoccupied properties which meet any of the following criteria - 100% relief indefinitely
  - ◆ listed building
  - ◆ rateable value is under £1,700
  - ◆ the ratepayer is a trustee for sequestration, a liquidator or executor
  - ◆ cannot be occupied by law
  - ◆ under a compulsory purchase order
  - ◆ the property has no buildings
  - ◆ the ratepayer is in administration (or subject to an administration order)
  - ◆ the ratepayer is a company or partnership being wound up

4.2. Recent analysis highlighted that there are currently 478 empty properties in South Lanarkshire with the Council being the ratepayer for 98 of these properties. Of the current empty properties 347 (73%) have been empty for more than 12 months, with 61 belonging to the Council.

4.3. In the most recent complete financial year 2022/2023, EPR of £1.721 million was awarded against the following relief categories, with properties where the Council is the ratepayer receiving £0.155m of this total:-

Table 1: Total EPR awarded in 2022/2023

CATEGORY	2022/23
	£000
Industrial	408
Other (Non-Industrial)	405
Insolvency	548
Listed buildings	182
No buildings	121
Rateable Value < £1,700	45
Deceased	12
<b>TOTAL</b>	<b>1,721</b>

4.4. The current projection for 2023/2024 is £2.820 million which represents a significant overspend on the budget of £2.183 million of £0.637 million because of the East Kilbride Shopping Centre entering administration in November 2022. Any overspend will require to be funded by the council although discussions have commenced with COSLA and SG regarding any scope for additional funding to be provided to mitigate the financial impact of this major unforeseen event.

#### 5. Proposed policy

5.1. It is proposed that the Council revises the EPR policy to promote the occupation of empty properties to deliver economic and social benefits in South Lanarkshire and also to reduce the cost to the Council during a period of significant financial pressure on budgets.

- 5.2. Re-occupation of properties would stimulate economic growth providing improved employment opportunities, increased spend in local businesses such as shops and cafes and a decreased risk of vandalism and anti-social behaviour. This proposed policy also delivers a fairer system which still provides relief to empty property ratepayers but incentivises re-occupation by ending open ended exemptions and reliefs for most empty properties. Instead, a 12-month time limit will be placed on any such award.
- 5.3. The proposed policy also removes the favourable empty relief terms offered to industrial categorised properties such as factories, warehouses, workshops and stores as opposed to commercial properties such as shops and offices. Analysis in South Lanarkshire has highlighted that commercial properties have on average remained unoccupied for longer than industrial reflecting the particular difficulties faced by this sector in the current economic climate. Industrial properties will therefore receive the same EPR as commercial, at the previous commercial rate, restricted for 12 months.
- 5.4. It is also proposed the 100% indefinite relief currently provided to listed buildings is replaced with 50% relief for the first 3 months, followed by 10% relief for 9 months. There would be no relief after 12 months. This would align with the proposed relief for commercial and industrial properties and incentivise owners of listed buildings to bring them back into use.
- 5.5. The duty on business owners to apply for relief timeously and ensure they receive accurate bills is reflected in the new policy. It is therefore proposed that backdating EPR is restricted to the current year as opposed to the current policy where backdating can be awarded up to the preceding 6 financial years.
- 5.6. Implementation of the new policy would commence from 1 April 2024 for all empty properties. However, for existing ratepayers affected by the policy change, entitlement will be dependent on how long the property has been empty. For example, a listed building which previously received 100% relief which has been unoccupied for 2 months at 1 April 2024 will be entitled to a further month at 50% relief and then 10% for up to a further 9 months. If, however the property has been empty for more than 3 months at 1 April 2024, entitlement from this date would only be for 10% relief.
- 5.7. For anti-avoidance reasons, any period of occupation of less than 6 months is disregarded for the purposes of awarding EPR. This is consistent with the current policy and therefore represents no change.
- 5.8. It is proposed that a full review of the new policy would be undertaken in 2027/2028, after 3 full years of operation. This could be undertaken earlier if the circumstances required this.
- 5.9. A comparison of the proposed EPR policy with the existing policy, including the justification for the proposed changes is provided at Appendix 1 with the full policy in Appendix 2.

## **6. Employee Implications**

- 6.1. There are no employee implications.

## **7. Financial Implications**

- 7.1. It is extremely difficult to accurately predict the reduced spend on EPR under the proposed new EPR policy due to the unpredictability of business behaviour. However, an indication of the potential financial benefits of the new policy could be provided by comparing the value of the last full year for EPR awards (i.e., 2022/2023) against what it would have been under the new policy.
- 7.2. As detailed at Appendix 2, the level of savings from this comparison is estimated to be £0.559 million. Offsetting the additional charges that would be levied on Council owned properties of £0.136 million provides an estimated net benefit of £0.423 million. This net benefit is expected to be impacted by collection levels, considered challenging to quantify.

## **8. Climate Change, Sustainability and Environmental Implications**

- 8.1. It is expected that this proposed policy would encourage the occupation of empty properties, some of which may be in a state of disrepair, and therefore reduce the blight on communities that these properties cause. This would have a positive environmental impact and could contribute to a reduction in vandalism and anti-social behaviour.

## **9. Other Implications**

- 9.1. The devolution of EPR to councils introduces a new financial risk to councils. Changes in business behaviour and economic conditions are likely to impact the level of EPR being awarded and therefore the levels of costs incurred. This risk is increased in the event a major business entering administration with the proposed changes to EPR policy mitigating the financial risks to some extent. The financial risk is mitigated to some extent from the proposals included in the report that are expected to reduce the EPR costs to the Council.
- 9.2. There may be a legal risk associated with changing the EPR policy, as businesses, individuals or representative groups could challenge any proposed changes to the policy. The consultation that has been completed offers a level of mitigation.
- 9.3. The proposed policy changes will be communicated to businesses using the Council's website and social media platform.

## **10 Equality Impact Assessment and Consultation Arrangements**

- 10.1. An Equality Impact Assessment has been carried out and no negative impact on any specific equality group has been identified.
- 10.2. A consultation exercise has been undertaken with responses received from the Federation of Small Businesses, the Hamilton Business Improvement District and property consultants, seeking views on the councils current EPR policy and potential areas for change. In summary, there was support for treating industrial and commercial properties the same and agreement that time limited relief adequately incentivised ratepayers to proactively utilise space with concern also shown towards listed buildings laying empty indefinitely. Shorter rates relief for industrial properties was considered the best way to generate greater revenue.

10.3. A Members' awareness session was also undertaken on 14 November 2023 to inform Members of the proposed new policy and seek views.

**Paul Manning**  
**Executive Director (Finance and Corporate Resources)**

17 November 2023

**Link(s) to Council Values/Priorities/Outcomes**

- ◆ Accountable, effective, efficient and transparent

**Previous References**

- ◆ Executive Committee, 1 March 2023

**List of Background Papers**

- ◆ None

**Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:-

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### Empty Property Relief – Current and New Policy from 1 April 2024

Property Category	Qualifying Properties	Current Policy	New Policy	Justification
Commercial	Properties such as shop and offices.	50% relief for the first 3 months, followed by 10% relief indefinitely.	50% relief for the first 3 months, followed by 10% relief for 9 months. No relief after 12 months.	Relief restricted to 12 months maximum to incentivise owners to bring the property back into occupation.
Industrial properties	Properties such as factories, warehouses, workshops and stores.	100% relief for the first 6 months, followed by 10% relief indefinitely.	50% relief for the first 3 months, followed by 10% relief for 9 months. No relief after 12 months.	To align with the proposed relief provided to commercial properties. No justification for different approach.
Listed Buildings	Listed buildings, ancient monuments, and properties in a preservation area.	100% relief indefinitely.	50% relief for the first 3 months, followed by 10% relief for 9 months. No relief after 12 months.	Current policy is not incentivising owners of listed buildings to bring them back into use. No justification for treating empty listed buildings differently from commercial.
Insolvencies	Properties where the ratepayer is in administration or subject to a winding up order, or the ratepayer is the trustee under a trust deed or sequestration or is a liquidator.	100% relief indefinitely.	No change.	Payment of charges unlikely.
Properties with a rateable value of £1,700 or less	Property with a rateable value of £1,700 or less.	100% relief indefinitely.	50% relief for the first 3 months, followed by 10% relief for 9 months. No relief after 12 months.	No justification for treating properties with a rateable value of £1,700 or less differently from commercial properties with a rateable value above this threshold.

No buildings	There are no buildings on site such as yards, ground, car spaces.	100% relief indefinitely.	50% relief for the first 3 months, followed by 10% relief for 9 months. No relief after 12 months.	No justification for treating vacant land differently from empty buildings. Current policy may encourage the demolition of buildings to take advantage of preferential relief terms for vacant land.
Occupation is prohibited by law	Where a statutory notice has been served preventing occupation of the property.	100% relief indefinitely.	No change.	Payment of charges unlikely.
Properties under a compulsory purchase order	Property currently under a compulsory purchase order.	100% relief indefinitely.	No change.	Payment of charges unlikely.
Ratepayer is deceased	Property where the liable ratepayer is deceased.	100% relief indefinitely.	No change.	Payment of charges unlikely.
Backdating of empty property relief	Where the claim is out-with the current financial year.	Empty property relief can be awarded up to 6 years prior to the current year.	Relief can only be awarded for the current financial year for all empty properties apart from those categories receiving 100% EPR. No change for properties in receipt of 100% EPR.	It is the responsibility of an owner to apply for EPR timeously to ensure accurate billing.
Empty relief after re-occupation for non-exempt categories	Where a property becomes empty after a period of occupation.	Any period of occupation of less than 6 months is disregarded for the purposes of awarding EPR.	No change.	Anti avoidance measure.

**Note:**

In this policy, 3 months equates to 92 days, 6 months equates to 183 days and 9 months equates to 273 days, or 274 days in a leap year.

Review period for new policy – 3 years (or earlier in the event of exceptional circumstances).

**Empty Property Relief**  
**Estimated savings based on 2022/23 actual cost**

CATEGORY	Current Policy	Proposed Policy	Difference	Reduction in EPR
	2022/23	2022/23	2022/23	
	£000	£000	£000	%
Industrial	408	212	212	50%
Commercial	405	354	51	13%
Insolvency	548	548	-	-
Listed buildings	182	19	163	90%
No buildings	121	12	109	90%
Rateable value < £1,700	45	5	40	89%
Deceased	12	12	-	-
	1,721	1,162	559	32%

**Finance and Corporate Resources  
Transactions Service  
Non-Domestic Rates**

**Empty Property Relief Policy**

**Subject:** Relief for unoccupied non-domestic properties

**Date:** November 2023

**Reason for change:** Planned review of current policy

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## **1. Introduction**

This revised policy becomes effective from 1 April 2024. Empty Property Relief (EPR) provides rates relief on unoccupied non-domestic properties for ratepayers. This policy sets out the qualifying criteria for EPR and the level of relief available, including the timescales. The policy also details how eligibility is determined.

## **2. Definition of an unoccupied property**

For the purposes of awarding relief, the following criteria must be met before a property is considered to be unoccupied:

- there should be no physical occupation by any person, for any purpose
- the premises must not be open or available to the public
- there should be no stock left on the premises\*
- there should be no moveable items left on the premises such as furniture, equipment, tools or moveable equipment or machinery\*.
- the premises, or windows of the premises, must not be used to advertise or promote any other business or property.

\*Except where these items have been abandoned by a tenant and the claim for relief is submitted by the landlord.

## **3. Eligibility and level of relief**

### **3.1 There are 3 levels of relief that can be awarded:**

- **Devolved Empty Property Relief**
  - 100% relief (exemption)
  - 50% relief for the first 3 months (92 days) followed by 10% relief for 9 months (273 days).
- **Scottish Government Empty Property Relief**
  - 100% relief for a maximum of 3 months (92 days) for partially unoccupied industrial property.

### **3.2 100% relief and exempt categories**

Properties which fall into one of the defined exempt categories listed below are eligible for 100% relief and are exempt from payment of rates during an unoccupied period for an unlimited time. Where a property in this category remains empty, a new relief application must be made at the beginning of each financial year.

#### **3.2.1 Insolvencies**

Exemption can be awarded under this category when the person entitled to possession of the property is so entitled because they are:

- a trustee under a trust deed for creditors
- a trustee under an award of sequestration
- a liquidator under section 112 or section 145 of the Insolvency Act 1986

### 3.2.2 Owner is a company or partnership in administration

Exemption is awarded where the ratepayer is the property owner and is a company or limited liability partnership which is subject to an administration order under part II of the Insolvency Act 1986 or is in administration within the meaning of paragraph 1 of schedule B1 of the Insolvency Act 1986.

### 3.2.3 Owner is a company or partnership being wound up

Exemption is awarded where the ratepayer is the property owner and is a company or limited liability partnership being wound up in terms of the Insolvency Act 1986.

### 3.2.4 Executors

Exemption can be awarded under this category when the person entitled to possession of the property is so entitled because they are the executor of the estate of a deceased ratepayer.

### 3.2.5 Properties under a Compulsory Purchase Order

Exemption should be awarded under this category where the ratepayer can provide proof from either South Lanarkshire Council or any Scottish Government department indicating that they have, or intend to, compulsorily purchase the premises. Exemption can be awarded from the date that notice is served on the ratepayer which is likely to be an earlier date than the actual date of the compulsory purchase.

### 3.2.6 Properties where occupation is prohibited by law

Exemption will be awarded under this category where a statutory notice has been served prohibiting the use of the building for any purpose. Exemption will apply from the date shown on the notice.

## 3.3 Short term partly occupied properties

This relief has not been devolved to local authorities and remains available in terms of the existing regulations.

In certain circumstances, unoccupied relief can be awarded where only part of a property is occupied. This relief is restricted to a maximum of 100% relief for 3 months (92 days) on the unoccupied part and can only be awarded once. The criteria which must be met before relief can be awarded is as follows:

- the property must be industrial (see definition below)
- applications can only be considered for the current financial year
- the rateable value of the unoccupied area must be at least 5% of the total rateable value
- relief cannot be applied for periods of less than 1 month
- relief cannot be applied for periods of more than 3 months (92 days)
- The claim must be submitted whilst the area remains unoccupied

A plan of the premises, indicating the unoccupied area, must be sent to the council with the completed application form. The Lanarkshire Valuation Joint Board will determine the rateable value of the unoccupied area and relief will be awarded on this basis.

- Definition of an Industrial Property

For the purposes of this policy, the definition of industrial property is:

*"industrial lands and heritages" means lands and heritages (other than retail lands and heritages) comprising one or more buildings which is, or all of which are,—*  
*(a) constructed or adapted for use in the course of a trade or business; and*  
*(b) constructed or adapted for use for one or more of the following purposes, or one or more such purposes and one or more purposes ancillary thereto:—*  
*(i) the manufacture, repair or adaptation of goods or materials;*  
*(ii) the subjection of goods or materials to any process;*  
*(iii) storage (including the storage or handling of goods in the course of their distribution);*  
*(iv) the working or processing of minerals;*  
*(v) the generation of electricity;*

*"relevant lands and heritages" means any lands and heritages comprising one or more buildings or a part of a building;*

### **3.4 All other properties**

Properties which do not fall into one of the categories above are entitled to 50% relief for 3 months (92 days) followed by 10% relief for 9 months (273 days).

Where a property is receiving 50% relief on 31 March 2024 only the balance of the 3 months (92 days) relief at this rate will be applicable from 1 April 2024, followed by 9 months (273 days) at 10%.

Where a property is receiving 10% empty property relief on 31 March 2024 it will be entitled to a further 9 months (273 days) relief at 10%.

### **3.5 Re-occupation rule**

Any period of occupation of less than 6 months (183 days) is disregarded for the purposes of awarding EPR, apart from claims for exemption.

### **3.6 Retrospective relief applications**

An award of empty property relief may have to be recalculated in the event that an application is received for a past period. This may result in the reduction of relief for the existing rate payer.

## **4. Documentary evidence**

### **4.1 Documentary evidence is required in all cases unless:**

- the rateable value of the subject is £100 or less, or the property description is 'ground' or 'premises'
- the unoccupied period is less than 1 month
- the application for relief is completed by a trustee, liquidator or administrator in the case of insolvency
- South Lanarkshire Council is the ratepayer.

#### 4.2 Examples of documentary evidence are:

- Zero or minimal use energy bills for the unoccupied period.
- Invoices and receipts for refurbishment works carried out on the property.
- Evidence of the property advertised for sale or let.
- Time stamped photographic evidence of the inside and outside of the property.
- Preservation Orders
- Governing body notice prohibiting occupation
- Compulsory purchase order
- Other evidence / verification that the property is / was unoccupied may be acceptable by the Council's Non-Domestic Rates Team.

#### 5. **Unoccupied repossessed property**

Exemption can only be awarded where the property falls into one of the defined exempt categories in section 3 above.

#### 6. **Seasonal occupation**

Unoccupied relief is not available to the property types below as the rateable value has been adjusted to take account of seasonal occupation.

- self-catering units
- holiday cottages
- markets
- other outdoor or tourist attractions

#### 7. **Showhouses**

Showhouses, are entered into the valuation roll whether they are furnished or not and are not eligible for unoccupied property relief.

#### 8. **Retrospective claims**

Empty property relief claims will only be accepted for the current financial year, apart from claims made under an exempt category.

#### 9. **Avoidance of rates charges**

The Council reserves the right to reject an empty property relief application from a tenant/lease holder where it appears that the property owner has put the agreement in place for the purpose of avoiding liability for rates charges.

## **10. Further information and guidance**

If you require further information or have any questions about the content of this procedure, please contact:

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