

Report

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Report to:	Finance and Information Technology Resources Committee
Date of Meeting:	19 January 2010
Report by:	Executive Director (Finance and Information Technology Resources) and Executive Director (Housing and Technical Resources)

Subject:	Non Domestic Rates Unoccupied Property Relief Policy
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ Seek approval for the Non Domestic Rates Unoccupied Property Relief Policy.

2. Recommendation(s)

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

- (1) that the Non Domestic Rates Unoccupied Property Relief Policy be endorsed
- (2) that the report be referred to the Executive Committee for approval.

3. Background

3.1. The Council is responsible for the billing and collection of Non Domestic Rates on behalf of the Scottish Government for approximately 9,000 non domestic properties in South Lanarkshire.

4. Regulations

- 4.1. Unoccupied properties are entitled to relief from Non Domestic Rates under the Non Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994.
- 4.2. While the Unoccupied Property regulations provide for the award of Unoccupied Property relief as a mandatory relief from Non Domestic Rates, the regulations do not provide a definition of "unoccupied". The attached policy document (Appendix 1) formalises the Council's interpretation of an unoccupied property and the conditions to be met by ratepayers applying for Unoccupied Relief.
- 4.3. In developing this policy document for Committee approval, a review of existing practices has been undertaken, in consultation with other Scottish local authorities through the Institute of Revenue, Rating and Valuation (IRRV).

5. Employee Implications

5.1. None.

6. Financial Implications

6.1. Unoccupied property relief is a mandatory relief from Non Domestic Rates and, due to the operation of a pooling system for Non Domestic Rates income, the award of relief has no direct impact on the Council's financial position.

7. Other Implications

7.1. None.

8. Equalities Impact Assessment and Consultation Arrangements

8.1. An impact assessment has been carried out for this policy and will be published subject to Committee approval.

8.2. Consultation on this policy has been undertaken with other Scottish Councils through the Institute of Revenue, Rating and Valuation (IRRV).

Linda Hardie

Executive Director (Finance and Information Technology Resources)

9 December 2009

Link(s) to Council Objectives and Values

♦ Value: Accountable, effective and efficient

Previous References

♦ None

List of Background Papers

♦ Non Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994

Contact for Further Information

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

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Housing and Technical Resources

Support Services
Non-Domestic Rates

Unoccupied Property Relief Policy

Subject: Relief for unoccupied non-domestic properties

Date: 9 December 2009

Reviewed:

Next review date: Next legislative change

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1. Introduction

- 1.1 In certain circumstances Non-Domestic ratepayers are entitled to apply for unoccupied property relief, based on the circumstances of the property in question. The main pieces of legislation which cover this are the Local Government (Scotland) Act 1994 (section 154) and The Non-domestic Rating (Unoccupied Property) (Scotland) Regulations 1994.

2. Level of Relief

- 2.1 There are 3 levels of relief that can be awarded:

- 100% relief
- 100% relief for 3 months followed by a 50% unoccupied charge
- Short term or partially unoccupied relief (level depends on rateable value of unoccupied area)

2.2 100% Relief and Exempt Categories

Properties which fall into one the defined exempt categories listed below are awarded 100% relief and are exempt from payment of rates during an unoccupied period and for an unlimited period of time.

2.2.1 Industrial Property

In terms of the unoccupied property legislation, the definition of an 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;

Generally, exemption should be awarded where the property description is:

- Yard
- Factory
- Warehouse
- Bakery
- Abattoir
- Electricity generation lands
- Minerals
- Store
- Workshop

However, it is important to establish the last known use of the premises, as this is the determining factor when awarding exemption under the industrial category. Reference should be made to the answer given on the application form where the applicant must describe the last known use of the premises. This should be compared to the above definition to ensure that it meets the criteria. Based on the above definition, properties used for retail or as offices should never be awarded exemption, despite how they are valued by the Lanarkshire Valuation Joint Board.

In addition, where the subject has no buildings, i.e. an ariel or mast, advertising station etc, then the 50% unoccupied rate cannot be levied. This can only be levied on 'relevant lands and heritages' which is defined in the legislation as 'any lands and heritages comprising one or more buildings or a part of a building'. Therefore exemption must also be given in this situation.

2.2.2 Insolvency

Exemption should be awarded under this category where the property has become unoccupied due to the insolvency of the ratepayer. This means that exemption can only be awarded for the period immediately following a liquidation, sequestration, administration, trust deed etc. This exemption can only be awarded to the person/company subject to these proceedings and the exemption cannot be awarded where the landlord has terminated the lease and is therefore liable for the payment of rates.

2.2.3 Death

Exemption should be awarded under this category where the property has become unoccupied due to the death of the ratepayer. This means that exemption can only be awarded for the period immediately after the death of the ratepayer and only where they were the ratepayer at the time of their death.

2.2.4 Rateable Value is less than prescribed threshold

Exemption is awarded to all properties where the rateable value is less than the prescribed threshold. Generally at the revaluation date, a statutory instrument will set the threshold and at the time of writing (December 2009) the threshold is £1,700.

2.2.5 Prohibited by law from occupation

The majority of claims under this category will be where there is a public house without a liquor license. In these cases the relevant Licensing Section must confirm in writing any period where the premises were without a liquor license. Exemption can only be awarded for this period. This category only applies to public houses.

The remainder of claims in this category will be derelict properties, properties in need of major repair, properties undergoing major redevelopment or properties damaged by fire. In these cases the ratepayer must provide proof from one of the following: South Lanarkshire Council's Building Control Section, South Lanarkshire Council's Environmental Health Section, Strathclyde Fire and Rescue (in the case of the property not meeting fire regulations or being severely fire damaged) or the Health and Safety Executive. The proof must quite clearly state that it would be against the law to occupy the premises in their current state or that a notice has been served prohibiting occupation of the premises. Letters, from surveyors or agents or any organisation who is not responsible for enforcing the law in relation to property, on their own are not sufficient proof for exemption to be awarded.

2.2.6 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. This is because it can be difficult to let a property which only has a short life span or in the case of owner occupied premises they may have to relocate prior to the compulsory purchase taking place.

2.2.7 Properties under a Preservation Order or which are a Listed Building or Ancient Monument

The majority of claims under this category will be listed buildings. Confirmation of listed or ancient monument status must be obtained from this website:

<http://www.historic-scotland.gov.uk/index/heritage/historicandlistedbuildings.htm>

For applications for properties which are under a Preservation Order, a letter from the relevant authority or body must be provided.

2.3 The 50% Unoccupied Property Charge

2.3.1 If a property does not fall into one of the exempt categories listed above, then only a 3 month period of exemption is awarded at the beginning of the unoccupied period. After this, an unoccupied property charge is levied for the remainder of the unoccupied period. This charge is equal to 50% of the rates which were payable when the property was last occupied and this lasts for an indefinite period whilst the property remains unoccupied.

2.3.2 If the property was last occupied by a ratepayer in receipt of either mandatory or discretionary relief, or a combination of both, then the same level of relief is applied to the 50% unoccupied charge. Therefore if the last ratepayer was in receipt of 80% mandatory relief, then the 50% unoccupied charge would be reduced by 80%. This does not apply to unoccupied relief awarded after any other type of relief.

2.3.3 Where there is a period of occupation lasting 6 weeks or less, falling between two periods of unoccupied relief, then whilst full rates are payable for this period, it is disregarded for unoccupied relief purposes. This means that the 3 month period of exemption does not re-start after the short period of occupation. This applies only to non-exempt properties.

2.3.4 The 3 month period of exemption for non-exempt properties starts at the beginning of the unoccupied period. If however, a claim is accepted from a ratepayer and a 3 month period of exemption is awarded, but a claim which is submitted at a later date falls immediately before the earlier claim, then the beginning of the unoccupied period must change to be the start date of the chronologically earlier period. This will mean a loss or reduction in the period of exemption awarded to the first ratepayer submitting their claim. This ratepayer will automatically be issued with a rates demand for the additional amount due. This is explained on the application form to ensure that applicants are aware that this may happen.

2.4 Short Term Unoccupied Relief (also known as Relief for Partly Occupied Properties)

In certain circumstances, unoccupied relief can be awarded where only part of a property is unoccupied. This relief is restricted to a maximum of 3 months relief on the unoccupied part in any financial year. The criteria which must be met before relief can be awarded is as follows:

- The property must be industrial (see definition above)
- Relief can only be awarded for the current financial year
- Dated photographic evidence of the unoccupied area must be submitted
- The rateable value of the unoccupied area must be at least 5% of the total rateable value
- The claim must be for a short period only, between 1 and 3 months
- The claim must be submitted whilst the area remains unoccupied
- Relief cannot be awarded for the same area more than once

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

3. Documentary Evidence

3.1 Independent documentary evidence is required in all cases apart from the following:

- Where the rateable value of the subject is £100 or less, or the property description is 'ground' or 'premises'.
- Where the unoccupied period is less than 1 month. The exception to this is where the unoccupied period is for a refurbishment during an ongoing liability.
- Where the application for relief is completed by a trustee, liquidator or administrator in the case of insolvency.
- Where the premises have been inspected by a South Lanarkshire Council employee.
- Where the property is the responsibility of South Lanarkshire Council and the claim is submitted by a council employee.

3.2 The documentary evidence must be one of the following:

- Zero or minimal fuel bills. The actual fuel consumption must be shown and must not be estimated. Where the consumption is not zero, earlier or later bills must be supplied for comparison. The fuel bills must cover over at least 50% of the unoccupied period.
- Dated receipts or invoices for work carried out in the refurbishment of the property. These must show the date of the work and the subject address.
- Dated receipts for materials purchased for the refurbishment of the property. These must show that the materials were delivered to the subject address.
- Copy of a 'To Let' advert showing the date of the publication and the subject address of the property.
- Copy of the invoice for the 'To Let' advert showing the date of the publication and the address of the property advertised.
- Signed statement or dated marketing brochure from the letting or property agent agent. If the agent completes the application form no documentary evidence is necessary.
- Signed and dated statement from two neighbouring businesses or residents. The statement must include details of the unoccupied period, the address in question and the names, addresses and contact telephone number of both neighbours. It is acceptable that one of these statements can be submitted by the ratepayer's solicitor, provided that their premises are in the vicinity of the unoccupied premises. The persons signing the statement must be able to be found on either the rates or council tax system at the address given and for the relevant period of time.
- Photographs – these must show both the inside and outside of the property, and must demonstrate the date taken.

- Any other evidence which independently verifies that the property is/was unoccupied during the period of the claim, subject to acceptance by the authorising officer.

4. Definition of an Unoccupied Property

- 4.1 Legislation requires that a property is 'unoccupied' before unoccupied relief can be awarded. However, the legislation does not define 'unoccupied'.

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 otherwise promote any other business or property, except for 'to let' or 'for sale' notices relating to the subject address.

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

5. Unoccupied property in the possession of the Mortgagee

- 5.1 There is no specific exempt category for the above situation. Therefore any unoccupied period whilst in the possession of the mortgagee should be treated in the same way as any other claim for relief. Exemption should only be awarded where the property falls into one of the defined exempt categories.

6. Seasonal Occupation

- 6.1 Following accepted case law on this matter, no unoccupied relief should be awarded in these cases, as the rateable value and any rental have been adjusted to take account of seasonal occupation.

The types of properties which are likely to fall into this category are:

- Self Catering Units
- Holiday Cottages
- Markets
- Other outdoor or tourist attractions

7. Showhouses

- 7.1 Showhouses, sometimes known as 'view homes', are entered into the valuation roll whether they are furnished or not and are used as a vehicle for selling other houses on the same development. They remain liable for rates and in the valuation roll until they are sold. We do not award unoccupied property relief to these subjects as the property is still available for viewing by interest parties until it changes hands and therefore beneficial occupation is enjoyed by the ratepayer.

8. Retrospective Claims

- 8.1 As unoccupied property relief is a mandatory relief, it can be awarded for the current year and with 6 years retrospection. As with all claims for unoccupied relief documentary evidence must be supplied covering the relevant period.

9. Inspections

- 9.1 There are 3 main reasons for a property to be inspected, as follows:

- To verify a current unoccupied relief claim.
- To obtain details of a property where we have been unable to contact the owner.
- To determine the status of a property following an insolvency.

For the purpose of these visits we have divided South Lanarkshire into 6 geographical areas and these areas are visited at least once each financial year. Each visit will include both random visits to verify current unoccupied relief claims and any properties falling into the other categories listed above.

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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