

Report

Report to:	Finance and Corporate Committee
Date of Meeting:	15 February 2023
Report by:	Executive Director (Finance and Corporate Resources)

Subject:	Non-Domestic Rates – Empty Property Relief Policy
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ advise Committee of the devolution of Non-Domestic Rates Empty Property Relief (EPR) from the Scottish Government to local authorities and seek approval for the policy to apply in South Lanarkshire Council from 1 April 2023

2. Recommendation(s)

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

- (1) that the background to the devolution of EPR to councils and the funding arrangements as set out in the report be noted;
- (2) that the EPR Policy to be adopted by South Lanarkshire Council from 1 April 2023, as outlined at section 5, be endorsed and referred to the Executive Committee for approval; and
- (3) that the EPR Policy be reviewed and presented to Committee by March 2024 to allow for a period of stability for rate payers and the Council.

3. Background

- 3.1. The existing Empty Property Relief (EPR) scheme operates at a national level. EPR provides certain rates relief on unoccupied non-domestic properties. It is currently mandatory and fully funded by the Scottish Government through the Local Government Financial Settlement.
- 3.2. The Programme for Government 2021/2022 confirmed that the devolution of EPR would be delivered in April 2023 for the purpose of enabling councils to tailor support to meet local needs. This means EPR reliefs and exemptions will no longer be covered by legislation. All Scottish councils therefore require to have an EPR Policy in place from 1 April 2023 as the current legislation governing this will lapse on 31 March 2023.
- 3.3. The Council's current EPR Policy was approved by the Executive Committee in 2010 and was last updated in 2015 to mirror changes in legislation at that time.

- 3.4. A total of £105 million is to be devolved across councils by the Scottish Government, reflecting the Scottish Fiscal Commission (SFC) Medium Term Financial Strategy (MTFS) forecasts published on 31 May 2022. The annual allocation of £105 million is fixed until the next revaluation in 2026. This considers the impact of the rates revaluation effective from 1 April 2023 and any inflationary pressures and is fixed until the next revaluation in 2026. The Council's annual allocation from 2023/2024 is £2.183 million.
- 3.5. It will be for local authorities to decide how they use this funding and the reliefs and exemptions that may apply under a local scheme. The funding provided is based on the operation of the current national EPR scheme. Any changes to the reliefs and exemptions provided which costs more than the funding will have to be met by the Council.

4. Current Position

4.1. Entitlement to EPR and the rate at which it applies is dependent on different factors relating to the ratepayer and/or the property type. The current legislative criteria for awarding EPR are:-

- ◆ Unoccupied industrial property - eligible for 100% relief for the first six months since becoming unoccupied, and 10% thereafter
- ◆ Other (non-industrial) unoccupied property - eligible for 50% relief for the first three 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
 - ◆ owned by a trustee for sequestration, liquidation or executors
 - ◆ cannot be occupied by law
 - ◆ under a compulsory purchase order
 - ◆ the property has no buildings
 - ◆ the owner is in administration (or subject to an administration order)
 - ◆ the owner is a company or partnership being wound up

4.2. EPR of £1.505 million was awarded in 2021/2022 against the following relief categories:-

Table 1: Total EPR awarded in 2021/2022

CATEGORY	2021/22
	£000
Industrial	354
Other (Non-Industrial)	584
Insolvency	170
Listed buildings	199
No buildings	147
Rateable Value < £1,700	43
Deceased	8
	1,505

5. Proposal

- 5.1. Devolution of EPR becomes effective at a time of significant change with a major revaluation of non-domestic rateable values effective from 1 April 2023 (previously undertaken in 2017) and at a time of major volatility in the economy and financial uncertainty facing businesses.
- 5.2. Maintaining the current provisions would provide some stability and certainty for businesses and the Council during these challenging times. It will also provide an adequate period to assess the benefits of any future amendments to the Policy. Indications from other councils is that this is also the approach that they are adopting. Clarification is also awaited from the Scottish Government on some specific aspects of the new arrangements (e.g., how backdated awards of EPR particularly for non-devolved years should be treated). It should also be noted that the Council received confirmation of a revised funding allocation on 24 January 2023.
- 5.3. It is recommended that the EPR Policy adopted by from 1 April 2023 reflects the change in legislation covering EPR and therefore the current policy should be amended to reflect this. The proposed policy document is attached in Appendix 1. This reflects the criteria listed at 4.1.
- 5.4. This also recognises that the funding provided is based on the current EPR rules and regulations.
- 5.5. A review of the Council's EPR Policy will be provided to this Committee by March 2024. The review will consider potential changes that could be made to the Policy and their implications with input from Economic Development considered vital.

6. Employee Implications

- 6.1. None.

7. Financial Implications

- 7.1. Council funding of £2.183 million per annum over the next 3 years is expected to be sufficient to meet the cost of EPR awards based on the current forecast for 2022/2023 of up to £2.0 million.
- 7.2. The Scottish Government recognises that some exceptional economic events may impact on the number of empty non-domestic properties in an area, and that these cannot be predicted. Where an exceptional economic shock has a substantial, unmanageable impact on an area in respect of a change in empty non-domestic properties having significant bearing on the settlement agreed, it is expected that local authorities and COSLA would raise this for discussion with the Scottish Government in the first instance.

8. Climate Change, Sustainability and Environmental Implications

- 8.1. There are no direct climate change, sustainability and natural environment implications arising from this report.

9. Other Implications

- 9.1. The devolution of EPR transfers the risk of additional costs arising from increases in the value of the relief from the Scottish Government to local authorities.

10. Equality Impact Assessment and Consultation Arrangements

10.1. An Equality Impact Assessment has been carried out.

Paul Manning

Executive Director (Finance and Corporate Resources)

25 January 2023

Link(s) to Council Values/Priorities/Outcomes

- ◆ Accountable, effective, efficient and transparent

Previous References

- ◆ Report to Finance and Information Technology Resources Committee 19 January 2010 – Non-Domestic Rates Unoccupied Property Relief Policy
- ◆ Report to Executive Committee 4 November 2015 - Review of Non Domestic Rates Unoccupied Property Relief Policy

List of Background Papers

- ◆ None

Contact for Further Information

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

Fraser Morrison, Revenues and Benefits Manager

Ext: 7436 (Tel: 01698 527436)7

E-mail: fraser.morrison@southlanarkshire.gov.uk

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

Empty Property Relief Policy

Subject: Relief for unoccupied non-domestic properties

Date: February 2023

Reason for change: Legislative change

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1. Introduction

This revised policy reflects changes to the legislative arrangements covering Empty Property Relief (EPR) and becomes effective from 1 April 2023. 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 4 levels of relief that can be awarded:

- 100% relief (exemption)
- 100% relief for the first six months followed by a 90% unoccupied charge (industrial property)
- 50% relief for the first three months followed by a 90% unoccupied charge (non-industrial property)
- 100% relief for a maximum of three months 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.

3.2.1 Properties under a Preservation Order or which are a listed building or ancient monument

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

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

3.2.2 Rateable value less than £1,700

Exemption is awarded to all properties where the rateable value is less than £1,700.

3.2.3 Trustees and liquidators

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



3.2.4 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 Prohibited by law from occupation

Properties will be eligible for exemption under this category where a letter or notice has been served by a recognised authority prohibiting the use of the premises.

3.2.6 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.

3.2.7 Property has no buildings

Where the subject has no buildings, i.e., an aerial or mast, advertising station etc, then neither the 50% nor 90% unoccupied rate can be levied. These empty property relief charges 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.

3.2.8 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.

3.2.9 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.

3.3 Unoccupied industrial property

3.3.1 Industrial properties that do not fall into one of the exempt categories above are eligible for 100% relief for 6 months followed by a 90% empty property charge. Where a property is receiving 100% relief on 31 March 2023, only the balance of the 6 months relief at this rate will be applicable from 1 April 2023.

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 Other (non-industrial) properties

Properties which do not fall into one of the exempt categories above, and are not industrial properties, are entitled to 50% relief for three months followed by a 90% empty property charge. Where a property is receiving 50% relief on 31 March 2023 only the balance of the 3 months relief at this rate will be applicable from 1 April 2023.

3.5 Short term partly occupied properties

In certain circumstances, unoccupied relief can be awarded where only part of a property is occupied. This relief is restricted to a maximum of three months 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 above)
- 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
- 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.

3.6 Re-occupation rule

Non-exempt properties will not be eligible for 50% or 100% relief if the property has been occupied for less than six months since the last award of relief. 10% relief will apply in such cases.

3.7 Retrospective relief applications

An award of empty property relief may have to be recalculated in the event that a retrospective 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

Eligible claims will be processed 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. 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:

Linda Buchanan
Team Leader (Non-Domestic Rates and Sundry Income)
Transactions Service
Finance and Corporate Resources
David Dale House
Blantyre
Telephone 01698 527442
linda.buchanan@southlanarkshire.gov.uk