



REPORT TO: SPECIAL MEETING OF MORAY COUNCIL ON 8 MARCH 2023

SUBJECT: DISCRETIONARY NON-DOMESTIC RATES RELIEF

BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1. REASON FOR REPORT

- 1.1 To consider the Council's policy for awarding discretionary relief of Non-Domestic Rates.
- 1.2 This report is submitted to the Council in terms of Section III (B) (11) of the local authority's Scheme of Administration relating to the administration of the levy, collection, payment and recovery of Non-Domestic Rates.

2. RECOMMENDATION

2.1 Council is invited to approve:

- (i) that discretionary Non Domestic Rate relief is rescinded, with the following exceptions: buildings used by organisations to directly deliver services on behalf of the Council, as described in paragraphs 3.6 to 3.8; land or buildings used by small, local based charities, as defined in paragraph 3.9;**
- (ii) that qualifying organisations must apply for other NDR reliefs when these are available prior to applying for discretionary NDR; and**
- (iii) authority is delegated to the Chief Financial Officer to approve applications from charities as described in paragraph 3.19, and to approve applications which fall within the policy approved by members from organisations not recognised as charities where the purpose of the organisation falls with the 16 charitable purposes and the organisation delivers public benefit as defined in the Charity Test as outlined in paragraph 3.20.**

3. BACKGROUND

- 3.1 A Scottish charity which occupies a property in furtherance of its charitable objectives is entitled to a mandatory award of 80% Non-Domestic Rates (NDR) relief. Only charities which are registered with the Office of the Scottish Charity Regulator (OSCR) are entitled to such an award.
- 3.2 In terms of Section 4(5) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962 rating authorities have powers to grant additional discretionary NDR relief in respect of premises:
- (a) occupied by charities and used for charitable purposes;
 - (b) occupied for the purposes of organisations which are not established for profit and whose principal aims are charitable and are otherwise philanthropic or religious or concerned with education, social welfare, science, literature or the fine arts; or
 - (c) occupied for the purposes of a club, society or other organisation not established or conducted for profit and which are wholly used for the purpose of recreation.
- 3.3 The cost of making any grant of discretionary rates relief falls partly on the Scottish Non-Domestic Rates 'pool' and partly on the Council. The national pool funds 75% of discretionary NDR relief and the remaining 25% is a direct cost to the Council and so effectively met by council tax payers.
- 3.4 At a meeting of the former Policy and Resources Committee on 12 February 2019 Members decided that Moray Council would no longer make an award of discretionary NDR relief to charity shops. In light of the financial constraints facing the Council, and following debate at council on this subject at its meeting on 29 June 2022, it seems appropriate to consider whether any further exclusions from discretionary NDR relief are now considered appropriate. Restrictions on discretionary NDR agreed by other local authorities have been taken into account. . It is proposed that such relief is restricted in future, with a focus on supporting small local charities.
- 3.5 At present the Council has awarded discretionary NDR relief in respect of 138 properties, at a total cost to the Council of £72,722 in 2022/23

Provision of Council Services

- 3.6 Eleven of these premises are occupied by organisations which directly deliver services to the Council from those premises. Ten are occupied by organisations delivering leisure services under a Service Leisure Agreement, contracted adult social care or children's services. The total cost of discretionary NDR for these premises is £16,811, total discretionary relief to the organisations in question being £67,244. There is a risk that the organisations would seek to recover some or all of their increased costs through the charges they make to the Council for their services. It is therefore recommended that the Council continue to award discretionary NDR relief to premises from which organisations are directly delivering services to the Council or on behalf of the Council.

- 3.7 The eleventh property is one pre-school nursery in receipt of discretionary NDR relief. The Early Learning and Childcare (ELC) service has been attempting to create a level playing field for ELC providers. This one award is anomalous. It is recommended that no award of discretionary rates relief is made to ELC providers.
- 3.8 Free standing office premises used by national / regional charitable organisations (even when delivering services in Moray) should not be awarded discretionary NDR as office premises as such are not direct costs of charitable activity.

Local Charities

- 3.9 It is general practice for Scottish local authorities to award discretionary NDR to local charities. Many restrict the award to small local charities, on the grounds of good stewardship of public funds. A variety of definitions are used. It is proposed that in common with Aberdeenshire Council charities with unrestricted reserves in excess of £100,000 are not awarded discretionary NDR. It is also proposed that a limit on annual income is set, and that charities with annual income in excess of £300,000 are not awarded discretionary NDR relief.

Other reliefs

- 3.10 Some other local authorities make it a condition of application for discretionary NDR that if an organisation would qualify for another form of relief (or specifically Small Business Bonus Scheme (SBBS)) then they must apply for that first. This provides the same level of support for the organisation but minimises the cost to the Council. It is recommended that the Council adopts this condition.

Revised policy

- 3.11 In summary the following policy is recommended:
The Council will award discretionary NDR to local charities (except Early Learning and Childcare providers) where:
- the charity has unrestricted reserves of less than £100,000 and
 - the charity has annual income of less than £300,000 and
 - if the charity would qualify for another form of NDR relief for the premises in question then it has applied for that relief before seeking discretionary NDR.

The Council will not award discretionary relief to

- charity shops,
 - national or regional organisations unless for premises from which the organisation directly delivers to national or regional charities
 - free standing office accommodation used by national or regional charities,
 - Early Learning and Childcare providers, even if local.
- 3.12 If these recommendations are accepted then the following types of organisation would lose discretionary NDR, following one year's notice being given as required by legislation:

Description	No. of properties	Current cost to Council £
Offices of national / regional charities	26	5,185
Licensed premises (Royal British Legion clubs) Note (1)	3	6,630
Army cadet huts / Scout huts Note (2)	5	1,797
Sports facilities	1	10,663
ELC provider	1	859
Other	11	1,978
Total		27,112

Notes

- (1) Many local authorities have a policy not to award discretionary NDR to licenced premises, which are ancillary to the charitable purpose of the organisations.
- (2) These organisations are part of national organisations and so considered not to be local charities, although would be assessed individually for SBBS.

3.13 Discretionary NDR would continue to be awarded in respect of the following: playing fields, town / community halls, community museums, other community-run facilities, foodbanks, local charities, subject to organisations applying for any other NDR relief to which they are entitled for the properties in question prior to application for discretionary NDR relief.

Delegation

- 3.14 Members have previously delegated resolution of some applications for discretionary relief to officers. At a meeting of the former Policy and Resources Committee on 23 March 2005 a decision was taken to delegate applications from organisations which promote the welfare of vulnerable persons and applications from groups which benefit the community. As it is 17 years since this delegation was made it seems appropriate to review this aspect of the administration of discretionary NDR relief.
- 3.15 When delegation was approved OSCR was in its infancy. In order to give a clearer definition of community benefit it is now recommended that delegation is made with reference to the Charity Test which OSCR applies as being an objective and independent measure of community benefit.
- 3.16 To pass the Charity Test, an organisation must have only charitable purposes and must provide public benefit in Scotland or elsewhere.
- 3.17 There are 16 charitable purposes, defined in the Charity and Trustees Investment (Scotland) Act 2005:
- (a) the prevention or relief of poverty,
 - (b) the advancement of education,
 - (c) the advancement of religion,
 - (d) the advancement of health,
 - (e) the saving of lives,

- (f) the advancement of citizenship or community development,
- (g) the advancement of the arts, heritage, culture or science,
- (h) the advancement of public participation in sport,
- (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,
- (j) the advancement of human rights, conflict resolution or reconciliation,
- (k) the promotion of religious or racial harmony,
- (l) the promotion of equality and diversity,
- (m) the advancement of environmental protection or improvement,
- (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,
- (o) the advancement of animal welfare,
- (p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

3.18 Public benefit is also defined in the 2005 Act:

- (1) No particular purpose is, for the purposes of establishing whether the charity test has been met, to be presumed to be for the public benefit.
- (2) In determining whether a body provides or intends to provide public benefit, regard must be had to—
 - (a) how any—
 - (i) benefit gained or likely to be gained by members of the body or any other persons (other than as members of the public), and
 - (ii) disbenefit incurred or likely to be incurred by the public,
 in consequence of the body exercising its functions compares with the benefit gained or likely to be gained by the public in that consequence, and
 - (b) where benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.

3.19 Although the definition of public benefit lacks the crispness of the definition of charitable purpose, it illustrates that an element of judgement is involved. Validation by OSCR is good evidence that the definition has been met. Consequently it is recommended that the following delegation is approved:

“Applications from charities which fall within the policy approved by members are delegated to the Chief Financial Officer to approve, providing the Charity Test is met.”

In practice this would mean that all applications for discretionary NDR relief from charities will be approved unless the properties applied for fall into a category where Council has decided not to award discretionary NDR as summarised in paragraph 3.11.

- 3.20 The Council has discretion to award NDR relief to organisations which are not registered with OSCR. Not all community organisations are registered as charities but many can be seen as having purposes falling within the sixteen purposes listed in paragraph 3.14 and can clearly be seen as delivering public benefit in their local areas. Consequently it is recommended that if the delegation at paragraph 3.16 is approved the following delegation is also approved:

“Applications which fall within the policy approved by members from organisations not recognised as charities are delegated to the Chief Financial Officer to approve where the purpose of the organisation falls with the 16 charitable purposes and the organisation delivers public benefit as defined in the Charity Test.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

No council/community planning priority implications for the local authority arise from the content of this report.

(b) Policy and Legal

The power to award discretionary NDR relief is conferred in the Local Government (Financial Provisions *etc.*) (Scotland) Act 1962.

It is proposed that the definition of public benefit used by the Council is aligned with the Charity Test, which is enshrined in the Charity and Trustees Investment (Scotland) Act 2005.

(c) Financial implications

If Members choose to exercise their discretionary powers to make an award of rates relief, this creates an ongoing financial liability which would increase in line with any increase in the rates poundage set by the Scottish Government.

If the recommended policy is adopted savings of £27,112 would accrue from 2024/25.

(d) Risk Implications

No risk implications for the local authority arise directly from the content of this report. There is a risk that some organisations would be unable to afford the increased costs. There are two main mitigations against this: the Council is obliged to give a year’s notice of any changes in

discretionary NDR relief and many smaller organisations will be entitled to other NDR reliefs.

(e) Staffing Implications

No staffing implications for the local authority arise from the content of this report.

(f) Property

No property implications for the local authority arise from the content of this report.

(g) Equalities/Socio Economic Impact

No equalities implications for the local authority arise directly from the content of this report.

(h) Climate Change and Biodiversity Impacts

No equalities implications for the local authority arise from the content of this report.

(i) Consultations

No consultation has been carried out in the preparation of this report. CMT/SMT have been consulted on the recommendations of the report.

5. CONCLUSION

5.1 Restriction of discretionary NDR to small local charities is recommended.

5.2 Delegation to officers to deal with applications in line with the Charity Test is recommended.

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Background Papers:
Ref: SPMAN-1293228629-827