



MANCHESTER  
CITY COUNCIL

National Non-Domestic Rates (Business Rates)  
Policy document 2021/22  
Section 44a of the Local Government Finance  
Act

## 1. Introduction and Scope

The Council receives requests from ratepayers asking that the rateable value of a hereditament (a chargeable unit for business rates purposes, referred to as a property in the rest of this document) that is charged non-domestic rates (referred to as business rates in the remainder of this document), is split between the occupied and unoccupied portions and that the Council then only charges rates of the occupied portion. This is permitted under Section 44a of the Local Government Finance Act 1988.

The Council has discretion to accept or refuse such a request. If the request is accepted, then the Valuation Office Agency is asked to supply a certificate indicating the relevant values for the occupied and unoccupied portions and this certificate is binding on the Council.

This document outlines the Council's approach to these requests and some of the things that will be considered as part of the decision making process.

Any relief granted has a direct impact on the Council's income and ultimately on Council Tax payers in the city and, therefore, any applications will be carefully considered in this context.

The principle consideration is that any relief granted is in the best interests of the taxpayers of Manchester City Council as the Council must bear the costs of any relief granted.

## 2. The law

Section 44a of the Local Government Finance Act 1988 allows the Council to charge on the basis of apportioned rateable values certified by the Valuation Officer where a non-domestic premise is partly occupied and partly unoccupied so long as this situation exists for a "short period of time". The phrase "a short period of time" is not defined in law, but is generally accepted to mean a maximum of one year. What is classed as a short period of time is for the authority to determine in view of the particular circumstances of each case.

The law provides a discretionary power, but the decision whether to exercise that power must be taken before the Valuation Office Agency's Certificate is requested, as the apportioned values are those upon which the charge must be levied once supplied.

The discretionary power does not alter the general rule that occupation of part of a premise constitutes occupation of the whole of the property.

The effect of the apportioned values applies for the **operative period**, which is defined as the period beginning with the day on which the property became partly unoccupied and ending with the first day on which one or more of the following events occurs.

- The occupation of any of the unoccupied part of the property;
- The ending of the financial year in which the apportionment was required;
- The requiring of a further apportionment;
- The complete occupation of the property; or
- The complete vacation of the property.

The authority is required to terminate this relief in the event of a change in the proportions of the property occupied and unoccupied or at the end of a financial year, and then may, if appropriate, consider requesting the Valuation Office Agency to issue a further certificate.

### 3. The financial impact

Changes to local government finance now mean that the income from business rates directly impacts on the Council's financial position.

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### 4. The Council's approach and considerations

Applications will be considered by a panel made up of:

- the Business Rates Manager; and
- the Corporate Revenues Manager.

Decisions made by this panel will be forwarded to the City Treasurer for information only.

Where the application is refused, any requests for a review of the decision will be considered by the Head of Service on behalf of the City Treasurer.

The Council will consider applications for change to the amount charged under the section 44a legislation from ratepayers, based on their own merits, on a case by case basis.

The use of Section 44a is intended to apply to those properties where there are practical difficulties in either occupying the property or vacating the property. Therefore it is not intended that all properties which temporarily become partly unoccupied should have their liability reduced.

The circumstances when it appears that Section 44a should apply are reasonably infrequent, but generally are found in respect of large manufacturing hereditament. In these cases it is often difficult to vacate the property quickly by the size and nature of the equipment used. Conversely there are often difficulties in occupying a property for the same reason.

Where there is a gradual occupation of such a property, the part which remains unoccupied could be subject to Section 44a reduction. By definition the lack of occupation is a short term measure in that the intention is soon for the property to be either wholly empty or wholly occupied.

Similarly, in a manufacturing environment there may be a time when part of the site becomes temporarily redundant and it may be reasonable to take the unoccupied part into account rather than levy full rates on the whole rateable assessment.

In determining the application the following matters will also be taken in to consideration.

Favourable consideration will be given (but not limited to) where:

- There is a partial occupation of a warehouse, factory or commercial property to facilitate relocation of the company into the city or to extend the current portfolio and associated occupation levels in the city; or
- Where fire, flood or other disaster prevents full use of the property.

Favourable consideration would not normally be given (but not limited to):

- For a period that has now passed;
- For consecutive periods;
- To support a business moving its operation outside of the city;
- Where the owner sublets part of the property on a commercial basis;
- Where the part occupation is likely to continue for more than three months (6 if industrial property)
- Where there appears to be no effort to let, sell or occupy the empty part; or
- Where part occupation is seasonal or cyclical in nature.
- Where the unoccupied area is subject to maintenance, modernisation or other building works
- Where occupation within a warehouse, office or commercial property has been reduced because of Covid-19.

At all times consideration will be made for the regulations contained within Section 44a of the Local Government Finance Act 1988 and any relevant caselaw.

## 5. Application process

All applications for discretionary discounts should be made in writing.

The applicant must also submit a plan, which clearly identifies the areas of occupation and areas unoccupied (estimated size must also be documented).

In considering the application, a visit may be made to the property to confirm the accuracy of the submitted plan.

Independent evidence may also be submitted and this may be in the form of surveyors' reports, dated photographs, solicitors' letters and estate or letting agents' records (list not exhaustive).

## 6. Review process

If an applicant is dissatisfied with the outcome of their application they can ask for a review of that decision.

The decision will be reviewed by the Head of Service on behalf of the City Treasurer within 21 days of the refusal decision being made. The applicant will be allowed to submit additional or new information or evidence to support the application.

Because the decision to grant a Section 44A relief is discretionary, any challenge relating to the Council not granting the relief would be in accordance with Section 138 of the Local Government Act 1988 by way of judicial review.

## 7. Award periods

Relief periods will be dependant on the circumstances of the case concerned however it will not normally be granted for longer than three months.

The Council reserves the right to review the award should the circumstances of the ratepayer change during the period of the award.

## 8. State Aid

State Aid refers to forms of assistance from a public body, or publicly-funded body, given to selected undertakings (any entity which puts goods or services on the given market), which has the potential to distort competition and affect trade between member states of the European Union.

European Union State Aid rules generally prohibit government subsidies to businesses. Relief from taxes, including non-domestic rates, can in some cases constitute State Aid.

However, there is a general exception from the State Aid rules, where the aid is below a “de minimis” level (see Comm Reg 69/2001). This is €200,000 to any one business over any three year period.

The Council will be mindful of these rules and will ensure compliance with the legal requirements and any permitted exemptions. Each case will be considered based on the ratepayer’s individual circumstances in full consideration of the State Aid rules.

## 9. Policy Review

This policy will be reviewed on an annual basis or sooner if there is a change in legislation that would affect its operation.