



# Chichester District Council

## National Non-Domestic Rates (Business Rates)

### Policy document

## Section 44A of the Local Government Finance Act 2019/20

### 1. Introduction and Scope

1.1 This policy provides a framework in which decisions are made when considering applications for support under Section 44a. 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.

1.2 Section 44a enables business ratepayers to request a reduction in 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.

1.3 The Council has discretion to accept or refuse such a request. A range of factors will be taken into account when considering a request for Section 44a. 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.

1.4 The principle consideration is that any relief granted is in the best interests of the taxpayers of Chichester District Council as there is a financial impact on the Council.

### 2. The law

2.1 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.

2.2 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.

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

2.4 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.

2.5 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**

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

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

### **4. Application process**

4.1 Requests for Section 44a assistance can be accepted by email. Requests must detail the rationale for the request.

4.2 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.

4.3 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).

## **5. The Council's approach and considerations**

5.1 Applications and requests will be reviewed by the Revenues team and submitted to the Revenues and Debt Recovery Manager who will review these and authority to make decisions on Section 44a requests are the responsibility of the Council's Section 151 Officer. In the event that the Council's Section 151 Officer is not available then their designated deputy can make decisions in their absence. This is in place given the financial impact awarding Section 44a has on the Council.

5.2 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.

5.3 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.

5.4 Therefore, it is not intended that all properties which temporarily become partly unoccupied should have their liability reduced.

5.5 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.

5.6 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.

5.7 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.

5.8 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 district or to extend the current portfolio and associated occupation levels in the district; or
- Where fire, flood or other disaster prevents full use of the property.

5.9 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 district;
- 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 (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.

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

## **6. Review process**

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

6.2 Where the application is refused, any requests for a review of the decision will be considered by Divisional Manager, Revenues, Benefits and Customer Services in conjunction with the Council's Section 151 Officer or designated deputy. This is to ensure an independent review process takes place.

6.3 If after a review the applicant remains dissatisfied with the way the application has been dealt with they can complain to the Local Government and Social Care Ombudsman. As the decision to grant a Section 44A relief is discretionary, any challenge relating to the Council not granting the relief after a review would be in accordance with Section 138 of the Local Government Act 1988 by way of judicial review.

## **7. Award periods**

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

7.2 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**

8.1 State Aid is not applicable to Section 44A requests as it involves a reduction in the rateable value.

## **9. Policy Review**

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