

SMALL BUSINESS RATE RELIEF (SBRR) - FREQUENTLY ASKED QUESTIONS

Since the finalisation of the details of the SBRR scheme and the introduction of the Non-Domestic Rating (Small Business Rate Relief) (England) Order 2004, there has been a number of queries directed to ODPM about the operation of the new relief scheme and the interpretation of the secondary legislation. This note sets out some of the more frequently asked questions that have been raised about the scheme and is intended primarily as a guide for billing authorities as they continue to administer the scheme.

The interpretation of the legislation governing the small business rate relief scheme is for billing authorities in the first instance. It is for authorities to decide whether or not to grant relief in the light of the circumstances of the particular case and in the light of their own legal advice. Ultimately, only the Courts can provide a definitive interpretation of the relevant legislation. The information presented here represents the ODPM's view on certain aspects of the rate relief scheme.

ELIGIBILITY

Q. What are the relevant qualifying conditions for SBRR?

- The hereditament must be on the rating list on the 1st day of the chargeable year.
- The rateable value of the hereditament on the first day of the chargeable financial year, the chargeable day and each day in between must be below the thresholds (£15,000 outside London, £21,500 inside London).
- Ignoring disregarded hereditaments (see below), the ratepayer occupies only one hereditament in England.
- The ratepayer must apply to the billing authority in respect of each chargeable financial year.

Q. Is there a specific definition of what constitutes a small business under this relief scheme?

For the purposes of this relief, small businesses are defined by reference to the rateable value of the hereditament, ie those with a RV below £15,000 (or £21,500 in London). No other distinction is made between different types of small business for the purposes of considering eligibility.

Q. What are disregarded hereditaments?

Additional properties with rateable values below £2,200 are disregarded when considering an application for SBRR. However, the rateable value(s) of such properties are included in determining whether or not the threshold criterion has been met.

Example - ratepayer has one property with RV of £7,000 and three other properties each with a RV of £2,000. In deciding whether the ratepayer is eligible for SBRR, the properties below £2,200 can be discounted and the ratepayer would be eligible for SBRR on the property with RV of £7,000. In terms of the Order, the ratepayer only occupies one property. But the ratepayer would pay the higher multiplier on the other three properties.

If, however, a ratepayer had a main property with RV of £7,000, two properties with RV of £2,000 and another property with RV of £3,000, then the ratepayer would not be eligible for relief on any of the properties and would pay the higher multiplier on all properties. That's because, after discounting the two £2,000 RV properties, the ratepayer still occupies two properties and so therefore fails to meet the single property criterion.

Q. What if a ratepayer occupies four properties each of which has a RV below £2,200 and whose aggregate RVs do not exceed the overall thresholds? Is SBRR payable in respect of all four properties?

The intention behind the legislation was that a ratepayer should be able to apply for relief in respect of **one property only**. So, in this scenario, the ratepayer would identify the one property for which relief is being claimed, and would set out on the application form all other hereditaments occupied. SBRR would not be given on these other properties and the rate bills for those would be calculated using the higher multiplier.

Q. Do empty properties qualify for SBRR?

SBRR can not be claimed in respect of an unoccupied property.

Further empty properties are not taken into account when considering an application for Small Business Rate Relief, regardless of the RV amount. However, once an empty property becomes occupied then it should be taken into account and a ratepayer's eligibility for SBRR should be reassessed.

Example - ratepayer occupies one hereditament with RV of £8,000 and also owns an empty property with RV of £12,000. Provided all other conditions are met, the ratepayer can claim relief on the £8,000 RV property. But occupation of the second property by the ratepayer would render ratepayer ineligible for relief on either property.

Q. Can a ratepayer be eligible for relief if s/he takes up occupation after 1 April?

Yes. The Order provides that the RV of the hereditament on the local list must be below the relevant threshold on the first day of the chargeable financial year. The ratepayer does not have to be in occupation on 1 April. Provided the qualifying conditions are met, SBRR is granted from the date the ratepayer occupies the hereditament.

Q. What happens if, after SBRR is granted, one of the qualifying conditions is not met, for example the RV of the hereditament increases above the thresholds?

The ratepayer ceases to be eligible for SBRR from the date the alteration to the RV has effect.

Q. What if the RV rateable value comes back within the qualifying criteria at a later date? Can SBRR apply to the "second" period of qualification?

No. There must be no break in the qualifying conditions.

Q. What happens if a ratepayer occupies a second property with a RV above £2,200 after SBRR has been granted on the first property?

The qualifying conditions for eligibility would no longer be met and the ratepayer would cease to be eligible for relief on the first property from that date.

Q. Where a ratepayer occupies more than one property, who decides which property should benefit from relief?

The application form asks the ratepayer to specify the hereditament for which relief is being sought.

Q. What happens where a second property has a RV of £2,700 as at 1 April 2005, but this is reduced to below £2,200 with effect from 1 May 2005? Can a ratepayer be eligible for relief for 2005/06, or must s/he wait until 2006/07?

The first condition is that the ratepayer - on the chargeable day - may only occupy one hereditament. Additional occupied hereditaments with RV below £2,200 on the chargeable day may be disregarded when determining whether the single property criterion is met. So, provided the other conditions are met, the ratepayer could apply for 2005/06 and be eligible from 1 May 2005.

Q. What happens if the RV of the hereditament is above the threshold on 1 April but is subsequently reduced, with an effective date which is later in the year, to below the threshold?

The first condition that the RV of the hereditament must be below the threshold is not satisfied, so the ratepayer would not be eligible for relief for that financial year.

Q. What happens with hereditaments that are split or merged part-way through the year?

The first condition requires the hereditament to be shown on the local list on 1 April. If as a result of a split or merger a hereditament appears on a local list for the first time after 1 April, this condition would not be satisfied and the ratepayer could not apply for relief for that financial year.

Q. What if a ratepayer has two separate businesses? Is SBRR available?

It depends on the circumstances of the particular case. Only a legal person (individual or body) can be liable for rates. Under section 43 of the Local Government Finance Act 1988, the ratepayer is the legal person in occupation of the hereditament. So where a company occupies a hereditament, it is the company which is the legal person liable for rates. Where a partnership occupies a hereditament, usually the individual partners will be jointly and severally liable for rates. Where an individual occupies a hereditament then that individual is the person liable to pay rates. Where a number of individuals jointly occupy a hereditament, they will be jointly and severally liable for rates.

Where a partner or joint occupier also occupies another property, then for SBRR purposes, account must also be taken of all the properties s/he occupies including those s/he occupies as a partner. This is because partnerships are not usually separate legal persons. In partnerships, all the partners - not the partnership itself - would be considered to be occupiers of the hereditament.

Companies are different from partnerships. ABC Limited would be a separate legal entity. If the company occupies the hereditament, it would be liable for the rates.

Q. Can a partly-occupied property get SBRR?

SBRR can be granted on the occupied part of a hereditament as long as the rateable value for the whole hereditament is within the thresholds and the qualifying conditions are met. For example, if a hereditament outside London

has a rateable value of £16,000, SBRR cannot be granted, regardless of the rateable value of the part occupied.

Q. How is SBRR calculated in these partly-occupied cases?

Where, for example, a property, situated outside London, has a full RV below £15,000 (ie ignoring any partly-occupied hereditament apportionment) and has satisfied the other SBRR conditions then it would be entitled to SBRR and the formula in subsection 43(4A) would be used to calculate the small business rate relief, $A \times D / C \times E$.

Where in 2005/06:

A = RV as defined by section 44A

D = 41.5p

C = 365 days

E = the small business factor based on the RV IN THE LIST (not the apportioned RV).

Where a hereditament **which would if wholly unoccupied fall within the class of hereditament subject to empty property rates**, and has a part occupied apportionment under section 44A(1), the rateable value A in the above is defined by section 44A(9) as such part of the RV as is assigned to the occupied part plus one half of such part of that RV as is assigned to the unoccupied part of the hereditament. Therefore it would have its rates bill calculated by using the formula: ((RV occupied part) + (Half RV of unoccupied part)) $\times D / C \times E$. There is no 3 month free period for the empty part.

Where a hereditament **which would if wholly unoccupied not fall within the class of hereditament subject to empty property rates (eg a qualifying industrial hereditament)**, and has a part occupied apportionment under section 44A(1), the rateable value A in the above is defined by section 44A(7) as such part of the RV as is assigned to the occupied part of the hereditament. Therefore it would have its rates bill calculated by using the formula: (RV occupied part) $\times D / C \times E$.

Q. Can market units qualify for SBRR?

Relief is available to the ratepayer of an occupied hereditament which meets certain conditions. The person who actually pays the rates bill is not necessarily the "ratepayer" under the Local Government Finance Act 1988. The ratepayer is the person who occupies the hereditament. If the market unit is a separate hereditament, it is likely that a stallholder who uses that unit exclusively and for more than a merely transitory period will be the occupier of that hereditament.

In terms of whether the market unit is a separate hereditament, there are a number of relevant legal cases. In *Brook (VO) v Greggs plc* [1991] RA 61, it

was held that the stallholder was in rateable occupation of the market stall. The court thought the evidence showed that the stallholders had a more than merely transitory occupation of the market stall. In *Williams v Wednesbury Overseers* (Ryde Rat App (1886-1890)) and *Roberts v Aylesbury Overseers* ((1853) 1 E & B 423), the court held that the market operator, not the stallholders, was in rateable occupation. In those cases, the stallholders' occupation "would probably be too fleeting to render them properly rateable."

Whether a market unit in any particular case is a hereditament will depend on the circumstances surrounding the occupation of the units, including the terms of the licence under which they are let.

APPLICATION PROCESS

Q. Do single hereditament businesses with RVs within the buffer zone have to apply for relief from the supplement?

Yes. The ratepayer must comply with all the conditions of the scheme, including making an application to the billing authority.

Q. Can agents sign the application form on behalf of clients?

No. The application form must be signed by the ratepayer or a person authorised to sign on behalf of the ratepayer. But this does not include agents. This is because the ratepayer is criminally liable if any information on the form is false.

Q. Can the Company Secretary sign the form on behalf of a company?

Where the ratepayer is a partnership, the application may be signed by a partner and where the ratepayer is a trust, it can be signed by a trustee. In the case of a body corporate, the Order requires the application to be signed by a director of that body. So, a Company Secretary who is also a director could sign the application form.

Q. Can SBRR be granted to a ratepayer when that ratepayer could be seen to be part of a larger organisation?

Eg Can SBRR is granted to a company trading under a franchise?

Eg What about MPs who occupy local offices where the running costs, including business rates, are paid by parliamentary authorities?

Eg What about county-owned property such as schools?

Eg Would businesses such as individual masonic clubs be classed as separate occupiers although they come under the umbrella of a nationwide organisation?

The billing authority must consider who is in occupation when considering an application for SBRR.

The Local Government Finance Act 1988 prescribes that anyone in occupation of a hereditament is liable for non-domestic rates. And it is only the person liable for non-domestic rates who can apply for small business rate relief.

Q. Can "eligible hereditaments" include things such as advertising rights, public telephone kiosks and car parking spaces ?

The relief is payable in respect of any occupied hereditament where the conditions of the scheme are met.

Q. Is there a right of appeal against a decision by a billing authority to turn down an application for SBRR?

There is no specific right of appeal built into the SBRR scheme. The only right of appeal against a decision to refuse SBRR would be to judicially review the council's refusal decision.

INTERACTION WITH OTHER RELIEFS

Q. Why can't ratepayers get charity/rural etc relief and SBRR?

Q. Where does it say that former agricultural premises relief takes precedence over SBRR?

Section 43(8A) and (8B) of the Local Government Finance Act 1988 provides that:

- where a property is eligible for charitable relief and SBRR, it shall receive charitable relief;
- where it is eligible for rural rate relief or relief under the former agricultural premises scheme and SBRR, it shall receive either the rural rate relief or the former agricultural premises relief;

- where a property is eligible for rural/former agricultural premises relief, charity relief and SBRR, it shall receive charity relief.

Q. If a ratepayer is eligible for mandatory relief and not SBRR, which multiplier is used to calculate the rate bill?

The higher multiplier.

Q. If a ratepayer gets mandatory relief and their RV is below the threshold, can s/he apply to have the small business relief multiplier of 0.415 applied to their bill rather than 0.422?

No. It is only those properties that are entitled to SBRR that attract the lower multiplier. Ratepayers who are entitled to mandatory relief are not entitled to apply for SBRR.

Q. Can hardship rate relief be applied alongside SBRR?

Yes. Billing authorities can grant hardship relief if the ratepayer is in financial hardship and if they consider it to be in the best interests of their council tax payers. Relief can be granted up to 100% of the rate bill.

Q. Can discretionary relief be applied alongside SBRR?

Under section 47 of the Local Government Finance Act 1988, a local authority may only give discretionary relief to charities, non-profit philanthropic bodies, non-profit sports clubs, CASCs, village shops, former agricultural premises, rural hereditaments of benefit to the community (subject to the interests of the council tax payers).

Any discretionary relief granted alongside mandatory charity, rural, or former agricultural premises reliefs is deemed to be 'top-up' discretionary relief.

Where discretionary relief is given to a charity or CASC, the local authority has to fund 75% of that discretionary relief itself. Of course, charities or CASCs cannot get SBRR (see section 43(8A) and (8B) of the Local Government Finance Act 1988).

Where discretionary relief is given, other than to a charity receiving charity relief or to a CASC, the local authority has to fund only 25% of that discretionary relief. The remainder is funded by the pool.

Where discretionary relief is granted alongside SBRR the local authority has to fund only 25% of that discretionary relief. The remainder is funded by the pool.

Q. As precepting authorities, parish councils are not entitled to discretionary relief (section 47(9) LGF Act 1988). Are they similarly excluded from entitlement to SBRR?

No. Hereditaments occupied by parish councils may qualify for relief, provided the conditions of the scheme are met.

CALCULATION OF SBRR

Q. How is SBRR calculated?

Q. How does the sliding scale work?

See attached Annex.

Q. How is the value of E rounded to three decimal places?

The value of E is calculated to 3 decimal places, rounded *down* where the value of the fourth decimal place (ie the ten-thousandths) is 5 or less than 5, and rounded up where the fourth decimal place is *more* than 5, ie 6 and above.

Example - 10,000 divided by RV of £7,000 comes to 1.4285714 which, to 3 decimal places, comes to 1.428.

Q. How does SBRR interact with transitional rate relief?

The relevant regulations are the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2004 (SI 2004 No. 3387).

Properties not eligible for SBRR pay for the scheme through a supplement (0.7p per £1 of RV) on their rate bills. Businesses in transition have their bill calculated using the lower multiplier (0.415) with the supplement then added. Regulation 11 provides that the chargeable amount shall be calculated using the following formula:

$$\frac{(BL \times AF)}{C} + U$$

BL and AF are defined in Regulation 10(2), and C is the number of days in the relevant year. U (the supplement) is calculated by multiplying the RV of the hereditament by 0.007 and dividing the result by C.

For businesses in transition that are eligible for SBRR, the chargeable amount is calculated by finding the value of $(BL \times AF) / C$ and then dividing the result by E (defined in SBRR Order - see also attached Annex).

Businesses not in transition have their rates bill calculated using the higher multiplier (0.422) which includes the supplement.

CALCULATION OF SMALL BUSINESS RATE RELIEF

Section 61 of the Local Government Act 2003 provides that the chargeable amount for a chargeable day shall be calculated using the following formula:

$$\frac{A \times D}{C \times E}$$

Where A = RV

D = SBRR multiplier, (0.415)

C = the number of days in the financial year

E = the amount calculated in accordance with article 6 of the SBRR Order

Value of E

For hereditaments with RV not more than £5,000, the value of E is 2.

For hereditaments between £5,001 and £10,000, the value of E is derived by dividing 10,000 by the RV of the hereditament.

Examples:

RV = £9,000

$$\text{Value of E: } \frac{10,000}{£9,000} = 1.111^*$$

RV = £9,900

$$\text{Value of E: } \frac{10,000}{£9,900} = 1.010^*$$

RV = £9,990

$$\text{Value of E: } \frac{10,000}{£9,990} = 1.001^*$$

RV = £9,995

$$\begin{aligned} \text{Value of E:} \quad & \frac{10,000}{£9,995} = 1.0005^* \\ & = 1.000^* \end{aligned}$$

* The value of E is calculated to 3 decimal places, rounded down where the value of the fourth decimal place (ie the ten-thousandths) is 5 or less than 5, and rounded up where the fourth decimal place is *more* than 5.

Calculation of SBRR

Using the same examples as those above, the chargeable amount would be:

RV = £9,000

$$\begin{aligned} \frac{£9,000 \times 0.415}{1.111} &= \frac{£3,735}{1.111} \\ &= £3,361.84 \end{aligned}$$

RV = £9,900

$$\begin{aligned} \frac{£9,900 \times 0.415}{1.010} &= \frac{£4,108.50}{1.010} \\ &= £4,067.82 \end{aligned}$$

RV = £9,990

$$\begin{aligned} \frac{£9,990 \times 0.415}{1.001} &= \frac{£4,145.85}{1.001} \\ &= £4,141.71 \end{aligned}$$

RV = £9,995

$$\begin{aligned} \frac{£9,995 \times 41.5}{1.000} &= \frac{£4,147.93}{1.000} \\ &= £4,147.93 \text{ (ie no relief)} \end{aligned}$$

Example where E = 2

For a hereditament with RV of £4,000:

$$\begin{aligned} \frac{\pounds 4,000 \times 0.415}{2} &= \frac{\pounds 1,660}{2} \\ &= \pounds 830 \text{ for year (ie 50\% relief)} \end{aligned}$$