

WIRRAL COUNCIL

CABINET

JUNE 2014

SUBJECT:	NON DOMESTIC RATES DISCRETIONARY RATES RELIEF & RE-OCCUPATION RELIEF
WARD/S AFFECTED:	ALL
REPORT OF:	HEAD OF BUSINESS PROCESSES
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR PHIL DAVIES
KEY DECISION	YES

1.0 EXECUTIVE SUMMARY

1.1 This report seeks approval to amend the authority's current discretionary rates relief policy to adopt additional criteria as set out in the government's guidance to its Non Domestic Rates Reoccupation Relief for it to be appropriately awarded in 2014/15 and 2015/16 the period in which it is fully funded by central government.

2.0 BACKGROUND AND KEY ISSUES

2.1 National Non Domestic Rates are the contribution to Council income from non domestic properties. Sums payable are set by nationally set rate poundages against each property value. This system has been in place since 1990. However as successive national revaluations have been delayed or cancelled the system has been augmented by a series of support measures. These include discretionary relief for charitable, non profit making and sporting organisations, rural relief for single shops in designated areas, small business relief to reduce the payable sum, hardship relief for exceptional cases and most recently the addition of Retail Relief. These measures are largely funded by central government with some elements proportionately funded by local authorities. Administration of the scheme including collection and recovery is undertaken by each local authority,

2.2. Wirral's policy for awarding discretionary rate relief for non domestic rate payers is based on Section 47 of the Local Government Finance Act 1988 and the NNDR (Discretionary Relief) Regulations 1989. Central government has periodically issued guidance urging local authorities to exercise their power of granting relief generously to organisations which satisfy the criteria and this has broadly been adopted by the Authority and is reproduced in the appendix to this report.

- 2.3. The Government announced in its Autumn Budget statement (5 December 2013) that it is to provide a further funded temporary relief in respect of Non Domestic Rates for retail properties. This is where previously empty retail premises which are occupied between 1 April 2014 and 31 March 2016 then a 50% business rates discount will be provided up to State Aid De Minimis limits for a maximum period of 18 months from re-occupation. The government issued its guidance on the operation of this relief in March 2014.
- 2.4. The government has chosen to introduce this not by changing non domestic rates legislation but by asking authorities to amend their discretionary rates relief policy to include this as a criteria for relief, then record it separately for which authorities will be fully reimbursed.
- 2.5. The qualifying property criteria are that it was previously occupied as a wholly or mainly retail property which has been empty for 12 months or more on re-occupation but it can be re-occupied for any use bar those specified. There is no rateable value limit but state aid de minimis rules continue to apply.
- 2.6. In the government guidance is set out what central government views as retail use and what it views as uses that should not be supported upon re-occupation. These include betting shops, pay day loan shops and pawn brokers. Authorities can add to these categories or decide if any local conditions exist that are such that relief should not be awarded as it would go against the authority's wider objectives or where it be viewed that it would not help an area thrive. No such suggestions are made at this time to include these but Members may wish to consider if they wish to add any of their own.
- 2.7. To award this relief the conditions should be adopted as part of the local scheme, under Section 47 of the Local Government Act 1998. It is therefore recommended that Wirral's policy mirrors the government's guidance issued in March 2014 and the Retail Reoccupation Relief policy is adopted. The current policy with the additional section (the Department for Communities and Local Government guidance) will then allow the authority to award this relief for relevant reoccupations from April 2014.
- 2.8. The policy requested to be approved is attached as an appendix to this report which shows both retail relief approved in March 2014 and the additional retail reoccupation relief conditions here and will be amended to show award levels Members agree to from the main section of this report.

3.0 RELEVANT RISKS

- 3.1 If the authority does not adopt the retail re-occupation relief as part of its policy then locally based businesses will be adversely affected with increased rates liability than is otherwise necessary.

4.0 OTHER OPTIONS CONSIDERED

- 4.1 The option to not adopt the Retail Reoccupation Relief scheme as part of the authority's discretionary relief scheme is not considered appropriate as the relief is fully funded by the government and will assist qualifying businesses meet rates liability.

5.0 CONSULTATION

5.1 None has been undertaken on this.

6. IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

6.1 The Reoccupation Relief scheme would benefit local groups where a property is reoccupied and meets the criteria.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

7.1 Small Business Rates Relief, Retail Relief and Retail Reoccupation Relief costs are all met in full by central government. The first is set to end 31 March 2015 the latter two on 31 March 2016.

7.6. Our staff have additional responsibility in administering the Reoccupation Relief scheme making decisions on eligibility based on the above criteria.

7.8. The IT system is being changed by the software supplier to accommodate the Reoccupation Relief amendment.

7.9. There are no asset implications arising from this change.

8.0 LEGAL IMPLICATIONS

8.1 There are none arising directly from this report.

9.0 EQUALITIES IMPLICATIONS

9.1 The original Equality Impact Assessment for all discretionary relief is at the link shown;

<http://www.wirral.gov.uk/my-services/community-and-living/equality-diversity-cohesion/equality-impact-assessments/eias-2010/finance>

10.0 CARBON REDUCTION IMPLICATIONS

10.1 There are none arising directly from this report.

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 There are none arising directly from this report.

12.0 RECOMMENDATION

12.1. That the authority's Discretionary Rates Relief Policy is extended to include eligibility for Retail Reoccupation Relief and will adopt the eligibility criteria as set out by government and award this relief in 2014/15 and 2015/16.

12.4. The updated policy shown at appendix 1 is approved for use for 2014/15 and later years until amended including Retail Reoccupation Relief criteria.

13.0 REASON FOR RECOMMENDATIONS

13.1 To allow members to agree the authority's current relief policy is added to its Discretionary Rates Relief Policy to ensure Retail Reoccupation Relief can be appropriately awarded in 2014/15 and 2015/16.

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APPENDIX

Proposed Discretionary Rate Relief Policy 2014/15 (including Re-Occupation Relief)

REFERENCE MATERIAL

Department for Communities & Local Government

Reoccupation Relief Guidance March 2014

SUBJECT HISTORY

Meeting	Dates
Cabinet (minute 306)	3 February 2011
Cabinet (minute 202)	18 February 2013
Cabinet (minute 165)	13 March 2014

APPENDIX 1

DISCRETIONARY RELIEF POLICY 2014

The following is an extract of Policy and Resources Committee Report (FNCE/4/90) approved by min 386 (P&R) of 24 January 1990 as amended by minute 185 (P&R) of 15 December 1992, then by Cabinet 3 February 2011 (minute 306) which details the criteria that has been used to assess applications.

1. **ACCESS**

- 1.1. Is membership open to all sections of the community? There may be legitimate restrictions placed on membership which relate for example to ability in a sport or the achievement of a standard in the field covered by the organisation or where the capacity of the facility is limited. Clubs or organisations should not be considered if they have membership rates set at such a high level as to exclude the general community. In general, the club or organisation must be prepared to show that the criteria by which it considers applications for membership are consistent with the principle of open access.
- 1.2. Does the organisation actively encourage membership from particular groups in the community e.g. young people, women, older age groups, persons with disability, ethnic minorities, etc? An organisation which encouraged such membership might expect more sympathetic consideration than one which made no effort to attract members from groups which the Authority considered to be particularly deserving of support.
- 1.3. Are the facilities made available to people other than members, e.g. schools, casual public sessions etc? The wider use of facilities should be encouraged and rate relief might be one form of recognition that an organisation was promoting its facilities more widely.

2. **PROVISION OF FACILITIES**

- 2.1. Does the organisation provide training or education for its members? Are there schemes for particular groups to develop their skills e.g. young people, the disabled, retired people? An organisation providing such facilities might deserve more support than one which did not.
- 2.2. Have the facilities available been provided by self-help or grant aid? The fact that a club uses or has used self-help for construction or maintenance or had facilities funded by grant aid might be an indicator.
- 2.3. Does the organisation run a bar? The mere existence of a bar should not in itself be a reason for not granting relief. The Authority should look at the main purpose of the organisation. In sports clubs for example the balance between playing and non-playing members might provide a useful guide as to whether the main purpose of the club is sporting or social activities. A social club whose main aim is to bring together people with similar interests should not be excluded from relief just because of the existence of a licensed bar.

- 2.4. Does the organisation provide facilities which indirectly relieve the Authority of the need to do so, or enhance and supplement those which it does provide? Authorities should not refuse relief on the grounds that an organisation is in competition with the Authority itself, but should look at the broader context of needs of the community as a whole. A new need, not being provided by the Authority itself but identified as a priority for action, might be particularly deserving of support.

3. **OTHER CONSIDERATIONS**

- 3.1. Is the organisation affiliated to local or national organisations e.g. local sports or arts councils, national representative bodies, i.e. are they actively involved in local/national development of their interests?
- 3.2. If the organisation is a sporting club, whose main activities are a recognised eligible sport, has it registered with the Inland Revenue as a Community Amateur Sports Club (CASC). If not the club should be encouraged to do so.
- 3.3. Is the membership drawn from people mainly resident in the charging authority's area? Although authorities will have in mind that 25% of the cost of any relief given will be borne by the Council Taxpayers in their area, particular difficulties may arise with hereditaments which straddle local authorities boundaries and which under Regulation 6 of the Non-Domestic Rating (Miscellaneous Provisions) Regulations 1989 (S.I. 1989 No. 1060) will now fall to be shown in one list. In these cases and in those where hereditaments are situated close to an authority's boundary, a proportion of the membership may come from another charging authority area. Also for geographical reasons, or because of the nature of the terrain, particular facilities may be the only ones available for a wide area. In such cases the joint use of facilities by one or more similar organisations is not uncommon. In most cases there will be a measure of reciprocity between the memberships of organisations from different areas.
- 3.4. Authorities may wish to add further criteria or substitute relevant alternative criteria, which are appropriate to the furthering of their policies and the needs of the community such as development programmes. They should also bear in mind the need to encourage new activities in the wide range of organisations for which relief from rates is available.
- 3.5. The manner in which charities or organisations are funded should also be considered. In cases of full or substantial funding from central government; either directly or through an agency, council or similar body, which is funded or established by central government, consideration should be given to the merit of awarding relief.
- 3.6. Are members paid to participate? The Authority may wish to consider whether to award relief where payments or other significant benefits are provided to players. Exceptions may be the reimbursement of reasonable travel expenses or reasonable provision and maintenance of club owned equipment. The Authority may look favourably on clubs whose paid players

contribute more to the club than just playing e.g. by coaching younger members.

- 3.7. The Authority may wish to consider the extent to which the organisation's activities contribute to local community strategies or authority objectives for developing neighbourhood identity, community building or social inclusion.
- 3.8. Housing Associations, universities, further education colleges and independent schools are specifically excluded from receiving discretionary rate relief as per Cabinet decision dated 10 January 2008.
- 3.9. All future discretionary rate relief applications in respect of properties with a rateable value of less than £18,000 are accompanied by a Small Business Rate Relief (SBRR) application to encourage SBRR take up and to continue to reduce the reliance on the Discretionary Rate Relief budget.
- 3.10. Community Interest Companies and social welfare organisations that occupy properties with rateable values under £7,000 be entitled to full discretionary rate relief and those occupying properties of £7,000 or more be considered by Members on a case by case basis.
- 3.11. **RETAIL RELIEF PROVISIONS**

Retail relief eligibility from 1st April 2014 will be administered in line with the Department for Communities and Local Government Retail Relief Guidance of January 2014 as set out below.

How will the relief be provided?

1. As this is a measure for 2014-15 and 2015-16 only, the Government is not changing the legislation around the reliefs available to properties. Instead the Government will, in line with the eligibility criteria set out in this guidance, reimburse local authorities that use their discretionary relief powers, introduced by the Localism Act (under section 47 of the Local Government Finance Act 1988, as amended) to grant relief. It will be for individual local billing authorities to adopt a local scheme and decide in each individual case when to grant relief under section 47. Central government will fully reimburse local authorities for the local share of the discretionary relief (using a grant under section 31 of the Local Government Act 2003). The Government expects local government to grant relief to qualifying ratepayers.
2. Central government will reimburse billing authorities and those major precepting authorities within the rates retention system for the actual cost to them under the rates retention scheme of the relief that falls within the definitions in this guidance. Local authorities will be asked to provide an estimate of their likely total cost for providing the relief in their National Non Domestic Rate Return 1 (NNDR1) for 2014-15 and 2015-16. Central government will provide payments of the local authorities' share to authorities over the course of the relevant years.

Which properties will benefit from relief?

3. Properties that will benefit from the relief will be occupied hereditaments with a rateable value of £50,000 or less, that are wholly or mainly being used as shops, restaurants, cafes and drinking establishments.

4. We consider shops, restaurants, cafes and drinking establishments to mean:

i. Hereditaments that are being used for the sale of goods to visiting members of the public:

- Shops (such as: florist, bakers, butchers, grocers, greengrocers, jewellers, chemists, stationers, off licence, newsagents, hardware stores, supermarkets)
- Charity shops
- Opticians
- Post offices
- Furnishing shops/ display rooms (such as: carpet shops, double glazing, garage doors)
- Car/ caravan show rooms
- Second hand car lots
- Markets
- Petrol stations
- Garden centres
- Art galleries (where art is for sale/hire)

ii. Hereditaments that are being used for the provision of the following services to visiting members of the public:

- Hair and beauty services (such as: hair dressers, nail bars, beauty salons, tanning shops)
- Shoe repairs/ key cutting
- Travel agents
- Ticket offices e.g. for theatre
- Dry cleaners
- Launderettes
- PC/ TV/ domestic appliance repair
- Funeral directors
- Photo processing
- DVD/ video rentals
- Tool hire
- Car hire

iii. Hereditaments that are being used for the sale of food and/ or drink to visiting members of the public:

- Restaurants
- Takeaways
- Sandwich shops
- Coffee shops
- Pubs
- Bars

5. To qualify for the relief the hereditament should be wholly or mainly being used as a shop, restaurant, cafe or drinking establishment. In a similar way to other reliefs (such as charity relief), this is a test on use rather than occupation. Therefore, hereditaments which are occupied but not wholly or mainly used for the qualifying purpose will not qualify for the relief.
6. The list set out above is not intended to be exhaustive as it would be impossible to list the many and varied retail uses that exist. There will also be mixed uses. However, it is intended to be a guide for authorities as to the types of uses that government considers for this purpose to be retail. Authorities should determine for themselves whether particular properties not listed are broadly similar in nature to those above and, if so, to consider them eligible for the relief. Conversely, properties that are not broadly similar in nature to those listed above should not be eligible for the relief.
7. As the grant of the relief is discretionary, authorities may choose not to grant the relief if they consider that appropriate, for example where granting the relief would go against the authority's wider objectives for the local area. We would encourage councillors to be consulted on the final scheme that the local authority adopts, so there is a clear line of accountability in case of a dispute on the final local scheme that is adopted.
8. The list below sets out the types of uses that government does not consider to be retail use for the purpose of this relief. Again, it is for local authorities to determine for themselves whether particular properties are broadly similar in nature to those below and, if so, to consider them not eligible for the relief under their local scheme.

i. Hereditaments that are being used for the provision of the following services to visiting members of the public:

- Financial services (e.g. banks, building societies, cash points, bureau de change, payday lenders, betting shops, pawn brokers)
- Other services (e.g. estate agents, letting agents, employment agencies)
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors)
- Professional services (e.g. solicitors, accountants, insurance agents/ financial advisers, tutors)
- Post office sorting office

ii. Hereditaments that are not reasonably accessible to visiting members of the public

How much relief will be available?

9. The total amount of government-funded relief available for each property for each of the years under this scheme is £1,000. The amount does not vary with rateable value and there is no taper. There is no relief available under this scheme for properties with a rateable value of more than £50,000.

3.12. BUSINESS RATES REOCCUPATION RELIEF

Government Guidance used as Eligibility Guidance for Wirral Council award of relief for 2014/15 and 2015/16

1. This guidance is intended to support local authorities in administering the “Reoccupation Relief” announced in the Autumn Statement on 5 December 2013. This Guidance applies to England only. This guidance sets out the detailed criteria which central government will use to determine funding in respect of Reoccupation Relief. The Guidance does not replace existing legislation on retail properties, any other relief, or development control.
2. The government wants to encourage thriving and diverse town centres and wants to see the number of vacant shops decrease. This relief is intended to encourage reoccupation of shops that have been empty for a long period of time and reward businesses that make this happen.
3. The government announced in the Autumn Statement on 5 December 2013 that it would provide a 50% business rates discount for 18 months for businesses moving into previously empty retail premises between 1 April 2014 and 31 March 2016, up to State Aid De Minimis limits.

How will the relief be provided?

4. As this is a temporary measure that applies to ratepayers moving into previously empty retail premises between 1 April 2014 and 31 March 2016 only, the government is not changing the legislation around the reliefs available to properties. Instead the government will, in line with the eligibility criteria set out in this guidance, reimburse local authorities that use their discretionary relief powers, introduced by the Localism Act (under section 47 of the Local Government Finance Act 1988, as amended), to grant relief. It will be for individual local billing authorities to adopt a local scheme and decide in each individual case when to grant relief under section 47. Central government will fully reimburse local authorities for the local share of the discretionary relief (using a grant under section 31 of the Local Government Act 2003). The government expects local government to grant relief to qualifying ratepayers.
5. Central government will reimburse billing authorities and those major precepting authorities within the rates retention system for the actual cost to them under the rates retention scheme of the relief that falls within the definitions in this guidance. Local authorities will provide an estimate of their likely total cost for providing the relief in their National Non Domestic Rate Return 1 (NNDR1) for 2014-15, 2015-16, 2016-17 and 2017-18. Central government will provide payments of the local authorities’ share to authorities at the end of the relevant years.

Which properties will benefit from the relief?

6. Properties that will benefit from the relief will be occupied hereditaments that:
When previously in use, were wholly or mainly used for retail as set out in paragraph 11 below

- ~ Were empty for 12 months or more immediately before their reoccupation
 - ~ Become reoccupied between 1 April 2014 and 31 March 2016
 - ~ Are being used for any use (ie not just retail use) except as set out in paragraph 10 below
7. There is no rateable value limit for the hereditament in respect of either the previous or reoccupied use. However, State Aid De Minimis limits may limit the amount of relief given.

What is retail use?

8. In relation to a premises' previous use for the purposes of Reoccupation Relief we consider retail to mean:

i. Hereditaments that were being used for the sale of goods to visiting members of the public:

Shops (such as: florist, bakers, butchers, grocers, greengrocers, jewellers, stationers, off licence, chemists, newsagents, hardware stores, supermarkets)

~ Charity shops

~ Opticians

~ Post offices

~ Furnishing shops/ display rooms (such as: carpet shops, double glazing, garage doors)

~ Car/ caravan show rooms

~ Second hand car lots

~ Markets

~ Petrol stations

~ Garden centres

~ Art galleries (where art is for sale/hire)

ii. Hereditaments that were being used for the provision of the following services principally to visiting members of the public:

~ Hair and beauty services (such as: hair dressers, nail bars, beauty salons, tanning shops)

~ Shoe repairs/ key cutting

~ Travel agents

~ Ticket offices e.g. for theatre

~ Dry cleaners

~ Launderettes

~ PC / TV / domestic appliance repair

~ Funeral directors

~ Photo processing

~ DVD/ video rentals

~ Tool hire

~ Car hire

iii. Hereditaments that were being used for the provision of the following services principally to visiting members of the public:

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Financial services (e.g. banks, building societies, bureaux de change, payday loan shops, betting shops, pawn brokers)

~
Other services (e.g. estate agents, letting agents, employment agencies)

iv. Hereditaments that were being used for the sale of food and/ or drink to visiting members of the public:

~
Restaurants

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Takeaways

~
Sandwich shops

~
Coffee shops

~
Pubs

~
Bars

9. The list set out above is not intended to be exhaustive as it would be impossible to list the many and varied retail uses that exist. There will also be mixed uses. However, it is intended to be a guide for authorities as to the types of uses that government considers for this purpose to be retail. Authorities should determine for themselves whether particular properties not listed were broadly similar in nature to those above and, if so, to consider them to be retail. Conversely, properties that were not broadly similar in nature to those listed above should not be considered to be retail.

Reoccupied use

10. The new use of the reoccupied premises can be for any use (i.e. not just retail uses) except for hereditaments wholly or mainly being used as betting shops, payday loan shops, and pawn brokers

In the context of the public debate about the cumulative impact of betting shops, payday loan shops and pawn brokers the Government does not consider it the best use of public funds to offer tax relief that would encourage and incentivise the proliferation of these types of uses.

11. As the grant of the relief is discretionary, authorities may choose not to grant the relief if they consider that appropriate, for example where granting the relief would go against the authority's wider objectives for the local area or where it would not help a shopping area to thrive. We would encourage councillors to be consulted on the final scheme that the local authority adopts, so there is a clear line of accountability in case of a dispute on the final local scheme that is adopted.

How much relief will be available?

12. Relief will be available for 18 months from the first day the hereditament becomes occupied as long as the first day falls between 1 April 2014 and 31 March 2016, subject to the hereditament remaining continuously occupied.
13. The eligibility for the relief and the relief itself will be assessed and calculated on a daily basis.
14. Under this scheme the relief available for each property is 50% of the business rates liability after any mandatory or other discretionary reliefs (other

than retail relief) have been applied, up to State Aid De Minimis limits. The relief should be calculated ignoring any prior year adjustments in liabilities which fall to be liable on the day.

15. Councils may use their discretionary powers to offer further discounts outside this scheme (and under local rate retention, 50 per cent of the cost would be locally funded and 50 per cent funded by central government).

State Aid

16. State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However Reoccupation Relief will be State Aid compliant where it is provided in accordance with the De Minimis Regulations (1407/2013).

Detailed State Aid guidance can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15277/National_State_Aid_Law_Requirements.pdf

17. The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a three year period (consisting of the current financial year and the two previous financial years). Local authorities should familiarise themselves with the terms of this State Aid exemption, in particular the types of undertaking that are excluded from receiving De Minimis aid (Article 1), the relevant definition of undertaking (Article 2(2)3) and the requirement to convert the aid into Euros⁴.
18. To administer De Minimis it is necessary for the local authority to establish that the award of aid will not result in the undertaking having received more than €200,000 of De Minimis aid. Note that the threshold only relates to aid provided under the De Minimis Regulations (aid under other exemptions or outside the scope of State Aid is not relevant to the De Minimis calculation). Section 3 of this guidance contains a sample De Minimis declaration which local authorities may wish to use. Where local authorities have further questions about De Minimis or other aspects of State Aid law, they should seek advice from their legal department in the first instance⁵.

Splits, mergers, and changes to existing hereditaments

19. Where a new hereditament has been created by a split or merger of hereditament(s), the new hereditament will be eligible for the Reoccupation Relief where at least half of the floor area of the new hereditament is made up of retail hereditaments that have been empty for 12 months or more (subject to meeting the other criteria in paragraphs 9 and 13).
20. Where a hereditament in receipt of Reoccupation Relief splits or merges to form new hereditaments, the new hereditaments will not be eligible for the remaining term of Reoccupation Relief.
21. Where a hereditament in receipt of Reoccupation Relief becomes unoccupied for any period of time less than 12 months it will not be eligible for any further Reoccupation Relief on occupation. However, if a hereditament that has

previously received Reoccupation Relief becomes empty for 12 months or more it will be eligible for an additional 18 months Reoccupation Relief if the criteria are met.

Change of ratepayer

22. The relief will run with the property rather than the ratepayer. So if a hereditament is in receipt of Reoccupation Relief and a new ratepayer becomes liable for the property they will benefit from the remaining term of the relief, subject to the new ratepayer's State Aid de minimis limits.

How will the relief work in Enterprise Zones?

23. Where a property is eligible for Enterprise Zone relief, that relief should be granted and this will be funded under the rates retention scheme by a deduction from the central share. If a property in an Enterprise Zone is not eligible for Enterprise Zone relief, or that relief has ended, Reoccupation Relief may be granted in the normal way, and this would be reimbursed by grant under section 31 of the Local Government Act 2003. Local authorities should not claim funding for Reoccupation Relief on properties which would otherwise qualify for Enterprise Zone government funded relief.