

Community Halls – Legislative Amendments **Guidance Notes**

Current Position

Community Halls can currently be considered for exemption under the terms of Article 41 (2) (a) (e) or (f) of the Rates (Northern Ireland) Order 1977 [the 77 Order]

Article 41 (2) (a) normally is considered where the hall is owned and occupied by a body such as a district council

Article 41 (2) (e) applies where the hereditament is wholly or mainly used for purposes that are declared to be charitable by the Recreational Charities Act (Northern Ireland) 1958 [the 58 Act]

Article 41 (2) (f) applies to hereditaments where 41 (2) (e) does not apply. The background to this Article is that it derived from the wish of the Lawrence Committee to give some measure of rating exemption to encourage hall owners, whose halls were of limited use and dedicated to some particular purpose, to make them available for public benefit, as places of common recreation resort, particularly in deprived areas. Accordingly this Article provides a measure of exemption based on the actual user of the hereditament. Uses by the owners normally do not qualify for relief but any other use for purposes that would be held to be charitable under the 58 Act attracts a measure of exemption. The greater the use by bodies that qualify under the 58 Act the greater the amount of exemption.

Current Proposals – Summary

New proposals open up the possibility of full exemption for many of the halls that currently qualify for partial exemption under Article 41 (2) (f). However, halls that have a full liquor licence are excluded on the basis that they have the capacity to generate income from the bar to assist with paying rates (temporary licences would be permissible). One of the main policy objectives is to simplify the current system of “actual use” and accordingly this will be replaced by one where the listed body will instead be required to demonstrate that the premises are “available for use” by other organisations for charitable/public benefit purposes.

Legislation

The intention of Government is that the new proposals will be included in the Rates (Capital Values etc.) (Northern Ireland) Order 2006 (the 2006 Order) that, subject to the normal legislative processes, is due to be operational by 1 April 2006.

Details of the Proposed Legislation

Article 11 of the 2006 Order inserts a new Article – Article 41A into the 77 Order. This provides that subject to certain provisions a hereditament can be distinguished as wholly exempt if it is occupied by one of the following bodies or occupied by a body that is a member of or affiliated to one of the listed bodies.

The bodies are:

The Ancient Order of Hibernians
Apprentice Boys of Derry
Grand Lodge of Freemasons of Ireland
Grand Orange Lodge of Ireland
Independent Loyal Orange Institution
Order of the Knights of St. Columbanus
Royal Antediluvian Order of Buffaloes
Royal Black Institution

The Department may amend the list by affirmative Order.

To qualify for exemption a hereditament occupied by one of the above mentioned bodies must satisfy the Commissioner or district valuer that:

- It will be used or made available for use to a substantial extent for purposes that are declared by the 58 Act to be charitable or for other charitable purposes not covered by the Act.
- Charges levied will be no more than necessary to defray reasonable expenses.

Excluded from exemption are hereditaments:

- To which Articles 31 [S&R] and 41(2) (e) [Used mainly for recreational charity purposes] apply;
- On which a person holds a full licence to sell intoxicating liquor (temporary licences are allowed); or
- In respect of which a club is registered under the Registration of Clubs (Northern Ireland) Order 1996

Article 16 and Schedule 4 deal with repeals. These are also referred to in more detail in Article 12. Relevant to current considerations is the repeal of Article 41 (2) (f) and 41 (2) (10). This means that currently legislation, which provides for partial exemption is no longer available but subject to the saving provisions note below.

Article 41 (9) of the 77 Order applies to the above as it applies to Article 41 (2). In particular this means that a reference to a hereditament includes a reference to a distinct part of that hereditament.

Savings

The 2006 Order includes various saving provisions, which apply to hereditaments that do **not** qualify for full exemption under the 2006 Order. These are set out in Article 12 and are explained below:

- Article 41 (2) (f) as noted above is repealed. However any hereditament that does not satisfy the new full exemption but is already distinguished on 31 March 2006 as partially exempt will be able to retain that percentage of partial exemption from 1 April 2006 for as long as it is occupied by the same body.
- Where a hereditament should have been, but was not distinguished in the List as partially exempt before the 2006 Order came into effect the hereditament can be so distinguished from 1 April 2006 (i.e. the date the Order comes into operation) using the provisions of Article 41 (2) (f). This means in respect of actual use made of the hereditament in the period preceding 31 March 2006. Such a hereditament will continue to be distinguished on this basis for as long as it is occupied by the same body.
- This Article also allows any hereditament that is distinguished as partially exempt from 1 April 2006 (or should have been so distinguished from this date), and is then subsequently replaced, to be distinguished to the same extent as the original hereditament.

Points To Note

Substantial

The term “substantial” is not defined. Legal advice obtained by RPD is that “substantial” should be given its legal meaning i.e. “of substance” interpreted as “more than de-minimis”.

The standard of proof that the Commissioner or district valuer will require?

RPD have had extensive discussions with the Orange Order [the Order] and others and have produced a form, which they have shown to the Order – the intention being that filling in the form will comply with this test. We agree that this is the correct way forward. A copy of the form, which we have amended slightly, is attached.

Exemption

Exemption can be considered under the terms of the 1958 Act i.e. under the terms of Article 41 (2)(e) but also under the terms of a new Article - 41A(2)(a) inserted by Article 11(1).

Recreational Charity Act Provisions

The terms of the 1958 Act are as follows:

- (1) Subject to the provisions of this Act, it shall be and be deemed always to have been charitable to provide, or to assist in the provision of, facilities for the recreation or other leisure time occupation, if the facilities are provided in the interests of social welfare. Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.
- (2) The requirement of sub-section (1) that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless:
 - a. The facilities are provided with the object of improving the condition of life for the persons for whom the facilities are primarily intended; and
 - b. Either
 - i. Those persons have need to such facilities as aforesaid by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances; or
 - ii. The facilities are to be available to the members or female members of the public at large.

The legislation covers the circumstances where the hereditament is either 'used' by the occupying body itself or 'used' or 'made available for use by someone else' for charitable purposes. **This extends beyond the 1958 Act i.e. it also covers other charitable purposes not covered by the Act – see new Article 41A(2)(a) inserted by Article 11(1).**

Use By Different Bodies

This is obviously a very "wide" provision and could lead to difficulty. If for example VLA were approached by a body that indicated that theirs was a use to which the 58 Act applied but that a lodge in receipt of full exemption on foot of a declaration about intention had refused use of the premises what do we do? RPD have commented as follows – "We would have thought that it would be a matter for the District Valuer to satisfy himself/herself that the hall had been made available to a substantial extent and it is therefore conceivable that exemption could continue in this circumstance." If such circumstances are encountered please seek advice of the DV operations [rating] before proceeding

Another question is - could the lodge argue that they only need to make the premises available for a “substantial” part of the time and that once this limit has been reached they are at liberty to refuse other potential occupiers? RPD have commented - Yes in all probability, see above. Again advice should be sought if such circumstances are encountered.

In answering both of the above questions it should be remembered that the requirement is to make the hall ‘available for use’ and therefore exemption may still be appropriate even if there is no uptake – however this would depend on whether reasonable steps have been taken to make the hall available to a substantial extent.

Licensed Halls

The intention of the legislation is that halls where a full liquor licence is present are not considered for exemption. The saving provisions however apply to these premises so that relief is still available to the same extent as previously.

Article 41 (9) applies so if the licensed portion is a “distinct part” of the entire hereditament one possible interpretation is that this means that the remainder could be considered to be wholly exempt?

Solicitors have been asked for advice.

Savings

In what circumstances would the “same proportion” rateable value apply? The answer to this question is that if a listed body is receiving partial exemption at 31 March 2006 but would not qualify for the full exemption on 1 April 2006 this provision means that it will retain its partial exemption level of 31 March on and after 1 April (i.e. the same percentage before and after). This point also applies to those hereditaments that are subsequently replaced.

Operational Issues

The legislation will not be effective until April 06 therefore no alteration can be made in the list until after this date.

Subject to the saving provisions Article 41 (2) (f) will cease to apply. We need therefore to survey all halls where relief under the 2006 Order actually or potentially exists.

We could assume that halls occupied by organisations named in the 2006 Order currently in receipt of partial exemption will qualify under the new provisions but at the very least we would have to check the Licence and Registered Club provisions.

Accordingly application forms should be issued to all halls as soon as possible after 1st April 06

Extract From Proposed New Legislation

Certain hereditaments to be wholly exempt from rates [j71]

11.—(1) After Article 41 of the principal Order (distinguishment in valuation list of hereditaments used for public, charitable or certain other purposes) there shall be inserted the following Article—

“Distinguishment in valuation list of hereditaments occupied by certain bodies and used or made available for use for charitable purposes

41A.—(1) There shall be distinguished in the valuation list as wholly exempt from rates any hereditament to which paragraph (2) applies which is occupied by a body which is not established or conducted for profit if the body is—

- (a) listed in Schedule 13A; or
- (b) a member of, or affiliated to, a body listed in Schedule 13A.

(2) This paragraph applies to a hereditament—

- (a) which the Commissioner or the district valuer is satisfied is to a substantial extent used or made available for use for purposes which are declared by the Recreational Charities Act (Northern Ireland) 1958 (c. 16) to be charitable or are otherwise charitable—
 - (i) where the use is by the occupying body, subject to charges, if any, not more than necessary to defray reasonable expenses actually incurred by the body by reason of that use; or
 - (ii) where the use is not by that body, for a consideration, if any, not more than necessary to defray such expenses; and
- (b) which is not a hereditament—
 - (i) to which Article 31 (reduction of rates on certain hereditaments used for recreation) or Article 41(2)(e) (exemption for recreational charities) applies; or
 - (ii) on which a person may under a licence (other than an occasional licence) or a protection order sell intoxicating liquor by retail; or
 - (iii) in respect of which a club is registered under the Registration of Clubs (Northern Ireland) Order 1996 (NI 23).

(3) Schedule 13A (listed bodies for purposes of this Article) shall have effect.

(4) The Department may by order made subject to affirmative resolution

amend Schedule 13A by—

- (a) adding any body which is not established or conducted for profit;
- (b) omitting, or altering the description of, any body.

PART III

(5) Article 41(9) shall apply to any reference in this Article or Schedule 13A to a body or to a hereditament of a description mentioned in paragraph (2) as it applies to any reference to a body in that Article or to a hereditament of a description mentioned in paragraph (2)(a) to (e) of that Article.

(6) Expressions used in paragraph (2)(b)(ii) and in the Licensing (Northern Ireland) Order 1996 (NI 22) have the same meaning in paragraph (2)(b)(ii) as in that Order.”

(2) After Schedule 13 to the principal Order (hereditaments excluded from exemption) there shall be inserted as Schedule 13A the Schedule set out in Schedule 3.

Repeal of Article 41(2)(f) of principal Order with savings, etc. [j71A]

12.—(1) Article 41(2)(f) of the principal Order (exemption for certain hereditaments used to an extent of not less than ten per cent. for certain charitable purposes) shall cease to have effect.

(2) Any hereditament which, immediately before the commencement of paragraph (1), was distinguished in the valuation list as exempt from rates to any extent by virtue of Article 41(2)(f) of the principal Order shall continue to be distinguished as exempt to that extent while it remains in the same occupation and Article 41A(1) of the principal Order does not apply to it.

(3) Where the Commissioner or the district valuer is satisfied that a hereditament should have been distinguished in the valuation list as exempt from rates to any extent by virtue of Article 41(2)(f) of the principal Order immediately before the commencement of paragraph (1), he shall distinguish the hereditament, or cause it to be distinguished, in the valuation list as exempt from rates to the extent that it should have been so distinguished immediately before the commencement of paragraph (1) while it remains in the same occupation and Article 41A(1) of the principal Order does not apply to it.

(4) Where the Commissioner or the district valuer is satisfied that a hereditament (“the replacement hereditament”) is used by a body as a replacement for a hereditament which—

- (a) is no longer occupied by that body; and
- (b) is or was distinguished to any extent as exempt from rates,

he shall distinguish, or cause to be distinguished, the replacement hereditament in the valuation list as exempt from rates to that extent while the replacement hereditament remains in the same occupation and Article 41A(1) of the principal Order does not apply to it.

(5) In paragraph (4)(b) “is or was distinguished” means—

- (a) is or should be distinguished in the valuation list under paragraph (3); or
- (b) was immediately before the commencement of paragraph (1) distinguished in the valuation list by virtue of Article 41(2)(f) of the principal Order.

(6) Article 41(9) of the principal Order shall apply to any reference in this Article

to a body or to a hereditament of a description mentioned in this Article as it applies to any reference to a body in that Article or to a hereditament of a description mentioned in paragraph (2)(a) to (e) of that Article.

(7) In the principal Order—

(a) in Article 31(2)(c)—

- (i) “or (f)” shall cease to have effect;
- (ii) at the end add “or by virtue of Article 12(2), (3) or (4) of the Rates (Capital Values, etc.) (Northern Ireland) Order 2005”;

(b) in Article 41—

- (i) in paragraph (3)(a), for “(e), or (f)” there shall be substituted “or (e)”;
- (ii) in paragraph (4), for “(e), or (f)” there shall be substituted “or (e)”;
- (iii) in paragraph (9), for “to (f)” there shall be substituted “to (e)”.

(8) In Schedule 7 to the principal Order—

- (a) in paragraph 3(a), for “, (e) or (f)” there shall be substituted “or (e)”;
- (b) paragraph 3 shall be renumbered as sub-paragraph (1) of that paragraph and after it there shall be inserted the following sub-paragraphs—

“(2) Where—

- (a) any hereditament was, immediately before the relevant date, distinguished in the valuation list as exempt from rates to any extent by virtue of Article 41(2)(f); and
- (b) it continues to be distinguished in the valuation list by virtue of Article 12(2) of the 2005 Order,

its rateable value shall continue to be the same proportion of its net annual value as it was immediately before the relevant date.

(3) Where a hereditament is distinguished in the valuation list as exempt from rates by virtue of Article 12(3) of the 2005 Order, its rateable value shall be the same proportion of its net annual value as it would have been immediately before the relevant date if it had been distinguished under Article 41(2)(f).

(4) Where a hereditament is distinguished in the valuation list by virtue of paragraph (4) of Article 12 of the 2005 Order, its rateable value shall be the same proportion of its net annual value as the rateable value of the original hereditament was of its net annual value immediately before it ceased to be occupied as mentioned in sub-paragraph (a) of that paragraph.

(5) In this paragraph—

- “2005 Order” means the Rates (Capital Values, etc.) (Northern Ireland) Order 2005;
- “original hereditament” means the hereditament to which sub-paragraphs (a) and (b) of Article 12(4) of the 2005 Order apply;
- “relevant date” means the date on which Article 12(1) of the 2005 Order (which repealed Article 41(2)(f)) came into operation.

APPLICATION FORM FOR FULL RATE EXEMPTION FOR HALLS UNDER ARTICLE 41A OF THE RATES (NORTHERN IRELAND) ORDER 1977

Name of hall	
Postal address (including postcode)	
	Postcode:
Name of owner	
Name of Occupier (if different)	

APPLICATION AND DECLARATION
I apply for full exemption from rates on behalf of the above organisation and I confirm that the information I have given on this form is correct.
I understand that if I knowingly give false information, you may take action against my organisation to recover any rates.
I understand that I must tell the Valuation and Lands Agency of any change in circumstance WITHIN ONE MONTH OF THE CHANGE OCCURRING.

Name of person who filled in this form (BLOCK CAPITALS)	
Signature of person	
Postal address (including postcode)	
	Postcode:
Contact telephone number	
Position in organisation	
Date	

NOTES TO APPLICATION FORM

- Organisations that received partial exemption under Article 41(2)(f) of the above Order but do not meet the criteria for full exemption will from 1 April 2006 retain their percentage level of exemption they received at 31 March 2006.
- Any charge which an organisation may make for the use of its property should be no more than is necessary to defray running expenses such as the cost of lighting, heating and cleaning.
- All box questions on page 2 must be answered.

