

EXEMPTION FROM RATES

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CHARITIES

1.0 Powers of the Commissioner and District Valuer.

Article 41 of the Rates [Northern Ireland] Order 1977 [the 77 Order] deals with the distinguishment in the valuation list of hereditaments used for public, charitable or certain other purposes.

Article 41(1) gives the Commissioner or the District Valuer the right to distinguish in the valuation list as exempt from rates any hereditament which he is satisfied should be so distinguished.

2.0 Relationships with other Public Bodies

2.1 The Charity Commission is established by law as the regulator and register for charities in England and Wales. The Commission does not extend to Northern Ireland and has no relevance therein. But if a local branch of a national charity operates under the same governing documents as the national organisation it is safe to assume that if the Commission has recognised the national organisation as charitable the local branch will also be a charity.

2.2. When a charity is approved and registered by the Charity Commission the Inland Revenue usually grants exemption from taxes.

In Northern Ireland, because there is no register of charities, the revenue will decide the case itself. In a number of Lands Tribunal cases the Tribunal appeared to express the view that if a body was recognised as a charity by the Revenue it was a very significant matter in favour of it being treated as a charity for purposes of the 77 Order. The view of Counsel were sought and the advice obtained was that:

“The legislation clearly requires the rating authorities to make an independent judgement in relation to the status of the organisation. At the same time the treatment of that organisation by the Revenue is obviously relevant but not conclusive. There should be consistency of approach although that might not always result in the interpretation of the circumstances leading to an identical result”.

Accordingly Inland Revenue recognition is clearly of importance in our considerations and in all cases we should establish the body’s tax status. But VLA is independent and must reach, and be prepared to defend, its own conclusions.

3.0 The History of Charity Law

To look at charity law from its inception we need to go back a fair distance – to the seventeenth century. The Irish “Statute of Pious Uses” [1634] derived from the Elizabethan “statute of charitable uses” [1601], which was an Act of Parliament declaring among other things that these activities were charitable “the relief of the aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars of universities; the repair of bridges, ports, houses, causeways, churches, sea-banks and highways, education and preferment of orphans; the relief, stock or maintenance of houses of corrections; the marriage of poor maids; the supporation aid and help of young tradesmen, handicraftsmen and persons decayed; the relief and redemption of prisoners and captives; the aid or ease of any poor inhabitants concerning payment of taxes”.

The 1934 Act, though long repealed, is still used as a guide in determining what is a charity.

4.0 The Pemsel Case

In 1891, in a famous House of Lords judgement commonly known as the Pemsel’s case, Lord MacNaghten classified charities under four different headings, and this classification is the one applied today:

- (i) Trusts or organisations for the advancement of religion.
- (ii) Trusts or organisations for the advancement of education.
- (iii) Trusts or organisations for the relief of poverty.
- (iv) A miscellaneous heading which included other purposes beneficial to the community, but not falling under any of the other three headings.

5.0 The Four Headings of Charity

- (i) **Advancement of religion** – means the promotion of the spiritual teaching of a religious body, but it does not include spiritualism, or moral societies which are not founded on a belief in God. Religion may be advanced within this principle either directly [building and repair of places of workship] or indirectly [support of retired ministers of religion]. Since as a general rule, the law recognises no purposes as charitable unless it is of a Public Character (ie for the benefit of the public, and not merely for the benefit of private individuals) it is normally presumed that a gift for religious purposes is for the public benefit.

- Scientology is not based on a belief in God therefore the Court of Appeal in *R v Registrar General exp Segendal* (1970) 2 QB 697 [1970] 3 All ER 886 held that a scientologist chapel was not a place of religious worship entitled to exemption.
- The public element was considered by the House of Lords in *Church of Jesus Christ of Latter Day Saints v Hemming* (VO) [1964] AC 420. A Mormon Temple, entry to which was limited to Mormons of good standing in possession of a ‘recommend’ from a bishop is not a place of public religious workshop.
- Cases are ongoing in relation to access by women to Mosques. It seems likely that while segregation of the sexes within premises would not be a bar to exemption, a bar on entry to one of the sexes would mean that worship was not “public”.
- NI Lands Tribunal cases which considered the advancement of religion are:
 - VR/1/1967 - *The Corrymeela Community v COV.*
 - VR/9/1967 - *Trustees of Redemptionist Order v COV.* This case was also considered by the Court of Appeal [1971 NI 114].
 - VR/49/1967 - *Trustees Newry Christian Brothers v COV.* This case was also considered by the Court of Appeal [1971 NI 114].
 - VR/33/1971 - *The Incorporated Governors of the Riddle Hall, Belfast v COV.*
 - VR/124/1999 - *Presbyterian Church in Ireland v COV.*

(ii) **Advancement of education** - Includes the establishment of schools and the provision of teachers, but it is not confined to teaching children the basics of education. For example the provision of a nursery for children under five, the advancement of the arts, and the building of libraries, museums and Zoos, have been regarded as charitable purposes.

- In Northern Ireland:
 - Controlled and maintained schools are rateable
 - Controlled integrated schools are rateable
 - Grant maintained integrated schools are rateable
 - Voluntary schools may be exempt if the use and occupation complies with Article 41(2)(C) of the 77 Order.
- NI Lands Tribunal Cases which considered the question of the advancement of education are:

VR/25/1965 – Trustees of the Dominican
Covent of the Holy Rosary v COV
VR/50/1965 – Trustees of the Aquinas Hall v COV
VR/54,60,61,62&64/1965 Portora Housing Society Ltd and
Fermanagh Protestant Board of Education v COV. This case was
pursued to the House of Lords [1970 NI 89].
VR/1/1967 – The Corrymela Community v COV
VR/17/1967 The Lord Mayor, Alderman & Citizens of Belfast v
COV [premises forming Queens Students Union].
VR/49/1967 – Trustees Newry Christian Brothers v COV.
This case was also considered by the Court of Appeal [NI 114].
VR/25/1970 – The Lyncic Players’ Theatre v COV
VR/65/1980 – The British Council v COV.

- (iii) **Relief of Poverty** – Since poverty is a relative term meaning different things to different people, charitable activity under this heading is not confined to combating destitution, but includes the meeting of needs of different kinds. For example, providing interest-free loans could be charitable, as could the provision of temporary accommodation for homeless people.
- (iv) **Other purposes beneficial to the community** - This may include the protection of health, the relief of disabled people, improving the environment, recreation etc. The key concept here being Public Benefit. Since 1958 in Northern Ireland, recognised charitable purposes have been taken to include “the provision, or assistance in the provision of facilities for recreation or other leisure-time occupations, if the facilities are provided in the interests of social welfare” [Section 1 Recreational Charities Act, Northern Ireland 1958]. The proviso was made that the facilities so provided must be for the “object of improving the conditions of life for the persons for whom the facilities are primarily intended and either:
 - (i) those persons have need of 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.”

6.0 Necessity for a Governing Document

In the case of the Corrymeela Community v The Commissioner [VR/1/1967] it was admitted that there was no formal declaration of trust. Despite this the Tribunal came to the conclusion that the community could be distinguished as exempt – being a charity. This case is however the exception – decided on its own particular facts. The more usual position is that to gain exemption it is essential that the premises be dedicated to a charitable user by a trust or governing document of a permanent character which can be enforced by the courts. To quote from the Tribunal in the case of David Davey v COV [VR/28/1972]:

“This decision points to the importance to an individual who wishes to use his dwelling for charitable purposes, of having an appropriate declaration of trust and trustees to execute the trust purposes, if he desired to have the premises distinguished as exempt under Section 2 of the 1854 Act now repealed by the Rates [Northern Ireland] Order 1972.”

6.1 What is a Governing Document?

A governing document is the formal document which sets up a charity and which should contain information about:

- what a charity is set up to do (objects)
- how a charity will do those things (powers)
- who will run it (charity trustees)
- what happens if changes to the administrative provisions need to be made (amendment provisions); and
- what happens if the charity wishes to wind up (dissolution provisions)

It should also contain the following administrative provisions:

- how the charity trustees will run it; and
- internal arrangements for meetings, voting, looking after money etc.

There are three main types of governing documents:

- constitution or rules
- trust deed
- memorandum and articles of association.

6.2 Constitution or rules – Constitutions are sometimes referred to as “rules”. The terms are interchangeable but the type of governing document is the same. A constitution or rules will create an “unincorporated association”.

The “association” part of this description means that it is an organisation consisting of a group of people who have decided to co-operate in furthering what the organisation is set up to do, and who have certain parts to play in its administration. The “unincorporated part of the description means that the organisation is not a company [which is incorporated]. This means that the association will not:

- [unlike a company] have limited liability and a legal personality of its own (ie the charity trustees may be liable for the repayment of any debts which they have incurred on behalf of the charity]
- be able to own land in its own name. It will need to appoint either a custodian or holding trustee(s) to do this.

This constitution is normally put into operation by being adopted (accepted for use) at a formal meeting of those people who are, or will be, the charity trustees and the general membership. The final typed version of the constitution should be:

- signed by all the charity trustees
- dated the day of the meeting at which it was agreed.

The minutes of the meeting should formally record that the constitution was adopted.

A body applying for exemption should be asked to provide:

- a copy of the constitution;
- a copy of the minutes of the general meeting at which it was adopted; and
- a copy of the minutes of the general or special meetings at which any subsequent amendments were approved by the general membership.

6.3 A Trust Deed – A trust deed will create a “trust”. A trust cannot own land or sign documents in its own name. It will need to provide for holding or custodian trustees if it is planned that the charity will own or lease land. Trust deeds can be known by other names, such as declaration or deed of trust, deed of settlement, or will trust.

A trust deed must be “executed”. This means that it needs to be signed and dated, in the presence of an independent witness, by those who are setting up the trust. The trust deed should refer to a specific amount of money or some other assets which will belong to the trust at the time that the trust deed is executed. If the deed declares trusts over cash or stocks and shares it may attract Stamp Duty.

A body applying for exemption should be asked to provide:

- A copy of the dated trust deed showing the names of the first charity trustees and the witnesses to their signatures;
- Evidence of adjudication by a local Stamp Office or a valid Stamp Duty Land Tax certificate; and
- Copies of any supplemental deeds or deeds of variation, showing subsequent amendments.

6.4 Memorandum and Articles of Association – A memorandum and articles of association create a company. A company has an advantage over a trust and an unincorporated association in that it is “incorporated”. This means that the law considers it to be a person, in the same way as an individual. Therefore a company, like an individual, can own land and enter into contracts in its own name.

A company is a legal person quite separate from its members and directors [who in the case of charitable companies are usually called members of the Council of Management].

The directors are agents of the company and as such are not normally liable personally for its debts.

The company will also have “limited liability” which means, in the case of a typical charitable company, that its members are normally only liable for the debts of the company to the extent which they have undertaken to guarantee them [usually the limit of liability stated in the memorandum of association is a nominal amount eg £1]. The company is subject to company law, as well as to charity law, and there are certain duties, which must be observed, such as the filing of accounts with the Registrar of Companies. However, charitable companies can never be the same as commercial companies. The main purpose of commercial companies is to make profits for distribution to their members. The constitution of a charitable company always precludes the distribution of profits to members. All the property of a charitable company is applicable for charitable purposes. A company is put into operation by being subscribed to by one or more people in accordance with the provision of Part 1 of the Companies Act 1985 and by registration with the Registrar of Companies who will issue a certificate of incorporation.

In Northern Ireland many charitable companies will register under the terms of the Industrial and Provident Societies Act 1965. The significance of this is that it has been shown to the Registrar of Friendly Societies that – per Section 1(2) of the Act – its business is “conducted for the benefit of the community”. Further if the Registrar is satisfied – under Section 5(5) – that the objects of the society “are wholly charitable or benevolent” he will permit the company to omit the descriptive word “limited” from its title.

A body applying for exemption should be asked to provide:

- a copy of the memorandum and articles of association
- a copy of the certificate of incorporation; and
- a copy of any special resolution showing subsequent amendments.

7.0 Occupation and Use

To be distinguished as exempt in the valuation list a hereditament should not only be occupied by a body which is considered to be a charity – or at Article 41(2)(d) by a body which is not established or conducted for profit, but its use must directly facilitate the objects of the charity. There are then the twin test of occupation and use.

The “classic” case dealing with use by a charity is *Oxfam v City of Birmingham District Council* [1975] which was decided ultimately by the House of Lords. The Head note to the reported case reads as follows:

“A charitable organisation (Oxfam) had among its principal objects the relief of poverty, distress and suffering in any part of the world. Oxfam was largely dependent on voluntary helpers at local level who found that the most effective form of fund raising lay in the organisation and manning of gift shops. The shops were used for the reception and sorting of donated articles and for the sale of such articles which could be used in Oxfam’s overseas work. The sales took place in the United Kingdom and the proceeds were applied for Oxfam’s work abroad. To a very small extent the shops were concerned with the sale of village handicraft articles ie goods made in various parts of the developing world under a scheme by Oxfam to encourage village industries and provide employment in poor countries. The shops also engaged in the sale of other articles eg tea-towels and biro pens advertising Oxfam’s name. Goods in this latter category were produced by a wholly owned subsidiary of Oxfam and amounted to some 13% of the sales of the gift shops. The shop premises were let to Oxfam either rent free, or in the majority of cases, at the full commercial rent. Oxfam sought a declaration against a local authority that shops which it occupied were entitled to rating relief under S.40(i) of the General Rate Act 1967 in that the shops were “wholly or mainly used for charitable purposes”.

Held: on the true construction of S.40(i) hereditaments occupied by a charity were “wholly or mainly used for charitable purposes” where the use was for purposes directly related to the achievement of the objects of the charity. Accordingly use for a purpose such as getting in, raising or earning money for the charity, which, although it benefited the charity indirectly, was not wholly related to or did not directly facilitate the purpose of the charity, did not constitute use “for charitable purposes” within S.40(i). It follows that, since the shops were mainly used for the sale of donated property in order to raise funds, they were not wholly or mainly used for charitable purposes within S.40(i) and Oxfam was not therefore entitled to the relief claimed.”

In the case of the Trustees of the Metropolitan Church v COV [VR/5/1988] the Church operated a transport service to bring worshippers to church services and to various activities connected to the church. To operate this service the church needed a fleet of buses which in turn needed regular maintenance. To do so they operated a garage – and the issue for decision was whether or not the garage should be considered to be exempt. The Tribunal found that the actual user of the hereditament was too remote to fulfil the charitable user test – in other words it did not directly facilitate the charitable objects of the church.

But in the case of The Royal British Legion Attendants Co (Belfast) Ltd v COV [VR/47/1977] a car park operated by disabled ex-merchant seaman was distinguished as exempt.

How then do we decide the “directly facilitates” question? What is the correct legal test?

Counsel has advised that the principles to be applied are those decided by the House of Lords in the “Oxfam” case. He said that from the speeches one can advance certain propositions or tests:

1. Does the use of the hereditament entail [per Lord Cross, at p. 302A/B] “doing something which is a necessary or essential or incidental part of, or which directly facilitates or which is ancillary to, what is being done in the actual carrying out of the charitable purpose?”
2. Is the use of the hereditament [again per Lord Cross] “sufficiently close to the execution of the charitable purpose of the charity?”
3. Is it a case of “user for purposes directly related to the achievement of the objects of the charity?” [Lord Cross at p. 299 H]
4. Does the user constitute (per Lord Morris, at p. 301H) “activities which consist in the actual carrying out of the charitable purposes?”
5. Or is the user too remote from the execution of the charitable objects of the body.

Counsel also highlights the following passages taken from the Metropolitan Church decision:

“... If the use which the occupier makes of the hereditament is such that it directly facilitates the carrying out of its main charitable purpose Then it can be said that the hereditament itself is occupied and used for charitable purposes

On the other hand if the purposes in question are too remote and not directly ancillary to the religious purpose then the hereditament fails the charitable user test

[On the facts] it undoubtedly greatly helps the charity and the work of the charity ...

[But] here the actual user of the hereditament is too remote to fulfil the charitable user test.”

8.0 Administrative Offices

In the case of *United Grand Lodge v Holborn B.C.* (1957) 3 All E.R. 283 the Court spoke of the distinction between (A) the purpose or objects of a body and (B) the manner whereby it seems to fulfil same:

“Every organisation setting out to advance some cause must, if it is of any size, have an office where the necessary clerical and administrative work is done; but one cannot isolate this and say that the purpose of the office is different from that of the organisation itself”.

This means that the vast majority of administrative offices occupied by charitable bodies can be distinguished as exempt.

But the test still is – does the use of the office directly facilitate the main objects of the charity. An appeal recently decided by the Commissioner illustrates the point:

The Northern Ireland Hospice is a registered charity with its offices at 74 Somerton Road, Belfast. All its management functions are carried out here and the property is wholly exempt for rating purposes. But, due to pressure on space and the expanding nature of the charity’s work the fundraising department was relocated to nearby property at 545 Antrim Road, the subject of the appeal. This is a former 3 – storey mid-terrace Victorian dwelling converted to offices. Apart from 3 second floor offices used by nurses and a care manager working in the community the remainder of the building is used to manage fund raising including work by 2 associated companies:- (a) NI Hospice Promotions Ltd – which administers the hospice lottery, and (b) NI Hospice Retail Ltd - which administers the chain of 12 hospice charity shops. The two companies although accommodated in the building have no formal lease and the building is considered a single hereditament occupied by NI Hospice.

Apart from the work of the two companies the offices are used for planning and organising events, registering collectors, publicity, discussing new fundraising ideas and strategies, safety protocols at events and administrative support for the fundraising teams. At revision the 3 second floor offices occupied by nursing staff were considered to be exempt while the remainder was considered to be rateable.

Note: Article 41 (9) permits this by the words:

“and in paragraph (2)(a) to (e) any reference to a hereditament of a description there mentioned includes a reference to a hereditament a distinct part of which is of that description”.

Before deciding the appeal the Commissioner sought the views of Counsel – Bernard McCloskey QC. In his opinion he relied heavily on the “Oxfam” case. He was of the view firstly, that the use made of the property, while authorised by the charitable trust, cannot be described as carrying out the charitable purposes themselves ie one step too far removed from directly facilitating the charitable objectives.

Secondly he expressed the view that there is no difference between fundraising and the management of fundraising as they are integral parts of each other.

As a consequence of this opinion no change was made on appeal, ie the offices were not held to be exempt.

9.0 Public Benefit

To be considered as a charity a trust or organisation must have some public purpose – something tending to the benefit of the community.

In considering the public benefit test in the case of Down District Council v COV [VR/8/1972] the Tribunal said

“The proviso expresses the established principle which distinguishes between private and private benevolence and requires that the beneficiaries of the relevant trust or institution, however few in number, should represent the public and that the benefit should be direct and not incidental”.

In Northern Ireland Housing Trust v COV Court of Appeal : 1970 NI 208, McVeigh L.J. stated:

“In order to establish a charity under the 4th head of Lord MacNaughton’s classification it is necessary not only to prove that it is charitable in the sense in which that phrase is known to the law, but that in addition it is for the public benefit, that is to say it must be for the benefit of the community or an appreciably important part of the community which must be sufficiently defined and identifiable by some quality of a public nature”.

McVeigh L.J. found that the user of the hereditament by various outside clubs and groups along with the tenants formed no section of the public nor was the use to which they put the hereditament charitable. Having found that the necessary public benefit was not present to constitute a charity under the fourth category within the statute of Elizabeth I, and that the public benefit required under that statute was the same as required to qualify under the Recreational Charities Act 1958, it followed that the case failed to come under the 1958 Act.

It would appear that the Courts find it difficult to lay down specific criteria or tests within the general public benefit rule and it seems that the best that can be done is to consider each case as it arises upon its own special circumstances. The following cases have considered, at least in part, the public benefit test.

(A) VR/72/1965 - Ballynahinch Tennis Club

Tennis Club – whether entitled to exemption on grounds of exclusive charitable purposes – fourth category of Pemsel Rules – consideration of the Recreational Charities Act (NI) 1958 – definition of public benefit.

Held: No trust established – no dedication of the hereditament as a public recreation ground – no entitlement to exemption under 1958 Act – appeal dismissed.

(B) VR/19/1965 - Trustees of the City of Belfast Young Men’s Christian Association.

Sports ground consisting of playing fields, tennis courts, pavilion – occupied by trustees – whether used for (i) exclusively charitable purposes or (ii) purposes deemed charitable under the Recreational Charities Act (NI) 1958 – reference to Pemsel Case – public benefit.

Held: Detailed consideration of the Trust Deed established that the provision of the facilities qualified as a Social Welfare charity.

(C) VR/5/1965 – Incorporated Cripples’ Institute and Holiday Homes.

Holiday homes – whether occupied by persons for charitable purposes – question of public benefit.

Held: Under the Recreation Charities Act (NI) 1958 the hereditament qualified as being used for purposes of an exclusively charitable nature.

(D) VR/78/1965 – Lurgan Swimming Pool.

Assessment of swimming pool. Appellant contended (i) that the hereditament was used for public purposes (ii) used for exclusive charitable purposes and (iii) a recreational charity under the Recreational Charities Act (NI) 1958.

Held: Detailed consideration of the concept of ‘public benefit’ – class of users were not considered to be representative of the public at large.

But this decision was reversed by the Court of Appeal : 1968 NI 104, which held that the hereditament should be distinguished as exempt, not only because it was used exclusively for the purposes of a recreational charity, but also because the hereditament was altogether of a public nature and occupied for the public service.

(E) VR/7/1981 – Lylehill Young Farmers Club

Club premises. Appellant sought to have the hereditament distinguished as exempt on the grounds that it was wholly or mainly used for purposes declared to be charitable by the Recreational Charities Act 1958 - club used for the benefit of 95 members – whether the concept of Social Welfare was satisfied – public benefit main issue.

Held: In the opinion of the Tribunal the facilities were not provided for public benefit – user therefore not within the 1958 Act.

Note: Exemption was subsequently granted to Young Farmers Clubs halls following a revision of the Memorandum and Articles of Association of the Young Farmers Clubs of Ulster.

(F) VR/29/1981 - Springhill Housing Action Committee

Community Centre – refusal of COV to distinguish the hereditament as exempt – appellant contended that the hereditament was used wholly or mainly for purposes declared to be charitable under the Recreational Charities Act 1958 – centre served a well defined geographical area – question of public benefit.

Held: The Tribunal looked in detail at the “class of beneficiaries” and found that although the class of beneficiaries was small it was nevertheless a section of the public and the hereditament was entitled to exemption.

The Court of Appeal (1983 5 NIJB) affirmed the decision of the Tribunal. The case turned almost entirely on the principle that a trust or institution to be charitable must be for the public benefit. In the judgement Gibson L.J. referred to an earlier case, Northern Ireland Housing Trust v Commissioner of Valuation (1970) NI 208. The present case differed from the earlier in that the purpose of the Committee in occupying the subject centre was to benefit all the inhabitants of the Springhill estate. They are all tenants of the Housing Executive, but that was a situation which could change and whether any resident is or is not a tenant of the Executive was irrelevant in deciding who may use the centre.

The sole question was whether the residents of the Springhill estate are such a group of persons that in providing a community centre for their use it can be said to be provided for the public benefit. The issue raised in argument was whether those inhabitants are so few in number or occupy so limited an area so that a trust in their favour cannot be regarded as being for the public benefit.

Gibson LJ stated;

“I know of no reason in principle which would fix a minimum number of beneficiaries in order that the benefit may be regarded as public and therefore charitable. Charities are perpetual and in the course of time there are shifts in population.” and, “The question is not how large numerically must a class of persons be before it can be accepted as a section of the public. It is, what is the distinction between a use of the hereditament which is for the public benefit and a use which is for private, personal or non-public benefit”.

In conclusion Gibson LJ stated;

“I am satisfied that a trust for a section of the community is normally charitable unless the object or purpose of the trust points to a different conclusion. In the present case the centre is occupied for a purpose which is normally charitable, and the class of persons for whose benefit it is occupied, being the residents of a sizeable estate, is not so insignificant in numbers as to deprive it of prima facie public character”.

Therefore the Tribunal was correct in law in holding that the hereditament was used wholly or mainly for purposes which are declared to be charitable by the Recreational Charities Act (NI) 1958).

(G) VR/6/1988 - Trustees of the Indian Community Centre?

Community Centre used for the members of the Indian Community in NI. Main question was whether or not the Indian Community was a sufficiently wide section of the public to satisfy the requirement of public benefit.

Held: That the Indian Community was an appreciable section of the public and the public benefit test was satisfied.

10.0 Trading by Charities – The Profit Question

Paragraph 41(4) of the Rates (NI) Order 1977 reads as follows:

“Subject to paragraph (5) any use (whether by way of letting or otherwise) for profit shall not be treated as a use for the purposes mentioned in subparagraph (a), (b) (i) or (ii), (c), (d), (e) or (f) of paragraph (2), unless it directly facilitates the carrying out of those purposes.

Trading per se is not, of itself, a charitable purpose in law and a body which intended to trade would normally be refused charitable status on the basis that it was not established for charitable purposes only. However, it is well-established that a charity may engage in trading provided the trade is exercised in the course of the actual carrying out of a primary purpose of the charity. Thus a charity

established for the advancement of religion may properly sell bibles and other religious literature and items in furtherance of its objects.

In the case of the Incorporated Council of Law Reporting for England and Wales v AG and others (1971) 3 WLR 853 Russell L.J. at page 860 said:

“Suppose on the one hand the company publishes the Bible for the profit of its directors and shareholders: plainly the company would not be established for charitable purposes. But suppose an association or company which is non-profit making, whose members or directors are forbidden to benefit from its activities and whose object is to publish the Bible; equally plainly it would seem to me that the main object of the association or company would be charitable – the advancement or promotion of religion.

If a profit is actually made then how the profit is used may be relevant. If for example an organisation whose aims were the advancement of religion sold Bibles and other religious goods and used the profits to help in the maintenance of Churches or Church Buildings. In these circumstances there would be an arguable case, following the Oxfam decision [Oxfam v Birmingham City Council (1975) 2 All ER 2] that the body was not a charity. However if any profits earned were ploughed back into the business to extend the range of items and activities available and/or to improve the fabric of the premises charitable status would not be affected.

If a body for which charitable status has been accepted subsequently extends its trading to include non-primary purpose trading (eg in the example given above, to trade in the sale of non-religious as well as religious items) then, although charitable status would not (normally) be withdrawn exemption would cease to be available in respect of the whole of the business. As long as the “mainly” provisions apply an apportionment would be required as per Article 41(3).

An interesting case where the “directly facilitating” question was considered was VR/25/1970 – The Lyric Players Theatre. In that case the Tribunal found that the appellants theatre at 55 Ridgeway Street, Belfast was being used for a wholly charitable purpose – the advancement of education. In addition the licensed bar and coffee bar was held to directly facilitate the appellants charitable objects.

11.0 Charity Shops

The decision of the House of Lords in Oxfam v Birmingham City Council [1975 2 All ER2] held that premises used mainly for the sale of goods given to a charity in order to raise money for use in the charity’s work were not entitled to exemption. Article 41(5) of the Rates (NI) Order was therefore enacted to give “charity shops” a measure of relief. This Article provides that a hereditament is

to be treated as used for charitable purposes to the extent that it is used for the sale of goods donated to a charity, but only so long as the net profits are applied for the purposes of a charity. The new paragraph is not to prejudice the generality of Article 41(2) (c) (ii), which makes it a basic condition for rating relief that the hereditament is used wholly or mainly for charitable purposes.

The hereditament is to be treated as used for charitable purposes to the extent that it is used for the sale of donated goods. The word “extent” has a double significance –

- (a) it is used as a test whether the hereditament is used wholly or mainly for charitable purposes (Article 41(2)(C)(ii) and therefore entitled to any rating exemption at all;
- (b) when the first test is passed, it is used as a test of the degree of relief which the hereditament enjoys.

It is a condition of relief that the net proceeds of sale are applied for the purpose of a charity. It need not be the same charity as the one which runs the shop – eg it is sufficient if Oxfam gives some of its profits to the International Red Cross or Christian Aid etc.

As regards the method of apportionment the legislation makes no specific provision as to method and there is no precedent in the Lands Tribunal. Accordingly the recommended method is to apportion on the basis of the relative turnovers of “denoted” and “bought in” goods.

12.0 Political Activities and Campaigning by Charities.

Charities under our law cannot be political bodies but this does not mean that they cannot contribute to the political process.

Charities must not have political objects but there is a fire line to be drawn between activities by charities in a political context in pursuance of their objects, which are permissible, and those, which encroach too far into the sphere of politics.

The Charity Commission for England and Wales recognised that there is little direct guidance from the courts on where the line should be drawn. They accordingly produced advice for charities on this whole question entitled CC9 – Political Activities and Campaigning by Charities. This is available from the Charity Commission Website - www.charity-commission.gov.uk.

13.0 Charitable Status and Sport

Recognition by the Inland Revenue

When considering a claim for exemption under Article 41 of the 77 Rates Order we generally acknowledge that if an organisation has been accepted by the Inland Revenue as being a charity that it is a charity and that no further investigation is needed – except as to the actual use of the premises.

In relation to sports clubs it must be clearly understood that two forms of relief are available from the revenue – only one of which is charitable relief. The background here is that:

On 30 November 2001 the Charity Commission announced that it would recognise as charitable “the promotion of community participation” in healthy recreation by the provision of facilities for the playing of particular sports.

Then on 17 April 2002 the chancellor introduced a package of tax relief to support Sports Clubs as an alternative route for those clubs unable or unwilling to apply for charitable status.

Sports clubs in NI are then free to choose to apply either to the Inland Revenue – Bootle, for charitable status, and the tax treatment that accrues to it, or to the Inland Revenue – Edinburgh for the tax relief specifically aimed at sports clubs.

If a sports club provides us with a letter from the Inland Revenue in support of a claim for exemption it is vital that we establish whether charitable status has been accepted or whether the letter relates to the specific package of tax relief. **Distinguishment as exempt under the provisions of Article 41 of the 77 Order will only apply to those clubs that have been accepted as charities.**

Q. What type of sports club can be charitable?

A. To be regarded as a charity a club must be organised on an amateur basis and must promote **community participation** in **healthy recreation** by the provision of facilities for playing particular sports provided that two criteria are satisfied.

- (1) The sport in question is capable of promoting health and fitness.
- (2) The clubs facilities are genuinely available to all members of the public who wish to use them.

Q. What is healthy recreation?

A. Sports that are capable of providing ‘healthy recreation’ are any sport that, if practised with reasonable frequency, will tend to make the participant healthier, that is, fitter and less susceptible to disease. The charity commission has identified nine sports that appear **not** to meet this criteria.

- Angling
- Ballooning
- Billiards
- Pool and Snooker
- Crossbow shooting
- Rifle and pistol shooting
- Flying
- Gliding

- Motor sports
- Parachuting

Q. What is community participation?

A. Membership of a club needs to be available to **all** members of the public, who wish to join, and hence membership fees will need to be affordable for the majority of the community the club serves and there must be no test of skill for admission.

Q. Is coaching permissible?

A. A club might properly provide coaching for participants geared to their individual level of skill. But any assistance for better players could not be at the expense of other participants and would be permissible only if directed solely to providing an incentive for participation by all.

Q. Can a club have social members?

A. All club members have to be playing members (or volunteers or helpers) rather than 'social members'.

Q. Can a club run a bar?

A. Essentially no. If a club provides refreshments it can only do so in connection with games or matches and not at times when no games or matches are being played.

Q. Can a club operate exactly as it does now?

A. In many cases, yes. But to become a charity the club constitution will have to be amended so that its stated purpose is specifically and exclusively charitable.

Q. What about those clubs which currently enjoy S&R relief?

A. Clubs, which do not qualify as charities, can continue to be considered for relief under Article 31.

Q. Under what Article is exemption being considered?

A. Either 41(2)(c) or (e) would apply. Note that the test in both is "mainly" not "wholly". However given the qualifying criteria it is difficult to think of circumstances where an apportionment would be appropriate. In most circumstances a club would either be wholly charitable or not at all.

Q What procedure should VLA apply?

A. In all cases where a club is seeking distinguishment as exempt an enquiry should be made about any previous reference to the Inland Revenue. As a general rule exemption should not be granted unless the IR has accepted that the club is a **charity**.

14.0 Article 41 of the Rates [Northern Ireland] Order 1977.

“41(1) Subject to the provisions of this Article, where the Commissioner or the District Valuer is satisfied that a hereditament is a hereditament of a description mentioned in paragraph (2), he shall distinguish the hereditament or cause it to be distinguished, in accordance with paragraph (3).

15.0 Article 41(2)(a)

“Any hereditament which is altogether of a public nature and is occupied and used for purposes of the public service.”

It has long been the case in Ireland that exemption has been granted to hereditaments which are altogether of a public nature and are occupied and used for purposes of the public service. Indeed this sub-paragraph essentially re-enacts Section 2 of the Valuation [Ireland] Act 1854 which provided for the distinguishment in the valuation lists of “all hereditaments and tenements, or portions of the same, of a public nature” and went on to provide for their exemption from rates “so long as they shall continue to be of a public nature and occupied for the public service”.

The kinds of property that qualify for exemption under this heading are:

- (a) property in which each member of the public has an interest eg a road dedicated to the public; or
- (b) property occupied by a local authority for the purpose of providing a service for the benefit of members of the public who are inhabitants of the district, where the service is also in fact available on equal terms to other members of the public eg a municipal park or swimming pool.

Note however that Article 41(b) specifically excludes from exemption a hereditament which is occupied for the purposes of a public utility undertaking [see Article 2(2) and Schedule 2] and hereditaments occupied by a body specified in Schedule 13.

The leading cases are:

- The Commissioner of Valuation v Lurgan Borough Council 1968 NI 104. This concerned the Lurgan Swimming pool and was decided by the Court of Appeal; and

- Belfast City Council v The Commissioner of Valuation [VR/6/1979] which was a decision of the Lands Tribunal which dealt with the Maysfield Leisure Centre.

The “Lurgan” case confirmed the principles that (a) public purposes extend beyond governmental purposes, within which at that time exemption in England and Scotland was confined and (b) such purposes mean purposes in which all members of the community are interested, and not purposes for the benefit of individuals, a class or a locality. In the case the appellants [the Council] succeeded because the Court of Appeal held that members of the public in general had an interest in the hereditament, and that under the wording of the Baths and Workhouses (Ireland) Act 1846 the hereditament was established and used for the benefit of all the public, not merely the inhabitants or ratepayers of the borough of Lurgan or even Lurgan and surrounding districts.

In the “Maysfield” case the Council had provided the facility under the powers of the Recreation and Youth Service (Northern Ireland) Order 1973. This Order directed the district council to provide a facility under Article 9(1) only for its area, and only with approval under Article 9(3) may a district council provide a facility for “the whole of Northern Ireland”, or for an area or areas outside its own area”. In the Tribunal’s judgement however the scheme of the 1973 Order was to have been the provision of public facilities on a local basis for the furtherance of sport, physical recreation and cultural activities through the Province. Accordingly, as per the judgement in the “Lurgan” case Article 41(2) (a) applied and the centre should be held to be exempt.

In the Lurgan case there was argument as to whether or not charges levied for the use of the pool should deny exemption. In the event it was held that limited restrictions on the use of the hereditament by members of the general public may be ignored “if they are purely regulatory”. The interpretation of this phrase has caused some difficulty because (a) many council’s levy charges which are close to “commercial” rates and (b) Article 41 (4) denies exemption to any use [whether by way of letting or otherwise] for profit. The advice of Counsel was sought. Counsel noted that there was case law dealing with the expression “used for profit”. This held that “use for profit” means “held for the purpose of making profit”. That being so the question would appear to turn substantially on the policy or intention of the occupier rather than what actually happens in fact.

The intention behind Local Authorities charging policy is therefore relevant. Do they:-

- resolve that the service should be subsidised from public funds;
- determine that the service should be self financing; or
- determine that the service should be provided on a commercial basis with the object of generating a profit.

Only the last of these three situations would be regarded as “use for profit”. The term “merely regulatory” has now little significance. The intention of the authority is what is relevant.

In looking at Council property there are two other matters to consider and the first is the application of Article 41(a). This says that a reference to a hereditament includes reference to a “distinct part” of a hereditament. Indeed when paragraphs (4) and (9) are considered paragraph 2 (a) needs to be read as follows:

“any hereditament, or any hereditament a distinct part of which is altogether of a public nature and is occupied and used for purposes of the public service, provided that it is not used for profit, unless it directly facilitates the carrying out of those purposes”.

Where then we find a situation in which a hereditament is used partly for profit, but where a distinct part is not used for profit, the distinct part can be considered to be exempt with apportionment under sub paragraph (3) of Article 41.

Finally there is the question of commercial lettings for special events. The point here being that the use of premises for special events limits the availability of the hereditament for general public use and hence Article 41 (2) (a) may not apply. Each case will depend on its facts and the decision is essentially whether or not such lettings can be considered to be de-minimis. In the Maysfield case the Tribunal noted in its decision:

“As regards the commercial lettings for special events the occasions when a hall or part of the hereditament was actually hired out at commercial rates were only three in number in 17 months and the interference with public use of the facilities was for relatively short periods and of part only of the hereditament. The Council was however in the market to make a larger, but still limited number of commercial lettings for longer periods than a day or two or a couple of nights and for more than a part of the Centre, so it is fortunate that it was not more successful in making such lettings which are inconsistent with occupation and use for public service purposes”.

16.0 Article 41(2)(b)

“any hereditament which consists of either or both of the following:

- (i) a church, chapel or similar building occupied by a religious body and used for purposes of public religious worship;
- (ii) a church hall, chapel hall or similar building occupied by a religious body and used for purposes connected with that body or for purposes of any charity; together, in either case, with buildings ancillary thereto”

16.1 Churches

Section 63 of the Poor Relief [Ireland] Act 1838 provided for exemption from the poor rate of any “church, chapel or other building exclusively dedicated to religious worship” – ie there was no condition that it had to be **public** religious workshop. But in the Campbell College Case [1964] the House of Lords held that the 1838 provision had been superseded by the Valuation [Ireland] Act 1852. This Act contained no express provision for the exemption of churches, which were left to be covered, without express mention, by the exemption of hereditaments used for charitable purposes. As however an element of **public** benefit is fundamental to a charity, the only churches or chapels that could qualify under these provisions were those used for public worship.

Subsequent legislation made specific reference to churches but the concept of public benefit established in the 1852 Act remains. The current situation is that although churches etc are capable of qualifying under sub paragraph (c) or (d) of Article 41(2) special mention is made of them because it is convenient to refer to them in conjunction with church halls with which they frequently form a single hereditament.

The church, chapel or other building must be occupied by a religious body – ie a chapel in a private house is not exempt, even though it is open to the public.

The main point for consideration is the public element. There are a number of relevant cases.

1. Trustees of the Congregation of Poor Clares of the Immaculate Conception v Commissioner [Court of Appeal] [1971 NI 174]. The case mainly concerned a possible educational charity but the comment was made that because the congregation was a closed Order seeking to achieve their own perfection in religion they could not contend that their user of the hereditament was a religious charity. This contention was not open to them because the user of the convent for religious purposes lacked the public element essential to make that user charitable.
2. Church of Jesus Christ of Latter Day Saints v Henning [VO][1964] – House of Lords. A Mormon Temple, entry to which was limited to Mormons of good standing in possession of a “recommendation” from a bishop, was not a place of public religious worship. Per Lord Pearce:

“it is unlikely that the legislation intended by the word ‘public’ some more subjective meaning which would embrace in the phrase ‘public religious worship’ any congregational worship observed behind doors closed to the public. I find it impossible therefore to hold that the words ‘places of public religious worship’ include places which, though from the worshippers’ point of view they were public as opposed to domestic, yet in the more ordinary sense were not public since the public was excluded.”

Lord Morris said:-

“In my view the conception of public religious worship involves the coming together for corporate worship of a congregation or meeting or assembly of people, but I think that it further involves that the worship is in a place which is open to all properly disposed persons who wish to be present”.

3. Broxtowe Borough Council v Birch and Others and Moffatt [VO] 1982 – Court of Appeal. Two meeting halls used for religious worship and occupied by the Exclusive Brethren, a religious sect practising the doctrine of separation from evil which doctrine restricted contact between members of the sect and the public, were held rateable because they were not places of public religious worship, nor any evidence of attendance at them by members of the public, except rarely by one or two.

The practice of the Brethren in not advertising or issuing invitations to the public may not have been calculated to keep the public out, but it had that effect and resulted in the meagre attendance of outsiders. The Court of Appeal held that the “**invitation**” test was the correct test to apply. The fact that properly disposed persons could use the premises was not sufficient, “A building on private property must somehow declare itself open to the public if activities which are carried on inside it are to be public and the nature of those activities must be brought to the notice of the outside world if they are not to be private activities”. As it was variously put from the Bench, the worship must be made public; the doors of the place of worship must be open not merely subjectively in the minds and hearts of the worshipping community but objectively in some manifestation of their intention that they should be open. There must be signs to indicate at least that the place is a place of religious worship and the signs must denote, in some physical form, and invitation to properly disposed persons to attend worship.

One other aspect of the “public” element which is not considered in these cases is the need for the invitation to public worship to be available to both sexes. Counsel has advised that segregation of the sexes in itself would not be a bar to exemption but clearly a bar on entry to one of the sexes would mean that worship was not “public”.

There was an interesting sequel to the Exclusive Brethren case:

The Broxtowe case was raised in Parliament in an adjournment debate in January 1983. Jim Lester MP called into question the criteria of public worship and asked for a review of the law. He suggested that England should follow Scotland and drop the word “public”. For the Government, Giles Shaw, DOE Under Secretary, said that he would look at the implications of the case but was not convinced of any need for a change. The “public” test had stood the test of time very well for about 150 years, he pointed out. He said that it was open for the Exclusive Brethren at any time to give the local valuation officer evidence that steps had been taken to advertise their meeting halls as open for public worship – as other denominations do.

This offer was taken up and on 26 April 1983 in reply to a question Mr Shaw said that it was understood that the Brethren now intended to erect notice boards outside their meeting halls which would make it clear that the halls were for public religious worship and would provide a telephone number where details of the meetings could be obtained. An appropriate form of words had been agreed in discussions with the Valuation Office and local VOs had been advised that meeting halls displaying such a notice should be given exemption from rates.

9 Hydepark Road, Mallusk Is an example of a hall in NI in the rateable occupation of the Exclusive Brethren. It is a modern, well constructed building with a seating capacity for 1,000 people [752.7m²].

From the details obtained from the Trust deed and from a Trustee it would appear that the use of the hall differs little from the use of the hall in the Broxtowe Case. Members of the public are not encouraged to participate in religious worship; details of meetings and times of worship are passed by word of mouth only and any “outsider” wishing to attend is certainly not encouraged. The “English Solution” has however been imported to NI in that a notice outside the premises states:

Brethren Meeting Room
Place of Public Religious Worship
In Accordance with The Rates (Northern Ireland) Order 1977
Contact Trustees: 843537, 833426

The premises have accordingly been distinguished as exempt.

16.2 Church Halls

To turn them to church halls the legislation here is a re-enactment of section 1 of the Rating and Valuation [Amendment] Act [Northern Ireland] 1956. That Act gave statutory effect to the principle enunciated by the Court of Appeal in Commissioner of Valuation v Trustees of Fisherwick Presbyterian Church [1927] NI 76 that the use of a church hall for marginal activities (such as the playing of badminton) does not affect the charitable status of the hall, if those activities are ultimately aimed at facilitating the basic purpose of the advancement of religion eg by providing an atmosphere which is attractive to young people. For the purpose of removing doubts as to permissible uses of exempt church halls, the Act allowed activities beyond the purely charitable so long as they were “connected with” the religious body concerned. The words “connected with” are of course words of wide impact and cover the activities of all kinds of subordinate organisations whose ultimate purpose is directed to the well being of the parishioners, congregation or other groups for whose benefit the hall is provided. It is not necessary that the hall be used in connection with a specific place of worship (Mageean v Commissioner of Valuation 1960 NI 141 – chaplainces and leisure facilities for students of the Queens University of Belfast.)

17.0 Article 41(2)(c)

“any hereditament other than a hereditament to which sub-paragraph (b) applies, which

- (i) is occupied by a charity; and
- (ii) is used wholly or mainly for charitable purposes (whether of that charity or of that and other charities).

We have already discussed what are and are not charitable purposes. But “charity” in this Article is further defined at Article 41(a) as meaning “a body established for charitable purposes only”. The effect of these words is to deny exemption to hereditaments used for the charitable activities of individuals – who are not “a body”. This point was confirmed in *Cecil Walker v Commissioner of Valuation* [VR/47/1985].

The advantage of bringing the activities of purely charitable bodies under this separate sub-paragraph is that, by reason of the fact that the definition of charity is the same as that in the Income & Corporate Taxes Act the recognition of a body for tax purposes and rating purposes will go hand in hand.

As a charity is defined as a body established for charitable purposes only, and as it has been held that the only use that is relevant for determining any claim for exemption from rates is the use of the occupier, it would seem at first sight that a hereditament occupied by a charity cannot be used otherwise than wholly for charitable purposes. However, paragraph (4) [41 (4)] breaches this principle for the purposes of this Article by providing in effect that any use for profit, unless directly facilitating the carrying out of the purposes of the charity, is not to be treated as a use for charitable purposes. Thus if the effect of say a letting would be merely to augment the charity’s funds, the use by way of that letting would be treated as a non-charitable use. Whether this denies exemption or leads to an apportionment using the “mainly” provisions depends on the facts of each individual case.

It should be remembered that the test in this paragraph is a double one ie occupation and use. Occupation by a charity is not sufficient, the use must be in connection with the charitable objects. In the case of *The Irish World v the Commissioner of Valuation* [VR/14/1990] a body recognised by the Inland Revenue as a charity occupied property at Market Street, Dungannon. Exemption was denied because the use of the property was found by the Tribunal not to be wholly or mainly for the charitable objects of the society.

18.0 Article 41 (2)(d)

“any hereditament, other than a hereditament to which sub-paragraph (b) applies, which is occupied by a body –

- (i) which is not established or conducted for profit; and
- (ii) whose main objects are charitable or are concerned with science, literature or the fine arts.”

The background to this paragraph is found in the Valuation [Ireland] Act 1852. Section 16 of that Act together with Section 2 of the Valuation [Ireland] Act 1854 provided for the exemption of hereditaments used exclusively for the purposes of science, literature and the fine arts as specified in the Scientific Societies Act 1843. Under that Act scientific, etc, societies supported by voluntary contributions and making no distribution of profit between their members qualified for exemption from rates on obtaining a certificate from the Registrar of Friendly Societies. The 1843 Act was however repealed and this paragraph places the onus on the Commissioner or district valuer to establish the character of applicant societies. Note that unlike the previous legislation it is not now necessary for a society to be established exclusively for the purpose of science, literature or the fine arts. It is now sufficient if these are its main objects.

In *Lisburn Camera Club v the Commissioner of Valuation* [VR/105/1978] the Tribunal found that (a) the occupier was a body not established or conducted for profit and (b) that the clubs main objects were concerned with the fine arts. It was therefore entitled to be distinguished as exempt under Article 41(2)(d)(ii).

19.0 Article 41 (2)(e)

“any hereditament which is used wholly or mainly for purposes which are declared to be charitable by the Recreational Charities Act [Northern Ireland] 1958.

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 assist in the provision of, facilities for 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 conditions of life for the persons for whom the facilities are primarily intended; and
 - b. either -
 - i. those persons have need of 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.

19.1 DETAILS OF THE 1958 ACT

a. Social Welfare

Certain phrases in the 1958 Act require further consideration and the first of these is the phrase “social welfare”. In the Court of Appeal in *Berry v St Marylebone Corporation* Romer LJ said that (i) Prima Facie the expression “social welfare” means the well being (whether in the physical, mental or material sense) of individuals as members of society and (ii) the provision of benefits which tend directly to improve the health or condition of life of individuals comes prima facie within the expression “social welfare”.

b. Available to the Public

The questions of “availability to the public” was considered by the Lands Tribunal in VR/8/1972 – *Down District Council v Commissioner*. In their decision the Tribunal said:

“Are the facilities available to the male and female members of the public at large?”

Mr Markey rightly calls attention to the fact that membership rules for individual clubs may contain qualifications and restrictions which may speak strongly of private benefit for a limited selected few and which could put the advantages of using the hall facilities beyond the reach of the general body of people wishing to share the club activity there. He reminds the Tribunal that there is a need to prove the absence of such restrictions upon membership and points particularly to the fact that 1/20th of the total area of the hereditament is given over to use by the Billiards Club numbering 1/20th of all club members, and that in consequence no individual or individuals wishing to play billiards could do so except after joining the Billiards Club. He illustrated his argument by the statement that even Joe Davis or Fred Davis could not demonstrate their skills on the Club tables as of right.

It is helpful that the Tribunal should be reminded of the need for cogent proof of general availability and the distinction to be made between benefit for the public at large and private advantage, but the evidence was sufficient to satisfy the Tribunal that the allocation of use between the applicant clubs and groups are more to regulate than to restrict general use of the Hall, **and all of the clubs and groups were open to all persons interested in their respective activities without qualifications which would materially restrict membership**, and thus result in the facilities not being generally available. The layout of the billiard room with its 2 tables and spectator benches obviously makes it rather unsuitable for any other activity, and the number of billiard players in any community must generally be a relatively small proportion of those interested in outdoor ball games, but it seems to the Tribunal that without some such allocation of the use of a particular room and tables it is not easy to see how people wishing to play billiards could share the benefit of the community hall.

The conclusion of the Tribunal is that the evidence was sufficient to show that use of the Hall was, having regard to the nature of its facilities, “available” to both sexes through the medium of a club or group membership **which was open without material restriction to all wishing to take part in the particular activities of the club or group**, and that the facilities can properly be regarded as being available to the public at large though having regard to their nature and the geographical situation of the village, it was the local community which obtained virtually all the benefit, and indeed the facilities were primarily intended for them.”

c. **Public Benefit**

The last phrase which needs to be considered is “Public Benefit”. The Tribunal in the Down District Council Case said in relation to public benefit:

“The proviso expressed the established principle which distinguishes between public and private benevolence and requires that the beneficiaries of the relevant trust or institution however few in number should represent the public and that the benefit should be direct and not incidental.”

20.0 Article 41(2)(f)

Article 41(2)(f) was repealed by Article 12 of the Rates (Capital Values etc) (NI) Order 2006 but with saving provisions.

“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 2006”,

(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 2006 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 2006 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 2006 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 –

“2006 Order” means the Rates (Capital Values, etc) (Northern Ireland) Order 2005;

“original hereditament” means the hereditament to which sub-paragraph (a) and (b) of Article 12(4) of the 2006 Order apply;

“relevant date” means the date on which Article 12(1) of the 2006 Order (which repealed Article 41(2)(f) came into operation.

21.0 Article 41 (3)

“The hereditament shall be distinguished –

- (a) in the capital value list, if it is used for domestic purposes which are also exempting purposes, as exempt from rates under that list to one half of the extent to which it is so used;
- (b) in the NAV list, as exempt from rates under that list to the whole of the extent that it is used for exempting purposes which are not domestic purposes.

(3A) Where the hereditament is used otherwise than wholly for domestic purposes which are exempting purposes, the capital value of the hereditament shall be apportioned by the Commissioner or the district valuer between –

- (a) the use of the hereditament for domestic purposes which are exempting purposes; and
- (b) the use of the hereditament for other purposes (so far as relevant to its capital value); and the apportionment shall be shown in the capital value list.

(3B) Where the hereditament is used otherwise than wholly for exempting purposes which are not domestic purposes, the net annual value of the hereditament shall be apportioned by the Commissioner or the district valuer between –

- (a) the use of the hereditament for exempting purposes which are not domestic purposes; and
- (b) the use of the hereditament for other purposes (so far as relevant to its net annual value);

and the apportionment shall be shown in the NAV list.

(3C) In paragraph (3) to (3B) and (4), “exempting purposes” means purposes mentioned in sub paragraph (a), (b)(i) or (ii), (c), (d) or (e) of paragraph (2).

This article deals with apportionments. In relation to domestic property the provision, and the complimentary provision found in Article 41(8), which deals specifically with clergymen’s houses, provides for 50% charitable relief.

The legal theory underlying the exemption of such houses is that once it is established that the charity is the occupier of the house, the only use of the house which is relevant for determining the right to exemption is the use made of it by the charity. The Article looks behind this theory to the actual facts, which are that the residence in the house of the incumbent carried a double benefit - (1) to the charity, whose objects can be more efficaciously pursued, and (2) to the incumbent himself, who obtains a home. While it is recognised that the charity deserves a measure of relief, it is also felt that there is no good ground for allowing the benefit to the incumbent to go completely free from rates which all other people have to pay on their homes.

Sub-paragraph (a) therefore provides that one-half of any part of a hereditament which qualifies for distinguishment under paragraph (2), but which is used for domestic purposes, shall be exempt from rates. “Domestic purposes” is defined [paragraph 9] as purposes of providing living accommodation for persons who are members or employees of a body by which the hereditament is occupied. “Employee” means a person employed under a contract of service and includes eg a caretaker.

Whether or not to apportion domestic property using the provisions of this paragraph was considered by the Court of Appeal in the case of *Hugh Kirker v The Commissioner of Valuation* (1983 NI JB 12 CA).

In this case the Commissioner of Valuation had not appealed against the determination by the Lands Tribunal that the hereditament fell to be distinguished as exempt in the valuation list. The appeal was limited to challenging the further decision that there should be no apportionment of the net annual value of the hereditament under article 41 (3) of the 1977 Rates Order.

The acceptance of the exempt status of the house meant that for the purpose of this appeal the parties acknowledged that it was in the rateable occupation of the trustees of the graveyard and used by them wholly or mainly for charitable purposes and was also occupied by a body not established or conducted for profit and the main objects of which were charitable.

The issue was whether the house was to any extent used for domestic purposes. The term ‘domestic purposes’ is defined by article 41 (9) as, “the purposes of providing living accommodation for one or more than one person who is a member or employee of a body by or on behalf of which the hereditament is occupied”. The word ‘employee’ in the article is also defined as meaning ‘a person employed under a contract of service’. Therefore the occupier of the house was the ‘body’ constituted by the trustees. It was used by the trustees for the living accommodation of the

graveyard caretaker, Mr Anderson, so if he is an employee within the meaning of the article, there should be an apportionment of the net annual value; but if he is not an employee the premises remain totally exempt. An apportionment only takes place where the occupant of a house for domestic purposes uses it under a contract of service. Gibson LJ noted that the Courts had found great difficulty in formulating a test which would determine into which class a particular contract would fall. It used to be considered that the degree of control over the person carrying out the work provided the answer. However, recent judicial authority seemed to tend increasingly to reduce the importance of control as a determining factor.

Gibson LJ said:

“To my mind the one outstanding fact which pervades the entire contract and is determinative of its nature is that the provision of burial facilities for those entitled and the general maintenance of the graveyard constituted the entire scope of function of the trustees and alone give their purposes the character of charity. All those functions were performed on their behalf by Mr Anderson. He was their instrument to carry out all their purposes and to do nothing else. In that frame he was, in my view, plainly their servant operating under a contract of service. Accordingly it follows that I consider the provisions as to the apportionment of the net annual value must be applied”.

Sub-paragraph (b) deals with apportionment where the “mainly” provisions in paragraph (2) apply. For example 41 (2) (c) (ii) – “is used wholly or mainly for charitable purposes”. A hereditament can be considered to be exempt if it is not used exclusively for charitable purposes but the non charitable use is rateable.

The sub-paragraph provides for full exemption of the hereditament to the extent that it is used for purposes mentioned in paragraph (2) that are not domestic purposes. Where the hereditament is used wholly for qualifying domestic purposes, it will be distinguished as 50% exempt. Where it is used wholly for qualifying non-domestic purposes it will be distinguished as 100% exempt. In any other case, its net annual value is to be apportioned, as appropriate, between 50% exempting purposes, 100% exempting purposes and non-exempting purposes, and the apportionment is to be shown in the valuation list.

No guide as to the appropriate method of apportionment is given and each case has therefore to be considered on its merits. In the case of a shop, for example the appropriate method might be to look at the turnover of exempt sales against the turnover of non-exempt sales.

22.0 Article 41 (4)

“Subject to paragraph (5), any use (whether by way of letting or otherwise) for profit shall not be treated as a use for exempting purposes, unless it directly facilitates the carrying out of those purposes”.

This paragraph provides that a use for profit is not to be treated as a qualifying use unless it directly facilitates the carrying out of the qualifying purposes. The use referred to is the use to which the occupying body puts the hereditament (eg by hiring it out) and not the use to which the hereditament is put by the hirer. The test that a subsidiary use must be such as directly to facilitate the qualifying purpose was enunciated by Lord Reid in *Glasgow Corporation v Johnston* (1965 Ac 609). A letting which had merely the effect of augmenting the occupying body's funds would not meet this test. But there may be cases where the making of charges is not aimed at making a profit. District Councils for example make charges for the use of leisure centres but the policy of the Council in most instances is not to make a profit therefore paragraph 5 would not apply. Also there may be cases where the provision of refreshments at a charge provides an atmosphere in which the proceedings of, say, a cultural society can be more fruitfully conducted. Thus the sale of drinks and refreshment in the Grand Opera House or Linenhall Theatre does not preclude exemption.

23.0 Article 41(5)

Notwithstanding anything in paragraph (4) and without prejudice to the generality of paragraph (2)(c)(ii), a hereditament shall be treated as used for charitable purposes –

- (a) to the extent that it is used for the sale of goods donated to a charity, and
- (b) if it is mainly used for the sale of goods donated to a charity, to the extent that it is used for the sale of other goods if they are of a description specified in an order made by the Department, so long as the proceeds of the sale of the goods mentioned in sub-paragraph (a) (after any deduction of expenses) are applied for the purposes of a charity.

(5A) The Department shall not make an order under paragraph (5)(b) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

- (6) This Article does not apply to -
 - (a) a hereditament which is occupied for the purposes of a public utility undertaking; or
 - (b) a hereditament which -
 - (i) is occupied by a body specified in Schedule 13; or
 - (ii) if hereditaments of any description are included in that Schedule, is a hereditament of that description.

This paragraph deals with Charity Shops

The decision of the House of Lords in *Oxfam v Birmingham City Council* [1975 2 All ER2] held that premises used mainly for the sale of goods given to a charity in order to raise money for use in the charity's work were not entitled to exemption. Article 41(5) of the Rates (NI) Order was therefore enacted to give "charity shops" a measure of relief. This Article provides that a hereditament is to be treated as used for charitable purposes to the extent that it is used for the sale of goods donated to a charity, but only so long as the net profits are applied for the purposes of a charity.

The new paragraph is not to prejudice the generality of Article 41(2) (c) (ii), which makes it a basic condition for rating relief that the hereditament is used wholly or mainly for charitable purposes.

The hereditament is to be treated as used for charitable purposes to the extent that it is used for the sale of donated goods. The word “extent” has a double significance –

- (a) it is used as a test whether the hereditament is used wholly or mainly for charitable purposes (Article 41(2)(C)(ii) and therefore entitled to any rating exemption at all;
- (b) when the first test is passed, it is used as a test of the degree of relief which the hereditament enjoys.

It is a condition of relief that the net proceeds of sale are applied for the purpose of a charity. It need not be the same charity as the one which runs the shop – eg it is sufficient if Oxfam gives some of its profits to the International Red Cross or Christian Aid etc.

As regards the method of apportionment the legislation makes no specific provision as to method and there is no precedent in the Lands Tribunal. Accordingly the recommended method is to apportion on the basis of the relative turnovers of “donated” and “bought in” goods.

Sub-paragraph 5(b) is new. It allows the Department to specify by Order that the sale of certain goods shall be considered to be charitable eg fair trade goods.

24.0 Article 41 (6)

This Article does not apply to –

- (a) a hereditament which is occupied for the purposes of a public utility undertaking; or
- (b) a hereditament which -
 - (i) is occupied by a body specified in Schedule 13; or
 - (ii) if hereditaments of any description are included in that Schedule, is a hereditament of the description.

A “Public Utility Undertaking” is defined in Article 2(2) as:

- “(a) any undertaking primarily carried on for the supply of gas, water, electricity or hydraulic power for public purposes, or to members of the public, or for the treatment of sewage, or to any one or more undertakings carried on under any statutory provision (including such a provision contained in or made under a local or personal Act or an Act confirming a provisional power); or

- (b) any other undertaking (including the undertaking of a dock authority or a railway company) conducted for purposes of public utility.

Certain hereditaments, which may otherwise have been entitled to exemption, are excluded therefrom by virtue of the fact that they are included in Schedule 13. The reason for this is that the bodies concerned are financed out of Government funds. If the bodies were organs of government, they would pay rates in the normal way. The provision ensures that, despite the technicality that they are not departments of the Crown, the Exchequer is not relieved from liability for their due portion of rates. The aim of the provision is to keep up the rate revenue of district councils to its highest potential, with a view to reducing to the minimum the need for support grants from central funds.

25.0 Article 41 (7)

The Department may, by order made subject to affirmative resolution amend Schedule 13 by –

- (a) including hereditaments of any description;
- (b) adding or omitting any body or any description of hereditaments;
- (c) altering the description of any body or hereditament.

This paragraph allows the Department, by order made subject to affirmative resolution, to add to the bodies listed in Schedule 13 or to omit bodies from the provisions of the schedule. The paragraph also enables a consequential change to be made in the Schedule if there is a change of name of any of the bodies mentioned in it.

26.0 Article 41 (8)

“A hereditament or a distinct part of a hereditament -

- (a) in which -
 - (i) the persons from time to time holding any full-time office as clergyman or minister of any religious denomination, or
 - (ii) any particular person holding such an office,

have or has a residence from which to perform the duties of the office; or
- (b) in which, in right of an interest which belongs to, or to trustees for, a religious body, accommodation is being held available to provide such a residence for such a person as is mentioned in sub-paragraph (a);

shall be treated for the purposes of this Article as occupied by a charity and used wholly for charitable purposes which are also domestic purposes, whether or not it would be so treated apart from this provision.”

Paragraph (8) of Article 41, which deals with clergymen's residences, is a particular application of a general rule affecting charitable property. That rule, as established in the English case of **Reed v Cattermole** [1937] 1 All E.R. 541 and confirmed by the House of Lords in **Glasgow Corporation v Johnstone** [1965] A.C. 609 and **Commissioner of Valuation v Fermanagh Protestant Board of Education** [1970] N.I. 89, is that where a charity provides a residence for a person whose activities advance the charity's purposes (in the cases mentioned they were, respectively, a clergyman, a church caretaker and school teacher) and (1) that person is required by the terms linking him with the charity to reside in the house, and (2) his residing there is of material assistance to the charity in carrying out its objects, the charity is the legal occupier of the house and is entitled to rate exemption in respect of it. The right to exemption flows from the rule of law that, once it is established that the charity is the occupier of the house, the only use of the house that is relevant for determining the right to exemption is the use made of it by the charity. The Article looks behind this theory to the actual facts, which are that the residence in the house of the incumbent carried a double benefit – (1) to the charity, whose objects can be the more efficaciously pursued, and (2) to the incumbent himself, who obtains a home. While it is recognised that the charity deserves a measure of relief, it is also felt that there is no good ground for allowing the benefit to the incumbent to go completely free from a levy which all other people pay on their homes. The Article assumes that, as a practical matter, there is an equal degree of benefit to the charity and the incumbent, and, accordingly, it directs that the degree of exemption of the house should be limited to 50%.

Note that the legislation does not apply to all clergymen as such, but only to those who are members of a class of persons for whom a house is provided as “a residence from which to perform the duties of the office”. Thus, where the duties in question are intended to be performed not from the residence but from an office building which is specially provided for the purpose, the paragraph will not apply.

Note that the 2006 Capital Values Order altered the long held view that the dwelling must be held by the charity before exemption is considered. The legislation extended exemption to houses where the interest is held directly by the occupier, not by the charity, as long as it is used to perform the duties of the office.

27.0 Article 41(9)

“any reference to a body includes a reference to persons administering a trust; and any reference to a hereditament which is occupied by a body includes a reference to a hereditament which is occupied for the purposes of a body by trustees for the body or by a person charged with the administration of, or otherwise acting on behalf of the body;

“charity” means a body established for charitable purposes only;

“domestic purposes” means the purposes of providing living accommodation for one or more than one person who is a member of employee of a body by or on behalf of which the hereditament is occupied;

“employee” means a person employed under a contract of service;

and in paragraph (2)(a) to (e) any reference to a hereditament of a description there mentioned includes a reference to a hereditament a distinct part of which is of that description.”

Paragraph (9) contains definitions for the purposes of the Article. References to a body include references to persons administering a trust. This will enable exemption to be obtained in respect of hereditaments occupied by trustees of a charitable trust under a will or settlement.

References to a hereditament as occupied by a body include references to its occupation by trustees or by some other person (eg the Superior of a religious community) on behalf of a body. This will enable charitable and other bodies to enjoy the benefit of the Article notwithstanding technicalities as to precisely who in law is the occupier of the hereditament in question.

“**Charity**” means a body established for charitable purposes only. This has partly been discussed in connection with paragraph (2)(c) above. “Charitable purposes” fall into five classes. The first four of these classes follow the classification of “charitable trusts” in **Income Tax Special Commissioners v Pemsel** [1891] AC 531, the fifth was added by section 1 of the Recreational Charities Act (Northern Ireland) 1958 (which is set out in the Appendix to this Note). The classes of charitable purposes are –

- (1) the relief of poverty;
- (2) the advancement of education;
- (3) the advancement of religion;
- (4) other purposes beneficial to the community within the intendment of the Statute 43 Eliz.c.4;
- (5) the provision of facilities for recreation or other leisure-time occupation, in the interests of social welfare.

Because the Poor Relief (Ireland) Act 1838 specifically exempted churches from poor rate, it was long assumed that the third class mentioned above had no relevance in Irish rating law on the principle **inclusio unius, exclusio alterius**. However, in the Campbell College case the House of Lords held that the Act of 1838 had been superseded by the Valuation (Ireland) Act 1852 and subsequent legislation, and it follows that there is no impediment to the rules enunciated in **Pemsel’s** case having full play. (In consequence of this, sub-paragraphs (c) and (d) of paragraph (2) refer to “a hereditament other than a hereditament to which sub-paragraph (b) applies”.)

“domestic purposes”, in relation to the new provision in paragraph (3)(a), is defined so as to make the 50% exemption apply to premises used as living accommodation for members or employees of the body by which a hereditament is (or is deemed to be) occupied.

“employee” is formally defined as a person employed under a contract of service.

The paragraph also makes it clear that where a distinct part, but not the whole, of a hereditament is used (or in some cases wholly or mainly used) for qualifying purposes, the hereditament may yet qualify for a degree of exemption by reference to the use of that part.

28.0 Article 41A

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

- (1) There shall be distinguished in the NAV 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 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.
- (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(d) have the same meaning in paragraph (2)(b)(ii) as in that Order.

This Article deals with exemption for Community Halls.

The position prior to the 2006 Capital Values Order was that Community Halls could 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) applied 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 42 (2) (f) applied 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.

This new Article opens 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 was to simplify the current system of

“actual use” and accordingly this was 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.

Article 11 of the 2006 Order inserted 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 (ie 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 ie “of substance” interpreted as “more than de-minimis”.

The standard of proof that the Commissioner or district value 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. Copies of the forms are available in district offices.

Exemption

Exemption can be considered under the terms of the 1958 Act ie 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 ie 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 from the DV 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.

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 (ie the same percentage before and after). This point also applies to those hereditaments that are subsequently replaced.

29.0 Article 42

- (1) There shall be distinguished in the NAV list as wholly exempt from rates -
 - (a) any hereditament used or occupied by the Foyle, Carlingford and Irish Lights Commission in respect of which that Commission is, under section 12(2) of the Foyle Fisheries Act (Northern Ireland) 1952, exempt from liability for rates; and
 - (b) any hereditament in respect of which a person is, under section 22(3) of that Act, exempt from liability for rates by reason of his being liable to pay fishery rate in respect of that hereditament under that Act.
- (1A) There shall be distinguished in the NAV list as exempt from rates in accordance with paragraph (1B) any hereditament which –
 - (a) is situated, or part of which is situated, in an enterprise zone; and
 - (b) is not -
 - (i) a dwelling-house, or a private garage or private storage premises (within the meaning of Article 27);
 - (ii) occupied by a body specified in Schedule 13; or
 - (iii) occupied for the purposes of a public utility undertaking.

- (1B) The hereditament shall be distinguished as exempt as follows, namely –
- (a) where it is situated wholly within an enterprise zone, it shall, subject to sub-paragraph (c), be distinguished as wholly exempt;
 - (b) where part only of it is situated within an enterprise zone, it shall, subject to sub-paragraph (c), be distinguished as exempt as to the whole of the extent to which it is so situated;
 - (c) where, though not a dwelling-house, it is used partly for the purposes of a private dwelling, it shall be distinguished as exempt in accordance with sub-paragraph (a) or (b) only to the extent to which it is used for other purposes.
- (1C) Where part only of the hereditament is situated within an enterprise zone, the net annual value of the hereditament shall be apportioned by the Commissioner or the district valuer between the part which is situated within the enterprise zone and the part which is not.
- (1D) 42 (1D) was repealed by the 2006 Capital Value Order.
- (1E) An apportionment under paragraph (1C) shall be shown in the valuation list.
- (1F) There shall be distinguished in the NAV list as wholly exempt from rates any automatic telling machine which is situated in a rural area during the relevant year.
- (1G) In paragraph (1F) –
- “automatic telling machine” means a hereditament which is used only for the purposes of a machine which provides automatic telling and other services on behalf of a bank or building society;
- “relevant year” means any year beginning on or after the commencement of Article 25 of the Rates (Amendment) (Northern Ireland) Order 2006 and ending before 1st April 2010 or on such later date as the Department may by order made subject to affirmative resolution specify;
- “rural area” means a ward designated by the Department by order subject to negative resolution as a rural area for the purposes of paragraph (1F);
- “ward” has the same meaning as it has for local government purposes.
- (2A) Regulations may provide that, subject to the condition paragraph (2B), there shall be distinguished in the NAV list as wholly exempt from rates any hereditament which –

- (a) comprises a hall of residence provided predominantly for the accommodation of persons who satisfy prescribed conditions as to education or training; and
- (b) is -
 - (i) owned or managed by a prescribed body; or
 - (ii) the subject of an agreement allowing such a body to nominate the majority of the persons who are to occupy all the accommodation so provided.

(2B) The condition referred to in paragraph (2A) is that it appears to the Commissioner or the district valuer that the amount of rates which would but for the regulations be chargeable in respect of the hereditament, less reasonable administrative costs, will be applied for the benefit of persons accommodated there who satisfy prescribed conditions as to education or training.

Article 42 contains miscellaneous total exemptions from rates.

29.1 Foyle, Carlingford and Irish Lights

Paragraph (1) continues existing rate exemption for:

- (a) properties occupied by the Commission which are exempt from rates under Section 12(2) of the Foyle Fisheries Act (Northern Ireland) 1952, and
- (b) any properties exempted under Section 22(3) of the 1952 Act because they are liable for the fishery, rate payable to the Commission under the Act.

The Foyle Fisheries Commission (now the Foyle, Carlingford & Irish Lights Commission) was jointly established in 1952 (by identical Acts in the Parliaments of Northern Ireland and of the Republic of Ireland) by the governments of Northern Ireland and the Republic of Ireland to manage the Foyle fishery which they purchased from its former owners, the Irish Society. The former owners could not protect and operate the fishery properly, because it is situated partly within the Northern Ireland jurisdiction and partly within the jurisdiction of the Republic; indeed, the Irish Society's title to the fishery was disputed in the Dublin courts. The fishery is of considerable economic importance and the two governments therefore co-operated to establish the Foyle Fisheries Commission to exercise international jurisdiction over the fishery area.

So as to avoid complications arising from the unequal incidence of different codes of taxation in the two countries, the Commission is given exemption from payment of all rates and taxes; provision for this exemption to be reflected in the valuation list is contained in **sub-paragraph (a)**.

There are certain fisheries in the Foyle Area which are worked by private occupiers. In 1952, these private fisheries were exempted from local government rates but were made liable to pay a fishery rate to the Foyle Fisheries Commission. **Sub-paragraph (b)** requires this exemption to be shown in the valuation list.

It should be noted that although this legislation is still in place the Rates Amendments Orders of 1994 and 1996 added “Salmon fishing or eel fishing” and “Buildings associated with salmon or eel fishing” to Schedule 11 ie such fishing and buildings are not to be treated as hereditaments. Also the 1998 Amendment Order amended Schedule 10 to provide that “rights of fishing” would not be considered to be “Profits a prendre” therefore fishing rights are also not considered to be hereditaments.

29.2 Enterprise Zones

The paragraph also exempts property which is situated, or part of which is situated, in an enterprise zone. Dwelling houses, properties included in Schedule 13 and public utilities are excluded. An apportionment is provided for where a property is situated partly within the zone and also where a property is partly used as a dwelling house.

29.3 ATM's

The paragraph exempts from rates any ATM situated in a designated rural area. The background is to encourage the provision of this form of banking in rural areas. “Rural Areas” have been designated in the Rates (ATM) (Designation of Rural Areas) Order (NI) 2006 – 2006 No 516.

29.4 Halls of Residence and Student Accommodation

Regulation can extend exemption to student accommodation. The intention is that the benefit be seem to go to the student not to Landlords.