

CHARITABLE EXEMPTION UNDER THE RATES (NORTHERN IRELAND) ORDER 1977

INTRODUCTION

1. This discussion paper has been developed to help inform responses to the review of non domestic rating policy, which is currently out for public consultation until 25 January 2016. Charitable exemption is a broad subject which is only covered at a high level in the main consultation paper. It is also an important subject. UK Charity Tax Relief Statistics reveal that in terms of value to the sector as a whole, rating exemption is the largest tax relief available to charities, though this fact is not widely appreciated. Rates exemption is also particularly important for smaller charities. According to the National Council for Voluntary Action (NCVA), around half of charities have an income of less than £10,000, and 83% have an income of under £100,000.
2. Charities have always had access to exemptions from non-domestic rates throughout the UK. An 1858 Select Committee report stated that for rates to apply, the occupier should receive some private benefit from the property, and *'so it follows that where lands or buildings are occupied for a public purpose, they are exempt from rate...'* There is, therefore, a long history of charities being exempt from property taxation in carrying out their charitable objectives and this paper is not suggesting that this long-standing position should fundamentally change. There are, however, anomalies and inconsistencies in applying old policy to modern circumstances.
3. This paper explains the current arrangements in more detail and sets out some of the issues for consideration. It is a complex subject which reflects the transformation of the voluntary sector in recent years. There is a consequence for public finances, given the exponential growth in rating exemptions over the past 10 years, with 34% rise in exempt value status compared to 10% growth in non exempt value (Net Annual Value or "NAV").
4. In common usage, the term 'charitable exemption' is used loosely, as it extends to many bodies that are not legally constituted or formally registered as a charity. It includes many 'not for profit' organisations providing a range of services to the public. Indeed, of the £86m worth of rating exemptions only around £11m of this is associated with what most people would recognise as 'proper' or 'traditional' charities, though a much higher proportion of the total relates to perfectly legitimate charities, involved in a wide range of worthy activities well beyond purposes associated with relief of the poor or supporting vulnerable and health related groups.
5. As a starting point for this discussion paper, it is worth setting out what "charitable" means before widening the subject out to explain the current treatment of other 'not for profit' organisations.

BACKGROUND TO CHARITABLE EXEMPTION

6. The exemption of charities from rate liability dates back to the late eighteenth and early nineteenth century. Legislative provisions and case law from that time have shaped the application of law to charitable exemption from rates until the present day.
7. The definition of charity in Northern Ireland is set out in Section 1 the Charities Act (Northern Ireland) 2008, as amended by the Charities Act (Northern Ireland) 2013. The Charity Commission for NI sets out the position in its *Registering as a charity in Northern Ireland* guidance: An organisation may be a charity if:
 - it is an institution, that is, it is an organisation that is an independent body, the hallmarks of which include having control and direction over its governance and resources;
 - it has exclusively charitable purposes; and
 - it is governed by the law of Northern Ireland.
8. To be a charity, an organisation must have purposes which are exclusively charitable in law.
9. The Charities Act section 2(2) sets out 12 descriptions of purposes that relate to charities in Northern Ireland. An organisation's purposes must fit within one or more of the descriptions for it to be charitable and be for the public benefit. The first 3 are long established as charitable purposes throughout the UK; the remainder, however, have been accepted as charitable and are now enshrined in the legislation.
 - a. the prevention or relief of poverty;
 - b. the advancement of education;
 - c. the advancement of religion;
 - d. the advancement of health or the saving of lives;
 - e. the advancement of citizenship or community development;
 - f. the advancement of the arts, culture, heritage or science;
 - g. the advancement of amateur sport;
 - h. the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
 - i. the advancement of environmental protection or improvement;
 - j. the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
 - k. the advancement of animal welfare;
 - l. any other charitable purposes.
10. Even if all but one of an organisation's purposes are charitable, it would not be considered to have exclusively charitable purposes and would not be

registered as a charity. Further information can be found in guidance published by the NI Commission: *“The Public Benefit Requirement – Statutory Guidance.*

11. A purpose is not charitable if it does not fit under one or more of the descriptions of purposes in the Charities Act, or is not for the public benefit, or is political; that is, to make a change in law or policy in a jurisdiction, or is unlawful.
12. Indicators that an organisation is governed by the law of Northern Ireland include:
 - it is a company registered in Northern Ireland; or
 - its governing document says that the organisation is governed by the law of Northern Ireland
 - a majority of the charity trustees are resident in Northern Ireland and there is no reference to any other legal framework in the governing document.
13. The decision to grant charitable exemption from rates is guided by the new NI Charity Register, the Charity Commission’s register in England and Wales and by the determinations of HMRC in Northern Ireland and Scotland.
14. It should be noted, however, that population of the NI register is an ongoing and managed process, so not all organisations that might be charities are currently listed. That process may take a number of years and is dependent upon factors such as the quality of applications and the Commission’s resources.
15. In Northern Ireland and throughout the UK, HMRC is the body which determines whether an organisation should be considered a charity for tax purposes. HMRC bases its decisions on the Finance Act 2010.
16. When dealing with applications for exemption from rates, LPS generally accepts that decisions on charitable status taken by the Inland Revenue, given that registration is an incomplete process. However, while, it is usually a good indicator, LPS is not bound by the Inland Revenue. There have been cases where the Commissioner of Valuation has not accepted HMRC’s decision on charitable status, e.g. Civil Service Benevolent Fund. However in practice, a body, which can show recognition of charitable status from the Inland Revenue or the Charity Commissioners (NI and/or E&W), will usually satisfy the occupier status test for charitable exemptions.
17. There are, however, two tests applied in determining entitlement to rates exemption. The other is the use to which the premises are put. This must directly facilitate the purposes of the charity.
18. Exemption applies at 100% in NI, which contrasts with 80% mandatory exemption in the rest of the UK, though many mainstream charities enjoy

100% exemption through a top up award at the discretion of the local authority.

19. In NI, if a property is used mainly but not exclusively for charitable purposes, in some circumstances the value can be apportioned to the extent that it was used for charitable and non charitable purposes.
20. The onus of obtaining the exemption rests with the charity. Rating decisions are made by the District Valuers in Land and Property Services. Appeals against decisions by a District Valuer are made to the Commissioner of Valuation. Further rights of appeal are available to the Lands Tribunal and then, on points of law only, to the Court of Appeal and beyond.
21. This is the position with proper or traditional charities. However, as noted above charitable rates exemption is a broad term that covers much more. The following section sets out the full scope of rates exemption, as set out in the main legislation which governs the rating system in NI: the Rates (Northern Ireland) Order 1977 (“the Order”).

LEGISLATIVE SCOPE OF ‘CHARITABLE’ RATES EXEMPTION

22. **Article 41** of the Order provides for the identification or distinguishment in the Valuation List of hereditaments used for public, charitable or certain other purposes. A hereditament is the legal term for an individual rateable property entered in the Valuation List.
23. The Article broadly provides for 100% exemption from rates of hereditaments that are occupied and used wholly for public or charitable purposes or for the advancement of science, literature or the fine arts.
24. To be more specific the scope of Article 41 is as follows:
 - a church, chapel or similar building occupied by a religious body and used for purposes of public religious worship - **Article 41(2)(b)(i)**
 - a church hall, chapel hall or similar building occupied by a religious body and used for purposes connected with that body or for the purposes of any charity - **Article 41(2)(b)(ii)**
 - a hereditament occupied by a charity and used wholly or mainly for charitable purposes - **Article 41(2)(c)**
 - a hereditament occupied by a body which is not established or conducted for profit and whose main objectives are charitable or are concerned with science, literature or the fine arts - **Article 41(2)(d)**
 - a hereditament wholly or mainly used for purposes declared charitable by the Recreational Charities Act (Northern Ireland) 1958 - **Article 41(2)(e)**

- a hereditament that is occupied for a use of a public nature, occupied and used for purposes of public service - **Article 41(2)(a)**.

25. The latter category (public nature/public service) is a broad one and it can include:

- property in which each member of the public has an interest, e.g. a road dedicated to the public. (Public roads are also exempt on the alternative ground of having no value: the doctrine of *rebus sic stantibus* requires the value to be taken as the rent a lessee would pay for the road on a lease requiring him to maintain it as a public road - of course, this would be nil);
- property occupied by an ad hoc body for the purpose of providing a service in the public interest otherwise than on a commercial basis. Although this is a possible class of qualifying property, in the situation created by the Order here is largely a theoretical one, because the bodies concerned are normally financed by the Government and who therefore lose their exemption under Schedule 13;
- 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, e.g. a municipal park or swimming pool.

26. Limited restrictions on the use of the hereditament by members of the general public may be ignored if they are purely regulatory, i.e. if they are reasonable in the interests of good management. For example, charges may be made for admission to a swimming pool, or it may be reserved at certain times for school children or club members. Other charges (e.g. for admission to a park on the occasion of a special entertainment, or by a fire brigade for a special service) may be ignored as de minimis.

27. Clergymen or ministers and appropriate office holders treated as exempt - **Article 41 (8)**. The paragraph gives 50% exemption to every clergyman's official residence / Minister's Houses. This discount has existed for many years; provision for such a relief predates 1972 legislation at a time when a lot of church work was carried on in clergy residences. It was extended through 2006 legislation to include houses occupied by religious ministers but not owned by the church.

28. **Article 41(6)** excludes certain hereditaments of classes of hereditament from the operation of the Article.

- a) **Hereditaments occupied for the purposes of a public utility undertaking**; A public utility undertaking is defined (Article 2(2)) as a public supply undertaking or any other undertaking (including a dock or a railway) conducted for purposes of public utility. "Public utility" means public need, and does not include recreation or entertainment. The effect of this in 1972 was to remove from the Belfast Harbour

Commissioners their exemption from certain items of rate (i.e. poor rate and county rate), which was established in court proceedings in 1897.¹

b) **Schedule 13** also interacts with Article 41 to exclude from exemption hereditaments occupied by a range of bodies who may otherwise be entitled to exemption. The aim of this provision was to bolster the District Rate(s) of Councils. The bodies mentioned in the Schedule can be updated. They include:

- an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986;
- the Fire Authority for Northern Ireland;
- the governing body of an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997;
- a Board of Governors of a maintained school or a grant-maintained integrated school within the meaning of the Education and Libraries (Northern Ireland) Order 1986;
- the Board of Trustees of the National Museums and Galleries of Northern Ireland;
- University of Ulster;
- the Police Authority for Northern Ireland;
- the Queen's University of Belfast.

c) property occupied by a local authority for purposes of a local administration, e.g. a town hall.

d) property occupied by an ad hoc body or a local authority for the purposes of an undertaking of a commercial nature or run on commercial lines

29. Schedule 13 was originally structured in such a way in 1972, following the previous major reorganisation of local government, so that rate exemption was not applicable to public bodies that are financed in such a way that rates paid by them would, in the long run, come out of the Exchequer, e.g. schools, further education colleges. The structure was originally intended to bolster each Council's basic tax base (exemptions being extracted from the rateable value upon which district rates are set). Neither does an exemption apply to certain bodies (e.g. the Belfast Harbour Commissioners) that are run on commercial lines (in the sense of being undertakings of a profit-making, though not a profit-distributing, character).

30. **Article 41A** provides for an exemption for Community Halls occupied by organisations listed in **Schedule 13A** to the Order, provided the building is made available for charitable purposes and is not a property on which a person may sell alcohol under a licence. The organisations include the Ancient Order of Hibernians and Orange Lodges.

¹ When the Belfast rates were consolidated into a single rate in 1925, the extent of exemption was then reckoned to be 42%. The exemption was formally removed in 1972.

31. A breakdown of exemptions as a result of Article 41 (and Article 41A) of the Order is shown in **Table 1** below. This analysis is fairly crude and in many cases the activity category was decided from the name of the body. In reality there is considerable overlap between categories and many charities will ‘tick a number of boxes’.

Organisation	Value £M
Religious Organisations	£30
Housing Related	£4.8
Education	£8
Council Facilities	£13
Charities	£11
Cultural	£3.8
Enterprise, Development, Training	£4.3
Sport	£0.75
Community Organisations	£8
Other	£1.37
Total	£85.02m

Table 1

THE RATIONALE FOR INTERVENTION

32. According to Northern Ireland Guide to Expenditure Appraisal and Evaluation (NIGEAE) the rationale for government intervention to support services provided by charitable or quasi charitable organisations is twofold²:

- the achievement of **economic** objectives by addressing inefficiencies in the operation of markets and institutions;
- the achievement of an **equity** objective, such as local or regional regeneration.

33. The NIGEAE at 2.2.2. goes on to say that the reason for government intervention is

“Intervention to achieve economic objectives is justified when markets fail to use resources in the most productive way possible.”

34. ‘Market failure’ refers to situations where the market has not and cannot of itself be expected to deliver an efficient outcome; the intervention that is contemplated will seek to redress this. There will be distributional effects from government intervention. Certain persons will be made worse off while others

² <https://www.dfpni.gov.uk/topics/finance/step-by-step-economic-appraisal-guidance>

will be better off. It may even be targeted and decisions such as these are made on equity considerations. It is also noted that government intervention can incur costs and can also cause economic distortions, which should be taken into account when deciding if intervention, which is in the form of tax relief in this case, is worthwhile.

35. Charitable exemptions and relief are viewed as beneficial to society. Indeed the importance the Government attaches to the charitable and voluntary sector is evident by the many initiatives that have taken place over the years. *The Concordat between Government and the Voluntary and Community Sector* published by DSD in 2011, and signed by the NI Executive and Charity representatives, outlines how the sector is uniquely placed to respond to social need and the role of the sector in partnership working between government and the sector.³

36. Charities generally exist on funding from a variety of sources. Research undertaken by NICVA in 2012 (State of the Sector VI) found that the main source of income is central government (34.2%), followed by the general public through charitable giving (29.7%), and a range of non-departmental public bodies and statutory agencies (17.4%). Therefore to remove rate relief would negate government's intervention by giving money in the one hand and taking it away in the other.

THE ISSUES – GROWTH AND BALANCE

37. The voluntary sector and the charitable sector have greatly changed since policy was established on rating exemptions. Analysis shows that rating exemptions over the past 10 years increased 34% in terms of value (**Table 2** below highlights the growth in **Total NAV vs. Total Exempt NAV**). Perhaps much of this growth can be explained by the expansion of the sector and the way in which public and community services are provided. However, the increase in rate exemption status is significant and there needs to be a better understanding of the factors at play, given the consequences for public finances. The following analysis sets out this growth by old Council area:

	Total NAV (Inc EX)	Total Ex
Antrim	16.78%	18.39%
Ards	5.29%	24.47%
Armagh	3.39%	18.99%
Ballymena	15.65%	57.63%
Ballymoney	6.09%	32.21%
Banbridge	19.95%	46.95%
Belfast	6.66%	34.43%

³ <https://www.dsdni.gov.uk/sites/default/files/publications/dsd/consultation-concordat-for-relationships-between-govt-vc-sector.pdf>

Carrickfergus	9.10%	44.68%
Castlereagh	10.09%	32.09%
Coleraine	11.69%	50.82%
Cookstown	23.86%	36.60%
Craigavon	8.38%	35.89%
Down	16.41%	26.23%
Dungannon	16.39%	24.53%
Fermanagh	23.69%	24.27%
Larne	7.76%	10.31%
Limavady	10.31%	38.39%
Lisburn	14.75%	29.72%
Londonderry	15.35%	29.70%
Magherafelt	21.13%	25.84%
Moyle	13.34%	60.63%
Newry & Mourn	12.47%	28.46%
Newtownabbey	9.37%	58.51%
North Down	16.51%	48.45%
Omagh	16.07%	33.70%
Strabane	13.50%	25.27%
Average Total	11.28%	34.00%

Table 2 - Total NAV vs. Total Exempt NAV

38. Exemptions are viewed by the majority of ratepayers as a deserving subsidy granted by government for the public benefit. Some, however, may regard it as an inherent entitlement bestowed upon an organisation because of its organisational form⁴. This is a growing issue because charities and “not for profits” engage in a wider range of activities – some indistinguishable from those engaged in by taxpaying entities – which is a significant issue for business ratepayers.
39. So far as the Department is aware, no one is suggesting that eligible organisations that perform functions on a not for profit basis for the clear public good should pay full rates. Nevertheless, there may be an issue with organisations that deliver services that the commercial sector provides, particularly in the context of the 80% exemption that applies elsewhere in the UK.
40. There are a number of examples in the current NI rating system where the exemption status may present an issue in terms of creating an unfair operating environment between the charitable and private sectors. One example is in the case of day nurseries provided by a Church or a Charity, where the fees are similar to those charged by commercial or private sector day nurseries. The former may be treated as exempt with the latter fully

⁴ The Urban Institute, Property Tax Exemption for Charities Explored and Explained, April 2002

rateable. Other examples are becoming more common also, for example where a charity operates a café / coffee shop employing staff with special needs, the premises are entitled to exemption even though pricing is consistent with other café / coffee shops. Likewise the case of second-hand bookshops which do not get an exemption and charity bookshops which are wholly exempted as a result of selling donated stock. Indeed, this question extends to the whole issue of charity shops which is dealt with in more detail later on in this paper.

41. Finding practicable, proportionate and objective ways of dealing with encroachment and 'over provision' issues is difficult.
42. The new District Councils assumed responsibility for community planning this year for the first time and this new role may present an opportunity for some marginal alignment of policies. These community plans set out how local objectives for economic and social development can be delivered through a mixed economy of service provision. Encouraging growth in social capital through the work of charities and voluntary organisations can only help foster economic growth.
43. The plans will include engagement in scrutiny and review of services. The plans and the partnerships involved in their development could present a framework against which competition between the sectors, or over provision, can be properly assessed and managed at a local level. It is not suggested that a discretionary element in the granting of charitable rates exemption is something that should be applied across the board but it may be justified for some categories of charitable and not for profit/public benefit activities. This may also extend to rate avoidance activity, which is explained later on in this paper.
44. Such an approach would be in keeping with other freedoms presented in the main consultation paper for discretion in targeting business reliefs and District Rate striking, recognising that District Rates are not only the primary source of income for Councils but the rating system itself could be used as an economic and social development tool at a local level.
45. In presenting this option, the Department is fully aware of concerns expressed by the voluntary sector about localisation of business rates in the rest of the UK, which due to the pressure on local authority budgets, could give rise to short sighted decisions being made about the application of discretionary relief over there (the system of discretionary reliefs in GB is explained later on in this paper). Some have suggested that it could lead to charities working in deprived communities being less likely to receive the 'top up' 20% discretionary rate relief than those working in affluent areas. Others are concerned it could mean certain activities may be unfairly disadvantaged by local authority policy; thereby politicising charities and their ability to work on unpopular causes.

46. It is important that this matter is considered in the context of the issue we are seeking to address, which is the relatively limited crossover with business sector interests. It is not about subjecting all charities to a further test of aligning their activities with adopted Community Plans in order to secure rates exemption.
47. Some of the other issues that present themselves in the context of the charitable exemption are laid out in the sections below.

THE ISSUES - RATES AVOIDANCE

48. One issue is the misuse of charitable exemption for **rates avoidance**, particularly, but not exclusively, in relation to empty property rates
49. Before setting out what some of the issues are, it should be noted that these are not instigated by reputable charitable (or not for profit) organisations who are entitled to, and indeed would be expected to, keep outgoings to a minimum.
50. Landlords with empty commercial properties, looking to avoid paying business rates are increasingly leasing them out to charities at heavily discounted rates (or even for a donation to the charity), often on a short-term basis under tenancies at will. Arrangements between charities and landlords to make use of empty properties can be mutually beneficial and the previous UK government has supported organisations, such as Meanwhile Space, to broker such arrangements. In many cases charities' use of vacant properties are positive arrangements which limit the number of vacant properties in town centres.
51. However, in addition to the creation of many legitimate arrangements, there are instances of charities entering into tenancy agreements with the main purpose being rates avoidance for landlords. Given the nature of this phenomenon, there are no figures available to indicate the scale of this problem, however, it does occur both here in Northern Ireland and the rest of the UK, particularly in relation to shops, retail warehouses and offices.
52. A further problem with the tenancies at will that are entered into by charities is that they often place responsibility for rates onto the occupier; but if the charity has since moved out there is no easy way of proving past charitable use retrospectively. The charity may not have been aware that it must inform LPS and apply for exemption during occupation.
53. The Charity Commission (E&W) became aware during the course of one case (in 2011) that 700 tenancy agreements had been entered into on the basis that the charity involved in the case (Public Safety Charitable Trust) would occupy empty properties. In the past few years private companies have been created which profit from setting up these often dubious arrangements. This particular scam did not extend to Northern Ireland, however, similar ones could happen here. It is the belief of rating practitioners in the rest of the UK that it tends to be newer charities that are involved in these avoidance scams.

54. The issue was also the subject of a public consultation last year undertaken by the Department of Communities and Local Government in England. Many of the issues considered as part of that exercise are also relevant to Northern Ireland and examples of practice are set out below.

55. Some of these instances are a consequence of unscrupulous behaviour rather than illegal practice, revealing shortcomings in the legislation and leading to a “benefit of the doubt” approach in administering exemptions:

- charities established with the sole purpose of saving the property owner from paying empty property rates.
- established charities are persuaded by a landlord to take up occupation of empty premises, in some cases paying a rent and in other cases not paying a rent. Some have suggested landlords are even offering ‘donations’ or similar to charities.
- there may even be an issue that some charities are being used by unscrupulous landlords to avoid empty property rates but without the charity being aware of this.
- charitable occupation of a property is minimal. Goods may also be spread out to give the appearance of being wholly or mainly used for charitable purposes. Current case law (Kenya Aid High Court case) established that efficiency or necessity of use were immaterial considerations under the current system. This could also extend to opening hours, where the charitable activity may occur only once a week.
- the vacant property may be leased to a charity and when it falls vacant, it qualifies for exclusion from empty property relief on the basis that when next in use the property will be wholly or mainly used for charitable purposes. This is despite charities not having clear plans for occupation or intended use.

56. There is a fine line between what is and is not considered legitimate behaviour by charities. The Charity Commission (E&W) has reissued guidance on charity tax reliefs which makes clear that trustees must not enter into any arrangements which can damage the reputation of the charity and may bring it into disrepute.

57. Given uncertainties about the scale of the problem the first question is whether any special measures should be adopted. There is an interesting nexus emerging around increased vacancies due to lack of high street retail demand, excess properties built during boom years, policy on empty property rates and the growth in charitable or quasi charitable exemptions. This may be a passing phenomenon, rather than a long term and expensive defect in the rating system.

58. Measures that could be considered include:

- limiting charitable exemption in some cities and town centres, through the application of quotas or valuation caps; but with safeguards through

a system of discretionary top ups, perhaps administered by District Councils.

- create a new test in legislation around ‘fraudulent occupation’ or ‘non charitable intention’.

59. If such policy changes are being considered, these need to be carefully thought through and proportionate; otherwise, ‘the remedy could end up being worse than the sickness’. It is important that any measures taken should not affect the operation, freedom and legitimate decision making of genuine charities. And be easily administered. Furthermore, although the problem could be significant, it is not believed to be anywhere near as widespread in NI as it is in the rest of the UK. The main reason being that empty property rates are levied at 50% in NI compared to 100% in England, 100% in Wales and 90% in Scotland; so the incentive is less.

THE ISSUES - CHARITY SHOPS

60. Charity shops in NI attract rates exemption in proportion to the amount of donated goods sold since the law was amended in 1977. Special provision is made in rating legislation because retail in itself is not a charitable activity. Therefore, charity shops do not qualify for exemption under the normal and longstanding charitable rules.

61. The legislation states that the shop 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:

- it is used as a test whether the property is used wholly or mainly for charitable purposes (Article 41(2)(c)(ii)) of the Order and therefore entitled to any rating exemption at all;
- when the first test is passed, it is used as a test of the degree of relief which the hereditament enjoys (Article 41(3)) of the Order.

62. It is a condition of relief that the net proceeds of sale are applied for the purposes of a charity. It need not be the same charity as the one which runs the shop – for example it is sufficient if Oxfam gives some of its profits to the Red Cross or Christian Aid or some other charity operating in a developing country. This acknowledgement of the standing of other charities reflects the provision in Article 41(2)(c)(ii) which, for the purpose of the test of use mentioned above, makes it sufficient for the hereditament to be used for the purposes either of the charity seeking exemption or of that charity and other charities. However, trading subsidiaries of charities (and any shops run by them) are not necessarily eligible for relief.

63. The LPS “shops” subclass of properties account for approximately £5m or 5.8% of the total £86m relief provided under the non-domestic exempt category. This relates to approximately 850 individual properties or 4.9% of all properties within this classification. A further £550k of exemption relates to 20 properties that can be described as retail warehouses/outlets. These figures

represent the minimum of what could reasonably be assumed to be “charity shops”, however there may be charitable organisations trading as shops in e.g. car showrooms that could fall outside of these classifications.

64. In contrast to the position in NI, charity shops in the rest of the UK are eligible for 80% exemption if they are ‘mainly or wholly’ used for the sale of donated stock.
65. The significant pressure on the charity sector’s finances, driven by reductions in government spending on the sector has forced charities to diversify their income. Many have turned to trading as a means to generate a sustainable stream of income. The number of charity shops has doubled in the past 20 years and the CRA estimate there are now over 10,500 in the UK & Ireland, generating over £290m for charities.
66. UK high street trading has suffered significantly over the past decade due to a range of factors including the growth of out/edge of town shopping centres and online trading. The recession also saw household incomes further squeezed, and since the financial crisis many well-known high street chains have closed down or rationalised their property assets as leases expire.
67. A consequence of this growth in charity shops, running in parallel to pressure on private shops on the high street, is that increasingly charity shops have been criticised for distorting the market due to the rates exemption they receive. On the other hand many would argue that charity shops are exerting a stabilising influence on ailing high streets - maintaining footfall, catering to specific local needs, and filling shops that would otherwise be empty.
68. The Government commissioned Mary Portas to conduct an independent review and make recommendations on how to revive the UK’s high streets. During the course of the review Mary Portas suggested it could be helpful to use the tax system to limit the number of charity shops, but stopped short of including the recommendation in her final report. However, the report still levelled some criticism at charity shop rate relief, suggesting that it ‘builds a disadvantage into the system. Landlords are choosing the safe option of charity shops and small new retailers aren’t getting a look in’.
69. However, there is no research available to demonstrate that charity shops have a major distorting effect. The issue is not clear cut. Charity shops’ biggest source of competition in some cases may be other charity shops rather than neighbouring small businesses. Additionally, the current policy is that rate exemption extends only to the sale of donated goods which helps ensure that charity shops undertake a different function from other retailers on the high street.
70. The issues, therefore, may be around the policing and monitoring of the policy. Or perhaps this is one policy where the new District Councils could be given a discretionary role given that circumstances differ from one area to another. The one size fits all policy may no longer be appropriate or responsive enough to local trading conditions.

POSITION IN GB

71. Billing authorities in GB are obliged by law to give 80% relief from the full rate charge where the ratepayer is a charity or trustees of a charity and the property is used wholly or mainly for charitable purposes. This relief was extended from April 2004 to non-charitable bodies registered as Community Amateur Sports Clubs with the Inland Revenue as a club for the purposes of Schedule 18 to the Finance Act 2002, where the property is used wholly or mainly for the purposes of that club or other such registered clubs.
72. Local authorities also have the discretionary power to go further and grant 100% relief to charities. Where a property is used for non-profit making purposes, whether the main objectives are philanthropic, religious, educational, social welfare or concerned with science, literature or the fine arts, local authorities can grant up to 100% discretionary rate relief. They can also make discretionary relief available to non-profit making sports clubs with premises used wholly or mainly for the purpose of recreation.
73. There can be disputes as to whether or not a ratepayer is a charity. Entry in the Register of Charities held by the Charity Commission is normally the accepted criterion, but the register is not complete and may exclude certain long-established charities. Some of the historic case law in this area suggests that the courts might in some circumstances take a wider view as to what constitutes a charity.
74. As to topping-up mandatory relief from 80% to 100% or granting discretionary relief to non-profit making organisations, this is a matter for each individual local authority. It should be borne in mind that this extra discretionary relief cannot be backdated to a preceding financial year, unless the authority receives an application in time to make a decision by 30 September after the end of the financial year.
75. In England until March 2013, and in Wales, a local authority will only get 25% back from central government of the additional cost of granting 100% rather than 80% relief, and 75% of the cost of other discretionary relief. It will have to find the additional money from its own funds, i.e. council tax payers. In England from April 2013 the costs of all relief are shared between local and central Government under the business rates retention scheme. So, while it may be worthwhile asking for, discretionary relief is not always granted. In Scotland, the local authority only bears 25% of the cost of discretionary relief granted, claiming the remainder back from central government.
76. The funding arrangements in England changed from April 2013 as part of the localisation of business rates and this has resulted in local authorities looking at applications for all reliefs much more carefully.

SUMMARY

77. Public benefit not private gain is the underlying distinguishing factor in terms of justifying special treatment for charities and other non for profit bodies under the rating system. Exemption from rates allows them to have a hub and physical presence within communities, facilitating the vital role many play in the social and economic well being of those communities. It follow that it is not only charities that benefit from rates exemption, but society benefits more widely. Charities are also being asked in some cases to deliver many of the services previously delivered by national, regional and local government and exemption from rates is an important way for charities to deal with the operating costs of these changes.
78. Although this position is accepted, it is important that charities and sector bodies work together through this consultation process to demonstrate the value for money of this form of tax relief, given the squeeze on public finances for the foreseeable future.
79. Radical change is not contemplated, it being recognised within government that a fundamental 'regime change' would amount to taking with one hand and somehow giving back with the other. However, that is not to say there are no issues.
80. The main concerns lie in areas where the activities of the charitable and voluntary sector are seen as interfering or competing with the business ratepayer world:
- in the provision of some services;
 - the impact of charity shops;
 - in facilitating the avoidance of empty property rates by some landlords
81. These issues are complex and the questions are difficult ones.
1. Should all charities be treated the same?
 2. Is there a case for asking some charities to pay some rates, where the activities of a charity 'compete more than complement' commercial interests in the locality?
 3. For those falling into that grey area, should we adopt the approach taken in GB where 80% mandatory relief is given but local authorities exercise discretion over 20%?

4. Is it appropriate for our new Councils, with their new role in community planning, to be involved in some discretionary decision making?
5. Are there other measures we could or should take, while safeguarding the interests of the vast majority of charities and not for profit bodies that benefit from rate exemption?

82. Views on all issues raised in this supplementary paper are sought and responses are required by 25 January 2016, in line with the closing of the wider consultation process. Full details of how to respond are contained within the main consultation paper at :

<https://www.dfpni.gov.uk/consultations/review-northern-irelands-non-domestic-rating-system>

Rating Policy Division DFP

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