

*This Explanatory Memorandum refers to the draft Rates (Capital Values, etc.)
(Northern Ireland) Order 2006 [N.I. xxx]*

DRAFT RATES (CAPITAL VALUES, ETC.) (NORTHERN IRELAND) ORDER 2006

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The draft Rates (Capital Values, etc.) (Northern Ireland) Order 2006 is being made under the Northern Ireland Act 2000 (c.1) and is subject to approval by affirmative resolution of each House of Parliament.
2. This Explanatory Memorandum has been prepared by the Department of Finance and Personnel ("the Department") to assist the reader in understanding the draft Order. It does not form part of the draft Order. All the documents referred to can be found on the rating policy website, www.nics.gov.uk/rating-policy.

BACKGROUND AND POLICY OBJECTIVES

3. The draft Order paves the way for the change in the basis of valuation in respect of domestic property from rental to capital values from April 2007 by enabling the Commissioner of Valuation for Northern Ireland ("the Commissioner") to publish the capital value of every domestic property in Northern Ireland. It is intended to publish these in Spring 2006, after which ratepayers will be provided with an opportunity to make enquiries and, if necessary, seek an informal administrative review before the new discrete capital value system comes into operation in April 2007.
4. The draft Order also fully exempts community halls (subject to certain criteria) from rates and increases the current level of sport and recreational relief from 65% to 80% (in line with the existing level of mandatory relief in Great Britain). It is intended that these reforms will take effect from April 2006. It also provides for the power to repay or recover rates where hardship relief has been awarded under the new scheme for businesses introduced on 31 December 2005.
5. The aim of the reforms is to make the rating system fairer and more understandable. They emanate from the Review of Rating Policy commissioned by the Northern Ireland Executive in 2000.

CONSULTATION

6. There was strong support for the move from rental to capital values in the domestic sector during a consultation exercise in 2002. This led to the publication of a policy paper in July 2004 and, following a 16 week consultation, a report in March 2005, which set out the Government's intention to introduce a discrete capital value based system in April 2007, a new rate relief scheme for those on low incomes, transitional relief over a three year period, a new independent

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valuation tribunal and a range of enabling powers to allow the new system to be varied, for example by setting a minimum or maximum payment.

7. A separate consultation was launched in February 2005 on a number of proposals to change the current charitable rating exemptions and reliefs, including the exemption of community halls and the increase in the level of sport and recreational relief. The responses were generally supportive of the proposals.
8. The draft Order was also the subject of consultation, which commenced on 7 October 2005 and ended on 30 December 2005. 14 responses to the consultation were received. There was general support for the provisions dealing with the exemption of community halls and sport and recreational relief, although concern was raised around the prescribed list of organisations covered by the community halls exemption and the need for an additional element of sport and recreational relief. The responses on the domestic reforms were more mixed and focused largely on wider policy measures, a number of which are referred to in paragraph 6 and will be dealt with in a further Order in Council to be published for consultation later in 2006. Where comments were provided on the detail of the draft Order, these largely confirmed that the provisions gave effect to the Government's policy intentions. On this basis, the provisions of the draft Order have not been amended.

FINANCIAL EFFECTS OF THE DRAFT ORDER

9. The additional costs associated with the revaluation of all domestic property on a capital value basis and the publication of the capital values will be in the region of £7m - £7.5m.
10. The additional costs associated with increasing the level of sport and recreational relief from 65% to 80% is estimated to be £0.5m. Fully exempting community halls from rates is estimated to cost an additional £1.9m.

HUMAN RIGHTS ISSUES

11. The provisions of the draft Order are considered to be compatible with the European Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

12. The Equality Impact Assessment (EQIA) on the domestic reforms found that, under the new discrete capital value system, there is unlikely to be a differential impact on the section 75 categories of age, gender, marital status and dependants. There is likely to be an adverse impact within the race and religion categories. However, in many cases this will be linked to affordability and, where this is not the case, new relief measures are designed to mitigate the impacts.

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13. In relation to non-domestic exemptions and reliefs, there were positive impacts in relation to proposals for sport and recreational relief and community halls exemption.

SUMMARY OF THE REGULATORY APPRAISAL

14. In overall terms, the benefits of increasing the level of sport and recreational relief from 65% to 80% are likely to outweigh the costs. Providing full exemption for community halls would have the likely benefit of increased usage.

MAIN ELEMENTS OF THE DRAFT ORDER

15. The draft Order is divided into four Parts and contains 16 Articles and 4 Schedules. Part I sets out the title of the draft Order and the commencement provisions. It also defines certain terms used in the draft Order.
16. Part II lists the categories of property to be revalued on a capital value basis and provides for the determination, publication and revision of their capital value.
17. Part III provides for the increase in the level of sport and recreational relief, the full exemption of unlicensed community halls that are not occupied by a registered club, the repayment and recovery of hardship relief and the repeal (with savings) of Article 41(2)(f) of the Rates (Northern Ireland) Order 1977 (N.I. 28) (“the principal Order”).
18. Part IV amends the existing duty on public bodies to inform the district valuer of certain information that comes to their notice and applies both this duty and the power of entry and power to call for returns in the principal Order for the purpose of determining, publishing and revising the new capital values. It also provides for transitional provisions and repeals.

COMMENTARY ON ARTICLES

PART I - INTRODUCTORY

Article 1: Title and commencement

19. This Article sets out the title of the draft Order and provides for its commencement.

Article 2: Interpretation

20. This Article provides for the interpretation of the draft Order and defines some of the expressions used in it.

PART II – CAPITAL VALUE

Article 3: Application of Part II and Schedule 1: Definition of ‘dwelling-house’ etc.

21. Paragraph (1) provides that Part II applies to any dwelling-house, any property used partly for the purpose of a private dwelling, any private garage and any private storage premises. These are the categories of properties the capital values of which may be published by the Commissioner.
22. Paragraph (2) provides that where a property is currently vacant and the Commissioner or district valuer considers when next in use it would fall within one of the categories mentioned in paragraph 21 above, the property shall, for the purposes of the draft Order, be deemed to be in use and to fall within that category.
23. Paragraph (3) gives effect to Schedule 1 to the draft Order. Paragraph 1 of Schedule 1 to the draft Order applies Schedule 5 to the principal Order for the purposes of determining what is to be treated as a dwelling-house for the purposes of the draft Order and to what extent certain properties are to be treated as used for the purposes of a private dwelling for the purposes of the draft Order. The application of Schedule 5 to the principal Order is subject, however, to a number of modifications which have the effect of excluding armed forces accommodation within the perimeter of a military establishment, prison accommodation and individual pitches within a leisure caravan site from the categories of property in respect of which the Commissioner may publish capital values.
24. Paragraphs 2 and 3 of Schedule 1 to the draft Order define private garage and private storage premises for the purpose of the draft Order.
25. Paragraph 4 of Schedule 1 to the draft Order enables the Department to modify Schedule 1 to the draft Order by regulations subject to a draft of the regulations having been laid before, and approved by a resolution of, the Northern Ireland Assembly.

Article 4 and Schedule 2: ‘Capital Value’

26. Article 4 gives effect to Schedule 2 to the draft Order.
27. Paragraph 1 of Schedule 2 to the draft Order defines the capital value of a property as the amount it would have reasonably sold for on the open market on 1 January 2005, based on a number of assumptions as set out in paragraphs 3 to 9 of that Schedule.

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28. Paragraph 3 of Schedule 2 to the draft Order provides for the assumption that the property was sold with vacant possession.
29. Paragraph 4 of Schedule 2 to the draft Order provides for the assumption that the estate sold was the fee simple absolute or a 99-year lease in the case of a flat.
30. Paragraph 5 of Schedule 2 to the draft Order provides for the assumption that the property was sold free from rentcharges or other incumbrances, which means that they will not be reflected in the capital value of a property. However, by virtue of the definition of “incumbrance” in paragraph 2 of Schedule 2 to the draft Order, service charges will be taken into account in determining the capital value of a property.
31. Paragraph 6 of Schedule 2 to the draft Order provides for the assumption that the property was in an average state of internal repair and fit out, taking account of the age and character of the property. Paragraph 6 also provides that it will be assumed that the property was otherwise in the state and circumstances in which it might reasonably be expected to be on 1 April 2007.
32. Paragraph 7 of Schedule 2 to the draft Order provides for the assumption that the property had no development potential over and above that for which planning permission is not required or for which no application for planning permission is required.
33. Paragraph 8(1) of Schedule 2 to the draft Order provides that where a property is a dwelling-house, a private garage or private storage premises or although vacant is deemed to be such a property under Article 3(2) of the draft Order, it will be assumed that it will always be such a property. Similarly, it will be assumed that where a property is used partly for the purposes of a private dwelling and partly for other purposes or although vacant is deemed to be so used under Article 3(2), it will always be so used.
34. Paragraph 8(2) and 8(3) of Schedule 2 to the draft Order provide that where a house is occupied in connection with agricultural land or a fish farm and used as the dwelling of a person whose primary occupation is the carrying on of or directing of agricultural or fish farming operations on the land or fish farm or a person employed for these purposes, it will be assumed that it will always be so used.
35. Paragraph 9 of Schedule 2 to the draft Order provides for the assumption that there has been no contravention of any legal obligation, whether arising under legislation, an agreement or otherwise, which would affect the capital value of the property.

Article 5: Publication of capital values

36. Paragraph (1) provides the Commissioner with the power to publish the capital value of any property to which Part II of the draft Order applies.

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37. Paragraphs (2) and (3) provide that, in the case of a property used partly for the purposes of a private dwelling, the Commissioner may publish only that portion of the capital value which can reasonably be regarded as attributable to the use of the property for the purposes of a private dwelling (“the domestic capital value”).
38. Paragraph (4) allows the Commissioner to publish other information relating to the property as determined by the Department.

Article 6: Publication of list of total published values for each district

39. Article 6 provides for the publication of a list of the total capital values and domestic capital values in each district council area.

Article 7: Revision of capital values, etc., by the Commissioner

40. Article 7 enables the Commissioner to revise any capital value or domestic capital value published under Article 5, any additional information published under that Article and any list published under Article 6. It also enables him to publish the revision.

Article 8: Manner and form of publication

41. This Article provides that the form and manner of publication under Articles 5 to 7 is to be determined by the Department.

PART III - RELIEFS

Article 9: Increased reduction of rates for certain hereditaments used for recreation

42. This Article provides for an increase in the current level of relief available to amateur sporting organisations from 65% to 80%.

Article 10: Repayment and recovery of hardship relief

43. This Article amends Article 33B of the principal Order to give the Department a power to repay rates where the conditions for hardship relief are satisfied. It also provides a power to allow the Department to recover rates where EU State Aid limits have been exceeded.

Article 11 and Schedule 3: Certain hereditaments to be wholly exempt from rates

44. This Article inserts a new Article 41A and a new Schedule 13A into the principal Order.
45. Paragraph (1) of Article 41A provides for any property, subject to paragraphs 2(a) and (b), occupied by a body to be distinguished in the valuation list as wholly exempt from rates if that body is listed in Schedule 13A to the principal Order or is a member of, or affiliated to, a body listed in that Schedule.

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46. Paragraph (2)(a) of Article 41A sets out the criteria to be applied for eligibility for distinction under paragraph (1), i.e. the use, or availability for use, of the property to a substantial extent for purposes declared to be, or which are, charitable and where charges are not more than necessary to defray reasonable expenses. Paragraph (2)(b) sets out those properties that are not eligible to be distinguished in the valuation list as exempt from rates under this Article.
47. Paragraph (3) of Article 41A gives effect to Schedule 13A to the principal Order.
48. Paragraph (4) of Article 41A gives the Department the power to amend Schedule 13A to the principal Order by order subject to affirmative resolution by the Northern Ireland Assembly.

Article 12: Repeal of Article 41(2)(f) of the principal Order with savings, etc.

49. Paragraph (1) provides that Article 41(2)(f) of the principal Order, which provides exemption for certain hereditaments used to an extent of not less than 10% for certain charitable purposes, will cease to have effect.
50. Paragraph (2) provides for a property which does not qualify under Article 41A(1) but was distinguished in the valuation list as partially exempt before the date this Article commences to continue to be so distinguished to the same extent after that date while it remains occupied by the same body.
51. Paragraph (3) allows the Commissioner or district valuer to distinguish a property that does not qualify under Article 41A(1) as partially exempt after the date this Article commences, where satisfied that it should have been so distinguished before that date and while it remains occupied by the same body.
52. Paragraphs (4) and (5) provide for a replacement property, which would not qualify under Article 41A(1), to continue to be distinguished to the same extent provided it is occupied by the same body.
53. Paragraph (6) applies the references in Article 41(9) to this Article. Paragraphs (7) and (8) make detailed amendments in the principal Order consequential to the provisions of this Article.

PART IV - MISCELLANEOUS

Article 13: Duties of public bodies with respect to alterations in valuation list

54. This Article amends Article 57 of the principal Order to oblige a public body to give the district valuer information in its possession or control which is relevant to a decision whether to alter a valuation list. Currently Article 57 only obliges a public body to inform the district valuer if information comes to its notice which leads it to suppose that a valuation list requires alteration.

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Article 14: Application of Articles 57 to 60 of the principal Order

55. This Article applies certain provisions in the principal Order for the purposes of Part II of the draft Order subject to modifications. These are the power of entry of valuers, the duty on public bodies to provide information, the power to request information and the offences associated with a breach of these provisions.

Article 15: Transitional provisions, etc.

56. This Article provides the Department with the power by regulations to make transitional or consequential provisions or savings which are necessary or expedient for the purposes of, or in connection with, the coming into operation of any provision of the draft Order.

Article 16: Repeals

57. This Article repeals the provisions set out in Schedule 4 to the draft Order. These repeals are consequential on Part III of the draft Order.

COMMENCEMENT

58. Articles 1, 2 and 15 of the draft Order will come into operation at the end of 7 days from the day on which the Order is made. The remaining provisions of the Order are to come into operation on a day, or days, to be appointed by the Department.

