

Office of the Deputy Prime Minister

Non-domestic rates: Guidance on rate reliefs for charities and other non-profit making organisations

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CHAPTER 1

Introduction

1.1 A practice note on the use by billing authorities of their discretionary powers to grant relief or remission of rates on property occupied by charities, other non-profit making organisations and by ratepayers experiencing hardship was issued by the Department of the Environment in 1989 and revised in 1990. This guidance note has been produced to update and amend the 1990 guidance. It sets out criteria which billing authorities may wish to consider in deciding whether to grant rate relief.

1.2 This guidance also covers issues which billing authorities may wish to consider in determining eligibility for mandatory rate relief of charity shops and other charitable organisations, and of empty properties. This was not covered by the previous guidance, but subsequent experience has shown that eligibility is not always clear-cut and that this is also an area where guidance to billing authorities would be helpful. This guidance does not however cover any of the rural rate relief schemes (village shop and farm diversification relief), as we intend to produce separate guidance.

1.3 This guidance replaces the 1990 guidance, but in the same way is not intended to be a rigid set of rules; it is for each authority to judge whether the criteria in the guidance are applicable in each case, and what weight if any should be attached to them.

Enquiries about the guidance notes and circulation should be made to:

The Non-Domestic Rates Branch,
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Further copies of the guidance notes are also available on our website at:

<http://www.local.odpm.gov.uk/finance/busrats1.htm>

CHAPTER 2

Summary

2.1 The main provision conferring the discretionary power on billing authorities to grant rate relief is Section 47 of the Local Government Finance Act 1988. Under this provision billing authorities have discretion to grant rate relief to certain ratepayers from all or part of the amount of non-domestic rates payable and the level of relief determined by an authority may be varied by a further determination. The Non-Domestic Rating (Discretionary Relief) Regulations 1989 (SI 1989 No. 1059) allow billing authorities to restrict discretionary relief under section 47 to a fixed period, and deal with the notice which must be given if that relief is varied or revoked. There is no statutory requirement for organisations to submit written applications for relief (*Chapter 3*).

2.2 Billing authorities should first consider whether an institution or organisation applying for rate relief is eligible for *mandatory* rate relief. This relief is fully centrally funded. Generally, properties used wholly or mainly for charitable purposes are eligible for 80% mandatory relief. This relief can be topped up to 100% at the discretion of the billing authority and the top-up benefits from 25% central government funding (*Chapter 4*).

2.3 Where mandatory rate relief is not available, authorities can consider the award of discretionary rate relief. Authorities have discretion to grant relief of up to 100% to certain non-profit making bodies. Billing authorities also have discretion to grant relief of up to 100% to ratepayers who are experiencing hardship (under section 49). 75% of the cost of all discretionary reliefs (including hardship relief) is met centrally, with the billing authority meeting the remaining 25% (*Chapter 4*).

2.4 The existing mandatory relief scheme for charities (section 43(5)) applies equally to any sports organisation that is a charity. Sports organisations that are charities and use their premises wholly or mainly for charitable purposes are entitled to 80% mandatory rate relief. In considering applications for discretionary relief from non-profit making sports clubs that do not have charitable status, authorities may wish to take into account the criteria suggested (*Chapter 5*).

2.5 Charity shops can receive rate relief if they are wholly or mainly used for the sale of goods donated to a charity and the proceeds of the sale are applied for the purposes of a charity (section 64(10)). General guidance for determining eligibility for rate relief of charity shops is provided in chapter 6. Guidance is also provided on Friendly and Industrial and Provident Societies and their eligibility rate relief. Charities may also be excepted or exempt from registration with the Charity Commission and this is also explained in chapter 6. An organisation that has had its application for registration as a charity refused by the Charity Commissioners can still be considered for rate relief (*Chapter 6*).

2.6 Billing authorities have the discretion to award rate relief of up to 100% on the grounds of hardship (section 49). General guidance is provided here with some additional factors that authorities should bear in mind when considering applications (*Chapter 7*).

2.7 The owners of empty non-domestic properties are eligible for mandatory rate relief of 100% for a period of either three months or six months depending on the type of property. Non-domestic properties which are unoccupied may be liable to empty property rates under the provisions of section 45 of the LGFA 1988 as amended by Rating (Empty Properties) Act 2007. Section 44A of the LGFA 1988 provides billing authorities with a discretion to grant relief where it appears to the

authority that part of a property is unoccupied and will remain so for a “short time only” (*Chapter 8*).

2.8 Relief from taxes, including non-domestic rates, can constitute state aid under European Union legislation. There is a block exemption from the state aid rules where the aid is below a de minimis level. The de minimis level applies to all de minimis aid received by a particular undertaking, including other Government subsidies or grants, in addition to any rate relief given as de minimis aid. This is €100,000 (approximately £63,000) over a three year period below which any aid is allowable. This rule does not apply in certain sectors including transport, agriculture, fisheries, coal and steel. Billing authorities should bear this in mind when granting discretionary rate reliefs. Any relief exceeding the de minimis threshold, or of any amount for businesses in the sectors where the threshold does not apply, may need to be notified to the European Commission. Billing authorities should contact ODPM if there are any queries about state aid (*Chapter 9*).

2.9 Chapter 10 provides general guidance to authorities on the need to keep ratepayers informed about their decisions on applications for discretionary rate relief. This includes procedures, acknowledgements, notifications to successful and unsuccessful applications, and the right of appeal against a decision to reject or restrict the award of discretionary rate relief.

2.10 Annex A contains the definition of a Community Amateur Sports Club (CASC) as set out in schedule 18 of the Finance Act 2001.

2.11 The table at Annex B summarises the property which is eligible for rate relief, the type and amount of relief that is available and the financial implications.

CHAPTER 3

Statutory Powers

3.1 The main provision conferring the discretionary power on billing authorities to grant rate relief is to be found in Section 47 of the Local Government Finance Act 1988 (LGFA). Regulation 6 of the Non-Domestic Rating (Miscellaneous Provision) Regulations 1989 (SI 1989 No. 1060) deals with the situation where a hereditament straddles billing authority boundaries. Under section 47 authorities have discretion to grant rate relief to certain ratepayers from all or part of the amount of non-domestic rates payable. A decision to grant relief can have effect for a previous financial year provided the decision is made within six months of the end of the year and may be revoked by a further decision of the authority. The level of relief determined by an authority may be varied by a further determination.

3.2 The Non-Domestic Rating (Discretionary Relief) Regulations 1989 (SI 1989 No. 1059) allow a billing authority to grant the relief for a fixed period, and deal with the notice which must be given if that relief is varied or revoked. Regulation 2 requires that billing authorities must give notice when they decide to grant, revoke or vary the amount of discretionary relief awarded. One year's notice is required of any decision to revoke or vary the amount of relief granted if, in the case of a variation, it would result in the amount of rates paid by the ratepayer increasing. The notice must take effect at the end of the financial year. In other words, if notice of a change which could increase a ratepayer's bill is not given by 31 March, relief could continue at the same level (at least) for a further two years. If the variation will result in the amount of rates the ratepayer will pay decreasing the ratepayer should be notified as soon as practicably after the decision has been made.

3.3 It is very important that billing authorities have readily understood guidelines for deciding whether or not to grant relief and for determining the amount of any relief given. However, we would not recommend authorities to adopt a policy or rule, which allows or requires it to dispose of a case without any consideration of the merits of the individual case. The operation of blanket decisions to refuse relief across the board might well be ultra vires and could involve the authority in litigation. That does not preclude it from having general criteria against which it considers cases, but where it has these, it is a matter of good practice that applicants or potential applicants for relief are aware of them.

3.4 There is no statutory requirement for organisations to submit written applications for relief. The lack of a formal written application need not preclude authorities in any way from granting relief if it so wishes. In cases of mandatory relief, further applications are not required once relief has been granted and mandatory relief will stay in force until there is a change in circumstances causing the ratepayer or property to no longer to qualify for the relief. Whilst there is no time limit for applications to be made in cases of discretionary relief, authorities must determine applications within six months after the end of the financial year for which the application for relief is made. Determinations after this time are invalid.

3.5 It is a question of good practice that authorities encourage organisations to give details of all the matters they wish to be taken into account, and to provide any other relevant information. For example, information such as audited accounts, written constitutions, membership details etc. may assist an authority in considering the merits of each case. A number of authorities have produced proforma questionnaires to assist in this process.

3.6 Authorities can not grant discretionary relief from rates on property, all or part of which is occupied, other than as a trustee, by a billing or precepting authority (section 47(9)).

3.7 The amount of rates payable by charities is calculated by reference to formulae applicable to occupied or unoccupied property, as the case may be. The effect is that charities pay only 20% of the rates that a non-charity would pay. With regard to occupied property, two requirements must be met:

(a) the ratepayer must be a charity or trustees for a charity; and

(b) the hereditament must be wholly or mainly used for charitable purposes (whether of that charity or of that and other charities)(section 43(5)).

3.8 In relation to unoccupied property, the second requirement is modified so that it must appear that when next in use the hereditament will be wholly or mainly used for charitable purposes (whether of that charity or of that and other charities). In such circumstances, 100% relief is granted (Section 45(5)).

3.9 Section 45 of the LGFA 1988 deals with empty properties. All property unoccupied for a period not exceeding three months is entitled to full rate relief during that period (The Non-Domestic Rating (Unoccupied Property) Regulations 1989). If the property remains unoccupied beyond the three month free period, the owner/ratepayer will be liable for unoccupied rate of half the full rates. For the purpose of determining whether a property has been continuously unoccupied for three months, any period of occupation of less than six weeks is disregarded. This avoids the claiming of consecutive periods of relief after short terms of occupancy.

3.10 Certain types of unoccupied property do not pay empty property rates, even after the three month rate-free period. These include listed buildings and all small properties with rateable value of no more than £2,200 (The Non-Domestic Rating (Unoccupied Property) Regulations 1989). Pre-Budget Report 2008 announced a temporary lifting of the threshold for exemption from empty property rates from £2,200 to £15,000 for a one year period covering the 2009 – 10 business rates year. This change was enacted in The Non-Domestic Rating (Unoccupied Property) (England) Regulations 2009 (SI 2009 No 353).

3.11 Section 44A of the LGFA 1988 gives billing authorities the discretion to grant relief where it appears to the authority that that part only of a property is unoccupied and will remain so for a short time only. What constitutes a "short time only" is left for the billing authority to determine given the circumstances in each case. However, what a billing authority considers to be a short time should be applied consistently to all properties in their area. Billing authorities should decide what in their reasonable opinion, taking account the prevailing commercial property market, constitutes a short period. If local conditions merit it the provision could perhaps allow a different view as to what constituted a short period of time from one type of property to another e.g. if a particular sector of the local economy is weak etc. Where an authority proposes to exercise its discretion, it should seek an apportionment of the Rateable Value from the Valuation Officer.

CHAPTER 4

General Considerations

4.1 Mandatory Relief for Charities etc.

4.1.1 On receipt of an application for rate relief, billing authorities should first consider whether the institution or organisation is eligible for *mandatory* relief.

4.1.2 To qualify for mandatory relief, the property must be used wholly or mainly for charitable purposes and the institution or organisation must be established for charitable purposes only or be occupied by any persons administering a trust established for charitable purpose only. Registration under the Charities Act 1993 as amended, is conclusive evidence of charitable status. Bodies which, under the 1993 Act, are excepted from registration or are exempt charities are also eligible for mandatory relief.

4.1.3 Mandatory relief for charities and similar organisations at 80% of rates payable is provided for in sections 43(5) and 45(5) of the 1988 Act. This relief is fully centrally funded, in that billing authorities are not required to pay the amount foregone into the national rate pool. In the case of empty properties which will, when they are next occupied, be used for charitable purposes, the liability is now 0% of the full rate bill. This relief is also fully funded.

4.1.4 Although charitable organisations are eligible for 80% mandatory relief, this relief can be topped up to 100% at the discretion of the billing authority under section 47. This discretionary top-up is 25% centrally funded, as billing authorities are required to pay 75% of any such top-up into the national rate pool (See paragraph 3 of Schedule 1 to the Non-Domestic Rating Contribution (England) Regulations 2000). If an authority wishes to increase the relief to charities above the mandatory level, for the purposes of calculating the chargeable amount, sections 43(5) and 45(5) are disapplied and the chargeable amount is determined by, or found in accordance with, rules determined by the authority.

4.1.5 Mandatory rate relief under section 43 of the 1988 Act for the rural rate relief schemes is intended to be provided in separate guidance.

4.2 Discretionary Relief

4.2.1 Where the property does not qualify for mandatory relief, authorities will still be able to consider the award of discretionary rate relief under section 47 of the LGFA 1988. Authorities have a discretion to grant relief of up to 100% to certain non-profit making bodies. The range of bodies eligible for discretionary rate relief is wide and not all of the suggested criteria will be applicable in each case. To be eligible for consideration, the ratepayer must be a non-profit making body and the hereditament used for charitable, philanthropic or religious purposes, or concerned with education, social welfare, science, literature or the fine arts, or used wholly or mainly for recreation by a not-for-profit club or society.

4.2.2 Authorities should consider carefully on its merits any bona fide case for relief, taking into account the contribution that the organisation makes to the local area. But where the case is properly a case of the ratepayer suffering hardship it should be considered under section 49 not section 47. 75% of the cost of this discretionary relief is met centrally, with the billing authority, and through them, the council taxpayer meeting the remaining 25%, which the authority must

contribute to the national rate pool (See paragraph 3 of Schedule 1 to the Non-Domestic Rating Contribution (England) Regulations 2000).

4.2.3 Discretionary rate relief under section 47 of the 1988 Act for the rural rate relief schemes is intended to be provided in separate guidance.

4.3 Hardship Relief

4.3.1 Billing authorities also have discretion under section 49(1) of the LGFA 1988 to grant relief of up to 100% to any ratepayers who would suffer hardship if they were not granted relief, and it is in the best interest of their council tax payers. Under this provision, billing authorities may reduce or remit the payment of rates due under sections 43 and 45 of the LGFA 1988, for occupied or unoccupied properties. 75% of the cost of funding this relief is met centrally, with the billing authority meeting the remaining 25% (See paragraph 3 of Schedule 1 to the Non-Domestic Rating Contribution (England) Regulations 2000).

4.4 General

4.4.1 Decisions on discretionary rate relief in all cases are a matter for the billing authority concerned. However, rate relief applications for a number of types of bodies often give rise to queries to the Department both from authorities having to make the determination, and from organisations querying entitlements to relief, or the decisions made in their own cases. Particular issues have been raised in relation to:

- rate relief for non-profit making sports clubs;
- charitable organisations and shops;
- hardship relief; and
- empty and partly occupied property relief.

The following sections give advice on the sorts of issues billing authorities might take into account in considering their decisions on applications for relief.

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CHAPTER 5 Sports Clubs

5.1 Charity Status for Sports Clubs

5.1.1 The existing mandatory relief scheme for charities applies to any organisation that is a charity. Therefore, sports organisations that are charities and use their premises wholly or mainly for charitable purposes are entitled to the 80% mandatory relief. On 30 November 2001, the Charity Commission announced revised criteria for the charitable status of certain sports clubs. Clubs which meet these criteria will be eligible for the mandatory relief.

5.1.2 The Charity Commissioners recognise the following as charitable purposes:

- The promotion of community participation in healthy recreation by the provision of facilities for the playing of particular sports; and
- The advancement of the physical education of young people not undergoing formal education.

5.1.3 Not all organisations describing themselves as community sports clubs are necessarily charitable. Along with the general requirements of charitable status, a community sports club seeking charitable status on this basis will need to make its facilities available to all members of the public who wish to use them, regardless of their levels of skill. And the sport concerned must be one that is capable of improving health or fitness. The criteria that community amateur sports clubs would need to meet to be recognised as charitable are explained in guidance issued by the Charity Commission on this subject. The guidance can be viewed at: www.charity-commission.gov.uk/registeredcharities/sport.asp

5.1.4 The date of registration with the Charity Commission should be taken as the effective date for entitlement for mandatory rate relief (this being conclusive evidence as to charitable status).

5.1.5 Many more sports clubs will qualify for charitable status under the revised criteria. However, billing authorities may consider applications for discretionary rate relief under section 47 for non-profit making sports clubs which are unable to qualify for charitable status (and hence mandatory rate relief under section 43(5) or 45(5)) but nonetheless contributes to the local community.

5.2 Discretionary relief for non-profit making sports clubs

The granting of discretionary rate relief under section 47 is a matter for individual billing authorities. However, to help achieve more consistency of treatment when considering whether a non-profit making sports club which does not have or decides not to obtain charitable status should receive discretionary relief, authorities may wish to consider the following issues. Authorities may also wish to bear in mind the legal definition of a Community Amateur Sports Club (CASC) at Annex A, as set out in schedule 18 of the Finance Act 2002 (which exempts specified community amateur sports clubs from corporation tax).

5.3 Access to clubs

5.3.1 Membership should be open to all sections of the community. However there may be reasonable restrictions placed on membership which relate, for example, to ability in a sport or to the achievement of a standard in the field covered by the organisation or where the capacity of the facility is limited, but in general membership should not be exclusive or restrictive.

5.3.2 Membership rates should not be set at such a level as to exclude the general community. However, membership fees may be payable at different rates that distinguish the different classes of membership such as juniors, adults, students, pensioners, players, non-players, employed and unemployed. In general, the club or organisation must be prepared to show that the criteria by which it considers applications for membership are consistent with the principle of open access.

5.3.3 Does the organisation actively encourage membership from particular disadvantaged or under-represented groups in the community e.g. young people, women, older age groups, persons with disability, ethnic minorities' etc? An organisation that encouraged such membership might justify more sympathetic consideration than one which made no effort to attract members from groups particularly deserving of support.

5.3.4 Are the facilities made available to people other than members e.g. schools, casual public sessions etc? The wider use of facilities should be encouraged and rate relief might be one form of recognition that an organisation was promoting its facilities more widely.

5.4 Provision of facilities

5.4.1 Does the organisation provide training or education for its members? Are there schemes for particular groups to develop their skills e.g. young people, the disabled, retired people? An organisation providing such facilities might deserve more support than one that did not.

5.4.2 Have the facilities available been provided by self-help or grant aid? The fact that a club uses or has used self-help for the construction or maintenance of its facilities or has attracted grant aid, might be an indicator that they were more deserving of relief.

5.4.3 Does the organisation's facilities include a licensed bar? The mere existence of a bar should not in itself be a reason for not granting relief. The

authority should look at the main purpose of the organisation. In sports clubs for example the balance between playing and non-playing members might provide a useful guide as to whether the main purpose of the club is sporting or social activities. A club whose main aim is to bring together people with similar sporting or recreational interests should not be excluded from relief just because of the existence of a licensed bar. Some authorities already include in their decision making criteria how much in percentage terms they would deduct from the overall relief granted to clubs with bar facilities based on how much additional revenue the facility raises.

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

5.5 Other considerations

5.5.1 Is the organisation affiliated to local or national organisations' e.g. local sports councils, county or national representative bodies? i.e. are they actively involved in local/county/national development of their interests?

5.5.2 Is the membership drawn from people mainly resident in the billing authority's area? Although authorities will have in mind that 25% of the cost of any relief given which will be borne by the billing authority, particular difficulties may arise with hereditaments which straddle or are close to billing authority boundaries. In these cases, a proportion of the membership may come from another billing authority area. Also, for geographical reasons, or because of the nature of the terrain, particular facilities may be the only ones available for a wide area. In such cases the joint use of facilities by one or more similar organisations is not uncommon. In most cases there will be a measure of reciprocity between the membership of organisations from different areas.

5.5.3 Are members paid to participate? Authorities should consider whether to grant relief where payments or other significant benefits are provided to players. Exceptions could include for example, the reimbursement of reasonable travel expenses for players or officials and reasonable provision and maintenance of club owned equipment necessary for playing the sport. Authorities may choose to look favourably on clubs whose paid players contribute more to the club than just playing, e.g. by coaching younger members.

5.5.4 Authorities may wish to consider the extent to which the activities of the organisation contribute to a local or regional community strategy and/or authority objectives for building neighbourhood identity, community building or social inclusion.

5.5.5 Authorities may wish to add further criteria or substitute relevant alternative criteria that are appropriate to the furthering of their policies and the needs of the community such as development programmes. They should also bear in mind the need to encourage new activities in the wide range of

organisations for which relief from rates is available.

5.5.6 Authorities may wish to consider using a points system for the granting of relief which might give greater weight to any particular aspect of the role of community clubs authorities wish to promote. The amount of relief given need not be 100%, but might be lower if some criteria are not fully met. Indeed, some billing authorities already operate a points system in considering applications.

5.5.7 To assist sports clubs with their long term planning, authorities may wish to indicate in their decisions the likelihood of continued rate relief in future years. Authorities may also wish to explain the likely circumstances in which the relief might be varied or revoked, and the timing constraints placed on the authority in making such a change.

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CHAPTER 6

Charitable Organisations and Shops

6.1 Registered Charities

6.1.1 Under section 67(10) a charity is an institution or other organisation established for charitable purposes only, or any persons administering a trust for charitable purposes only. In practice, the question on whether an organisation is a charity may be determined in most cases by referring to the register of charities maintained by the Charity Commissioners. The absence from the register, however, does not necessarily mean that an organisation is not a charity because it may be excepted from the register or exempt - see [6.4](#) and [6.5](#) below.

6.2 Charity Shops

6.2.1 Charity shops are entitled to mandatory rate relief under section 43(5) (read in conjunction with section 64(10) of the LGFA 1988 - "A hereditament shall be treated as wholly or mainly used for charitable purposes at any time, if at the time it is wholly or mainly used for the sale of goods donated to a charity and the proceeds of sale of the goods (after any deduction of expenses) are applied for the purposes of a charity").

6.2.2 Although this is a mandatory relief, billing authorities need guidance as they still have a decision making role to play. Many billing authorities, charities and others have told us that the rules about what constitutes 'wholly or mainly' are not clear, so that there is inconsistent treatment up and down the country. This lack of clarity makes it difficult for charities to comply with the rules and causes problems for billing authorities seeking to apply them. The legislation does not determine what constitutes wholly or mainly for charitable purposes. Whilst we are unaware of any case law that provides guidance on the meaning of 'mainly' in relation to the rating legislation, in other circumstances, 'mainly' has been held to mean 'more than half' (see *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at 669).

6.2.3 In deciding whether a charity shop is 'wholly or mainly' used for the sale of donated goods, we understand that some billing authorities currently take some or all the following relevant factors into account:

- I. The percentage of floor space occupied by donated goods.
- II. The percentage of turnover and profit represented by the sale of donated goods.
- III. The percentage of individual items sold which are donated goods.

6.2.4 The use of the above factors may not, in every case provide billing authorities with the solution for determining eligibility for rate relief. Charity shops often present difficulties for billing authorities in determining eligibility for rate relief because in terms of quantity of goods displayed, most items may be goods donated by the public. However, in terms of value, the donated goods may represent only a small proportion of turnover. In such circumstances, the weight given to the charitable and non-charitable uses of the hereditament may also need to be considered even if the charitable use, which could be the main use, occupies less than half of the floor space. Clearly, the three factors given above can go up or down depending on the prevailing local economy. In the interests of certainty to ratepayers, billing authorities should try to ensure that properties do not move in and out of charitable relief regularly as a result of such minor fluctuations.

6.3 Friendly and Industrial and Provident Societies

6.3.1 A number of billing authorities have asked for guidance on whether exempt charities within the meaning of the Friendly Societies Act and the Industrial and Provident Societies Act (see 6.5) like credit unions and housing associations are eligible for mandatory and/or discretionary rate relief.

6.3.2 It is our opinion that these societies may not normally meet the requirements under sections 45 and 47 of the LGFA 1988. They are not registered charities, nor do they usually operate as one as they are usually constituted for the purpose of making a return on the investment made by their members whereas charities must have the aim of benefiting the community rather than members.

6.3.3 So registration as a friendly society or an industrial and provident society will not in itself automatically mean that the organisation concerned meets the requirements of the 1988 Act. For a friendly society to qualify for mandatory rate relief it must be "an organisation established for charitable purposes only (section 67(10) and use the property in question "wholly or mainly for charitable purposes" (section 43(6)). Some friendly societies may qualify as charities. Such a society should be in receipt of a letter from Inland Revenue saying it is entitled to exemption from taxes under the provisions of section 505 of the Income and Corporation Taxes Act 1988. This letter can be presented to the billing authority as proof that it is entitled to mandatory rate relief.

6.3.4 To be eligible for consideration for discretionary relief a friendly society or an industrial and provident society must be a non-profit making body and the property it occupies must be used for social, philanthropic, educational or religious purposes.

6.3.5 It still remains for each billing authority to decide whether or not a particular friendly or industrial and provident society is a charity (as defined in section 67(10) of the 1988 Act), and is eligible for rate relief under the provisions of the rating legislation.

6.4 Excepted Charities

6.4.1 Charities are excepted from the need to register with the Charity Commission if they do not meet the minimum requirements for compulsory registration as described in section 3(5) of the Charities Act 1993. The minimum requirements for registration are:

- a permanent endowment; or
- the use or occupation of any land; or
- annual income from all sources amounts of more than £1,000.

6.4.2 In addition to the above there are some other charities which have been specifically excepted from the requirement to register by legislation or Commission order (mainly churches, also voluntary schools).

6.5 Exempt Charities

6.5.1 Any charity comprised in Schedule 2 of the Charities Act 1993 referred to, as an 'exempt charity' is not required to be registered with the Commission. No charity is required to be registered in respect of any registered place of religious worship (under the Places of Worship Registration Act 1855). In any case, such hereditaments and some buildings ancillary to these places of religious worship are exempt from rates under paragraph 11 of Schedule 5 to the 1988 Act.

Exempt charities are those listed in Schedule 2 of the Charities Act 1993 and include:

- Charities which are Industrial and Provident Societies within the meaning of the Industrial and Provident Societies Act 1965;
- Charities which are also registered societies, within the meaning of the Friendly Societies Act 1974;
- Most Universities; and
- Some museums and galleries

6.5.2 More information on Exempt Charities can be found in the Charity Commission leaflet - Exempt Charities (CC23) - which can be viewed and printed from their web-site at www.charity-commission.gov.uk.

6.5.3 Those institutions listed in Schedule 2 of the Charities Act are only exempt to the extent that they are, in law, charities. Organisations such as co-operatives for example, are not normally considered charitable as they are established for the benefit of their members rather than for the public at large, which is one of the criteria considered when establishing the charitable status of an organisation.

6.6 An organisation that has had its application for registration as a charity refused by the Charity Commissioners can still be considered for discretionary rate relief.

6.7 However, it should be noted that it is not enough for a hereditament to be put to charitable uses, as the use of the hereditament must be in pursuance of the purposes of a defined charity or charities.

CHAPTER 7

Hardship

7.1 Section 49 of the Local Government Finance Act 1988 gives billing authorities the discretion to reduce or remit the payment of rates for any ratepayer. A billing authority can reduce or remit the payment of rates where it is satisfied that the ratepayer would sustain hardship if it did not do so and it is reasonable for it to do so having regard to the interests of its council tax payers.

7.2 Whilst it is for each billing authority to decide on the facts of each case whether to exercise its powers under section 49 - and to judge the extent of those powers - authorities may wish to bear the following guidance in mind:

(i) Although authorities may adopt rules for the consideration of hardship cases, they should not adopt a blanket policy either to give or not to give hardship relief: each case should be considered on its own merits and the application process kept as simple and streamlined as possible to enable decisions to be made quickly;

(ii) Reduction or remission of rates on grounds of hardship should be the exception rather than the rule;

(iii) All relevant factors affecting the ability of a business/ratepayer to meet their liability for rates should be taken into account;

(iv) 75% of the cost of any reduction or remittance of rates is offset against an authority's payment into the national non-domestic rate pool: 25% must be borne locally and met by the authority;

(v) The 'interests' of council taxpayers in an area may go wider than direct financial interests. For example, where the employment prospects in the area would be worsened by a company going out of business, or the amenities of an area might be reduced by, for instance, the only provider of a service in the area;

(vi) Where the granting of relief would have an adverse effect on the financial interests of council tax payers, the case for a reduction or remission of rates payable may still on balance outweigh the cost to tax payers if the other interests of the council tax payers are greater;

(vii) Hardship rate relief may in some cases constitute state aid, and may need to be notified to the European Commission - see chapter 9 below;

(viii) The hardship caused to a ratepayer may be self-evident, for example where a business has been affected by severe loss of trade, due to external factors such as natural disasters. However, authorities may wish to consider how the business can demonstrate such loss of trade or business. For example, do accounts, order books, till receipts or VAT returns show a marked decline in trade compared to corresponding periods in previous years?

(ix) Authorities should be clear in awarding relief that it will be granted only for the period for which there is clear evidence of hardship for the ratepayer concerned; and

(x) To guard against fraudulent claims, authorities should satisfy themselves that the claim is from a ratepayer suffering genuine hardship.

7.3 Whilst the Non-Domestic Rating (Discretionary relief) Regulations 1989 do not apply to decisions in respect of hardship relief under section 49, billing authorities should nonetheless consider establishing clear rules for notifying ratepayers as to their decisions under section 49 as soon as is practicable.

7.4 Applications for relief on the grounds of hardship need not be in writing and relief can commence when the applicant meets the requirements. Hardship relief should be reviewed regularly and should be given for short fixed periods which could be renewed following a review rather than for extended periods without review but can straddle financial years.

CHAPTER 8

Empty and Partly Occupied Property Relief

8.1 Empty Property

8.1.1 The liable ratepayer of empty non-domestic properties are eligible for mandatory rate relief of 100% for a period of either three months or six months depending on the type of property. Full rates liability for an empty non-industrial property, such as offices and retail, begins after the property has been empty for 3 months, or, in the cases of industrial properties, such as warehouses and factories, 6 months.

8.1.2 Non-domestic properties which are unoccupied may be liable to empty property rates under the provisions of section 45 of the LGFA 1988 as amended by Rating (Empty Properties) Act 2007. The Non-Domestic Rating (Unoccupied Property) Regulations 2008 (SI 2008 No. 386) superseded the Non-Domestic Rating (Unoccupied Property) Regulations 1989 (SI 1989 No. 2261) and prescribe the classes of unoccupied properties on which rates are not payable. All other classes of empty properties are liable to empty property rates at 100% of the full rate bill.

8.1.3 In the case of empty properties which will, when they are next occupied, be used for charitable purposes, the liability is now 0% of the full rate bill.

8.1.4 Certain types of property are “exempt” from empty property rates. They include those properties where occupation is prohibited by law; those kept vacant by reason of certain action taken by the Crown or a local or public authority; listed buildings and those subject to preservation notices; scheduled monuments; and those which the owner holds only as a personal representative of a deceased person, liquidator or trustee under a deed of arrangement, where the owner is the subject of insolvency proceedings or whose company is in administration within the meaning set out in paragraph 1 of Schedule B1 to the Insolvency Act 1986.

8.1.5 In addition, hereditaments whose rateable value is less than £2,200 are also exempt from empty property rates. Unlike exempt properties under Schedule 5 to the Local Government Finance Act 1988, those “exempt” from empty property rates remain on the rating list.

8.1.6 Pre-Budget Report 2008 announced a temporary lifting of the threshold for exemption from empty property rates from £2,200 to £15,000 for a one year period covering the 2009 – 10 Business Rates year. This change was enacted in The Non-Domestic Rating (Unoccupied Property) (England) Regulations 2009 (SI 2009 No 353).

8.1.7 Billing authorities have a statutory duty to collect all the non-domestic rates due in their area. They should therefore ensure they have procedures in place to administer empty property relief.

8.1.8 The cost of funding empty property relief is met centrally.

8.2 Partly Occupied Property

8.2.1 Section 44A of the LGFA 1988 provides billing authorities with a discretion to grant relief where it appears to the authority that part of a property is unoccupied and will remain so for a “short time only”.

8.2.2 It is not intended that section 44A be used where part of a property is temporarily not used or its use is temporarily reduced i.e. where the equipment, plant and machinery remain in it (e.g. a factory which reduces its output capacity). Instead section 44A is aimed at situations, for example, where there are practical difficulties in occupying or vacating a property in one operation (perhaps because new accommodation to which the occupier is moving is not fully ready for occupation) and it is phased over a number of weeks or months. In such cases it would be reasonable to reduce the liability on that part of the property which is unoccupied. Similarly, where a building or buildings on a manufacturing site become temporarily redundant it might be reasonable to take the unoccupied part of the property into account rather than levy full rates on the whole property.

8.2.3 Where an authority proposes to exercise its discretion in these circumstances it should seek an apportionment of the Rateable Value from the Valuation Officer. On receipt of such a request the Valuation Officer is required to apportion the Rateable Value of the property between the occupied and unoccupied parts of the property.

8.2.4 Following the changes made to the LGFA 1988 by the Rating (Empty Properties) Act 2007 the power to apportion remains available to billing authorities. The amendments made by the 2007 Act to section 44A of the LGFA 1988 ensure that the provisions on empty property rates apply to the unoccupied part of a property where an apportionment has taken place. So, for instance, where the rateable value of the apportioned, unoccupied part of the property is below the relevant threshold no rates will be payable on that part until the end of the operative period (see further paragraph 8.2.7). It should be noted that the threshold has been increased from £2,200 to £15,000 for a one year period covering the 2009/10 business rates year (see further paragraph 8.1.5).

8.2.5 Where the rateable value of the apportioned, unoccupied part is above the threshold then that part should benefit from the initial three month exemption from rates (or six months in the case of industrial properties). This will ensure that, in cases where new businesses are only partly occupied when they initially start up, authorities have discretion to provide short term support by applying the initial exemptions from the unoccupied rate to the unoccupied part. After this period the whole property will be liable to 100% of the occupied business rates including any occupied business rate reliefs such as small business rate relief. This will ensure that occupiers can benefit from occupied business rate reliefs on the whole property and not just the occupied part.

8.2.6 Where an apportioned property is owned by a charity or community amateur sports club, or is covered by the other exemptions from empty property rates set out in regulations, the empty part of the property will benefit from an exemption from rates for the entire time it is empty.

8.2.7 Section 44A makes it clear that relief is only available for the operative period, which starts on the day on which the property became partly unoccupied and this period continues until one or more of the following events occur:

- a. the occupation of any of all or some of the unoccupied part of the property to which the apportionment relates;
- b. the end of the rate year in which the authority requires the apportionment;
- c. the property becoming completely unoccupied.
- d. the unoccupied part of the property has had the 3, or in the case of industrial properties, 6 months rate free exemption at which time it becomes liable for 100% business rate liability.

8.2.8 The constraint in paragraph 8.2.7(b) above means that after 31 March in each year any apportionment that is operative ceases to have effect. If an authority wishes to continue the arrangement in the following rate year it must use its discretion to require a further apportionment. In practice, if there has not been any change to the extent that the property is partly occupied or it has not exceeded the 3 month or 6 month empty property exemption, then the earlier certificate provided by the Valuation Officer could stand - unless the following rate year is one in which a new rating list comes into force or the rateable value for the hereditament has otherwise been altered (e.g. on a material change in circumstances).

8.2.9 Where the part of the property which is vacant is capable of separate assessment it will not be necessary for the Authority to exercise its discretion if the Valuation officer is requested to split the existing assessment into the part that is occupied and the part that is vacant.

8.2.10 It is our view that there is no restriction, express or implied, in the provisions of section 44A as to the type of property or circumstances in which relief may be given. Once an application is received, the first questions an authority must consider are the factual ones. That is to say, is any part of the property unoccupied, and if so, again on the facts of the case, how long has that part been continuously unoccupied.

8.2.11 If, the local authority is of the view that the necessary conditions are present, then it is bound to consider whether or not to exercise its discretion in favour of the applicant and grant relief for apportionment under section 44A. In reaching the conclusion, local authorities must have regard to all the relevant facts.

8.2.12 The cost of funding partly occupied property relief is met centrally.

Updated: 2009

CHAPTER 9

State Aid

9.1 The following should not be taken as an exhaustive guide to the complex rules and cases of EU State aid. Of necessity the following is just a sketch of the state aid issues which may affect the granting by billing authorities of rate relief.

9.2 European Union competition rules generally prohibit Government subsidies to businesses. Relief from taxes, including non-domestic rates, can constitute state aid. Billing authorities should bear this in mind when granting discretionary rate reliefs.

9.2 Empty property and transitional reliefs are regarded as part of the determination of liability, applied equally to all ratepayers, and so are not considered to be state aid.

9.3 Rate relief for charities and non-profit making bodies is not normally considered to be State aid, because the recipients are usually not in market competition with other businesses. However, if the charities or non-profit making bodies are engaged in commercial activities or if they are displacing an economic operator or if they have a commercial partner, rate relief could constitute State aid and the rules set out below will apply.

9.4 Hardship relief can also constitute state aid, as can relief under the village shop and farm diversification schemes. In practice, however, aid to village shops, most local, "commercial" charities and other small-scale, local service organisations (B&Bs, small retailers, child-care facilities, etc.) will not be caught by the state aid rules, as long as they are independent, family-owned businesses, because they are deemed incapable of affecting intra-Community trade. Any manufacturing operation, on the other hand, however small-scale, is normally deemed to be capable of affecting intra-Community trade, so rate relief for butchers and farmers for example, producing cheese, sausages, cider and other foodstuffs would be state aid.

9.5 There are also general exceptions from the state aid rules where the aid is below a "de minimis" level. This is €100,000 (around £63,000) to any one business over three years. The de minimis level applies to all de minimis aid received, including other Government subsidies or grants, in addition to any rate relief. This de minimis threshold does not apply in certain excluded sectors, including agriculture, fisheries, transport, coal and steel, and aid to export-related activities, where any amount of rate relief is state aid. As far as agriculture is concerned, rate relief for farmers would not be eligible for De Minimis aid, but rate relief for farm diversification projects, which do not involve the production, processing and marketing of agricultural goods, would be eligible. There are a number of administrative requirements relating to de minimis aid and authorities considering using it should contact the DTI's State Aid Policy Unit. The exchange rate that applies is the one for the month in which the aid is given and can be found at http://europa.eu.int/cgi-bin/make_inforeuro_page/en/gbp

9.6 Guidance on State aid is available at <http://www.dti.gov.uk/europe/stateaid> and the DTI's State Aid Branch can be contacted at:

State Aid Branch
2nd - Floor
Kingsgate House
66-74 Victoria Street
London SW1E 6SW
E-mail: sapu@dti.gsi.gov.uk

9.7 Where relief does constitute State aid, it may need legal clearance from the European Commission. Authorities that are considering granting any hardship relief, charity relief or farm diversification relief which would be caught by the State aid rules and would bring total aid to the business concerned above the de minimis level, or granting any amount to businesses in the excluded sectors, should contact the ODPM at our enquiries address ([see introduction](#)). The ODPM will seek clearance from the Commission, if necessary. If Commission clearance is needed, the relief should not be paid until clearance has been granted.

CHAPTER 10

Notification of the decisions

10.1 It is important that applicants are aware of the decision making process in their applications for relief. It may be appropriate to advise applicants of the process involved, and of any appeals process the authority operates in respect of unsuccessful applications when the authority acknowledges receipt of the application.

10.2 Acknowledging the application

Authorities should acknowledge all applications for rate relief in accordance with their normal targets for responding to correspondence from ratepayers. Acknowledgements should advise ratepayers of the likely time for any decision to be made, and of the possibility that the authority may need to ask questions or make further enquiries.

10.3 Making the decision

Authorities will already have their own established procedures for making decisions on applications for rate relief. Many will delegate decision-making powers to individual officers or committees with agreed terms of reference.

10.4 Notice of decisions - successful applications

Authorities should notify all applicants for rate relief of their decision in writing. Where relief is granted, the letter should set out:

- The amount of relief granted and the date from which it has been granted
- If relief has been granted for a specified period, the date on which it will end.
- The new chargeable amount.
- The details of any planned review dates and the notice that will be given in advance of a change to the level of relief granted.
- A requirement that the applicant should notify the authority of any change in circumstances that may affect entitlement to relief.

10.5 Notice of decisions - unsuccessful applications

10.5.1 One of the commonest criticisms from unsuccessful applicants for relief is that they are not given an explanation of the reasons for refusal. We suggest that as a matter of good practice, authorities should provide an explanation of their decision in every case where relief is either refused or restricted to a smaller amount than applied for. Authorities should explain the decision within the context of the exercise of their statutory duty.

10.5.2 This is particularly important. First so that the applicant is aware of the reasons for the decision.. And second, so that that an organisation can, if it wishes, take steps to conform with the criteria which the authority has adopted for the granting of relief.

10.5.3 The ratepayer should also be notified at the same time of any right of appeal the authority may provide against the decision of the authority. We believe that it is in the interests of fairness to the ratepayer and a matter of good practice that such mechanisms are available.

10.6 The right of appeal

Authorities should have a mechanism that allows applicants to appeal against a decision by an authority to revoke, reject or restrict the award of discretionary rate relief. Appeals could be resolved by written or oral representations but should not be considered by the same officials that made the original decision. It may be considered appropriate to refer any appeal to a panel of council members for determination, especially where an officer of the council made the original decision under delegated powers. We are aware that some billing authorities may already have in place similar appeals procedures.

Annex A
Definition of Community Amateur Sports Clubs (CASCs) as set out in
Schedule 18 of the Finance Act 2002

COMMUNITY AMATEUR SPORTS CLUBS

CLUBS ENTITLED TO BE REGISTERED

The requirements

1 A club is entitled to be registered as a community amateur sports club if it is, and is required by its constitution to be, a club that -

- (a) is open to the whole community,
- (b) is organised on an amateur basis, and
- (c) has as its main purpose the provision of facilities for, and promotion of participation in, one or more eligible^[1] sports.

In this Schedule "registered club" means a club that is so registered.

Open to the whole community

2 (1) A club is open to the whole community if-

- (a) membership of the club is open to all without discrimination,
- (b) the facilities of the club are available to members without discrimination, and
- (c) any fees are set at a level that does not pose a significant obstacle to membership or use of the club's facilities.

(2) For the purposes of sub-paragraph (1) "discrimination" includes indirect discrimination and includes, in particular-

- (a) discrimination on grounds of ethnicity, nationality, sexual orientation, religion or beliefs;
- (b) discrimination on grounds of sex, age or disability, except as a necessary consequence of the requirements of a particular sport.

(3) This paragraph does not prevent a club from having different classes of membership depending on-

- (a) the age of the member;
- (b) whether the member is a student;
- (c) whether the member is waged or unwaged;
- (d) whether the member is a playing or a non-playing member;

- (e) how far from the club the member lives;
- (f) any restriction on the days or times when the member has access to the club's facilities.

Organised on an amateur basis

3 (1) A club is organised on an amateur basis if-

- (a) it is non-profit making,
- (b) it provides for members and their guests only the ordinary benefits of an amateur sports club, and
- (c) its constitution provides for any net assets on the dissolution of the club to be applied for approved sporting or charitable purposes.

(2) A club is "non-profit making" if its constitution requires any surplus income or gains to be reinvested in the club and does not permit any distribution of club assets, in cash or in kind, to members or third parties.

This does not prevent donations by the club to charities or to other clubs that are registered as community amateur sports clubs.

(3) The ordinary benefits of an amateur sports club are-

- (a) provision of sporting facilities;
- (b) reasonable provision and maintenance of club-owned sports equipment;
- (c) provision of suitably qualified coaches;
- (d) provision, or reimbursement of the costs, of coaching courses;
- (e) provision of insurance cover;
- (f) provision of medical treatment;
- (g) reimbursement of reasonable travel expenses incurred by players and officials travelling to away matches;
- (h) reasonable provision of post-match refreshments for players and match officials;
- (i) sale or supply of food or drink as a social adjunct to the sporting purposes of the club.

(4) Sub-paragraph (3) does not prevent a club from-

- (a) entering into an agreement with a member for the supply to the club of goods or services, or
- (b) employing and paying remuneration to staff who are also members of the club,

provided the terms are approved by the governing body of the club without the member concerned being present and are agreed with the member on an arm's length basis.

(5) In relation to the application of the net assets on the dissolution of the club, "approved sporting or charitable purposes" means such of the following as may be approved by the members of the club in general meeting or by the members of the governing body of the club-

(a) the purposes of the governing body of an eligible sport for the purposes of which the club existed, for use in related community sport;

(b) the purposes of another club that is registered as a community amateur sports club;

(c) the purposes of a charity.

[1] A sport designated as an eligible sport where that sport appears on the list maintained by the national Sports Councils of activities recognised by them.

Annex B

PROPERTY ELIGIBLE FOR RATE RELIEF	TYPE OF RELIEF	AMOUNT OF RELIEF	FINANCIAL IMPLICATIONS	
			Proportion offset against payments into NNDR Pool	Proportion borne locally by council tax payers
1. Property wholly or mainly used for charitable purposes which is occupied by a registered charity or charity shop.	a) Mandatory	80%	100%	-
	b) Discretionary	Up to a further 20%	25%	75%
2. Property, all or part of which is occupied for the purposes of a non-profit making: a) institution or other organisation whose main objects are philanthropic or religious or concerned with social welfare, science, literature or the fine arts; or b) club, society or other organisation and is used for the purposes of recreation	Discretionary	Up to 100%	75%	25%
3. Property, all or part of which is occupied, where the billing authority is satisfied that the ratepayer would suffer hardship	Discretionary	Up to 100%	75%	25%
4. Property, all or part of which is occupied, other than as trustee, by a charging or precepting authority	None	None	-	-
5. Property which is unoccupied for: a) 0 to 3 months for offices and shops	a) Mandatory	100%	100%	-
	a) Mandatory	100%	100%	-

b) 0 to 6 months for industrial premises				
6. Property which is partly occupied for a short period only (Section 44A of the LGFA) a) 0 to 3 months for offices and shops b) 0 to 6 months for industrial premises	Discretionary	100%	100%	-
7. Property in designated rural settlements a) sole general store, post office, food shops (£7,000 RV or less); sole public house and petrol filling station (£10,500 RV or less) b) Other business properties (£14,000 RV or less)	a) Mandatory a) Discretionary b) Discretionary	50% Up to a further 50% Up to 100%	100% 75% 75%	- 25% 25%

