

RATES (AMENDMENT) (NORTHERN IRELAND) ORDER 2004

S.I. 2004 No. 703 (N.I. 4)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Rates (Amendment) (Northern Ireland) Order 2004 ('the Order') was made on 10 March 2004.
2. The Explanatory Memorandum has been prepared by the Department of Finance and Personnel ("the Department") to assist the reader in understanding the Order. It does not form part of the Order.

BACKGROUND AND POLICY OBJECTIVES

3. The Order aims to make several key changes to the existing non-domestic rating system in Northern Ireland. They are part of a major programme of rating reform initiated by the former Northern Ireland Executive in 2000 with the aim of establishing a modern and fairer rating system in Northern Ireland.
4. The main policy objectives of the Order are:
 - (i) to phase out the exemption from rates for industrial property, known as "industrial derating". The phase out begins on 1 April 2005 and will be completed by 31 March 2011;
 - (ii) to introduce the rating of unoccupied non-domestic property, including new buildings; and
 - (iii) to provide for hardship relief in exceptional circumstances.

CONSULTATION

5. The policy decisions to phase out industrial derating and to introduce the rating of vacant non-domestic property were announced in April 2003 following an extensive public consultation exercise in 2002 and detailed discussions with representatives of the business community in early 2003.
6. A further consultation exercise was launched in October 2003 on the Proposal for a draft Rates (Amendment) (Northern Ireland) Order 2004, which aimed to give effect to these policy decisions. 31 responses were received. The Proposal was also debated in the House of Commons Northern Ireland Grand Committee in January 2004. The provision in the Order on hardship relief (Article 8) was inserted in response to the views expressed during the consultation exercise on the Proposal and the Grand Committee debate.

OVERVIEW

7. The Order consists of 9 Articles and 4 Schedules.

COMMENTARY ON ARTICLES

8. Comments are not provided where the wording is self-explanatory.

Article 3: Removal of exemption for Industrial Hereditaments

This Article amends paragraph 4 of Schedule 7 to the Rates (Northern Ireland) Order 1977 (the principal Order) and provides that industrial derating will be phased out from 1 April 2005. It specifies the percentage of the rate payable on industrial property during each year of the phase out period and removes the exemption completely on 1 April 2011. The Department is granted an order-making power to vary the percentages payable during the phase out period. Such an order would be subject to the affirmative resolution procedure at the Assembly. Article 3 also provides that during the phase out period, where a property is occupied and used partly for industrial purposes and partly for other purposes, the part that is not used for industrial purposes will continue to be liable to the full rate while the industrial part will be liable to the percentage rate applicable in the year in question.

Article 4 (and Schedule 1): Liability to be rated in respect of certain unoccupied hereditaments

This Article inserts a new Article 25A in the principal Order. It provides for a person to be chargeable to rates in respect of a property that is unoccupied if certain conditions are met. The conditions are that the property is one to which the new Schedule 8A (Schedule 1 of the Order) applies and that the person is entitled to possession of it. Schedule 8A applies to specified (i.e. non-domestic) hereditaments within the meaning of Article 39A(3) of the principal Order that are included in the Valuation List and fall within a class to be prescribed in Regulations. Schedule 8A also provides that the amount payable when the property is unoccupied will be 50% of the occupied rate. It limits liability to the actual period of the vacancy and makes provision for the amount chargeable to be adjusted where a property is vacant for part only of a year and for a refund to be made if appropriate. Provision is also made for unoccupied property intended for use as a sports club, nursing home or for public, charitable and certain other purposes to be wholly or partly exempt from the vacant rate. The Department is also given a power to make Regulations to make any provisions it considers necessary or expedient for the purposes of Article 25A, or in consequence of any provision made by or under this Article. Such Regulations may modify any of the provisions of the principal Order and have to be laid in draft before, and approved by resolution of, the Assembly.

Article 5 (and Schedule 2): New Buildings

This Article, which is consequential on Article 4, inserts a new Article 25B and Schedule 8B (Schedule 2 of the Order) in the principal Order. Schedule 8B provides that the Department may serve a completion notice on the person entitled to possession of a new building where it appears to the Department that the new building has already been completed or that it can reasonably be expected to be completed within 3 months. A completion notice can be withdrawn and cannot be served on a building that is, or when next in use will be, a private dwelling. It proposes the date of the "completion day". This is the day on which a new building is deemed to be completed. Schedule 8B provides that the completion day proposed in the completion notice may be determined by agreement between the Department and the person entitled to possession. In this case, the completion notice is withdrawn. However, where an agreement cannot be reached, the ratepayer is given a right of appeal to the Commissioner of Valuation. The Commissioner may determine a different date as the completion day. He can also transfer an appeal to the Lands Tribunal of Northern Ireland. However, if the Commissioner has considered the appeal and the ratepayer is dissatisfied with his decision, he or she has a further right of appeal to the Lands Tribunal of Northern Ireland. The Tribunal may then determine the completion day. If there is no appeal, the completion day will be the day proposed in the notice. Article 25B provides that where the completion day has been determined and a new building is not occupied on that day, it is deemed to become unoccupied on that day. If the building is one to which Schedule 8A applies, the person entitled to possession of it will be liable to the vacant rate from that day. If the building is not in fact completed by the day determined as the completion day, this Article provides that the building will be valued as if it were complete on that day and in a reasonable state of repair. This completion notice system is designed to circumvent the deliberate non-completion of a new building in order to evade liability for the rate.

*This Explanatory Memorandum refers to the Rates
(Amendment) (Northern Ireland) Order 2004 No. 703 (N.I. 4)*

Schedule 8B also provides that, while an appeal is pending, the person entitled to possession will continue to be liable to the vacant rate on the basis of the date proposed in the completion notice. An obligation is placed on the Department to make Regulations providing for the amount chargeable to be adjusted in light of the outcome of an appeal and, where appropriate, for a refund of any overpayment to be made to the ratepayer.

Provision is also made for a building that requires further specialised “fitting out” or work which is customarily done after the building is substantially completed. In this case, it is assumed that the proposed completion day will be such as would allow a reasonable time for the fitting out to be completed (for example, leaving out of account any time required for securing a tenant).

Article 6: Power of Department to require information where hereditament is unoccupied.

This Article inserts new paragraphs (2A) and (2B) in Article 26 of the principal Order. The new paragraph (2A) provides that the Department may serve a notice on specified persons or bodies requiring information to be provided in writing to help identify the person liable to pay the vacant property rate where that person is unknown. The Department is given a power to make Regulations prescribing the information to be sought in a notice. The information must be within the knowledge or control of the person on whom the notice is to be served. If a person specified in paragraph (2B) fails, without reasonable excuse, to comply with such a notice, he or she will be guilty of an offence under Article 60 of the principal Order.

Article 7: Powers of entry

This Article inserts a new Article 26A in the principal Order which provides authorised officers of the Department with a power to enter non-domestic property for the purpose of gathering information. The power is exercisable at any reasonable time with the consent of the occupier or, if the property is vacant, with the consent of the person entitled to possession of the property. In the absence of such consent, the power may be exercisable after 24 hours notice has been given. A property that has been entered under this Article must be left in a secure state and compensation is payable if a property is damaged.

Obstructing an authorised officer of the Department is also an offence under Article 60 of the principal Order.

Article 8: Hardship relief

Article 8 inserts a new Article 33B in the principal Order which enables the Department to make Regulations that will give the Department a discretion to reduce or remit the amount of rates payable where there are exceptional circumstances and it appears to the Department that hardship would otherwise be suffered by a ratepayer. This hardship relief will apply to specified (i.e. non-domestic) hereditaments that do not fall within a class to be prescribed in the Regulations.

Schedule 3

This Schedule makes detailed amendments to the principal Order consequential on the provisions of this Order.

Schedule 4

This Schedule sets out details of legislation being repealed.

COMMENCEMENT

9. **Article 1** and **Article 2** (interpretation) come into operation on the day after the day on which the Order is made. Paragraph (1) of **Article 3** (removal of exemption for industrial hereditaments) and paragraphs (2) and (3) of **Article 9** (amendments, repeals etc) and paragraph (1) of that Article so far as it relates to paragraph 1 of **Schedule 3** (amendments) will come into operation on 1 April 2011. The remaining provisions of the Order are to be brought into operation on a day or days to be appointed by the Department.